

ESCR-Justice

Monthly Caselaw Update



ESCR-NET CASELAW DATABASE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS
RELATED JURISPRUDENCE, CASES AND OTHER DECISIONS

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New Delhi High Court Upholds Women's Human Rights to Food and Health

Laxmi Mandal v. Deen Dayal Harinagar Hospital & Ors, W.P.(C) Nos. 8853 of 2008 High Court of Delhi, June 4, 2010.

This is the next installment of ESCR-Justice, a monthly update highlighting an important economic, social or cultural rights (ESCR) case that has been added to the Caselaw Database. This edition of ESCR-Justice summarizes an important case decided by the High Court of Delhi at New Delhi on access to maternal healthcare.

This case was brought on behalf of Shanti Devi, a women living in poverty from a Scheduled Caste*, who died as the result of being repeatedly refused adequate maternal healthcare despite the fact that she qualified for the free services under existing state-sponsored schemes. The High Court of Delhi found that there was a failure to properly implement the pre and post natal services which should have been available to her. They stated that it was inappropriate to place the burden on the poor to prove their eligibility for health services; rather government should be facilitating their access to these essential services. The Court found that this petition highlighted two critical "survival rights" enforceable under Article 21 of the Indian Constitution that protects the right to life: the right to healthcare, and the right to food--which is integral to the right to health and life. The Court noted that all of these rights are interrelated and indivisible and emphasized that the lack of effective implementation of health and nutrition schemes essentially creates a denial of the right to life.

Financial compensation and "red cards", which allow the claimant's surviving family to access health and nutrition services were awarded. The Court also determined that the schemes themselves needed reformation and ordered the States of Haryana and Delhi to undertake corrective measures and institute monitoring policies to ensure the decision is implemented, including affidavits on compliance to be submitted 8 weeks from the date of the decision. This case is a clear example of the gap that exists in India, and globally, between the existence of laws that protect women's economic and social rights and implementation of domestic policies which make these rights accessible and meaningful. This case was compounded by the intersectional discrimination Shanti Devi experienced being a poor woman from a Scheduled Caste. Advocates who worked on this case believe the judgment was an important victory and that it will have major implications for health policy in India, where a maternal death occurs every five minutes.

*Scheduled caste is a legal term for someone from a so-called "untouchable" caste, which is specifically identified in the Indian Constitution, as entitled to specific rights and protections because of their untouchable status. "Dalit" is a self-given and political term used that includes all scheduled castes but also includes those communities that are treated as untouchable but not recognized by the Constitution as needing protection.

For a **full case summary** and information on the enforcement and other outcomes of this decision, visit the **Caselaw Database** at www.escr-net.org. There you will also find information on groups involved, case documents and secondary literature.

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