

Public Interest Litigation

Independent Thought vs. Union of India (W.P. Civil 4678 of 2016)

(Honorable High Court of Delhi Issued notices to Union of India and Others on 20 May 2016)

Independent Thought¹ (www.ithought.in) has approached the Hon'ble High Court of Delhi by way of Writ Petition under Article 226 of the Constitution seeking for the issuance of necessary and appropriate guidelines for performance of Caesarian section operations to safeguard the reproductive health rights of women and children in India. The Petitioner submits that absence of such guidelines is leading to violation of reproductive health rights of women. This PIL pertains to the fundamental right to health of women and children in India and such women and children are not in a position to access this Hon'ble Court directly.

The Petitioner humbly submits that complete absence of any regulation through law and the increasing rate of caesarian section deliveries based on extraneous considerations and in complete violation of the right to health and reproductive rights of all women in India.

Status of Deliveries under Caesarean section in Delhi during period of 1st April 2013 to 31st March 2015

Private Hospitals: April-2012 to March-2015

On average percentage of delivery under c – section is **65.54%** held in Private Hospitals² of Delhi. The information pertains to 47 Private Hospitals from Districts namely; West, South West, North West, Shahadra, Central, East. The total delivery in the period was 45064 out of which normal was 15529 and Cesarean was 29535.

Government Hospitals: April-2012 to March-2015

On average percentage of delivery under c – section is **20.62%** held in Government Hospital³ of Delhi. The above information pertains to 22 Government Hospitals. The total delivery in the period was 314738 out of which normal was 249829 and Cesarean was 64909

Background

The efforts of the Petitioners through numerous applications under the Right to Information Act, 2005 (RTI) has also clearly established that there is NO guidelines for the performance of CS on a pregnant woman. The only faint reliance in this area is often given to the WHO guidelines but which has no legal status and hence not complied with seriously at all. As per this guideline, the norm allowed for birth by caesarian section is on 10 to 15% of the total deliveries whereas the RTI data pursued and received by the petitioner clearly shows a violation of the above norms. In the government hospitals of Delhi, the RTI data reveals that such deliveries are upto 20.65% whereas in the private hospitals, this percentage goes high upto 65.54%. It is submitted that the high rate of deliveries by CS in private hospitals are solely due to the unregulated space in this area and is a serious violation of the right to health of women and children.

The PIL is directed against the Government of India through its Ministry of Health and Family Welfare as it deals with the right to health of women and children. Similarly, the Department of Health and Family welfare, Govt of NCT, Delhi is made a respondent because the data revealed from the RTIs has been from this Duty bearer. The Medical Council of India, which is the statutory body responsible for maintaining minimum standards and for ensuring and implementing all guidelines pertaining to the medical profession is also a respondent.

¹ *Independent Thought* is a National Human Rights organization working towards equity, justice and mutual respect. Based in Delhi NCR, iThought provides technical and handholding support to non government, government and multilateral Funding, Policy, Research and Grassroots organizations in several states of India.

² 47 Private Hospitals following District, namely; West, South West, North West, Shahadra, Central, East

³ 22 Government Hospitals

Factual Details

- Recently released the Government's Data at the National level by the 2015–16 National Family Health Survey–4 (NFHS–4), under the aegis of the Ministry of Health and Family Welfare shows that women who delivered by caesarean section (C-section) were found to be as high as 58% in Telangana, Andhra Pradesh (40%) and Tamil Nadu (34%). The C-section deliveries has been found to be much higher in urban areas than in rural areas and found more common in private facilities, varying from 25% in Haryana to 75% in Telangana.
- Petitioners through numerous applications under the Right to Information Act, 2005 (RTI) has clearly established that there is NO guidelines for the performance of CS on a pregnant woman. It is submitted that the RTIs were filed seeking data on number of deliveries under caesarian section in Delhi in both government and private hospitals in Delhi. The period for which data has been sought was April 1st, 2013 to March 31, 2013. As per an analysis of all the RTI responses received, it has been found that during this period, in 47 private hospitals of Delhi, a total of 45064 deliveries had taken place and out of this, the ones conducted by caesarian section was a total of 29535, which is a high percentage of 65.54% and much in violation of the WHO norms. During the same period, the data analyzed has shown that in the 22 Government hospitals, the total deliveries was 314738 and the ones conducted by caesarian section was a total of 249829, which works out to a 20.51%, which though above the WHO norm, is still near it.
- **Certain replies received under RTIs** clearly mentions the following;
 - There are no statutory guidelines issued in this regard
 - There is no definition of what constitutes unnecessary caesarian section delivery.
 - There is no Act, evaluation, recommendation, notification, to regulate the birth of caesarian sections in Hospitals
 - ICMR has no such information is available with them on this
 - There are absolute and relative indications for caesarian deliveries but no such Act exists
 - The standard recommendations can be found in any standard obstetrics textbooks.
 - Hospital follows the WHO, FOGSI and RCOG guidelines in management of caesarian cases
 - Caesarian are done based on indications as mentioned in books

Grounds

Some of the important grounds on which the PIL has been framed :

- That there is a complete lack of any law, policy, guideline or regulation in any form that is leading to the high rate of operations by caesarian section in hospitals, especially privately run hospitals of India
- That this increase in the high rate of operations by caesarian section in hospitals, especially privately run hospitals of India is violative of the right to health and reproductive rights of woman.
- That unnecessary operations by caesarian section is dangerous and harmful to the neo natal health of both mother and child and hence is a complete violation of the fundamental right to health of women and children in India
- That unnecessary conduction of caesarian section operations result in higher cost of health care and is thus violative of the right of the woman to quality access to health services at reasonable rates and is thus benefitting the private sector of medical professionals solely at the cost of being violative of the fundamental right to health of women and children.

Prayers

The Petitioner has prayed for following in Hon'ble Court:

- Issue appropriate guidelines for conducting caesarian operations on pregnant woman and to regulate and monitor quality norms and standards therein in all hospitals in India
- Issue necessary directions to Union of India to bring on record the actual status and number of caesarean section deliveries in different States
- Issue necessary directions to the Union of India and Government of NCT, Delhi to Constitute Commission of Inquiry on the circumstances in which the average birth by caesarean section in private hospitals of Delhi, is as high as 65.54%; against 20.65% in the government hospitals of Delhi, and where the WHO norm allowed for birth by caesarean section is between 10 to 15% of the total deliveries.
- Issue any other direction, order, guideline as it may deem fit in the interest of justice by this Hon'ble Court.

For Details: Vikram Srivastava, Advocate and Founder, Independent Thought

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