IN THE HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

WRIT PETITION NO. 1913/2015 (PIL)

Petitioners:

1. **Smt. Kusum w/o Vikram**
   Age 28,Accupation Nothing,
   R/O Bhatkala Post Mandu
   District Dhar(M.P)

2. **Hagariya s/o Nagji**
   Age 75,Accupation Nothing,
   R/O Malipura, Post Mandu
   District Dhar (M.P)

Versus

Respondents:

1. **Principal Secretary ,**
   Through ,Department of Public Health and Family Welfare,
   Bhopal,Madhya Pradesh.

2. **Principal Secretary ,**
   Rural Administration and Development,
   Bhopal Madhya Pradesh.

3. **Principal Secretary ,**
   Madhya Pradesh Road Development Corporation Ltd.
   45- A Arera hills
   Bhopal Madhya Pradesh.

4. **Managing Director,**
   M.P. Paschim Kshetra Vidyut Vitaran Co. Ltd.
   GPH Compound, Pologround,
   Indore Madhya Pradesh.

5. **Commissioner,**
   Municipal Corporation
   Indore. Madhya Pradesh.

6. **Collector,**
   Dhar ,Madhya Pradesh.

7. **Union of India,**
   Through ,Principal Secreatary ,
   Ministry of Rural Development
   Govt. of India New Delhi.

PUBLIC INTEREST LITIGATION PETITION , WRIT PETITION

UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

1. Particulars of the cause/order against which the petition is made:

1.1. Date of Order: Nil

1.2 Passed in (Case or File Number): Nil

1.3 Passed by (Name and designation of the Court, Authority, Tribunal etc.): Nil

1.4. **Subject-matter in brief**:

That by way of instant Writ Petition the Petitioner seeks kind indulgence of this Hon'ble Court in matter of the fundamental rights violations of Adivasi villagers in Dhar District of Madhya Pradesh.

Approximately 35,000 Adivasi people are living in these all 6 villages near Mandav district Dhar M..P. among them Malipura village is 4 km away from Madav and other villages are AMBAPURA, RATITALAYI, BHATKALA, BANDHAV, PIPLADIYA are near to Malipura. There are lots of ditches and rocks on the way to reach up to those villages that way is full of dangerous valley there is no medical facility for villagers. There is no electric supply in surrounding villages except Malipura , water supply and nobody is there to care of them, if any person gets sick then they have to take that patient to the hospital by using some cloth sheets like dhoti,bedsheet (kapdo ki jholi) because no vehicle can run of that way which is full of ditches.

As a result of woefully inadequate infrastructure, poor implementation of government guarantees and entitlements, and neglect, these villagers have suffered grave violations of their Right to Life, Right to Health, and Right to Food under Article 21 of the Constitution of India and violations of the right to equality regardless of caste, race or place of birth under Article 14 of the Constitution.

These violations disproportionately impact pregnant and lactating women who have experienced grave violations of their fundamental Rights to Life, Health, and Dignity enshrined in Article 21 as well as violations of their fundamental rights to

Freedom from Discrimination based on gender enshrined in Article 14 of the Constitution. Specifically, the Respondents have failed to ensure the guarantees in the National Health including access to health centers, access to ambulance services, access to antenatal care, and access to safe delivery services.

This Writ Petition illustrates the Respondents gross failures to ensure the Right to Life for these Adivasi villagers.

2. The antecedents of the Petitioner:

1.That, the petitioners are citizen of India. Petitioner No.1 Smt. Kusum w/o Vikram Residence Bhatkala Adiwasi, post Mandu Distt. Dhar was pragnant when people were taking her to hospital she has delivered her child on the way ,unfortunately that child was died and Petitioner No.2 Hagariya S/o Nagji age 75 years old person was suffering from Typhoid and villagers have taken him to the hospital 4 km away from his village by using cloth sheet (kapdo ki jholi).

(A copy of affidavits are marked and Annexed here to as **Annexure P/1 and P/2** .*)* The right to Adivasi villagers are a fundamental right as enshrined under article 14, of the constitution of India and the right to livelihood is a right flowing from the right to life with dignity as enshrined under article 21 of the constitution of India.

2. That, the present petition under article 226 of the constitution of India is being filed by way of public interest litigation and the petitioners have no personal interest. The petition is being filed in the interest of poorAdiwasi people, innocent, illiterate rights.

3.That, the petitioners are filling the persent petition on his own and not at the instance of someone else.

Facts in Brief:

The Petitioners mentioned above respectfully showeth as under:

MOST RESPECTFULLY SHOWETH:

3.1 That the Petitioners are filing the current public interest litigation as a result of grave Article 21 violations in give villages in Dhar District Madhya Pradesh: Ambapura, Ratitalayi, Bhatkala, Bandhav, and Pipladiya. Each village has a population of around 5,000 people. The Respondents have denied the Adivasi residents of these villages access to basic services including medical care, antenatal and delivery care, clean water, adequate roads ,Electricity and adequate nutrition.

FAILURE TO ENSURE ACCESS TO HEALTH CARE AND SERVICES FOR PREGNANT ADAVASI WOMEN AND ILL VILLAGERS

3.2 That, none of the Six focus villages has a single health facility. Pregnant women and ill villagers travel to hospitals in cloth sheets because vehicles cannot reach the villages. Villagers routinely carry sick family members to Mandav Hospital (4 kms) or to Nalsa Hospital (13 kms) to seek treatment. Without health facilities or adequate roads, villagers routinely face increased injury or die on the way to care.

3.4 That , approximate 4 pregnant women died on the way due to the non approchable road to reach the hospital . Newborns also perish on road due to not providing medical services in time. For example, one villager, Kusum(Petitiner no 1) delivered a baby on the arduous path to the hospital. The baby died before Kusum could reach a facility. Villagers carried an elderly man, Hagariya,(Petitioner no .2) 4 kms in a handmade *kapdo ki jholi* for typhoid treatment. The Petitioners discovered that these conditions persist in all six villages where health services are non-existent.

3.6 That, India accounts for the highest number of maternal deaths in the world and has a Maternal Mortality Rate (MMR) of 138 because of inadequate access to health care and poor quality services. At least 80% of India’s maternal deaths could be prevented if women simply had access to essential maternal and

basic health-care services. Every eight minutes an Indian woman dies in child birth; her lifetime risk of maternal death is one out of seventy. The majority of maternal mortality is preventable. The United Nations High Commissioner for Human Rights on preventable maternal mortality and morbidity and human rights reported that at least 80% of India's maternal deaths could be prevented if women simply had access to essential maternal and basic health-care services.

3.7 That, Madhya Pradesh has one of the highest Maternal Mortality Ratios (MMRs) in India. India has overall brought the MMR down to 138, but for every 1 lakh live births in Madhya Pradesh, 230 women will die, mostly from wholly preventable causes. The state also has one of the highest infant mortality rates (IMRs) in India with 54 out of every 1000 newborns dying in the first year. Additional data illustrates rampant violations of the Right to Life, the Right to Health, and the Right to Equality in the state and in Dhar District.

3.8 That, the latest District Level Household Survey (DLHS) data from Madhya Pradesh shows that just 34.2% of all pregnant women in the state had the minimum of three Ante Natal Check (ANC) ups and that just 16.7% of pregnant women consumed the required amount of Iron Folic Acid Tablets. Shockingly, just 7.9% of pregnant women had full antenatal checkups with just 5.7% of rural women receiving the same. The data also shows that only 47.1% of deliveries occur institutions. ANCs are crucial to flag potential complications that can result in maternal mortality including anemia.

3.9 That, the DLHS also indicates that just 57% of villages in the state have a Sub-centre within 3 Kms and that only 55.6% of villages have a Primary Health Center within 10kms. Just 55.5% of Sub-centres have delivery rooms and only 73.2% of Sub-centres have toilets. Even if villagers can reach a higher level of care, like a Community Health Centre (CHC) they are unlikely to get specialized services as only 20.8% of CHCs have an Obstetrician or Gynecologist, only 13.2% of CHCs

provide caesarean section deliveries, and just 6.3% of CHCs have a blood storage facility. This is especially shocking given that post-partum hemorrhage (bleeding) accounts for 25% of all maternal death in Madhya Pradesh.

3.10 That, as the DLHS states, "Women who either do not take ANC or take incomplete course of ANC are exposed to the risk of maternal death." Maternal deaths are caused by three delays: 1. A delay in seeking safe delivery services; 2.A delay in reaching safe delivery services; 3.A delay in receiving treatment at a facility. Without adequate antenatal care, roads and ambulances, and trained staff, women in Madhya Pradesh face all three deadly delays during delivery. The Respondents' overwhelming failures – where 93% of rural women do not receive the mandated ANC services – therefore jeopardizes women's lives and violates the Right to Life.

3.11 That, In addition to failing pregnant and lactating women, the Respondents have failed newborns as well. The Respondents have failed to ensure adequate implementation of health services for infants and children. As the DHLS states, "To promote child survival and prevent infant mortality, NRHM envisages new born care, breastfeeding and food supplementation at the right time and a complete package of immunization for children." Unfortunately, just 40% of newborns in the state receive an examination within 24 hours of delivery. Just 36% of infants received their full immunization package.Only 50% of women received information about breastfeeding – showing poor counseling and village level health services.

3.12 That, the DLHS shows especially poor health indicators in Dhar District, where 60% of children do not receive full vaccinations and the at least 85% of women do not receive full Ante Natal Care. The dearth of facilities in Dhar makes adequate, accessible, quality health care impossible for most pregnant women in the district.

- 57% of villages in Dhar do not have Sub-Centre.
- 95% of villages in Dhar do not have a PHC.

•Over half (55%) of villages have no government health facility at all.

•79% of villages do not have a doctor.

•31% of villages have a field level health worker (ASHA).

•63% of women in Dhar have pregnancy complications that require medical attention.

•Zero Sub-centres in Dhar have regular electricity, 14 have water, 13 have a toiliet, and just 17 have a labour room (but only 5 Sub-centres actually use the labour room).

•Just four PHCs have a functioning vehicle.

•The district has just one Obstetrician, two pediatricians, and zero anesthetists.

3.13 That ,the 6th Common Review Mission (2012), which evaluates implementation of the National Health Mission found crucial short comings in Madhya Pradesh including:

•State-wise shortfall of Sub-centres at 3445;

•State-wise shortfall of PHCs at 821;

•State-wise shortfall of male health workers at Sub-centres at 5731;

•State-wise shortfall of female health assistants at PHCs at 610;

•State-wise shortfall of doctors at PHCs at 342;

•State-wise shortfall of Obstetricians & Gynecologist at CHCs at 260;

•State-wise shortfall of Pediatricians at CHCs at 266

•State-wise shortfall of specialists at CHCs at 1105;

•State-wise shortfall of nursing staff at PHCs and CHCs at 1020.

3.14 That, even six years after the DLHS, the Common Review Mission shows 89% women in rural areas do not receive full ANCs – threatening their survival. The Common Review Mission found, “MP has shown remarkable progress in scaling up institutional deliveries over the last five years of NRHM. Hospitals providing delivery

services have increased from about 335 in 2006 to 859 at present. However, corresponding reductions in Maternal Mortality Ratio are not observed. This is mainly because of non-uniform geographic distribution of HR, infrastructure, logistics and quality of services."

3.15. That, the Petitioners' firsthand observations show clear failures to implement myriad government schemes aimed at preventing maternal and infant mortality. The Centre Government provides substantial funds to the Respondents to ensure adequate services. Every year, the State submits a plan for spending this money and implementing programs. Despite ten years of the National Health Mission, Adavasi women and infants continue die in Madhya Pradesh as a result of inadequate health services. The following section provides an overview of these schemes for this Hon'ble Court. Understanding that maternal and infant mortality is costly, needless and preventable, the Government of India passed legislation creating numerous schemes to address the health care needs of women. These schemes provide a minimum standard for adolescent and maternal health services. The following paragraphs provide this Hon'bleCourt with background on the schemes.

3.16 The National Maternity Benefits Scheme (NMBS)

The NMBS is a Central maternal health government scheme created to provide women with financial assistance prior to delivery to cover nutritional costs. Although JSY replaced and incorporated many aspects of the NMBS in 2005, the Hon'ble Supreme Court ordered the Union of India and all the State Governments and the Union Territories to continue to provide cash assistance under the NMBS. In addition to financial benefits under JSY, all BPL women should receive cash assistance of Rs. 500/- 8-12 weeks prior to delivery under NMBS irrespective of family size and/or the age of the pregnant woman. ***PUCL v. Union of India*** **[W.P. (C) 196/2001, Order dated 20 November, 2007].**

3.17 The National Health Mission (NHM)

The Government launched the NHM in 2005 and codified the Parliament's commitment to maternal and infant health with the mission to bring a "dramatic improvement in the health system and the health status of the people, especially those who live in the rural areas of the country." The majority of funding for NHM is provided by the Central government with responsibility of implementation largely charged to the states. The Central government retains responsibility for oversight. The NHM's goals include reducing maternal and infant mortality while providing universal access to public health services. A key strategy of NHM is to increase pre-natal and post-natal care and the number of institutional births. The program created legal obligations for the government to provide the services outlined below.

The NRHM guarantees access to a wide range of free maternal health services including: registration of all pregnancies; minimum of four ANCs and provision of comprehensive services for each pregnant woman; during checkups, women must be provided with IFA tablets and TT injections; nutrition and health counseling should be provided along with other services as needed; high-risk pregnancies must be identified and managed appropriately, including referrals; a minimum of two postnatal checkups (PNC); and 24/7 access to emergency obstetric care.

3.18 JananiSuraskhaYojana (JSY)

Through the NHM, the government coordinates benefit schemes including JSY, a financial incentive scheme to encourage registration of pregnancies and institutional deliveries for BPL, SC, or ST women. As a Low Performing State (LPS), Madhya Pradesh must provide JSY benefits of Rs. 700/- for institutional deliveries in rural areas (in both government health centres and private accredited hospitals), Rs. 600/- in urban areas, Rs. 1,500/- for caesarean section patients, and Rs. 500/- (from the NMBS funds) for home deliveries conducted by skilled birth attendants.

3.19 That, On 13th May 2013, the Ministry of Health and Family Welfare removed the conditionality of a minimum age of the mother and the two child limit for BPL women to access JSY benefits in HPS States. Today, all pregnant BPL, SC and ST women should receive JSY payments irrespective of their age, number of children, type of accredited health facility (public or private), and/or state of residency.

3.20 That, ASHA workers act as a link between the government and pregnant women under JSY. Responsibilities of the ASHA worker include registering pregnancies; providing or helping women receive at least three ANCs with folic acid and iron (IFA) tablets and tetanus toxoid (TT) injections; assisting women in obtaining necessary documentation for JSY benefits; escorting women to health facilities for delivery; assuring availability of the JSY cash incentive for disbursement at the health facility, in addition to reimbursement cash for the woman's out-of-pocket transportation costs; providing postnatal care visits within seven days of delivery; ensuring that infants are immunized; and providing women with family planning counseling.

3.21 Janani-ShishuSurakashaKaryakram (JSSK)

Through the NHM, the government also coordinates JSSK, which provides free health services to pregnant women and sick newborns until 30 days after birth in all government health institutions. Free services include cashless delivery; free medications; free essential diagnostics; free diet during their stay (up to three days for normal delivery and up to seven days for caesarean section); free provision of blood; free transportation from home to the health institution, between facilities in case of referral, and back home after their stay in the facility. These benefits are given in addition to JSY financial assistance and are provided to all women who deliver in government health facilities, regardless of age, number of children, and/or economic status. Although women who choose to deliver in private health facilities do not receive JSSK

benefits and must bear the costs themselves, they are still eligible to receive JSY incentives.

3.22 The Indian Public Health Standards (IPHS)

The IPHS guidelines establish minimum requirements for the various levels of care under the NRHM including operating hours, minimum equipment standards, and standards for hygienic health care. The public sector in rural areas consists of a three-tier structure; (i) at the lowest level, a sub-center; (ii) at the intermediary level, a PHC; and (iii) at the higher level, a CHC.

•Sub-Centres are run by a female health worker and should provide: registration of pregnancies; a minimum of four ANCs; provision of IFA supplements; vaccines including TT injections; treatment of anemia; a minimum of two postpartum home visits, first within 48 hours of delivery, and again within 7-10 days; family planning education and counseling; contraceptives including condoms, IUDs, oral pills, and emergency contraception; and counseling and appropriate referrals for safe abortion services.

•PHCs should have a medical officer and other paramedical staff. Under the IPHS, all PHCs must have at least one female health worker and should provide: 24-hour emergency care including delivery services for both normal and assisted deliveries; one adolescent clinic per

week; contraceptives; assistance with menstrual disorders; STD/STI and HIV/AIDS education; abortion counseling and services under the MTP Act; nutritional

counseling; counseling for sexual problems; and immunizations.

•CHCs should have obstetric specialists and inpatient beds. Under the IPHS, all CHCs must have lady health

workers and a gynecologist on staff; a blood bank facility; and essential laboratory services. Tertiary care is provided by district hospitals.

3.23 The Integrated Childhood Development Scheme (ICDC)

ICDS provides services including: supplementary nutrition, immunization, health check-up, referral services, pre-school non-formal education, and nutrition and health education. The Government has an obligation to provide 1 AWC per 300-800 residents in a Tribal area.

Services	**Target Group**	**Service Provided by**
Supplementary Nutrition	Children below 6 years: Pregnant & Lactating Mother (P&LM)	Anganwadi Worker and Anganwadi Helper
Immunization*	Children below 6 years: Pregnant & Lactating Mother (P&LM)	ANM/MO
Health Check-up*	Children below 6 years: Pregnant & Lactating Mother (P&LM)	ANM/MO/AWW
Referral Services	Children below 6 years: Pregnant & Lactating Mother (P&LM)	AWW/ANM/MO
Pre-School Education	Children 3-6 years	AWW
Nutrition & Health Education	Women (15-45 years)	AWW/ANM/MO

24.**PRADHAN MANTRI GRAM SADAK YOJNA (PMGSY)**

According to PMGSY the eligible unconnected habitations are to be connected to nearby habitations already connected by an All weather road or to another existing All weather road so that services (Educational, Health, Marketing facilities etc.)which are not available in the unconnected habitation ,become available to the residents. A copy of **PMGSY** are marked and Anneexed hereto as **Annexure P/3**.

Problems are still exist in Dhar distt., a boys hostel having capacity of 100 adivasi students and a school is there for girls and another school is in Bhatkala village for 64 students. In rainy season the way of those villages are completely blocked and even two wheeler can not reach upto those villages that is why villagers get cut from all these things, like employment (labour work),food, milk, medicine etc.during three months of rainy season.

25**. RAJIV GHANDH GRAMEEN VIDYUTIKARAN YOJNA(RGGVY)**

The scheme provides for free of cost connection to all rural households living below poverty line. Future, there will no discrimination in the hours of supply between rural and urban areas. A copy of RGGVY are marked and Anneexed hereto as **Annexure P/4**.

26. **RAJIV GHANDI DRINKING WATER MISSION**

According to the Government of India Ministry of drinking water and sanitation circular that is there any water treatment plants working or not.A copy of circular are marked and Anneexed hereto as **Annexure P/5.**

4. Source of information:

The Petitioners declare that the facts pleaded in the petition have been collected from newspaper articles, first-hand visits to the villages, That news has been published in Dainik Bhasker news paper on 17/09/2014 by reading this news paper, fact finder went to those villages and met with 35 adivasi people and seen the actual condition of those villages and taken some photograps and from government data on health service in Dhar District. A copy of News Paper cutting is marked and Annexed

here to as **Annexure P/6**, Photographs **Annexure P/7** , Singed list of 35 villagers of Malipura and Bhatkala Distt.Dhar **Annexure P/8,** and affidavits of villagers **Annexure P/9.**

5. Nature and extent of injury caused/apprehended:

1. The Respondents' failure to fully and adequately implement these schemes jeopardizes the health of pregnant women and violates their fundamental rights protected under the Constitution of India and international law. These rights include but are not limited to the rights to life and health in Article 21, the rights to equality and non-discrimination in Articles 14 and 15, and the protection of access to medical services regardless of status under Article 38(2). Finally, Respondents have impermissibly derogated from their legal obligations under binding international human rights treaties to respect, protect and fulfill the rights of Adiwasi people and pregnant and lactating women living in Dhar District, M.P.

2. That, Immediate action is necessitated from this Hon'ble Court to ensure that those services are accessible and administered in a dignified, humane, equitable, and gender-focused manner.

   RESPONDENTS VIOLATE PREGNANT AND LACTATING WOMEN'S RIGHT TO LIFE

3. Article 21 of the Constitution of India and a number of international treaties to which the GoI is a party recognizes a Fundamental Right to Life. The Hon'ble Supreme Court has further interpreted this Right to Life to include a right to live with human dignity, and a right to health.

4. First, Article 21 of the Constitution explicitly states "No person shall be deprived of his or her life or personal liberty except according to procedure established by law."

5. In addition to binding domestic law protecting the right to health, India has signed and ratified numerous covenants and treaties that impose obligations on the State to respect, protect, and fulfill the human rights of its people. The Supreme Court has consistently held that the judiciary is:

   > "Under an obligation to give due regard to International Conventions and Norms for construing domestic laws more so when there is no inconsistency between them and there is a void in domestic law**." *Apparel Export Production Council,* 1999 (1) SCR 117.**

6. In 2010 the Delhi High Court held, that women have a fundamental right to survive pregnancy. In a maternal death case arising from denial of treatment in New Delhi, the High Court found, "This is where the inalienable right to health which is so inherent to the right to life gets enforced. There cannot be a situation where a pregnant woman who is in need of care and assistance is turned away from a Government health facility only on the ground that she has not been able to demonstrate her BPL status or her 'eligibility'. The approach of the Government, both at the Centre and the States, in operationally the schemes should be to ensure that as many people as possible get 'covered' by the scheme and are not 'denied' the benefits of the scheme."

7. In 2012, the Hon'ble High Court at Jabalpur has also concluded, "It be remembered that the inability of women to survive pregnancy and child birth violates her fundamental right to live as guaranteed under Article 21 of the Constitution of India. And it is the primary duty of the government to ensure that every woman survives pregnancy and child birth, for that, the State of Madhya Pradesh is under obligation to secure their life. **(*SandeshBansalvs Union of India &Ors.,*WP (C) 9061/2008).**

RESPONDENTS VIOLATED ADAVSAI AND PREGNANT AND LACTATING WOMEN'S FUNDAMENTAL RIGHT TO LIVE WITH DIGNITY

8. The Hon'ble Supreme Court first interpreted this right to include the right to live with human dignity in ***Francis Coralie Mullin v. Administrator, Union Territory of Delhi &Ors*: (1981) 2 SCR 51**. Here the Hon'ble Court explained the

> "Right to live with human dignity enshrined in [Article] 21 derives its life breath from the Directive Principles of State Policy and particularly clause (e) and (f) of A. 39, A. 41 and A. 42 and at least, therefor it must include protection of the health and strength of workers men and women, and of the tender age of children to develop in a healthy manner…"

9. Forcing villagers to travel to health facilities in handmade carts, risking their lives clearly violates their right to a dignified life.

RESPONDENTS VIOLATE ADAVASI VILLAGERS FUNDAMENTAL RIGHT TO HEALTH

10. Along with the right to life, Respondents have violated the right to health of Indore's homeless pregnant and lactating women. It is settled law that Article 21 of the Constitution includes a fundamental right to health. The Supreme Court has held that the right is a "most imperative constitutional goal." ***Consumer Education and Research Center v. Union of India,* (1995) 3SCC 43.**

11. Indeed the Supreme Court has proclaimed, in ***Chameli Singh vs. State of U.P.*, (1996) 2 SCC 549:**

> "the right to life in any civilized society implies the right to food, water, shelter, education, medical care and a decent environment. These are basic human rights known to any civilized society. The civil, political, social and

cultural rights enshrined in the Universal Declaration of Human Rights and Conventions or under the Constitution of India cannot be exercised without these basic human rights."

12. The Delhi High Court in a *suomoto* petition involving the maternal death of a homeless pregnant woman who died four days after giving birth to a baby girl in the busy streets of Delhi has recognized the "role of the mother in building the nation." In the *Court of Its Own Motion v. NCT Delhi*, *W.P. (C) 5913/2010),* the Chief Justice underscored the constitutional obligation of States to protect the life of pregnant women:

> "We just cannot become the silent spectators waiting for the Government to move like a tortoise and allow the destitute pregnant women and lactating women to die on the streets of Delhi, maybe after giving birth to a child or maybe along with the child. Such a situation cannot be countenanced and is not possible to visualize in the backdrop of Article 21 of the Constitution of India. It is expected of the State and the persons who are in-charge of its departments to have a vision. It has been said long back that the personalities who have vision can always visualize the invisibility."

13. A number of international treaties include the right to health generally, including Article 25 of the United Nation's Declaration of Human Rights and Article 12 of the ICESCR.

14. Moreover, a number of international treaties recognize the particular difficulties associated with access to maternal health care, and have made a point to articulate separate provisions for pregnant and lactating women's access to health. First, Articles 12.2 and 14.2 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), orders State Parties to ensure "appropriate services in connection with pregnancy, confinement and the

post-natal period, granting services where necessary, as well as adequate nutrition during pregnancy and lactation." Then, Article 24 of the CRC guarantees the right of the child to health, but also orders State Parties to "ensure appropriate pre-natal and post-natal health care for mothers." Finally, the International Cairo Programme of Action, 1994 orders State Parties to take steps to reduce maternal mortality and increase access to reproductive and sexual health services.

RESPONDENTS VIOLATED ADAVASI VILLAGERS AND WOMEN'S RIGHTS TO NON-DISCRIMINATION AND EQUALITY BEFORE THE LAW

15. The government's failure in providing and removing barriers in access to pregnancy-related health services violates Articles 14 and 15's promise of nondiscrimination and equal protection under the law, as only women, and not men, need access to these services. Indeed, "there is no single cause of death and disability for men between the ages of 15 and 44 that is close to the magnitude of maternal mortality." (Reducing Maternal Mortality: The contribution of the right to the highest attainable standard of health, by Paul Hunt and Judith Bueno de Mesquita, UNFPA, Human Rights Centre, University of Essex (2010).

16. Furthermore, the Supreme Court described gender equality as one of the "most precious Fundamental Rights guaranteed by the Constitution of India." *Apparel Export Promotion Council v. AK Chopra,* AIR 1999 SC 625.The Court reaffirmed the government's obligation to "gender sensitise its laws" and placed the judiciary "under an obligation to see that the message of the international instruments is not allowed to be drowned." Citing CEDAW, the Beijing Declaration, and the ICESCR, the Court held that the international instruments

> "Direct all State parties to take appropriate measures to prevent discrimination of all forms against women

besides taking steps to protect the honour and dignity of women is loud and clear."

17. Indeed, Article 2 of both the ICCPR and the ICESCR compels governments to provide basic human rights without discrimination, with Article 12 and 14 of CEDAW explicitly prohibiting discrimination in access to reproductive health care:

> "(i) State Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care including those related to family planning.
>
> (ii) States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary as well as adequate nutrition during pregnancy and lactation.
>
> (iii) State must ensure that women have access to family planning services, availability of information and education related to family planning."

18. Critically, the obligation to provide equitable health care to women is immediate and not dependent on availability of resources. And the law, policy, program, or practice does not have to be intentionally discriminatory. If the discriminatory effect nullifies or impairs the "recognition, enjoyment or exercise" of the right then it constitutes discrimination. (CEDAW, Art. 1).

19. The Convention on the Elimination of Racial Discrimination (CERD), ratified by India clearly defines racial discrimination" as... "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an

equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life." (Article 1). The Respondents failure to ensure adequate services in Adavasi villages clearly excludes this ethnic group from enjoying the right to life, health, and non-discrimination.

20. RESPONDENTS VIOLATED GOVERMENTS SCHEME IN FAVOUR OF ADAVASI VILLAGERS AND EQUALITY BEFORE THE LAW

6. DECLARATION:

A declaration that no proceeding on the same subject matter has been previously instituted in any Court, authority or tribunal.

7. Any representation made:

The advocate for the Petitioners, Ms. Shanno Shagufta Khan sent a representation letter to the Respondents on 12 February 2015. A copy of Notice is marked and Annexed here to as **Annexure P/10 and Receipt Annexure P/11.** The Respondents failed to respond. Moreover, the villagers have reported these fundamental rights violations to the Collector, president of Janpat, Parshand and officers of the Municipal Corporation in return and verbal but no action is taken, all the complaints are being registered in "Thahrao-prastao"in Gram sabha meeting since last 15 years on all such dates like 15Aug,26 Jan and 2 Oct.

8. Grounds Urged:

a. FOR THE REASON THAT: Respondents have failed to adhere to their constitutional obligations to protect reproductive rights as enshrined in Article 21's right to life, right to live with human dignity, right to health, right to be free from cruel, inhuman and degrading treatment.

b. FOR THE REASON THAT: Respondents have failed to adhere to their constitutional obligations to protect reproductive rights enshrined in Article 14 and 15's right to equality and non-discrimination, through the lack of implementation of required services for pregnant and lactating Adavasi women and ill villagers in Dhar District, M.P.

c. FOR THE REASON THAT: Respondents have failed to adhere to their constitutional obligations to protect improve access and infrastructure (adequate medical services, road,water supply,electricity etc.) in MALIPURA,AMBAPURA, RATITALAYI, BHATKALA, BANDHAV, and PIPLADIYA Post Mandav District Dhar(M.P.) so that ambulances and emergency vehicles can serve the people.

d. FOR THE REASON THAT: Respondents have failed to adhere to their constitutional duties to secure order for the promotion of the welfare of its people and duty to raise the level of nutrition and improve health under Articles 38 and 47, in their failure to implement health schemes in Dhar District, M.P.

e. FOR THE REASON THAT: Respondents have failed to provide proper health services to women per the concrete Service Guarantees of the NRHM, the JSY, JSSK, ICDS, NMBS, NFBS, and other government schemes.

f. FOR THE REASON THAT: Respondents have failed to PRADHAN MANTRI GRAM SADAK YOJNA ,RAJIV GANDHI GRAMEEN VIDYUTIKARAN YOJANA and RAJIV GHANDI DRINKING WATER MISSION.

g. FOR THE REASON THAT: The Respondents fail to enforce the minimum standards prescribed by the NRHM. Specifically, Respondents fail to meet their obligations to ensure that local ASHAs register pregnancies at least 20-24

weeks before delivery; treat anemia; provide pregnant women with at least three ANCs including essential IFA supplements and TT injections; promptly identify and appropriately refer high risk pregnancies; provide pregnant BPL women with NMBS cash assistance of Rs. 500/- 8-12 weeks before delivery regardless of number of children and the age of the woman; and ensure all BPL, SC, and ST women receive JSY cash benefits irrespective of their age and number of children.

h. FOR THE REASON THAT: this Honorable Court has jurisdiction under Article 226 of the Constitution to restore the fundamental rights of Adiwasi villagers.

i. FOR THE REASON THAT Respondents have failed to uphold their obligations under international law. Article 51(c) of the Constitution requires the government to respect international law obligations. India is a signatory to multiple international conventions that uphold the right to health, the right to reproductive autonomy, and the right to be free from degrading treatment. Relevant conventions include the International Covenant on Economic Social and Cultural Rights (ICESCR), the International Covenant on Civil Political Rights (ICCPR), the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), the Convention on the Elimination of Racial Discrimination (CERD).

j. FOR THE REASON THAT: Respondents have failed to provide proper Road ,Electricity and water supply services in Dhar District, M.P.

9. Details of remedies exhausted:

No Remedy exhausted except this petition.

10. Delay, if any, in filing the petition and explanation therefor:

There is no delay in filing the petition.

11. Relief(s) prayed for:

In the light of facts stated above, arguments advanced, grounds urged and authorities cited, this Hon'ble Court may pleased to issue an appropriate writ order or direction:

a. For a writ of mandamus or any other writ, order or direction to Respondents to immediately improve access and infrastructure (adequate road,water supply,eletricity) in MALIPURA,AMBAPURA, RATITALAYI, BHATKALA, BANDHAV, and PIPLADIYA so that ambulances and emergency vehicles can serve the people.

b. For a writ of mandamus or any other writ, order or direction to the Respondents to ensure that Ambapura, Ratitalayi, Bhatkala, Bandhav, and Pipladiya have trained and adequate ASHA workers to provide basic ANC services and to serve as a link between women and the public health system.

c. For an order to the Respondents to ensure at least one Sub-Centre per 500-800 people in Ambapura, Malipura,Ratitalayi, Bhatkala, Bandhav, and Pipladiya that meets the requirements outlined in the IPHS and ensuring that a Female Health Worker conducts: Registration of pregnancies; a minimum of four ANCs; provision of IFA supplements; vaccines including TT injections; treatment of anemia; a minimum of two postpartum home visits, first within 48 hours of delivery, and again within 7-10 days; family planning education and counseling; contraceptives including condoms, IUDs, oral pills, and emergency contraception; and counseling and appropriate referrals for safe abortion services.

d. For an order to verify that Malipura,Ambapura, Ratitalayi, Bhatkala, Bandhav, and Pipladiya all have functioning ambulances per the NHM norms.

e. For an order to the Respondents to ensure that all PHCs have a medical officer and other paramedical staff. Under the IPHS, all PHCs must have at least one female health worker and should provide: 24-hour emergency care including delivery services for both normal and assisted deliveries; one adolescent clinic per week; contraceptives; assistance with menstrual disorders; STD/STI and HIV/AIDS education; abortion counseling and services under the MTP Act; nutritional counseling; counseling for sexual problems; and immunizations.

f. For an order directing Respondents to ensure that health facilities are accessible to all, particularly the rural poor, by fulfilling their obligations to build new facilities, maintain safe and weather-durable roadways, and provide reliable free transportation to pregnant women as mandated under JSSK.

g. For an order directing Respondents to ensure that all CHCs in Nagpur District have a blood bank with a stocked supply of blood on the facility grounds.

h. For an order to the Respondents to ensure the functioning of ICDS, including that all AnganwadiCentres have:

a. Day-care services;

b. Regular food distribution to children, adolescent girls, and pregnant and lactating women;

c. Regular immunization days;

d. Basic prenatal care and information;

e. Regular weigh-ins and height monitoring to spot malnutrition cases.

i. For an order directing the Respondents to immediately ensure the appointment of a sufficient number of doctors, health professionals, and support staff that are available 24 hours, seven days a week at each public health facility level – Sub-centres, Primary Health Centres (PHCs), Community Health

Centres (CHCs), and the District Hospital (the DH) – in Dhar District.

J. For a writ of mandamus or any other writ, order or direction to the Respondents to ensure that Electricity and water supply must be provided to Malipura, Ambapura, Ratitalayi, Bhatkala, Bandhav, and Pipladiya. Post Mandu District Dhar.(M.P.)

12. Interim Order/writ, if prayed for:

Given the longstanding nature of these violations and the grave and continued violations of the Adivasi community's fundamental rights, the Petitioners humbly request.

a. An order to the Respondents to immediately improve access and infrastructure (adequate medical services, road, water supply, electricity) in MALIPURA,AMBAPURA, RATITALAYI, BHATKALA, BANDHAV, and PIPLADIYA Disrict Dhar,so that ambulances and emergency vehicles can serve the people.
b. Pass any other order that this Hon'ble Court may deem necessary based on the facts and circumstances of this case.

13. Caveat:

That, no notice of lodging a caveat by the opposite party is received.

Submitted by

PLACE
INDORE

DATE **ADVOCATE FOR THE PETITIONERS**
18.03.2015 **SHANNO SHAGUFTA KHAN**