

HEALTH LAWS IN INDIA: AN OVERVIEW OF WOMEN HEALTH STATUS IN INDIA

By: Aushi Sarangi
Kiit Law School, Kiit University,
aushi.sarangi@gmail.com

" Right to Life is considered as one of the fundamental rights and thus health is one of the vital indicators reflecting quality of human life & If women are neglected from their health rights, humanity is deprived half of its energy and creativity".

In the paper the researchers embarks on the subtheme of "Constitutional perspective and role of international institutions in respect of human health". This paper discusses about health related issue with special focus on women in India having socio-economic as well as cultural background. Right to health is one of the basic human right as well as fundamental rights but poverty, lack of education and gender bias have given rise to many health problems among women in India and thus it becomes one of the prime responsibilities of the state to provide health care services to all its citizens.

To make the paper effective, the first part of the paper deals with various constitutional provision vested under Articles 38,39 (e) (f), 42,47,48A in Part IV along with judicial pronouncements of various Medico-legal cases like Consumer Education and Resource Centre Vs Union of India, State of Punjab Vs Mohinder Singh Chawala etc.

The second part of the paper deals with the evolution and development of Healthcare System in India. It also discusses about various types of Health Policies and Programmes implemented in India. The third part of the paper briefly gives a critical understanding of rising morbidity and mortality rate among women along with other issues like breast cancer, HIV/AIDS, menopause.

The fourth part of the paper deals with the roles of various international health organisation subdivided into, bilateral, multilateral like World Health Organization and NGO's. Last but not the least, in the final part of the paper the researchers wish to embark that along with constitutional and legal measures, there is a need for increasing public awareness on the benefits of a healthy life cycle and thus this paper gives valuable suggestions to deal with various health related issues of women.

KEYWORDS- Constitution, Gender Bias, Health Care, Human Right, Morbidity.

Right to Health is one of the basic human rights. Health is determined by a broad range of social, environmental, economic and biological factors. According to the World Health Organization, health is defined as a "complete state of physical, mental and social well-being and not merely the absence of disease or infirmity".^[1] Similarly according to Bircher, health is defined as a "dynamic state of well-being characterized by a physical and mental potential, which satisfies the demands of life commensurate with age, culture and personal responsibility".^[2] Though India has advanced in several areas but there are many fields which are still in a backward state and one such area is women's health. Like most culture across the world, Indian society has deeply entrenched patriarchal norms and values, women have been historically discriminated against, they are a group whose health concerns need to be prioritized and understood. In India, large number of women leads extremely stressful life because of the dowry related issues. Gender discrimination, domestic violence has severely affected the psychological well-being and physical health of Indian Women. Poverty, lack of education, environment, racism, sex-role stereotyping and gender bias have given rise to many health problems among women in India .A multiplicity of factors including biological, social, cultural,

environmental and economic influence women's health status, their need to health services and their ability to access appropriate services. Gender discrimination begins before birth, females are the most commonly aborted sex in India [3] and if a female foetus is not aborted, the mother's pregnancy can be stressful experience due to her family's preference for son [4]. Once born, daughters are prone to being fed less than sons, especially when there are multiple girls already in the household [5]. As women mature into adulthood, they were prevented from achieving equitable levels of health stem from the low status of women and girls in the Indian society, particularly in the rural and poverty affected areas [6] and then are subjected to domestic violence after marriage and thus women faces many problem right from birth which continues till her death. Taken together, women are many a times seen less valuable than men. With lower involvement in the public sphere, women face a unique form of gender discrimination.

CONSTITUTIONAL PROVISION

The state has to direct its policy towards securing that health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength [7] and that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and maternal abandonment [8]. Other constitutional provision enshrined under the following articles under the head of Directive principles of state policy, Part IV.

ARTICLE 42 - Provision for just and humane conditions of work and maternity relief- The State shall make provision for securing just and humane conditions of work and for maternity relief.

ARTICLE 47 - Duty of the State to raise the level of nutrition and the standard of living and to improve public health- The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavor to bring about prohibition of the consumption, except for medicinal purposes, of intoxicating drinks and of drugs which are injurious to health.

ARTICLE 48A - Protection and improvement of environment is also made one of the cardinal duties of the State - The articles act as guidelines that the State must pursue towards achieving certain standards of living for its citizens'. It also shows clearly the understanding of the State that nutrition, conditions of work and maternity benefit as being integral to health.

JUDICIAL INTERPRETATION OF MEDICO-LEGAL CASES

The Constitution incorporates provisions guaranteeing everyone's right to the highest attainable standard of physical and mental health under Article 21 of the Constitution which guarantees protection of life and personal liberty to every citizen. The Supreme Court in *Bandhua Mukti Morcha vs. Union of India* [9] has held that the right to live with human dignity, enshrined in art 21, is derived from the directive principles of state policy and therefore includes protection to health. In the case of *Consumer Education and Resource Centre Vs Union of India* [10] the Supreme Court has held that the right to health and Medical care is a fundamental right under Article 21 of the constitution as it is essential for making the life of the workman meaningful and purposeful with dignity of person. "Right to life" in Article 21 includes protection of the health and strength of the worker. The expression 'life' in Article 21 does not connote mere animal existence. It has a much wider meaning which includes right to livelihood, better standard of life, hygienic conditions on workplace and leisure. The court

held that the State, be it Union or State Government or an industry, public or private is enjoined to take all such action which will promote health, strength and vigour of the workman during period of employment and leisure and health even after retirement as basic essentials to life with health and happiness. The right to life with human dignity encompasses within its fold, some of the finer facets of human civilization which makes life worth living. The court accordingly laid down the following guidelines to be followed by all asbestos industries. Similarly in the case of *State of Punjab and Others vs. Mohinder Singh Chawala [II]* it has been held that right to health is integral to right to life. Government has a constitutional obligation to provide health facilities. Similarly in the case of Vincent *Panikulangara vs. Union of India [12]* the Supreme Court of India on the right to health care observed: "Maintenance and improvement of public health have to rank high as these are indispensable to the very physical existence of the community and on the betterment of these depends the building of the society of which the Constitution makers envisaged. Attending to public health in our opinion, therefore is of high priority-perhaps the one at the top".

2. EVOLUTION OF HEALTHCARE SYSTEM IN INDIA

Healthcare system in india has evolved during the national movement against colonial rule and has implemented various health policies, plans and programmes in India. A Health Survey and Development Committee also known as Bhore Committee (1946) was established by the British authorities and came up with recommendations like:

- Integration of prevention and curative health services at all administrative levels;
- Development of primary health centres in two stages;
- Major change in medical education;

- Formation of district health board for each district;
- Laid emphasis on preventive health services;
- Inter-sectoral approach to health service development.

Subsequently in 1948, the Sokhey Committee recommended that manpower and services be developed from the bottom upwards [13], the committee represented 'a people centred and pluralistic' model of development.

2.1 DIFFERENT HEALTH POLICIES AND PROGRAMMES IMPLEMENTED IN INDIA

(a) National Health Policy,1983; (b) National population policy,2002; (c) National Nutrition Policy,1993; (d) Reproductive and Child Health, (e) National Rural Health Mission,2005[14].

CRITICAL UNDERSTANDING OF RISING HEALTH ISSUES AMONG WOMEN

Indian society is essentially a male dominated society, in which the status of women has always been low. Women are restricted in matters of decision making, freedom of mobility, poor participation in political processes, culture that values motherhood and access to money. There is a strong correlation between illiteracy, poverty and women health. India has around 19% of the world's population and 70% of this population resides in rural areas and thus rural people in general and the tribal's in particular have superstitious beliefs , they have their own practices to cure a disease and thus only education and development of scientific outlook can reduce such superstitious beliefs. The present section of women's health in India systematizes existing evidence on the topic. The basic hygienic factors expose women as well as their family members to various diseases are uncontaminated drinking water, nutritional deficiency can manifest in an array of disorders like anaemia, iodine

deficiency, night blindness etc. Most of the women in India consume tobacco in different forms like bidi's, cigarettes, gutka etc thereby endangering their life. Some of the rising health related issues among women are –

MALNUTRITION - Nutrition is a detriment of health. A well balanced diet increases the body's resistance to infection, thus warding off a host of infections as well as helping the body fight existing infection. Maharashtra has one of the highest per capita incomes among states in the country, but is marked by poor nutritional profile of its people. More than half the households in both the rural and urban areas of the state receive less than the prescribed adequate amount of calorific intake and the situation has worsened in the rural areas of the state in the past twenty years [15]. Thus malnutrition acts as a serious health concern which increases susceptibility to illness and high mortality. Thus, the nutrition profile of the country is not only indicative of the deprivation that disadvantaged social groups suffer from but also provides a vivid picture of the double burden of nutritional disorders that differentially affect social groups in the country.

WOMEN'S MORBIDITY- Morbidity refers to the state of being diseased or unhealthy. India currently has one of the highest rates of malnourished women among developing countries. Women missing out their dietary requirements are malnourished women who gives birth to malnourished children. Maternal malnutrition has been associated with an increased risk of maternal mortality and child birth defects. Thus the researcher would like to emphasise that morbidity rates were higher among adult women in comparison to that of girls.

3.3 FEMALE REPRODUCTIVE SYSTEM - Most important system which plays a very important role throughout the life of a women, due to the complexity of reproduction system and poor personal health care a woman experiences various problems like vaginal infections, ovarian cysts, thyroid etc. Women are more

subjected to Reproductive Tract Infections(RTIs) or Sexually Transmitted Infections(STIs) than men and that the spread of infection to the upper genital tract is greater in women. Even they are subjected to HIV/AIDS due to lack of access to contraceptives, non availability of free HIV testing.

3.4 MENOPAUSE - It signals the end of a woman's childbearing phase and thus marks as the cessation of the reproductive life of a woman. It may be a mentally and physically unsettling process. Women belonging to the disadvantaged social groups of the country (rural, illiterates, low standard of living) are more likely to experience the early onset of menopause. The problem remains largely hidden, the socio-psychological consequences as experienced by women in the country being little understood.

3.5 BREAST CANCER - A recent study conducted by Tata Memorial Hospital (a twenty year analysis of breast cancer rate between 1976 and 2005) shows that the rate of breast cancer is definitely increasing among Indian women due to growing urbanization. In the year 2008, almost 1, 15,000 new cases of breast cancer were reported in India and about 53,000 deaths due to breast cancer. It calls for an urgent action to create awareness amongst women.

3.6 MENTAL HEALTH - The mental health of women is a serious issue. As per the World Health Organisation estimates, depression is expected to be the second largest health problem by 2020. All the factors like inferior treatment received all the time, gender bias at every stage of their lives, family pressures to deliver male children, domestic violence are adversely affecting the mental and physical well-being of women.

4. INTERNATIONAL HEALTH ORGANISATION - A large number of organisations of various sizes provide international health aid, also they are the major

source of expert technical advice and training for local health professionals. The International Health Organisations are usually divided into three groups : multilateral organisations, bilateral organizations and non-governmental organizations.

4.1 MULTILATERAL ORGANISATION - The term multilateral means that funding comes from multiple governments (as well as from non-governmental sources) and is distributed to many different countries. The major multilateral organizations are all part of the United Nations.

(a) The World Health Organization (WHO) - It is the premier international health organization which is an "intergovernmental agency related to the United Nations." WHO and other such intergovernmental agencies are "separate, autonomous organizations which, by special agreements, work with the UN and each other through the coordinating machinery of the Economic and Social Council." According to its constitution in the year 1948, its prime motive is "the attainment by all peoples of the highest possible level of health." It helps in directing and coordinating international health activities and supplying technical assistance to countries. It provides training in international health, develops system for monitoring and evaluating health programs and thus lays down certain standard norms. WHO has three main divisions[16] :-

THE GOVERNING BODY- meets once a year to approve the budget and decide on major matters of health policy. All the 190 or so member nations send delegations.

THE WORLD HEALTH ASSEMBLY- It elects 31 member nations to designate health experts for the Executive Board, which acts as a liaison between the Assembly and the Secretariat and conduct meeting twice a year.

THE SECRETARIAT - which carries on the day-to-day work of the WHO. The Secretariat has a staff of about 4,500 , with 30% of the employees at headquarters in Geneva, 30% in six regional field offices, and 40% in individual countries, either as country-wide WHO representatives or as representatives of special WHO programs.

(b) The United Nation Children's Fund (UNICEF) - The core objective is to improving the health of children all over the world. It has an extensive global health presence, and brings practical solutions to the women and children health at higher risk and thus also have strong partnerships with governments and non-governmental organizations at national and community levels. UNICEF knows what it takes to ensure the survival and health of children and women.[17] It spends the majority of its program (non-administrative) budget on health care. UNICEF makes the world's most vulnerable children its top priority, so it devotes most of its resources to the poorest countries and to children younger than 5.

4.2 BILATERAL ORGANISATION - They are the governmental agencies in a single country which provide aid to developing countries .

(a) The United States Agency for International Development (USAID) - USAID/India partners with national- and state-level institutions and demonstrates high-impact best practices in the areas of family planning/reproductive health; maternal, newborn, and child health; and global disease threats including HIV/AIDS, polio, and tuberculosis. India accounts for 21% of the world's global burden of disease. India is home to the greatest number of maternal, newborn and child deaths in the world. According to recent estimates, India is losing more than 6% of its GDP annually due to premature deaths and preventable illnesses. Access to quality services is an overarching impediment, with technical and operational capacity limitations. Despite

increases in the Indian Government's health budget, India's public investment in health remains low[18].

4.3 INTERNATIONAL NON GOVERNMENTAL ORGANISATIONS - They are the private voluntary organisations. It has the same mission as a non governmental organization (NGO), but it is international in scope and has outposts around the world to deal with specific issues in many countries.

(a) The International Red Cross and Red Crescent Movement - It is the largest and most prestigious of the world's humanitarian NGOs. The Movement is neutral and impartial, and provides protection and assistance to people affected by disasters and conflicts. It has three components: the International Committee of the Red Cross (ICRC), the International Federation of Red Cross (IFRC) and 100 Member Red Cross and Red Crescent Societies. The different members of the Movement support communities in becoming stronger and safer by implementing different types of development projects and humanitarian activities. The Movement also works in cooperation with governments, donors and other aid organizations to assist vulnerable people around the world[19].

(b) CARE INTERNATIONAL - It takes a special interest in empowering poor women because they believe that women have the power to help whole families and entire communities and can fight against poverty. The mission and explicit goals of CARE, as described on their website, are to facilitate lasting change by[20]:

- Strengthening capacity for self-help,
- Providing economic opportunity,
- Delivering relief in emergencies,
- Influencing policy decisions at all levels,
- Addressing discrimination in all its forms.

CONCLUSION

The researcher would like to conclude by putting certain the following suggestions which may help to improve the overall health and well being of Indian women like-

1. The issues like severe poverty and illiteracy need to be addressed at the national and international level.
2. To reduce the discrimination of women in the families and in the society through public awareness along with constitutional measures.
3. Need of women empowerment.
4. Need to develop a strong healthcare system specifically in rural areas.
5. Disease due to lack of environmental sanitation and safe drinking water and limited access to preventive health services.

Last but not the least the researcher would like to state that in order to fulfill the dreams of great visionary like Justice Mahadev Govind Ranade, who had visualized a century back that no society can progress socially, politically, economically and culturally without the active participation of women and thus now its high time to consider women's health on priority for the development of the Nation .

Reference:

- [1] WHO. Preamble to the Constitution of the World Health Organization as adopted by the International Health Conference, New York, 19-22 June 1946, and entered into force on 7 April 1948.
- [2] Bircher J. Towards a dynamic definition of health and disease. *Med. Health Care Philos* 2005;8:335-41.
- [3] Raj, Anita, "Sex selected abortion in India" *Lancet*.378.(2011):1217-1218.
- [4] Patel, Vikram, Merlyn Rodrigues, et al. "Gender, Poverty and Postnatal Depression: A Study of Mothers in Goa India." *Am J Psychiatry*.159.(2002).
- [5] Sen, Gita and Aditi Iyer, "Who gains, who loses and how: Leveraging gender and class intersections to secure health entitlements." *Social Science and Medicine*. 74.(2012): 1802-1811.
- [6] Raj, Anita . "Gender equity and universal health coverage in India." *Lancet*.377.(2011).
- [7] Article 39(e), The Constitution of India.
- [8] Article 39(f), The Constitution of India.
- [9] Bandhua Mukti Morcha vs. Union of India, AIR 1984 SC 802
- [10] Consumer Education and Resource Centre vs. Union of India, AIR (1995) 3 SSC, 42.
- [11] State of Punjab and Others vs. Mohinder Singh Chawala, AIR (1997) 2 SC 83.

[12] Vincent Panikulangara vs. Union of India, AIR 1987 SC 990: 995. p. 995.

[13] National Health (Sokhey) Sub-Committee (called the Sokhey Committee) and was a part of the National Planning Committee constituted by the National Congress in 1940. Its report was presented in 1948.

[14] Available at <http://bhrc.bih.nic.in/Docs/Womens-Rights-to-Health.pdf> (last visited on Jan.03,2016).

[15] Duggal, R. (2002) Health and nutrition in Maharashtra. In Government of Maharashtra (2002) Human Development Report : Maharashtra, New Delhi: Oxford University Press. pp. 53-77

[16] Available at <http://www.imva.org/pages/orgfrm.htm> (last visited on Jan.03,2016).

[17] Available at <http://www.unicef.org/health/> (last visited on Jan.03,2016)

[18] Available at <https://www.usaid.gov/india/health> (last visited on Jan. 03,2016)

[19] Available at <http://www.ifrc.org/en/who-we-are/the-movement/> (last visited on Jan.03,2016)

[20] Available at <http://www.care.org/about/index.asp> (last visited on Jan.03,2016)