

Concept Note

Introduction

At more than 400 deaths per 100,000 live births, India's maternal mortality ratio is one of the highest in the world. This dramatic situation demands that efforts be made to examine how the law can help to reverse this trend. Women are dying because of corruption within the public health system (including the procurement of medicines), the lack of qualified medical staff in rural areas, poor people's inability to pay for services, a lack of appropriate transport, and for many other reasons.

No less alarming is the fact that the existing laws governing safe motherhood, although progressive, are not being implemented so that legislation can evolve appropriately over time.

Maternal deaths are not routinely registered by the health services, and are therefore widely under-reported. Pregnancy, childbirth and the post-partum period are arguably amongst the riskiest stages of a woman's life in States such as Uttar Pradesh, Bihar, Orissa and Madhya Pradesh where ante and postnatal care is minimal.

Anaemia, due to a poor diet, lack of knowledge about proper nutrition, and the effects of malaria, accounts for up to 20% of maternal deaths in some States. In remote areas and conflict zones where health facilities are lacking, or being shut down, childbirth is even riskier.

Although India's judicial system is wide ranging, proper implementation of the law is abysmally weak, especially when it comes to the Rights of the poor. Nor has advocacy been used proactively enough to ensure that legal safeguards covering safe motherhood are developed and acted upon.

The implementation of State legal aid services, although designed to be pro-poor, are often desultory. Moreover, the judiciary as a whole lacks a sound balance between the opinions of marginalized communities and the elite, resulting in entrenched attitudes that are rooted in caste and class, and are highly discriminatory. Often, scant attention is paid to the legal aspects of a woman's Right to life and health, for example.

To bring about change, maternal mortality needs to be considered not only from a medical perspective, but also within the framework of Human Rights and the law.

The Consultation

The Consultation, which the Human Rights Law Network (HRLN) is organizing in collaboration with experts from the 'Initiative for Health, Equity and Society' on the 15th and 16th March, will address the above-mentioned issues in depth. Its purpose is to bring doctors and other health professionals together with lawyers into a forum where urgent problems of maternal mortality can be debated, and solutions identified.

The Consultation will be part of a series of activities to be arranged over the coming months in a spirit of partnership between a range of concerned organizations, social activists and committed lawyers. The resulting legal work, for which HRLN will be responsible, should result in practical benefits for people from the grass roots up.

Such action will include the filing of Public Interest Litigation (PILs) to test and enforce existing laws, as well as to establish legal precedents. A compilation of judgments on the two-child norm has already been prepared. A compilation of judgments on women's reproductive rights is under preparation.

Individual casework will also be undertaken with a focus on those that can bring quick results.

Liability and accountability within the law will be the overriding watchwords throughout.

Methodology

The Consultation will draw upon a variety of sources from across the country to address, amongst other things, maternal mortality, the quality and quantity of the government's response through the public health system, current policies on safe motherhood and obstetric care, and the reasons for their poor implementation. Case studies will be examined with a focus on the medical, legal, and social aspects of maternal health with the intention of finding appropriate legal remedies.

One of the major objectives of the Consultation will be to examine the existing legal tools that can reinforce the entitlements of mothers, such as the availability of recommended medicines and the deployment of suitably qualified personnel. It will be crucial to frame issues in a manner that makes subsequent litigation possible.

Expected Outcomes

The expected outcomes of the Consultation are multi-faceted. They include the following:

- A coordinated mechanism between all participants for the sharing on a regular basis of information on legal cases and developments on the health front
- Increased collaboration between health professionals and lawyers at the State level, so as to strengthen the capacity of local health groups and individuals to seek appropriate redress when required through the legal system
- The creation of a ten-member national Health and Human Rights Alliance, in which HRLN's role will be as a catalyst for legal issues, the provision of legal aid, and the use of legal tools to bring about change at the community level. HRLN will not involve itself directly in the development of health programmes
- State-level legal training and dissemination on the laws (international and national), precedent-setting judgments, and policies that may be invoked to combat maternal mortality and morbidity
- The creation of mechanisms for the provision of legal aid for individual women and/or their families who have been victims of maternal mortality and morbidity. This includes filing cases in court for prosecution of offenders as well as for compensation
- The filing of a Public Interest Litigation Petition (PIL) in the Supreme Court against the government of India (at both the National and State level), to enforce existing legal standards. This to be done under a mechanism devised by the Court through a committee of civil society members. The PIL will call for the Court to issue guidelines to fill gaps in government policy, and for a strategy that enforces the right to safe motherhood, by holding the appropriate parties accountable
- The launch of a "National Maternal Mortality and Morbidity Watch" with the aid of the above-mentioned Advisory Committee, to track violations and compile data to be presented to the Supreme Court