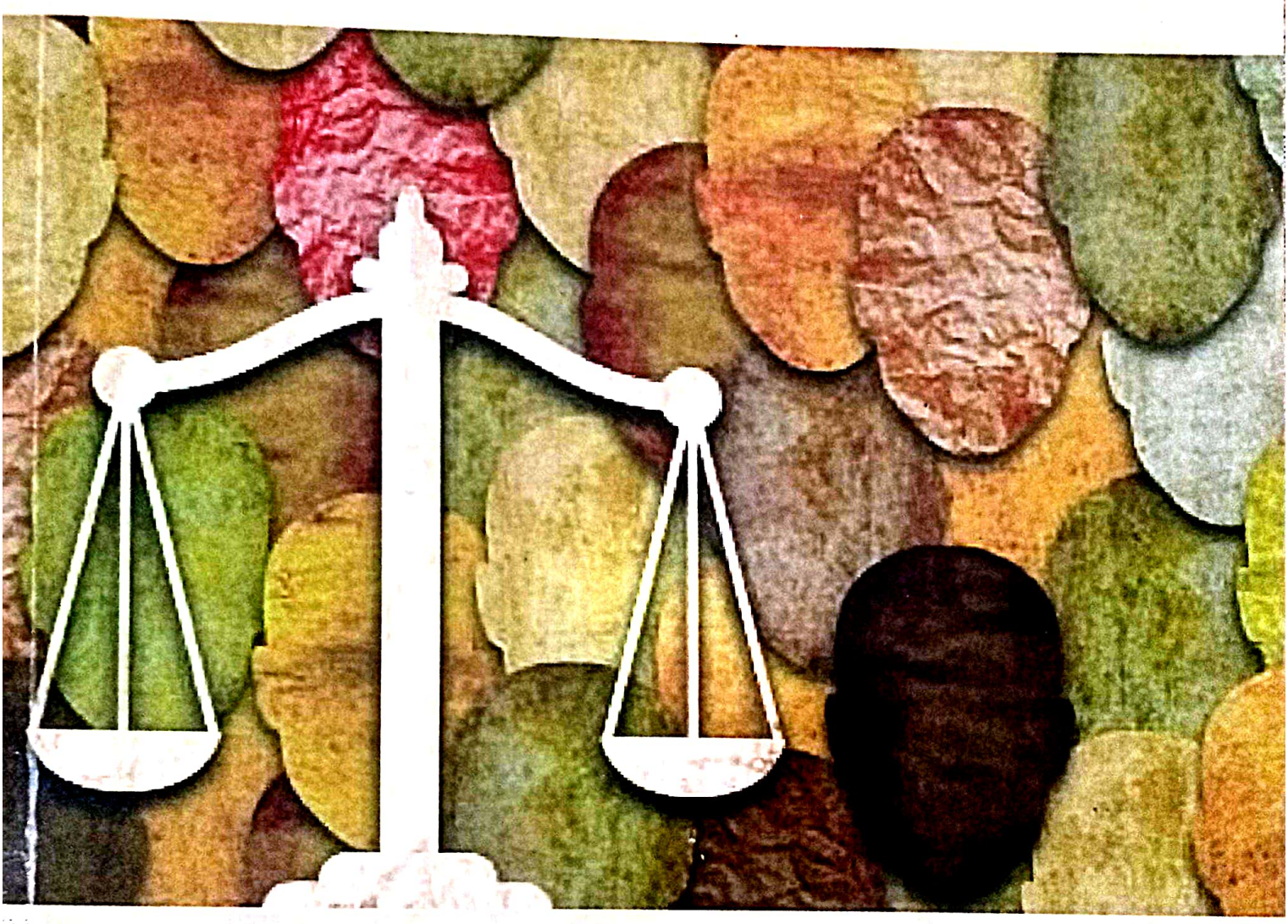
Law and Social Change



Prof. (Dr.) Pradeep Kulshrestha
Animesh Kumar
Manish Kumar

ANAGH

LAW AND SOCIAL CHANGE

Edited by

Prof. (Dr.) Pradeep Kulshrestha

Animesh Kumar

Manish Kumar

Published by

ANAGH - Forum For Sustainable Outreach

CONTENTS

ONE

Legal Framework Combating Primary Health Care of Children in India: Challenges and Issues

ABHISIKTA BASU & AVISHIKTA CHATTERJEE

Abstract

Globally, primary health care (PHC) has been marketed as a complete strategy to attain "health for all" and the best possible health status. Though it attracted attention at first, the PHC strategy fell short of the Indian public's expectations. In India, child health initiatives have long been initiated as vertical programmes that were later integrated and designed to provide services through PHC systems. A number of strategies under the National Rural Health Mission have been established to increase the rate of child survival, including strengthening immunisation services, creating nutritional rehabilitation centres, home-based newborn care, sick newborn care units, skilled birth attendant and emergency obstetric care, and integrated management of neonatal and childhood illnesses. However, in the last ten years, there have been many new initiatives aimed at improving child health. The PHC system, which still needs improvement, is the only means of providing services to a sizable segment of the rural population. Although India ratified the United Nations Convention on the Rights of the Child, not enough money has been set aside, nor have efforts been made to address health issues. The researcher aims to emphasise in this chapter that while infrastructure, community health workers, funding availability, and other aspects have improved, there is a requirement to strengthen the PHC system in India immediately and make it more child-friendly, which can contribute to child survival. Community involvement, health planning at the district level, data for action, political commitment, public-private collaboration, accountability, and the development of the health workforce are some of these areas.

Keywords: *Primary Health Care, Child Health, Child Survival, Health Infrastructure*

Introduction

According to definitions given by Amnesty International, USA, human rights are *"fundamental freedoms and rights to which every individual is entitled, regardless of nationality, sex, national or ethnic origin, race, religion, language, or other status."* It is believed that all persons have equal rights just by virtue of being human and that human rights are universal and egalitarian. These rights may be recognised as legal or natural rights. The UN explicitly stated in its charter that it will uphold and advance respect for everyone's fundamental freedoms and human rights, regardless of their colour, sex, language, or religion. In response to the wrath of World War II, the General Assembly, the most vital organ of the 'United Nations' approved in the year 1948 the 'Universal Declaration of Human Rights (UDHR)'.

The *"protection and fulfilment of right to health for all - right to life, equality, and non-discrimination"* is a very clear and explicit statement found in the Indian Constitution. Everyone has the right to health care that is readily available, easily accessible, reasonably priced, and of the highest calibre. Articles 14, 15, and 21 of the Indian Constitution (rights to life, equality, and non-discrimination) require the State to guarantee that everyone's right to health is fulfilled without exception. This naturally leads to the realisation that human rights must be respected, protected, fulfilled, and guaranteed by the country without regard to caste, class, creed, or sexual orientation. The rights-based approach seeks to guarantee that initiatives aimed at addressing the widening socio-economic gaps are not only implemented but also concentrate on built-in mechanisms that allow the objectives to be met without prejudice. Furthermore, the rights-based approach guarantees that the "State" will provide the funds required to guarantee that health care is provided to all.

Objective of Study

The study was undertaken with three main objectives. Firstly, the international instruments relating to the right to health of children will be reviewed, and the laws and policies pertaining to the right to health of children and the various health schemes will be reviewed. Thirdly, the gaps will be addressed, followed by suggestions.

Methodology of Study

This study is a review of various healthcare schemes and international instruments relating to the right to health of children, and it is doctrinal research based on books, government notifications and journals. Section 1 of the paper deals with the introduction and background study. Section 2 deals with the International Instruments relating to the Right to Health of Children, which also includes the various conventions and declarations undertaken for the promotion of the health of children. Section 3 deals with the right to health of children from the Indian Perspective, which deals with the constitutional provisions and the various health schemes in India. Section 4 deals with the conclusion and suggestions relating to the gaps in the health care system.

(g) Communities and groups need to be mobilised to address the health challenges and disparities that they believe are most important while also utilising a more technical, top-down approach to assess social disparity and set priorities for action.

(h) Another factor contributing to the dire situation of the public health sector is the hierarchical nature of health governance from an administrative, financial, and technological standpoint. Additionally, "hospitals, dispensaries, public health, and sanitation" are state-regulated matters. The Constitution's "Concurrent list" should include health, giving the federal government and the states the authority to jointly manage health-related concerns.

(i) Finally, but just as importantly, a public health law ought to be passed, serving as a basis for other health-related laws to be regulated, implemented, and monitored. The Constitution should be amended to elevate the "right to health" to the rank of a fundamental right in the chapter on basic rights. Health is, in actuality, an inexpensive, highly profitable investment that can advance not just the general advancement and prosperity of a country but also every facet of child development. It is imperative that national health policy be in line with human rights law and offer, at the very least, basic healthcare services as a matter of right to all citizens, particularly the nation's future leaders, the children.

In conclusion, the "right to health" must be seen as a positive human right on a worldwide scale rather than merely being thought of as a traditional right that can be enforced against the state.

References:

Amnesty International USA. (2024, August 8). Amnesty International USA. http://www.amnestyusa.org/research/human-rights-basics

Bakshi, P. M. (2009). The Constitution of India (9th ed., p. 90). Universal Law Publishing Co. Pvt. Ltd.

Bandhua Mukti Morcha v. Union of India (AIR 1984 SC 812)

Charter of the United Nations, 59 Stat. 1031, T.S. No. 993, 3 Bevans 1153 (1945)

Child and adolescent health: Fact sheet on Sustainable Development Goals (SDGs): Health targets. (2017). World Health Organization. https://iris.who.int/handle/10665/340816

Chouri, D. (2012). Constitutional perspective of right to health in India. The IUP Law Review, 2(1), 46.

Committee on Economic, Social and Cultural Rights. (1990). General comment No. 3 (1990): The nature of States parties' obligations. U.N. Doc. HRI/GEN/1/Rev.3 (1997). https://www.ohchr.org/en/treaty-bodies/cescr-general-comments

Committee on Economic, Social and Cultural Rights. (2000). General Comment No. 14: The right to the highest attainable standard of health (Art. 12) (E/C.12/2000/4). United Nations Economic and Social Council. https://digitallibrary.un.org

Convention on the Rights of the Child. (1989). Article 41. United Nations. https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child

End preventable deaths of newborns and children under 5 years of age. (2024, March 14). World Health Organization. https://www.who.int/data/gho/data/themes/topics/sdg-target-3_2-newborn-and-child-mortality

Goal 3, Department of Economic and Social Affairs. (n.d.). United Nations. https://sdgs.un.org/goals/goal3#targets_and_indicators

Government of India. (1983). The National Health Policy 1983. Ministry of Health and Family Welfare, Government of India.

Government of India. (2002). National health policy 2002. Ministry of Health and Family Welfare, Government of India.

Government of India. (2008). Rural health statistics 2008. Ministry of Health and Family Welfare, Nirman Bhawan, New Delhi.

Hannum, H. (1998). The UDHR in national and international law. Health and Human Rights, 3(2), 145-158.

Health Survey and Development Committee. (1946). Report of the Health Survey and Development Committee. Ministry of Health, Government of India. http://nihfw.org/NDC/Documentation%20Services/Committe_and_commission.html

Hendriks, A. (1998). The right to health in national and international jurisprudence. European Journal of Health Law, 5(4), 389-408.

James, W. (2006). William James. In Stanford Encyclopedia of Philosophy. Stanford University.

Kinney, E. D., & Clarke, B. A. (2004). Provisions for health and health care in the constitutions of the countries of the world. Cornell International Law Journal, 37(2), 285-355.

Klerk, Y. (1987). Working on Article 2(2) and Article 3 of the International Covenant on Economic, Social and Cultural Rights. Human Rights Quarterly, 9(2), 250-267.

Lahariya, C. (2008). Health planning in India: A critical review. In A review of preventive and social medicine (pp. 53-60). Jaypee Brothers Medical Publishers Pvt. Ltd.

Lakshmi Kant Pandey v. Union of India, AIR 1984 SC 469

Leary, V. A. (1994). The right to health in international human rights law. Health and Human Rights, 1(1), 24-56.

Ministry of Health and Family Welfare, Government of India. (2009). Facility based integrated management of neonatal and childhood illness (F-IMNCI) facilitators guide (Facility based care). https://nhm.gov.in/images/pdf/programmes/child-health/guidelines/facility_based_care_facilitator_guide.pdf

Ministry of Health and Family Welfare, Government of India. (n.d.). Title of the webpage. https://nhm.gov.in/index4.php?lang=1&level=0&linkid=484&lid=754

Ministry of Health and Family Welfare. (2021). Rural Health Statistics 2020-21. Government of India. Retrieved from https://main.mohfw.gov.in

Office of the United Nations High Commissioner for Human Rights. (2008). WHO factsheet No. 31: Right to health.

Oldring, L. (2009). Advancing a human rights approach on the global health agenda. In Swiss Human Rights Book, 3, 101-102.

Parmanand Katara v. Union of India (AIR 1989 SC 2039)

Paschim Banga Khet Mazoor Samity v. State of West Bengal (1996)4 SCC 37)

Riedel, E. (2009). The human right to health: Conceptual foundations. In Swiss Human Rights Book, 3, 21-39.

Rifkin, S. B. (2018). Alma Ata after 40 years: Primary health care and health for all-from consensus to complexity. BMJ Global Health, 3 (Suppl 3).

Sheela Barse v. Union of India, (1986) 3 SCC 596

Singh, P. (2019). Challenges to India's healthcare system and solutions. Journal of Family Medicine and Primary Care, 8(6), 2169-2173. https://doi.org/10.4103/jfmpc.jfmpc_411_19

THE 17 GOALS, Sustainable Development. (n.d.). United Nations. https://sdgs.un.org/goals

Toebes, B. (1999). The right to health as a human right in international law. Oxford University Press.

United Nations General Assembly. (1974). Resolution adopted by the General Assembly 3201 (S-VI): Declaration on the establishment of a new international economic order. http://www.un-documents.net/s6r3201

Universal Declaration of Human Rights. (1948). Article 25. U.N. Doc. A/810.

World Bank. (2020). India's Healthcare System: Overview and Key Challenges. World Bank. Retrieved from https://www.worldbank.org/en/country/india

World Health Organization. (1978). Report of the International Conference on Primary Health Care, Alma-Ata, USSR, 6–12 September 1978. Geneva, Switzerland: Author.

World Health Organization. (2008). Primary health care: More than ever: World health report. WHO.