

International accountability and the right to maternal health

ANAND GROVER
UN SPECIAL RAPPORTEUR ON THE RIGHT TO HEALTH

Public Dialogue on the Report of the Mission to India of UN Special Rapporteur on the Right to Health
NEW DELHI
13 August, 2010

The right to health in India

- Constitutional Law
 - Enshrines the Fundamental Right to Life under Article 21 of the Constitution, which has been interpreted to include the right to health
 - Fundamental rights to be interpreted in light of Directive Principles
- International obligations
 - India is a signatory to a number of conventions which concern the right to health
 - Fundamental Rights are interpreted in light of Human Rights in the international conventions

Domesticating International Law

- India is a dualist state: International law has to be domesticated
- Protection of Human Rights Act enacted in 1993
- Human Rights which are enforceable under PHR Act are rights under:
 - International Covenant on Civil and Political Rights;
 - International Covenant on Economic, Social and Cultural Rights
- Established the National Human Rights Commission

Vishaka V. State of Rajasthan

- However, a significant change occurred in Vishaka

“In the absence of domestic law occupying the field...the contents of international Conventions and norms are significant for the purpose of interpretation”

“Any International Convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee”

JS Verma C.J.I., Supreme Court (1997)

ICESCR

ARTICLE 12

- Recognizes “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”
- Steps to be taken by States parties to achieve full realization of this right include those necessary for:
 - a. Reducing stillbirth and infant mortality rates;
 - b. Improvement of environmental and industrial hygiene
 - c. Prevention, treatment and control of diseases
 - d. Creating conditions which ensure medical attention and services in the event of sickness

Right to Health Approach

- A rights to health approach elaborated in General Comment 14 includes
- Respect: State must not itself interfere with the right
- Protect: State must protect interference from 3rd parties
- Fulfill: Must take legislative, administrative and other measures to realize the right

What is a Right to Health Approach?

- **Non-Discrimination**
 - Health services available to all equally
- **Non-retrogression and Adequate progress**
 - Base line indicators: Monitoring: More services delivered each year
- **Accountability and Monitoring**
 - Governments to families
- **Transparency**
 - Information available to potential parents?
- **Participation**
 - Inclusion of parents on policy-making bodies
- **Proportionality**
 - Are measures reasonably necessary?

Obligations of health systems: AAAQ

- **Availability** – in quantity to meet needs
- **Accessibility** – Encompasses, non-discrimination, physical and geographic access, special population (children, elderly), affordable, information
- **Acceptability** –ethically sound (consent, confidentiality), culturally appropriate.
- **Quality** –Scientifically, medically sound

CESCR: General Comment 14

Article 12.2(a) of ICESCR has been interpreted as the right to maternal, child and reproductive health

"The provision for the reduction of the stillbirth rate and of infant mortality and for the healthy development of the child" (art. 12.2 (a)) may be understood as requiring measures to **improve child and maternal health**, sexual and reproductive health services, **including access to family planning, pre- and post-natal care, emergency obstetric services and access to information**, as well as to resources necessary to act on that information.

CEDAW

ARTICLE 12

- "States must 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 services, including those related to family planning."
- "States 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."

India's Response to the Paul Hunt's Report on Maternal Mortality

- Supply-side shortages
 - The government claims to be addressing human resource shortages in the health sector. This includes efforts to increase medical colleges and institutions and the creation of a conditional cash transfer scheme in 2005, known as *JananiSuraskhaYojana*, which reaches out to women and provides them with money for seeking out institutional facilities for delivery.
- Monitoring and accountability
 - Data is collected through the Registrar General's Sample Registration System. Deficiencies of the system are recognized and now web-based Health Management Information System has been put into place. The government claims to be expanding this system and also asking States to provide maternal death audits.
- Obligations under international human rights instruments
 - India believes the legal case for maximum resource allotment to the health sector is overstated. The report further states that family planning, skilled birth attendants, referral networks, and emergency obstetric care are all required by international law.

India's Response to the Paul Hunt's Report on Maternal Mortality

- Overall, the government claims to realize many deficiencies exist in the current treatment of maternal mortality in India. However, it also claims to be making great efforts to address these problems.
- Over 200 districts have been identified for special interventions, including the creation of a District Health Profile, which will culminate in the production of an Annual Health Survey,
- This is one of the multiple prongs that the government has adopted and which has seen great declines in maternal mortality to from 301 deaths/100,000 live births in 2001-2003 to 254 deaths/100,000 live births from 2004-2006.

India's international obligations

- Obligated under international law to ***respect, protect and fulfill*** the right to health.
- Reporting obligations to the Human Rights Council
- There is a need for a comprehensive plan to reduce the rate of maternal mortality to levels lower than the current ratios and meet MDG 5 (109 deaths/100,000 live births).
- While the government has taken significant action, it is still not meeting its international obligations.