



HIMMAT MAHILA SAMOOH V. HARYANA

In India, a woman dies in childbirth every eight minutes, and one out of every one hundred seventy women will die from pregnancy-related causes.¹ Despite the very real risks of pregnancy, in the state of Haryana, the failure of government policies to address barriers in access to contraceptive information and services effectively denies women the ability to prevent unintended pregnancies, which are a root cause of avoidable pregnancy-related harms, including maternal mortality and morbidity, unsafe abortion, and sexually transmissible infections.

Though India's national health policies and programs guarantee women access to the full range of contraceptive methods at no cost in a manner that emphasizes voluntary use and a target-free approach, government studies in Haryana show that both the unmet need for contraceptives and pregnancy-related deaths have risen in the past decade.² In Haryana, almost a quarter of married women aged 15–24 who want to limit or space pregnancies do not have access to contraceptive information or services.³ The state's population-control-focused reproductive health policies and programs mean that there are targets for female sterilization, which is promoted more than other contraceptive methods. Government data indicates that knowledge of nonpermanent forms of contraception has decreased in Haryana since 1998.⁴ Without practical access to nonpermanent methods, women cannot prevent their pregnancies from being too close together, which increases their health risks. For certain vulnerable groups of women, this lack of access to contraceptive methods carries additional physical and mental health risks. Such risks include pregnancy-related complications or injuries as well as mental health harm for married adolescent girls who cannot prevent early pregnancy and survivors of sexual violence who are unable to access emergency contraceptives.

Why this case is important

Women worldwide have a fundamental right to decide if and when to have children, and to access the information and means to do so. This case is the first filed in a state high court in India to seek recognition that the failure to ensure access to contraceptive information and services is a constitutional and human rights violation.

Lack of access to contraceptives perpetuates the low status of women and is part of a continuum of discrimination faced by women in Haryana. The state's failure to guarantee access to contraception has a disproportionate impact on women, because, biologically, women must bear the serious and potentially fatal risks associated with unplanned pregnancies, including maternal mortality and morbidity and unsafe abortion. Further, for women who carry unplanned pregnancies to term, they face the ramifications in all facets of their lives, including in connection with their ability to work, seek education, and care for their families. The petition argues that for the government to fulfill women's rights to life and equality and nondiscrimination in the enjoyment of their human rights, it must ensure that *all* women have access to available, acceptable, and quality contraceptive information and services.

Further, as documented in a 2013 study by Jindal Global Law School, additional barriers to contraception in Haryana include social stigma and judgment regarding contraceptive use, poor-quality contraceptives, and a lack of accurate information and counseling on contraceptives.⁵

Petitioner

This public interest case was filed in the High Court of Punjab and Haryana at Chandigarh on behalf of Dr. Jagmati Sangwan through Himmat Mahila Samooh, a leading women's empowerment organization in Haryana.⁶ This petition, which was filed by the Human Rights Law Network with technical support from the Center for Reproductive Rights, demands recognition of women's right to contraceptive information and services in Haryana. It cites government data and independent field research to illustrate the depth and breadth of barriers that women in Haryana face in accessing contraceptive information and services.

Claims

The petition argues that the government of India—through the Ministry of Health and Family Welfare, the state of Haryana, and the Department of Women and Child in Haryana—has failed to provide women with access to the full range of contraceptive methods. It asserts that the failure to ensure access to contraceptive information and services violates women's fundamental rights to life and health, nondiscrimination and equality, and freedom from torture and cruel, inhuman, and degrading treatment, as protected under the Indian Constitution and international human rights law.

The petition builds on several recent decisions issued by Indian courts. In these decisions, courts have established that where the failure to provide reproductive health services exposes women to increased health risks and the mental anguish of unwanted pregnancies, women's rights to life and health are violated.⁷ The petition also cites the Indian government's positive obligation to ensure access to contraceptive information and services, as recognized by several international human rights treaties ratified by the Indian government, including the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of All Forms of Discrimination against Women; and the International Covenant on Civil and Political Rights.

Remedies

This petition requests an order instructing the national government and the government of Haryana to comply with the service guarantees in national policies and programs concerning contraceptive information and services. Further, it calls on the state and national government to take the following actions:

- Ensure that all public facilities have adequate stocks of the full range of contraceptive methods on India's National List of Essential Medicines— including condoms, oral contraceptive

pills, emergency contraceptives, and intrauterine devices—and have staff trained to provide contraceptive information and counseling;

- Ensure that all community health workers have proper training and adequate supplies of oral contraceptive pills, emergency contraceptives, and condoms, which should be provided free of charge to women living below the poverty line;
- Educate all health workers on modern contraceptives and introduce male field-level health workers to counsel male patients, thus ensuring that women do not bear a disproportionate burden in preventing pregnancy;
- Implement health policies guaranteeing reproductive health care for adolescents;
- Ban the use of targets in all contraceptive-related programs and policies;
- Design a statewide plan for addressing social and cultural barriers to accessing contraception, and conduct monthly information campaigns in regional languages; and
- Establish a monitoring committee consisting of civil society representatives to submit quarterly reports on the respondents' compliance with the orders.

Current Status

The case was filed on November 14, 2013. The court issued an order in January 2014 seeking the government's response and inviting further pleadings if this reply was unsatisfactory. The government's reply, submitted in February 2014, claims that existing services are adequate and fails to refute the evidence of barriers to contraceptive information and services presented. Petitioners plan to file a fresh petition in 2015.

Endnotes

- ¹ A. Gogoi & R. Motihar, *Maternal Health in India: Where We Are Today*, HUFFINGTON POST, June 6, 2013 (calculated from Office of Registrar General, India), *Special Bulletin on Maternal Mortality in India 2007-09*, June 2011; THE WORLD BANK, LIFETIME RISK OF MATERNAL DEATH (1 IN: INDIA).
- ² CENTRAL STATISTICAL ORGANIZATION, MINISTRY OF STATISTICS AND PROGRAMME IMPLEMENTATION, GOV'T OF INDIA, MILLENNIUM DEVELOPMENT GOALS IN INDIA COUNTRY REPORT (2011); GOV'T OF INDIA, MINISTRY OF HEALTH AND FAMILY WELFARE & INT'L INSTITUTE FOR POPULATION SCIENCES, DISTRICT LEVEL HOUSEHOLD AND FACILITY SURVEY (DLHS-3) (2007-2008).
- ³ INT'L INSTITUTE FOR POPULATION SCIENCES & MINISTRY OF HEALTH AND FAMILY WELFARE, DISTRICT LEVEL HOUSEHOLD AND FACILITY SURVEY: HARYANA 113 (2010).
- ⁴ MINISTRY OF HEALTH AND FAMILY WELFARE, GOV'T OF INDIA, NATIONAL FAMILY HEALTH SURVEY (NFHS-3) 2005-2006 8 (2008).
- ⁵ D. JAIN & N. ROZARIO, VOICES FROM THE FIELD: ACCESS TO CONTRACEPTIVE SERVICES AND INFORMATION IN THE STATE OF HARYANA, INDIA (Centre for Health Law, Ethics and Technology, Jindal Global Law School, 2013).
- ⁶ Himmat Mahila Samooh v. Haryana W.P. (C) No. 12623/2014 (2014).
- ⁷ See, e.g., Consolidated Decision, Laxmi Mandal v. Deen Dayal Harinagar Hospital & Others, W.P. (C) No. 8853/2008 & Jaitun v. Maternal Home MCD, Jangpura & Others, W.P. (C) Nos. 8853 of 2008 & 10700 of 2009, Delhi High Court (2010); Sandesh Bansal v. Union of India & Others, W.P. (C) No. 9061 of 2008 (2012); Dr. Mangla Dogra et al. v. Anil Kumar Malhotra et al, Ajay Kumar Pasricha et al. v. Anil Kumar Mahotra et al., CR No. 6337 of 2011, HC Punjab and Haryana at Chandigarh (2011).