



In the Munger district of the state of Bihar, India, women seeking maternal health services often face insurmountable barriers to decent medical care. Those who are actually able to reach government health facilities find themselves delivering in filthy and overcrowded wards without electricity or running water; recovering from surgery on dirty, bloodstained hospital floors; being sent home from health centers sometimes less than thirty minutes after giving birth; or facing illegal demands for money despite the government's promise of free medical services. In one health center, a single working toilet littered with used condoms and excrement serves 196 patients' beds. Due to severe understaffing, even a district-level hospital has gone months without providing the most basic reproductive health services, including antenatal care and safe abortion services.

The conditions in Munger are emblematic of Bihar as a whole, where the state government has failed to prioritize maternal healthcare, despite the fact that **the right to survive pregnancy and childbirth is a basic human right that includes the right to maternal health services of appropriate quality**. In 2010, the Delhi High Court recognized **"the reproductive rights of the mother" as "inalienable survival rights"** protected under the right-to-life provision of the Indian constitution (art. 21).² However, enforcement of the right to survive pregnancy and childbirth is still significantly lacking throughout India, especially in states such as Bihar, where conditions in government health facilities are so deplorable that pregnant women there are among the most likely in the country to die from pregnancy-related causes.³ Bihar's maternal mortality ratio, measured in combination with that of neighboring state Jharkhand, is estimated to be 261

Why this case is important

The *CHARM* case seeks accountability for the Bihar government's failure to provide quality maternal health-care services in government health facilities, leading to the inhuman treatment of pregnant women and high maternal mortality rates.

Human Rights Law Network's (HRLN) petition and the Center for Reproductive Rights' memorandum argue for the first time in an Indian court that the failure to ensure quality maternal healthcare and safe abortion services constitutes a violation of the **right to be free from cruel, inhuman and degrading treatment** due to the foreseeable physical and mental pain and suffering caused to pregnant women. The petition argues that this right is violated particularly with regard to poor women, who are effectively "imprisoned" by poverty and forced to rely on the state for healthcare. It compares their situation with that of pregnant women in state custody, towards whom the state has a specific obligation to protect against cruel and degrading treatment, and posits that the state bears a similar duty of protection towards pregnant women living below the poverty line.¹

This case is part of a broader legal accountability strategy to address India's failure to implement policies and schemes aimed at preventing maternal mortality and morbidity. It draws on the Delhi High Court's landmark 2010 decision establishing that inaccessibility of maternal healthcare services constitutes a violation of fundamental rights and human for which the government may be held accountable.

Human rights obligations . . . require states to take legislative, administrative and judicial action, including through the commitment of maximum available resources to prevent maternal mortality and morbidity.⁴

maternal deaths per 100,000 live births.⁵ This ratio is the fourth highest in India and well above the national average of 212.⁶

In 2009, HRLN undertook a fact-finding mission in Munger to investigate reports of the abysmal conditions in government hospitals providing maternal healthcare. HRLN attorneys documented widespread violations of the right to survive pregnancy and childbirth on account of the poor quality and sometimes even absence of crucial maternal health services, such as antenatal care, emergency obstetric care, and safe abortion services. Public health centers in Munger **lacked the most basic facilities, including intensive care units, maternity wards, and blood storage units** needed to facilitate emergency transfusions. One primary health center **lacked any mode of transportation**, rendering the facility inaccessible for women in sixteen of the villages it serves. Monitoring systems mandated by the government to ensure accountability—for example, **referral systems, maternal death audits, and grievance redressal mechanisms—were entirely absent**. Furthermore, despite the existence of the Janani Suraksha Yojana, a central government scheme to provide cash incentives to women to deliver in institutions, women repeatedly reported that **payments were either delayed or not made at all**.

In March 2011, HRLN filed a public interest litigation (PIL) petition in the High Court of Judicature at Patna on behalf of the Centre for Health and Resource Management (CHARM), a civil society organization in Bihar, seeking accountability for the horrific conditions in Munger's health facilities. The Center for Reproductive Rights also prepared a legal memorandum discussing the government of Bihar's international legal obligations to ensure women's right to survive pregnancy and childbirth by guaranteeing their access to quality healthcare services.

Claims

The petition argues that the Bihar government's failure to ensure access to maternal health services amounts to a violation of women's constitutionally and internationally protected rights to life, health, equality and non-discrimination, and freedom from cruel, inhuman and degrading treatment. The petition alleges a lack of implementation of official policies, schemes, and

standards, including key provisions of both the National Rural Health Mission and the Indian Public Health Standards (IPHS). The Center for Reproductive Rights' memorandum supports these claims and additionally cites violations of women's rights to liberty and security and to reproductive self-determination, as well as suggests legal remedies.

Remedies

The petition seeks a court order directing the state of Bihar to immediately provide necessary services and infrastructure as required under government policies and programs, including the following:

- Renovation or construction of adequate health facilities consistent with the IPHS;
- Essential maternal healthcare supplies and services, including ambulances or other forms of transportation, antenatal and postnatal care, emergency obstetric care, blood storage facilities, safe abortion services, essential laboratory services, functioning maternity wards, and intensive care units;
- Trained staff to provide these services and maintain these facilities;
- Functional registration and referral systems, including the tracking and investigation of maternal deaths; and
- Removal of financial barriers to maternal health services, including the prevention of illegal fee collection and the implementation of financial support services for pregnant women and infants.

The petition also requests the Court to order implementation of an independent grievance redressal system, including an emergency hotline and accountability mechanisms.

Current Status

Following a hearing on July 11, 2011, the government of Bihar was ordered to file an exhaustive counter affidavit to the PIL by early August 2011. A hearing was scheduled for September 27, 2011.

Endnotes

¹ See Optional Protocol to the Convention against Torture, adopted Dec. 18, 2002, art. 4, G.A. Res. A/RES/57/199, 57th Sess., U.N. Doc. A/RES/57/199 (2003) (*entered into force* June 22, 2006).

² 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), 3, 15–19.

³ Office of Registrar General, India, Sample Registration System: SPECIAL BULLETIN ON MATERNAL MORTALITY IN INDIA 2007-09 3 (June 2011) [hereinafter Sample Registration System].

⁴ Human Rights Council, *Report of the Office of the United Nations High Commissioner for Human Rights on Preventable Maternal Mortality and Morbidity and Human Rights*, para. 12, U.N. Doc. A/HRC/14/39 (2010).

⁵ Sample Registration System, *supra* note 3.

⁶ *Id.*