



NAMHHR V. CHHATTISGARH

In India, unsafe abortion remains a leading cause of preventable maternal death. Recent estimates attribute between 8% and 20% of all maternal deaths to unsafe abortion,¹ and unsafe abortions significantly outnumber safe procedures.² In the state of Chhattisgarh, which has among the highest levels of maternal mortality in India,³ women are effectively denied access to safe and legal abortion by the state's failure to implement existing laws guaranteeing the provision of comprehensive reproductive health care. Moreover, existing services are frequently inadequate in terms of accessibility, cost, and quality.⁴

India legalized abortion in 1971 via the Medical Termination of Pregnancy Act (MTP Act), which permits abortion under a broad range of circumstances.⁵ In 2002, the oversight of abortion facilities was decentralized to District Committees comprising between three and five government officials (including the district's chief medical officer or district health officer as the chairperson), which were authorized to register private facilities to expand access to abortion services.⁶ In addition, the National Health Mission (NHM), an initiative of the government of India to increase access to health care services, including family planning and maternal health services and access to abortion, requires that abortion services be available in public health care facilities.⁷

Despite these specific legal and policy measures, less than half of all abortions in Chhattisgarh are performed by a skilled provider,⁸ and most of the state's districts lack the required District Committee, meaning that private facilities are unable to obtain the necessary registration to perform abortion legally. Applications for registration by private facilities are routinely ignored by government officials, and the state has failed to fully utilize funds disbursed by the central government for the NHM.

Why this case is important

Women have the fundamental right to decide if and when to have children. This case highlights Chhattisgarh's nonadherence to statutory, constitutional, and international laws requiring that women have access to safe and legal abortion. It confronts the government's failure to effectively implement national laws and policies, including the MTP Act and the NHM. Building on other recent cases in India, it underscores how the inaccessibility of safe and legal abortion harms women's health and violates their rights, including by threatening their survival and undermining their advancement and equal participation in society.

The state's failure to guarantee access to safe abortion disproportionately affects women because it is only women who need access to these services, making such a denial fundamentally discriminatory. In order for the government of India to respect women's rights to life, equality, and nondiscrimination, it must ensure access to safe and legal abortion services as mandated by the MTP Act and the NHM. Services must also be accessible, affordable, and of good quality for women to enjoy the right to health enshrined in the Indian Constitution and international law.

Consequently, many women turn to untrained providers or dangerous methods of self-induced abortion. Chhattisgarh also has a considerable tribal population, and women in these communities often live below the poverty line, thus increasing their vulnerability to negative reproductive outcomes, including unwanted pregnancy, unmet contraceptive needs,

and maternal mortality.⁹ Indian courts have condemned these preventable harms and have interpreted reproductive rights as falling squarely within the right to health.¹⁰ In 2012, the state of Madhya Pradesh was ordered to properly implement the NHM following the deaths of multiple women who were refused adequate maternal health care at public facilities.¹¹

Petitioner and Defendants

On June 30, 2014, *NAMHHR v. Chhattisgarh* was filed before the High Court of Chhattisgarh by the National Alliance for Maternal Health and Human Rights (NAMHHR), a national alliance of individuals and organizations that focuses on rights-based strategies to combat India's high maternal mortality rate. The defendant is the state government of Chhattisgarh—specifically, Chhattisgarh's Department of Health and Family Welfare and the mission director for the NHM.

Claims

Linking the inaccessibility of safe and legal abortion to negative reproductive health outcomes that the state is obligated to prevent, the petition argues that the state's failure to implement the MTP Act is a violation of constitutional, statutory, and international law. It asserts that women's fundamental rights to life, nondiscrimination, and equality guaranteed in the Indian Constitution are violated through the state government's failure to establish the required District Committees for the regulation of facilities, as well as through the persistence of barriers to care, including excessive costs and poorly equipped facilities. Moreover, the denial of a critical reproductive health care service such as abortion contravenes the government's international obligation to safeguard women's human rights, including the right to be free from torture and cruel, inhuman, or degrading treatment.

The petition's claims are grounded in rights guaranteed by the Indian Constitution, the MTP Act, key provisions of the NHM, recent judicial decisions in India upholding women's reproductive health and rights, and international human rights instruments signed and ratified by India.

Remedies

The petition requests orders from the High Court of Chhattisgarh instructing the defendants to fulfill their responsibility to ensure access to safe and legal abortion services. It calls for the following government measures:

- Implement the MTP Act;
- Provide information on the status of the MTP Act's implementation;
- Initiate criminal action against noncompliant officials responsible for the failure to form District Committees, which oversee private abortion providers; and
- Provide funding to properly equip MTP centers in rural areas.

Current Status

The case was filed in the High Court of Chhattisgarh on June 30, 2014. It was listed on July 18, 2014, and notice has been issued to the state government and its agencies to respond to the claims.

Endnotes

- ¹ Naina Kumar, *Current Abortion Practices in India: A Review of the Literature*, 3(2) INT'L J. REPROD. CONTRACEPTION, OBSTETRICS & GYNECOLOGY 293, 294 (2014).
- ² *Unsafe Abortions: Eight Maternal Deaths Every Hour*, 374 LANCET 1301, 1301 (2009). See also Ravi Duggal & Vimla Ramachandran, *The Abortion Assessment Project – India: Key Findings and Recommendations*, 12 REPROD. HEALTH MATTERS 122, 122 (2004) [hereinafter Duggal & Vimla Ramachandran, *The Abortion Assessment Project*].
- ³ See, e.g., GOV'T OF INDIA, MINISTRY OF HEALTH AND FAMILY WELFARE, A STRATEGIC APPROACH TO REPROD., MATERNAL, NEWBORN, CHILD AND ADOLESCENT HEALTH 4 (2013), available at http://www.unicef.org/india/1_RMNCHAStrategy.pdf.
- ⁴ Duggal & Ramachandran, *The Abortion Assessment Project*, supra note 2, at 125-127.
- ⁵ The Medical Termination of Pregnancy Act, No. 34 of 1971, INDIA CODE (1971).
- ⁶ The Medical Termination of Pregnancy Act (Amendment), sec. 4, No. 64 of 2002, INDIA CODE.
- ⁷ GOV'T. OF INDIA, FRAMEWORK FOR IMPLEMENTATION: NATIONAL HEALTH MISSION 2012-2017 2, 32 (2014) available at http://nrhm.gov.in/images/pdf/NHM/NRH_Framework_for_Implementation__08-01-2014_.pdf.
- ⁸ GOV'T OF INDIA, OFFICE OF THE REGISTRAR GENERAL & CENSUS COMM'R, CHHATTISGARH, ANNUAL HEALTH SURVEY 2010-2011: FACTSHEET 44 (2013), available at http://www.censusindia.gov.in/vital_statistics/AHSBulletins/AHS_Baseline_Factsheets/Chhattisgarh.pdf.
- ⁹ See, e.g., Linda Sanneving et al., *Inequity in India: The Case of Maternal and Reproductive Health*, 6 GLOBAL HEALTH ACTION 1, 7 (2013).
- ¹⁰ *Laxmi Mandal v. Deen Dayal Harinagar Hospital & Ors* W.P. 8853/2003 (2010).
- ¹¹ *Dunabai v. State of Madhya Pradesh*, W.P. 5097/2011 (2012).