NALSAR STUDENT LAW REVIEW

1st

SYMPOSIUM ON

LAW & PUBLIC HEALTH

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NALSAR University of Law, Hyderabad

BACKGROUND

Law plays an important role in shaping society, enabling us to articulate rights and realise societal aspirations. Public health focuses on the health, safety and well-being of a population, striving to provide the maximum benefit for the largest number of people through interdisciplinary engagement to evolve solutions. Public health considers a wide view of health, going beyond physical health to include issues ranging from mental health and violence to health inequity and universal access to health coverage. Government proposals in the past have been inadequate in addressing the dynamic factors behind poor health. In the context of law's role in improving access to healthcare, there has been a growing movement to see the right to health as a fundamental right in the developing world, ensuring that the government prioritises actualising universal health care. While the National Health Policy 2017 falls short of recognising health as a fundamental right, it advocates a progressive, assurance-based approach to universal health coverage.

PURPOSE

The 1st NSLR Symposium hopes to improve the visibility and effectiveness of law as a tool to protect and promote public health in India from a human rights perspective. To this end, the symposium encourages individuals from law, medicine, public policy, development studies and other disciplines to engage with law and public health, with an emphasis on looking for ways to bridge the gap between research and policy.

PANEL DISCUSSIONS

LAW, GENDER & PUBLIC HEALTH:
EVOLVING A LEGAL FRAMEWORK TO CONFRONT GENDER-BASED VIOLENCE FROM A HEALTH SYSTEMS PERSPECTIVE

Gender-based violence (GBV) lies at the intersection between the discourses on law, gender and public health. The World Health Organisation (WHO) has referred to violence against women as a 'global health problem of epidemic proportions,' with adverse health impacts ranging from death and injury to depression. India is a prime example, with a recent survey ranking the country as the most dangerous country for women due to the high risk of violence against women and inadequate efforts to tackle the issue. GBV includes sexual assault, child marriage and violence based on gender identity or sexual orientation. Sexual assault in India is often perpetrated by intimate partners, with approximately 29% of women experience intimate partner violence (IPV) at least once in their lives, with survivors experiencing higher incidence of gynaecological, neurological and stress-related problems for survivors. A study of Indian women between 20 to 24 years, found that 27% were married before age 18. Marriage before the age of 18 years increases risk for poor sexual and reproductive health outcomes for women and girls. In India, people belonging to marginalised identities and sexual orientations face violence for gender non-conformity, besides harassment and discrimination. According to one study, such abuse increases their vulnerability to HIV.

In 2016, India adopted the global plan of action to strengthen the role of the health system to address interpersonal violence, in particular against women and children. However, marital rape continues to be legal. The National Health Policy, 2017 notes that GBV is a serious issue with wide-ranging consequences, recommending the provision of free health care to survivors in the public and private sector, while ensuring their dignity is upheld. To this end, the government came out with guidelines for medico-legal care for survivors/victims of sexual violence in 2014 to build the capacity of health-workers to respond to instances of sexual violence in a sensitive and comprehensive manner. While this is a step in the right direction, the guidelines address the symptom rather than the underlying issue of widespread GBV. There is a need for a multisectoral approach to adequately address the different aspects of GBV. This panel discussion aims to look at GBV from a health systems perspective to work towards evolving an effective legal framework.

II LAW, TECHNOLOGY & PUBLIC HEALTH:
THE PRIVACY IMPLICATIONS OF THE STORAGE AND USE OF ELECTRONIC HEALTH RECORDS

The privacy implications of the storage and use of electronic health records (EHRs) lie at the interface between contemporary debates surrounding law, technology and public health. In K. S. Puttaswamy v. Union of India, the Supreme Court held that infringements of privacy without the force of law are constitutionally invalid. Recent government initiatives necessitate reflecting on the privacy implications of storage and use of EHRs. EHRs facilitate public health surveillance, a system of collecting data to better understand infectious diseases, chronic diseases and environmental exposure. In 2016, the government notified the Electronic Health Record Standards to realise a "standard-based system for the creation and maintenance of EHRs." These standards deal with issues of data privacy and security of EHRs, aiming to safeguard confidentiality. However, they do not have the force of law.

NITI Aayog's National Health Stack (NHS), which is a shared digital healthcare infrastructure to oversee the implementation of the Ayushman Bharat Scheme as well as other public healthcare programs, includes national health electronic registries, a federated personal health records framework and a national health analytics platform. While the goal of the NHS may be to utilise patient data for better implementation of welfare schemes, there is potential for abuse. The Digital Information Security in Health Care Act, 2018, a draft legislation brought out by the government, seeks to address this. The Act enables digital sharing of personal health records between hospitals and clinics and ensures the owner of health data "the right to privacy, confidentiality, and security of their digital health data." It also provides for the creation of health information exchanges to share EHRs and an authority to regulate them. India has the opportunity to realise a legal framework that strikes the appropriate regulatory balance between furthering the benefits of public health surveillance and safeguarding individuals' right to privacy. This panel discussion aims to analyse NHS from a privacy perspective and suggest an appropriate legal framework for the storage and use of EHRs.

III MENTAL HEALTH POLICY IN INDIA:
CHALLENGES & SUGGESTIONS

Mental health care in India is plagued by economic, social and cultural barriers. This is rooted in a lack of awareness on what mental health entails and how to identify and address mental health issues. An estimated 7% of the population suffers from mental health issues and 80% of them do not undergo treatment. Suicide is the leading cause of death among the nation's youth and the WHO estimates that one out of six Indians suffer from depression, making it the most depressed country in the world. The doctor to patient ratio in the field of mental health is woefully inadequate at 0.3 psychiatrists and 0.07 psychologists per 100,000 population and the cost of treatment is high, rendering it out of reach for most. Coupled with the lack of capacity and monetary hurdles, there is social stigma and cultural barriers to seeking mental health treatment, with poor mental health being perceived as a trivial issue and a sign of weakness. This prevents even those with adequate resources from seeking help. Realising access to mental health care is essential to restore the hope and dignity of those suffering.

The Mental Health Care Act, 2017 seeks to improve the situation. The Act adopts a right-based approach to mental health care, guaranteeing every person the right to access affordable, good-quality treatment without discrimination. The Act's decentralised model obligates the central and state governments to fund mental health services and facilities and help bridge the gap between patients and professionals. It integrates mental health care at each level of the public health system. While the Act has been hailed as pathbreaking, it is not perfect. For instance, the Act retains an exception to a person's right to confidentiality for information related to mental health care and treatment to "protect any other person from harm or violence," which reflects a negative view of persons with mental illness that may be detrimental. Additionally, there are hurdles in implementation. Infrastructure gaps must be addressed to realise the potential of the Act. To this end, public initiatives at the community- level show promise in increasing capacity. Further, state mental health authorities must step up to ensure compliance with the Act. This panel discussion aims to suggest steps the government may take to address challenges with the Act and promote its effective implementation.

IV THE FUTURE OF RIGHT TO HEALTH IN INDIA:

THE PATH TO REALISING UNIVERSAL ACCESS

Despite various government initiatives to improve public health in India, the average Indian's life expectancy is 68 years old, significantly lower than that in other large developing countries like China or Brazil. This is largely due to lack of access to affordable, high-quality healthcare. The country spent only 1.4% of its gross domestic product on public health care in 2014 and in the last four years, the amount spent has reduced significantly. There is broad consensus on the need to realise universal access to healthcare for everyone in India.

However, it is less certain which path is the best to achieve this. Various models of healthcare dominate in different countries – from UK's National Health Service where the government owns and operates most hospitals and clinics to Canada's National Health Insurance model where the government runs a health insurance programs utilising private sector providers. However, established health care systems are confined to the developed world. In India, most pay for health care out-of-pocket while many more do not have access to hospitals or clinics at all.

Several policy initiatives exist to remedy this, from primary health care centres and community initiatives like Delhi's Mohalla Clinic and Hyderabad's Basti Dawakhanas, more similar to the UK model, to the Ayushman Bharat programme, which is a publicly-funded health insurance scheme, and Andhra Pradesh's Aarogyasri community health insurance scheme, echoing to the Canadian model. This panel discussion aims to explore different paths to realising universal access to health care in India and deliberate on our future towards achieving the right to health for all.

PARTICIPATION

The symposium aims to bring together experts and practitioners from diverse backgrounds, including senior government officials, policy analysts, academicians, researchers and medical professionals.

OUTCOME

The symposium will result in a discussion of policy options tackling public health issues, focusing on the four themes outlined above. Panellists are encouraged to contribute papers, which will be published in a special issue of the NALSAR Student Law Review. The issue will also include a summary of the symposium's panel discussions.