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HEALTH POLICY AND LEGAL FRAMEWORK: ANALYSIS

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ABSTRACT

The health policy and legal framework is a foundational component of the healthcare system, encompassing a range of laws, regulations, and policies that govern the delivery, accessibility, and quality of healthcare services. It plays a critical role in ensuring that healthcare facilities are delivered in a fair, equitable, and sustainable manner while upholding individual rights and promoting public health. A central element of this framework is healthcare financing, which is essential for making healthcare accessible to all individuals, irrespective of their socioeconomic status. Effective financing mechanisms, including government and private health insurance schemes, provide financial protection by covering healthcare costs, thus improving access, and reducing financial barriers to necessary medical treatments. Additionally, the health policy and legal framework includes stringent regulations for healthcare providers to ensure that they meet established standards of competence and ethical conduct. These regulations help maintain high-quality care and professional accountability within the healthcare sector. Another important component is the protection of patient rights, encompassing the confidentiality and privacy of medical records and the right to voice concerns or complaints about healthcare services. Safeguarding patient rights is vital for fostering trust between patients and healthcare providers, ensuring respectful and patient-centered care. The research focuses on the significance of medical policies in regulating the healthcare sector, analyzing how these policies contribute to shaping an effective and equitable healthcare system. By addressing key areas such as healthcare financing, insurance provider regulations, and patient rights, the health policy and legal framework helps to identify strengths and weaknesses within the healthcare system. This study employs both qualitative and quantitative research methods to provide a comprehensive understanding of the current health policy and legal framework, aiming to highlight areas for improvement and contribute to the development of high-quality healthcare services with reference to policies in healthcare sector and also with reference to population control bill of India.

Keywords: - National Health Policy, Global Health Policy, mal-nutrition, Sterilization, Population, Constitution, Health Policy, National Health Mission

HYPOTHESIS OF RESEARCH

This research is done to aware the readers about health policy and legal frameworks in health sector under Article 47 of Constitution of India directive principle of state policy recognizes the duty of the state to raise level of nutrition and standard of living and to improve public health as among its primary duty. The union ministry of health and family welfare is instrumental and responsible for implementation of various programmes at national level in the health sector the main role of the government is to ensure that every person is getting 2 times food to eat. Article 47 laid down the key directives which include prohibition of toxic drugs and drinks, Promoting healthy life for the citizens of nation. The research will be focusing on the National health policy 2008 & 2017. In 2008 National Health Policy the main objective was to offer health services to every age group and gender whereas in 2017 the main aim of national health policy was to inform, clarify, strengthen, and prioritize the role of government in shaping the health system in all dimensions, Investment in health, organization of health care services, prevention of diseases, Promotion of good health. it is very important to have a legal framework for creating and enforcing strong health policies it is crucial for advancing public health, protecting individual liberties, and tackling difficult issues like population control, malnourishment, and sterilization. It is imperative to adopt a comprehensive approach that considers cultural, social, economic, and ethical factors. Individual rights should be protected and prioritized by policy, especially when it comes to reproductive health and procedures like sterilization. The provision of comprehensive healthcare services, such as family planning, reproductive health, and nutritional support, should be supported by a clearly defined legal framework to encourage favorable health outcomes, services must be easily accessible and reasonably priced. Policies should mainly focus on the education as a tool for empowerment, particularly in areas of sexual, reproductive health, nutrition, and overall wellbeing. The people who are empowered can take informed decisions for them and for the community. There should be equal and equitable distribution of resources. To determine whether health policies and legal frameworks are effective, regular monitoring and evaluation are necessary. It is imperative that policies exhibit flexibility and adaptability to effectively address changing health challenges and maintain their significance.

REVIEW OF LITERATURE

After reading research articles, papers it has been observed that it is very important to have a legal framework to protect the citizens who are deprived of their right. Additionally, when we are talking about medical policy and legal framework this means we will be discussing every aspect of medical policy with the legal framework. Under Indian constitution under the directive principles of state policies (DPSP) under Article 47¹. It is duty of the state to raise level of nutrition and standard of living and to improve public health as among its primary duty. The national health policy of 1983 and 2002 basically guided about how working will be in 5-year plan². Now after 14 years health priorities are changing day by day. In 2008 National Health Policy came in existence the prime focus of that policy is to increase the life expectancy rate of the people. In 2017 another significant change has taken place where government of India has framed another medical policy which was mainly focusing on affordable healthcare facilities under the 2017 National Health Policy government of India has invested heavily on the medical Infrastructure also launched the scheme under the name of Ayushman Bharat where the cover of 5 lac on surgical procedures are been covered this scheme of government of India helped more than 500 million people belonging to middle class families. Mainly this scheme has focused on the people who are belonging to socially deprived section of society and the people who are below the poverty line and are unable to afford the expenses can avail the scheme introduced by government of India. The scheme mainly focused on people who are belonging to socially backward areas or rural areas or urban areas can now easily avail the healthcare services in government and in private hospitals which are empaneled by government under Ayushman Bharat scheme. After observing the implications, it has been observed that there is a need of a specific health policy which can help the people to reduce the financial burden on them population control bill which mainly focused on stabilization of population by 2045 has to be passed from the houses growing population in India will mainly create the problem for the government as many of the people in India are deprived of two meals a day. If supposedly a woman delivers the baby and is so poor than the main problem will be faced by the women that how she will feed her child as she is not getting the food also when the proper nutrition is not been given to the child than the child will become malnourished and eventually die. The population is major threat for the government because at one point people will not get the food if population is increased drastically. When we are talking about medical policy and

¹ JN Pandey, Constitutional Law of India (First Published 1969 CLA 1969)

² National Health Policy <https://main.mohfw.gov.in/sites/default/files/9147562941489753121.pdf> accessed November 07, 2023)

legal framework than medical policy, population control, malnourishment index, sterilization should be taken into consideration. As they are interrelated with each other. Nowadays medical insurance has been taken by people to secure their risk of medical expenses if the person is not well or need any surgical procedure in future than they can undergo for surgery but in return they only have to pay the premium amount which was decided by the insurance company every month so that they can avail the services after some time.

Health Policy and legal Framework: Analysis

Introduction: -

Health policy is defined as decisions, plans, actions which are undertaken to achieve specific healthcare goals which are to be achieved in health sector. Every country has a prime priority to protect their citizens by granting them basic rights. As per World Health Organization (WHO) the effective health policy can achieve goals, vision, priorities of the health sector. Health policy plays important role in today's world there are many health policies which were created. Some of the policies are Global Health Policy, Public Health Policy, Mental health Policy, Insurance policy every policy has different role in health sector. Health insurance schemes provides financial protection to individuals by covering the cost of healthcare services. These schemes are been provided by the government, private entities, or combination of both. Health insurance plays a vital role in improving access to healthcare and reducing financial barriers that may prevent individuals from seeking necessary medical treatment. if person has any problem or needs surgery than the amount is fully paid by the insurance company this relieves the liability from the person's mind and the medical treatment is done very easily in good hospitals the only thing which customer has to do is to pay the monthly premium amount to the insurance company. If we talk about Mental Health Policy its main role is to provide universal access to mental health care services, it helps in providing access to the facilities related to mental health especially to the people who are depressed on facing any mental issues and the main focus is on the people belonging to remote areas, homeless persons, educationally socially deprived sections, to reduce the risk and incidence of suicide and attempted suicide to reduce the prevalence and impact of risk factors associated with mental health. The World Health Organization (WHO), in its world health assembly (WHA), 2012, resolved that "there is need of a comprehensive, coordinated response from the health and social sectors at the

community level to address the issue of burden of the mental illness.”³ India being a signatory to it, launched their national mental health policy (NMH Policy) in 2014. Public Health Policy is another crucial policy this policy brings theory and research of practical world to find the solutions and helps in formulating the strategies and policies around the health sector.

Global Health Policy (GHP) is the area of public health concerned with decisions that translate evidence and policies into authoritative public agreement and interventions⁴. Health Policy is basically needed to formulate strategies, roadmap, vision, futuristic goals.

One key aspect of health policy and legal framework is healthcare financing. This involves the allocation and management of financial resources to support healthcare services including funding for infrastructure, medical equipment, and personnel. India has invested immensely on healthcare infrastructure and increased the budget of health sector after outbreak of Covid-19 in 2020. India is considered as one of cheapest place for medical infrastructure and the people from other countries usually comes to India for treatment. Health policy and legal framework usually plays a crucial role in ensuring that basic healthcare is provided in fair manner to everyone irrespective of caste. **An agreement with an insurance provider that helps you pay for medical expenses is known as health insurance.** Health insurance is a type of insurance coverage that normally covers the insurer’s medical, surgical, prescription drug, and occasionally dental costs.⁵ Health insurance is a contract between the individual and the insurance company where the company agrees to provide specified amount of insurance cover at a particular insurance amount called as premium subject to terms and condition’s this is basically a risk management method that is adopted nowadays by the people if person needs any surgical procedure or any type of medical assistance. They can get that assistance after a stipulated time mentioned in Policy. The insurer can take the insurance claim from the company. The total amount of surgery is paid by the insurance company for the individual as the individual had already paid premium for the same. Before the judgement of supreme court of India Insurance company did not cover mental health in the insurance policy **after the**

³ Sixty-fifth world health assembly: The global burden of mental disorders and the need for a comprehensive, coordinated response from health and social sectors at the country level (2012), https://apps.who.int/gb/ebwha/pdf_files/WHA65/A65_R4-en.pdf (accessed September 20, 2023)

⁴ Role of Global Health Policy [https://publichealth.gwu.edu/global-health-policy-mph#:~:text=Global%20Health%20Policy%20\(GHP\)%20is,authoritative%20public%20agreement%20and%20interventions.](https://publichealth.gwu.edu/global-health-policy-mph#:~:text=Global%20Health%20Policy%20(GHP)%20is,authoritative%20public%20agreement%20and%20interventions.) (accessed, October 10,2023)

⁵Legal aspects of health insurance https://www.lawcolumn.in/legal-aspects-of-health-insurance-in-india/#WHY_DO_WE_NEED_HEALTH_INSURANCE (accessed November 07, 2023)

judgement of hon'ble Supreme Court of India court observed that “Section 212 of the mental health care act, 2017 recognizes the right to equality and it prohibits any sort of discrimination related to mental illness thus insurance company should make provisions for medical illness on the same basis as physical illness.”⁶

UNDERSTANDING THE NECESSITY OF NATIONAL HEALTH POLICY?

A National Health Policy plays a crucial role in addressing various healthcare challenges and ensuring the well-being of the population.

India, with its vast population and diverse healthcare needs, faces numerous challenges in providing quality healthcare to all its citizens. These challenges include limited resources, uneven distribution of healthcare facilities, accessibility issues, and disparities in healthcare outcomes. A national health policy can help to address these challenges and create a more equitable and efficient healthcare system.

One of the primary reasons why a national health policy is essential is to provide a clear roadmap for healthcare delivery. While India has made significant progress in healthcare, there are still gaps in accessibility, affordability, and quality of healthcare services. A national policy can bridge these gaps by setting clear objectives, strategies, and guidelines for healthcare providers and stakeholders.⁷

Key reasons and guidelines are mentioned below: -

- To ensure that healthcare resources are allocated effectively and efficiently with a large population, it becomes essential to prioritize and allocate resources in a way that ensures access to quality healthcare for everyone, regardless of their socio-economic status or geographical location.
- A national health policy can also provide a framework for addressing public health issues and promoting preventive healthcare measures. By focusing on preventive care, such as immunizations, health education, and disease surveillance, a national policy can help in reducing the burden of diseases and improve overall health of the population.

⁶ *Supreme Court Direction on Mental health in Insurance policy* <https://www.livelaw.in/amp/columns/world-mental-health-day-world-health-organization-who-insurance-act-mental-health-care-act-211780> (accessed. October 10,2023)

⁷ *Key Reasons for need of national Policy* <https://www.who.int/activities/supporting-national-health-policies-strategies-plans> (accessed. October 10,2023)

- Additionally, a national health policy plays a vital role in addressing healthcare infrastructural gaps. It can guide the establishment and expansion of healthcare facilities, particularly in underserved areas, ensuring that people have access to essential healthcare services without having to travel long distances.
- Another important aspect of National Health Policy is the regulation and standardization of healthcare services. It can define guidelines and standards for healthcare providers, ensuring quality care and delivery across the country. This can help in building the trust among the population and improve healthcare outcomes and facilities
- Furthermore, a National Health Policy (NHP) can promote research and innovation in healthcare sector. It can encourage the development of new treatments, technologies, and healthcare delivery models, leading to advancements in medical science and improved patient care.

While a national health policy is crucial, it's important to acknowledge that implementing and executing such a policy comes with its own set of challenges and rules. These challenges may include financial constraints, coordination among different stakeholders, and ensuring effective implementation at the grassroots level. However, with proper planning, collaboration, and commitment, a national health policy can significantly improve the healthcare landscape in India and contribute to the well-being of its citizens.

Effective resource allocation is another critical aspect of a national health policy. India faces challenges in terms of healthcare infrastructure, skilled professionals, and funding.⁸ A national policy can prioritize resource allocation, ensuring that healthcare facilities are adequately equipped and healthcare professionals are trained and available in underserved areas. It can also guide the allocation of funds to strengthen primary healthcare centers, preventive measures, and specialized care for specific health conditions.

Additionally, a national health policy plays a significant role in addressing public health challenges. India faces various health issues, including infectious diseases, non-communicable diseases, maternal and child health concerns, and mental health challenges. A comprehensive policy can outline strategies to prevent, control, and manage these health issues effectively. It can focus on promoting health education, preventive measures, immunization programs, and

⁸ *Mrigesh Bhatia, 'The health sector allocation in India' (2021)*
<https://journals.sagepub.com/doi/full/10.1177/25166026211017338> (accessed. October 10,2023)

early detection and treatment of diseases.

Moreover, a national health policy can prioritize vulnerable populations and marginalized communities. India has diverse socio-economic groups, and certain sections of society face unique health challenges and disparities. A policy can ensure that healthcare services reach these populations through targeted interventions, outreach programs, and specialized healthcare initiatives. It can also address social determinants of health, such as access to clean water, sanitation, and nutrition, which significantly impact overall health outcomes.

Innovation and research in healthcare sector are also fostered by a national health policy. It can encourage the development of new technologies, medical advancements, and evidence-based practices. By fostering research collaborations and supporting innovation, a policy can contribute to the growth of the healthcare sector and improve the overall quality of healthcare services.

Additionally, a national health policy can strengthen healthcare governance and regulation. It can establish standards for healthcare facilities, professionals, and practices. It can ensure transparency, accountability, and quality assurance in healthcare delivery. By setting guidelines and regulations, a policy can protect the rights of patients and promote ethical practices

GOVERNMENT INITIATIVES FOR NATIONAL HEALTH POLICY:

The government of India has implemented several initiatives as a part of national policy to improve healthcare service and ensure access to quality healthcare for all citizens. These initiatives address various aspects of healthcare delivery, Infrastructure, funding, and public health challenges.

One of the key initiatives in this regard is the Ayushman Bharat scheme, also known as Pradhan Mantri Jan Arogya Yojana (PMJAY). This scheme provides health insurance coverage to over 500 million people, with a focus on those from economically disadvantaged backgrounds⁹. Under PMJAY, eligible beneficiaries can avail themselves of cashless treatment for a wide range of medical conditions in empaneled hospitals across the country. This has significantly expanded the reach of healthcare services and reduced the financial burden on individuals and families.

⁹ *Ayushman Scheme Pradhan Mantri Jan Arogya Yojna* <https://nha.gov.in/PM-JAY> (accessed. October 10,2023)

In addition to PMJAY, the National Health Mission (NHM) plays a crucial role in ensuring access to healthcare for all. NHM focuses on strengthening primary healthcare and improving healthcare infrastructure, particularly in rural and underserved areas. It aims to provide accessible, affordable, and quality healthcare services to every citizen. Through the establishment and upgradation of healthcare facilities, recruitment and training of healthcare professionals, and the implementation of various health programs, NHM strives to bridge the gap in healthcare accessibility.

Moreover, the government has implemented targeted programs to address specific health issues. For instance, the National AIDS Control Program (NACP) focuses on preventing and controlling the spread of HIV/AIDS¹⁰. It includes initiatives such as awareness campaigns, testing and counseling services, and access to antiretroviral therapy for those living with HIV. Similarly, the National Mental Health Program aims to promote mental well-being, provide access to mental healthcare services, and reduce the stigma associated with mental health conditions.

By implementing these initiatives, the government aims to ensure that healthcare services are available to every individual, regardless of their socio-economic status. However, it's important to note that challenges still exist in achieving universal healthcare coverage. Factors such as limited resources, high demand, and limited capacity can pose obstacles in providing healthcare services to all. Additionally, lack of awareness about available services, as well as language and cultural barriers, can further hinder access to healthcare.

To overcome these challenges, continuous efforts are being made to strengthen healthcare infrastructure, improve service delivery, and enhance awareness among the population. The government, along with various stakeholders, is working towards creating a comprehensive and inclusive healthcare system that can be accessed by everyone in the country.

NEED OF MEDICAL POLICY WITH REFERENCE TO POPULATION CONTROL BILL?

It is very important to have a specialized medical policy to control the population in India. As India is about to become the country with highest population. In 2019 the population control

¹⁰ NACP Programme <https://naco.gov.in/national-aids-control-programme-v> (accessed November 24, 2023)

bill was proposed by MP Rakesh Sinha. The purpose of the bill was to have a control on a population which is growing in India day by day¹¹. The target of the policy is to stabilize the population by 2045. Indian states are considering the option of initiating some measures which will help in stabilizing the population. The first and foremost problem which has been faced by the country is increase in population of children's which are been delivered and the women's who are delivering these children's mostly fall in age group of 16-19 years old. Due to increase in population the biggest threat for poor people is poverty and due to poverty, they are unable to afford the food for themselves. Due to this the children are not getting proper feed from their mothers this is leading to deaths of the children due to malnutrition to stop this it is better to have a policy so that the people who are poor are able to get food for atleast 2 times a day or otherwise if the poor people are having a child than it is prime duty of the parents of the child to feed the children by providing nutritious food. If poor people are not able to maintain the child due to poverty than they must not have a child. If the parents of children are not getting the proper meals than how will they able to feed their children. Government of India had taken some of the measures to control the population and to help the women's who are voluntarily participating in the programmes like sterilizations etc. There are certain incentives which were given by government to the women's to promote sterilization and the women's were made aware by doing the community health programmes and the people of rural area were focused more so that by doing the programmes and by creating the awareness. In these programmes certain initiatives are been told to the people. If control on population is ignored than there will be scarcity of resources and due to scarcity and increase in demand will be their prices will also get increased and people will go into poverty faster. Due to higher rate of food and the basic amenities. Due to this poor people will not able to afford the food. Eventually if parents are not getting the food than how they will feed their children and after some time the children will die due to malnourishment or malnutrition. Sterilization with reference to medical policy is needed so that there should be uniform increase in population. One of the key initiatives taken by government is to promote and to initiate sterilization as per family planning method. They key initiative of family planning insurance scheme. Under the scheme, individual who undergoes with sterilization procedures are provided with financial coverage for any complication that may arise because of the procedure. This ensures that the people are more secure and confident in their decision to undergo sterilization, they will receive necessary medical support if needed. Additionally, government took the initiative to offer various benefits and initiatives to

¹¹ Population Control Bill Proposal <https://www.hindustantimes.com/india-news/mp-rakesh-sinha-moves-bill-on-population-regulation-in-rajya-sabha-101644001397320.html> (accessed November 24, 2023)

encourage individuals to opt for sterilization. These incentives may include cash incentive, access to healthcare services etc.

LET US UNDERSTAND STERILIZATION WITH REFERENCE TO INDIA?

Female Sterilization is one of the most popular and effective methods of contraception. In addition to being permanent, it is highly effective, safe, and relatively free from side effects. In India female sterilization by tubectomy or tubal occlusion is the most accepted methods among eligible couples. District Level House-hold Survey (DLHS III) shows that 34% of the ever-married women accepted female sterilization as a contraceptive choice. In India over 4.1 million female sterilization procedures are done annually (HMIS 2013-14). As per DLHS III the total unmet need in contraception for the country remains high at 21.3%, out of which 13.4% is for limiting methods.¹² This unmet need is mainly due to the lack of skilled service providers at the peripheral health facilities. The targeted audience was mainly people living in rural areas and the people who are very poor don't have food to eat are advised to go for sterilization so that children don't born because if the children's will be borned than the children will not get the proper nutrition. As in if mother is mal nourished or don't have food to eat than how the mother will able to feed the children and if new born will not get feed and didn't get the essential components than eventually the new born will born mal nourished than if mother is not able to feed the children than eventually the mal nourished child or a new born will die. Due to mal-nourishment health problems will be occurred so much. To prevent the health problems, it is important to have a sterilization policy so that fatality rate of new born can be reduced.

STATISTICAL DATA OF THE CHILDREN'S WHO DIED DUE TO MAL NUTRITION IN INDIA

As per Sample Registration System 2016 Report, over 9.6 lakh children who are less than 5 years of age die annually due to conditions triggered by malnutrition¹³. According to the National Family Health Survey (2005-06), over 79.2% of the children in India under age 3 are anemic. The sad thing is that the condition has only improved slightly in the past 2 decades. India Has Highest Level of Child Wasting in South Asia. Wasting, or low weight for height, is

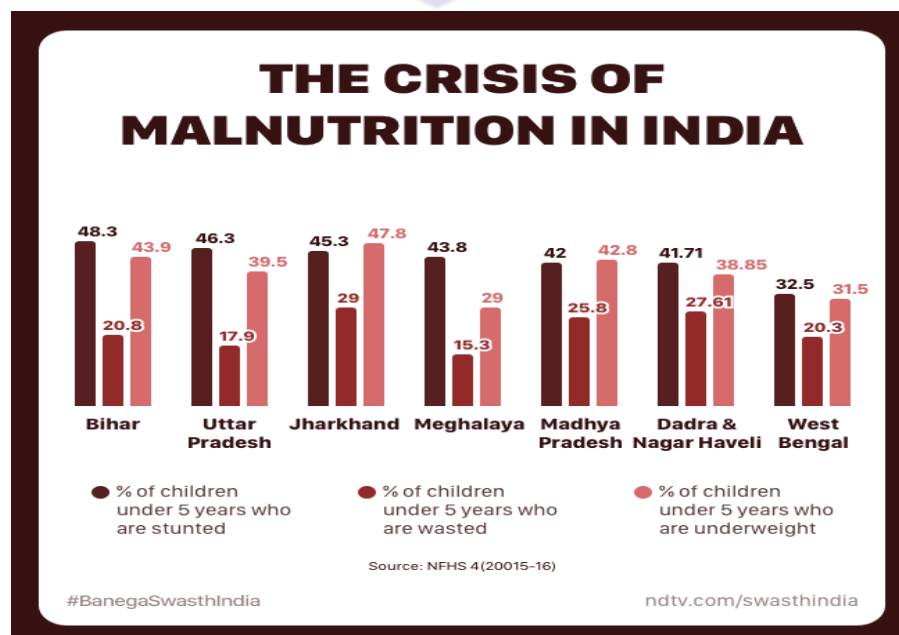
¹² Reference manual for female sterilizations

https://nhmmp.gov.in/WebContent/FW/Guidline_GOI_New_manuals_Dec_2014/Ref%20Manual%20for%20Female%20Sterilization.pdf (accessed November 24, 2023)

¹³ *Statistical Data of the children's who died due to mal nutrition in India* (<https://swachhindia.ndtv.com/national-nutrition-week-2019-the-crisis-of-malnutrition-in-india-37531/>) (accessed November 24, 2023)

a strong predictor of mortality among children under five. This is usually the result of acute significant food shortage and/or disease. According to the Global Nutrition Report 2018,¹⁴ India also accounted for 25.5 million children out of the 50.5 million children who are wasted globally, or half of the global wasting burden, followed by Nigeria (3.4 million) and Indonesia (3.3 million). National Family Health Survey (NFHS-4) further states that Bihar, Madhya Pradesh, Meghalaya, Jharkhand, Uttar Pradesh and Dadra & Nagar Haveli, have more than 40 per cent of their children stunted. In West Bengal, cases of Malnutrition have increased. National Family Health Survey (NFHS-4) states West Bengal has more children under five years of age, who are “wasted” and “severely wasted”, compared to the last national-level survey held in 2005. According to NFHS-4 report, 20.3 per cent children in West Bengal are wasted and 6.5 per cent are severely wasted. In the past, 16.9 per cent children in the same age bracket were wasted and 4.5 per cent were severely wasted. The Global Hunger Index 2018 ranks India at 103 out of 119 countries based on three leading indicators the prevalence of wasting and stunting in children under 5 years, child mortality rate under 5 years and the proportion of undernourished in the population. It states that India is suffering from serious problem of hunger and malnutrition.

Below Survey shows about the states which are severely affected due to malnutrition This Survey is national health survey done by ministry of family welfare government of India.



¹⁴ Global nutrition report <https://globalnutritionreport.org/reports/global-nutrition-report-2018/> (accessed November 24, 2023)

Pictorial Representation of Crisis of Malnutrition in India

According to the National Family Health Survey-4 (2015–16), only 54.9% of babies in India are exclusively breastfed, and only 41.6% of babies are breastfed within the first hour of life. Breastfeeding is thought to be the most effective treatment for malnutrition¹⁵. According to, the survey reports it states that less than 10% of children in the nation receive adequate nutrition. Anemia in mothers linked with malnutrition in children are closely associated with each other. According to a report by the United Nations, 51.4% of women who are of reproductive age are anemic. Young children's nutritional status is significantly impacted by maternal anemia, which can result in stunting and underweight. This main purpose of combing sterilization, Malnutrition and health together is it is very important make a health policy in such a way that all the three important things can be examined likewise a medical policy has to be made with reference that if the poor women had adopted to go for sterilization, she will get secured from all the health conditions. Also get the treatment she should get all the incentives which are given by the government. Likewise, if a children will be born to the poor family than the main problem which will be faced will be that the women will not be able to feed the children. There will be lack of deficiencies in children which will led to malnourishment. If the child will be malnourished than eventually after a particular time due to deficiencies the child will die this will increase the death ratio. That's why medical policy is related to sterilization, malnourishment etc.

STAND OF SUPREME COURT OF INDIA WITH REFERENCE TO HEALTH POLICY AND LEGAL FRAMEWORK:

Paschim Banga Khet Mazoor Samity v. State of West Bengal (1996) 4 SCC 37¹⁶

In this case the supreme court of India observed the scope of Article 21 was further widened, as the court held that it is the responsibility of the Government to provide adequate medical aid to every person and to strive for the welfare of the public at large.

Parmanand Katara v Union of India AIR 1989 S.C. 2039¹⁷

In this case the Supreme Court of India, held that every doctor at Government hospital or otherwise has the professional obligation to extend his/ her services with due expertise for protecting life of a patient.

¹⁵ Statistical Data of the children's who died due to mal nutrition in India (<https://swachhindia.ndtv.com/national-nutrition-week-2019-the-crisis-of-malnutrition-in-india-37531/>) (accessed November 24, 2023)

¹⁶ *Paschim Banga Khet Mazoor Samity v. State of West Bengal (1996) 4 SCC 37*

¹⁷ *Parmanand Katara v Union of India AIR 1989 S.C. 2039*

Consumer Education and Research Centre V. Union of India AIR 1995 SC 922¹⁸, held that right to health and medical aid to protect the health and vigor of a worker, both while in service and post-retirement, is a fundamental right under Article 21.

Devika Biswas vs Union of India AIR 2016 SC 4405, 2016 (4) RCR 461 (Civil), 2016 (8) SCALE 707, 2016 (10) SCC 726¹⁹

The Supreme Court issued several directives on September 14, 2016, in the case of Devika Biswas vs. Union of India & Ors. [Writ Petition (Civil) No. 95 of 2012]. The court examined a number of significant issues regarding the conduct and management, under the auspices of State Governments, of sterilization procedures, wherein women and occasionally men are sterilized in camps or in accredited centers. It was inter alia directed that the “State-wise, district-wise or region-wise panel of doctors approved for carrying out the sterilization procedure, must be accessible through the website of the Ministry of Health and Family Welfare of the Government of India as well the corresponding Ministry or Department of each State Government and each Union Territory” and the “list should contain all necessary particulars of each doctor and not merely the name and designation”. The Court also emphasized on the requirement of ensuring that a proposed patient gives “an informed consent for undergoing the sterilization procedure and not an incentivized consent.” Further, while directing the Union of India to ensure strict adherence to the guidelines and standard operating procedures in the various manuals issued by it, the Court held that “the Sterilization program is not only a Public Health issue but a national campaign for Population Control and Family Planning. The Union of India has overarching responsibility for the success of the campaign and it cannot shift the burden of implementation entirely on the State Governments and Union Territories on the ground that it is only a public health issue.” Also, directing the Union of India to take a decision on or before 31st December, 2016 on whether it would like to frame a National Health Policy or not, the Court observed that “In case the Union of India thinks it worthwhile to have a National Health Policy, it should take steps to announce it at the earliest and keep issues of gender equity in mind as well.”

¹⁸ *Consumer Education and Research Centre V. Union of India AIR 1995 SC 922*

¹⁹ *Devika Biswas vs Union of India AIR 2016 SC 4405, 2016 (4) RCR 461 (Civil), 2016 (8) SCALE 707, 2016 (10) SCC 726*

CRITICAL ANALYSIS: -

Whether there is need of medical policy or not what are implications of the same. It is very important to analyse first that what are the problems which are been faced by the country. Nowadays first problem which has been faced by the people is equitable distribution of the resources which are not been done when we talk about health policy whether there is a need of health policy or not. It is very important to have a health policy to secure the interest of the individuals. Every individual should be entitled to have an affordable health facilities. Further if we are talking about increasing population is biggest threat to India. As we know that day-by-day population is increasing in India which is leading to depletion of resources. Poor people are unable to use the resources as there is no equitable distribution of resources. Further if population is not been controlled than another problem of mal nutrition will come. So, it is very important to make people aware about sterilization and the incentives and benefits which government has given to the people so that the population can be stabilized very soon. If poor women who doesn't have food to eat and is unable to eat one time meal due to financial constraints or any problem than she will be facing the problem while delivering the baby and after some time the baby will get malnourished if the appropriate nutrition is not been given to baby than problems will be caused it is equally important for baby and mother to eat healthy so that there will be no problem during delivery of the child. If proper nutrition which is needed to newborn is not been given to the child eventually the child will become mal nourished and after some time will die. So, I feel everything is interrelated likewise medical policy should be there to help the citizens to have an affordable medical facility. Further sterilization is needed to stabilise the population which will eventually control the population if population will be controlled there will be less population than it will become very easy to distribute the resources if the people will be getting atleast 2 meals a day. This will increase their standard of living eventually if there will be less population than people who are suffering from mal nutrition will get food there will be less deaths as compare deaths in era of more population. National health policy of 2008 and 2017 has prime focus to increase the life expectancy rate. It seeks to provide all age groups and genders with excellent health services. The primary goal of the policy is to ensure that everyone has affordable, high-quality access to healthcare services encouraging a focus on health care in all policies related to development. facilitating access to better care, reducing costs associated with health care sector, and raising standards by 2025, it hopes to cut premature death by 25% in the following four categories: diabetes, chronic respiratory

conditions, cancer, and cardiovascular diseases²⁰. This policy acknowledges the significance of quantitative goals with a deadline and sustainable development. In India, the National Health Policy provides palliative, rehabilitative, and promotional services to enhance overall health status. Further in 2017 the government has invested heavily on health infrastructure and also tried to reduce the medical expenses so that poor people can also access the medical facilities after 2017. The scheme of PMJAY (Pradhan Mantri Jan Aarogya Yojna) also called Ayushman Bharat. Ayushman Bharat Pradhan Mantri Jan Aarogya Yojna is the largest health assurance scheme in the world which aims at providing a health cover of ₹ 5,00,000 per family per year for secondary and tertiary care hospitalization to over 10.74 crores poor and vulnerable families (approximately 50 crore beneficiaries) that form bottom 40% of the Indian population. The households included is based on the deprivation and occupational criteria of the Socio-Economic Caste Census 2011 (SECC 2011) for rural and urban areas respectively. PM-JAY is fully funded by the Government and the cost of implementation is shared between the Central and State Governments²¹.

SOLUTIONS ON HEALTH POLICY AND LEGAL FRAMEWORK WITH REFERENCE TO STERILIZATION, POPULATION CONTROL, MALNUTRITION:

- There should be a proper health policy which should be framed to protect the interest of the individuals by providing them affordable health care facilities. Likewise strengthening of existing policy is much needed practice.
- There should be a separate health policy for sterilization and people should be made aware by doing community health programmes they should be made aware about the implications and affects if there will be increase in population then what will happen likewise there will be scarcity of the resources. If the method of sterilization is chosen by them what are incentives and benefits which people will be entitled too. Enhancement of health sector has to be done by investing more so that modern technologies should be used in diagnosing the diseases.
- People should be made aware by conducting regular awareness programmes about what schemes are made by government related to health policy and what are the benefits of that schemes.

²⁰ Objectives of National Health Policy 2008 &2017 <https://byjus.com/free-ias-prep/national-health-policy/> (accessed November 24, 2023)

²¹ Ayushman Bharat Scheme <https://www.myscheme.gov.in/schemes/ab-pmjay> (accessed November 24, 2023)

- By creating the separate legislation which should be made enforceable by law related to food quality and safety to ensure that population is having the nutritious food and quality has been maintained.
- Proper counselling session should be there for the women and men who are undergoing sterilization process. There should be free consent and people who are undergoing the process they should be told the benefits and effects of the treatment mainly rural area should be taken into the consideration as some rural areas are deprived of the rights.

CONCLUSION: -

After analysis of several research papers, newspapers it has been observed that it is very important to have a legal framework for creating and enforcing strong health policies it is crucial for advancing public health, protecting individual liberties, and tackling difficult issues like population control, malnourishment, and sterilization. It is imperative to adopt a comprehensive approach that considers cultural, social, economic, and ethical factors. Individual rights should be protected and prioritized by policy, especially when it comes to reproductive health and procedures like sterilization. The provision of comprehensive healthcare services, such as family planning, reproductive health, and nutritional support, should be supported by a clearly defined legal framework to encourage favorable health outcomes, services must be easily accessible and reasonably priced. Policies should mainly focus on the education as a tool for empowerment, particularly in areas of sexual, reproductive health, nutrition, and overall wellbeing. The people who are empowered can take informed decisions for them and for the community. There should be equal and equitable distribution of resources. To determine whether health policies and legal frameworks are effective, regular monitoring and evaluation are necessary. It is imperative that policies exhibit flexibility and adaptability to effectively address changing health challenges and maintain their significance.