

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

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INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS

ISSN

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BREAKING BARRIERS: JUDICIAL ACTIVISM'S ROLE IN CHALLENGING HEALTHCARE TABOOS IN INDIA

AUTHORED BY - PRERNA BEHERA

I. SYNOPSIS

ABSTRACT

Breaking social taboos, judicial activism has been a powerful factor in India's healthcare sector in recent years. The Indian judiciary has played a pivotal role in facilitating access to essential medical treatments and eliminating cultural barriers that obstruct progress in this domain. This essay aims to explore the ways in which judicial activism impacts Indian healthcare practices and taboos in society. This essay will examine key court rulings, such as those that support sexual and reproductive health, to demonstrate the court's revolutionary impact on the creation of healthcare policy. It will also examine any limitations or problems associated with judicial activism in order to provide a comprehensive understanding of how it impacts the dismantling of social taboos in India.

KEYWORDS

Healthcare, judicial activism, social taboos, cultural norms, discrimination

LITERATURE REVIEW

1. Amit Bindal, "Judicial Activism and the Right to Health in India", National University of Juridical Sciences Law Review, 2014

In his work, Bindal examines the Indian judiciary's role in advancing the right to health, highlighting the Supreme Court's crucial role in advancing and upholding this fundamental freedom. Bindal discusses significant rulings that have broadened the definition of the right to health, guaranteeing that individuals may obtain essential drugs, guaranteeing healthcare to underserved populations, and protecting the rights of persons with stigmatised illnesses. He acknowledges the ongoing challenges in securing this right for all Indians, but also underlines the need for ongoing legal effort in addition to more extensive social initiatives.

2. Shubankar Dam, “Public Interest Litigation and Social Transformation in India: A Critical Appraisal”, National University of Juridical Sciences Law Review, 2014

The role of public interest litigation (PIL) in promoting social change and busting myths around healthcare is examined in this study by Shubankar Dam. Dam acknowledges PIL's potential for change, especially when it comes to giving underprivileged groups more influence. He does, however, highlight some of its potential drawbacks, including the potential for PIL to be abused and overworked courts. Dam also questions the democratic legitimacy of PIL, claiming that in order for it to be successful, it must reconcile respect for democratic processes with social justice.

3. Susmita Rath, Prof. Dr. Shashikala Gurpur, Dr. Manika Kamthan. “Breaking Menstrual Stereotypes to Improve Menstrual Health”, Solid State Technology, 2020

The current study investigates the presence of discriminatory menstruation customs that continuously worsen women's menstrual health in India. The core of this analysis is the 'Untouchability' concept used by Justice D.Y. Chandrachud in the Sabrimala Temple case. In addition to violating a person's right to health, these traditional practises, which are controlled by a patriarchal worldview, subject women to unfair treatment in society, the economy, and politics. Women's constitutional rights and freedoms in India are violated by the culture of demeaning femininity promoted by Indian religions. The research

4. Sheena Asthana & Robert Oostvogels, “The social construction of male ‘homosexuality’ in India: implications for HIV transmission and prevention”, Social science and medicine, 2001

The relativity of sexual norms and the challenges of transferring Western ideas of sexuality to various socio-cultural contexts have gained increasing attention during the past 20 years. Studies of men who have sex with men (MSM) reveal that the methods in which male-male sexual activity is molded and constructed vary greatly from place to place, which best expresses this viewpoint. Despite this, the term "homosexuality" is nevertheless seen as unproblematic in discussions about HIV/AIDS. This paper, which is based on an ethnographic study conducted in Madras, identifies key distinctions between India and the West, not only in terms of MSM sexual identities and circuits but also in terms of their sexual relationships and behaviours.

5. Dan A. Chekki, “Social Stratification and Trends of Social Mobility in Modern India”, Sociologus, 1970

This research studies the dynamics of social mobility in India to gain a better understanding of the connections between traditional caste-based hierarchies and new opportunities for upward mobility. The article highlights the increasing upward mobility of lower castes, particularly among those who have access to opportunities for employment and education in urban regions. Greater opportunities for social interactions beyond traditional caste boundaries and career diversification exist in urban environments, which may facilitate upward mobility. While admitting the presence of social injustices and the transformative potential of modernity, Chekki contends that India is moving towards a more flexible and open social structure.

STATEMENT OF PROBLEM

India's judicial activism dismantles obstacles to treatment and advances it, particularly in the domains of sexual and reproductive health. However, opposition continues, which reduces the total impact of this legal campaign. Examining these successes and failures shows the intricate interactions that India's taboos, activism, and healthcare practices carry out.

HYPOTHESIS

Although judicial activism promotes healthcare in India, its success is dependent on social transparency, the court's flexibility, and strong support networks. It is critical to investigate this interaction in order to improve healthcare access and equity.

RESEARCH QUESTION

1. How much has judicial activism affected India's efforts to eliminate societal stigmas around healthcare?
2. How have court rulings affected social attitudes and behaviours in India around delicate healthcare issues?
3. What are the drawbacks and possible unexpected effects of using judicial activism as a weapon to confront societal taboos in India's healthcare system?
4. What are the main ways that judicial activism affects public opinion and policy improvements in India's healthcare system?

RESEARCH OBJECTIVE

- 1) To analyse the practical impact of court orders on social taboo eradication, including changes to healthcare practices, legislation, and societal attitudes.
- 2) To grasp how judicial activism's legal precedents have influenced society's attitudes and actions regarding healthcare-related social taboos.
- 3) To investigate the legal arguments, outcomes, and repercussions of key court cases that have called into question cultural taboos in healthcare.
- 4) To identify persisting social taboos that have a substantial impact on Indian healthcare practices and access.

RESEARCH METHODOLOGY

The research technique employed in the construction of this project is "doctrinal research methodology," which includes material from books, articles, journals, and documents related to the problem.

SCOPE AND LIMITATIONS

This research will look at specific court decisions that have been critical in dispelling cultural taboos, focusing on the legal arguments, results, and subsequent ramifications. This study is confined to resources available on the Internet.

CHAPTERIZATION

1. Synopsis
2. Introduction
3. Overview of Social Taboos in Healthcare in India
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5. Impact of Judicial Activism & International legal frameworks
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II. INTRODUCTION

DEFINITION OF JUDICIAL ACTIVISM

Judicial activism in the legal system refers to judges' propensity to read and apply the law differently from its intended meaning and intent. It means that judges must actively influence public policy issues and use their judgement to challenge established laws and practices. This tactic usually entails the courts taking the lead in addressing societal challenges and promoting equality and justice. In India's healthcare system, judicial activism has been particularly important in dismantling societal taboos that limit access to essential medical services. By using constitutional principles, judges have upheld the right to health and tried to eradicate discriminatory practices, which has resulted in beneficial changes to healthcare laws and procedures¹.

IMPORTANCE OF CHALLENGING SOCIAL TABOOS IN HEALTHCARE

Recognising the importance of breaking these taboos as well as the impact of judicial activism on social taboos in Indian healthcare is crucial. Breaking societal taboos is crucial to improving healthcare quality and access. By addressing and removing these taboos, healthcare providers may help create a more inviting environment where patients feel comfortable receiving the necessary treatment. Furthermore, breaking down societal taboos encourages the transmission of correct, scientifically-supported health information, which in turn increases awareness and aids in disease and condition prevention². This is especially important in India, where societal stigmas and taboos can make it difficult for people to seek medical attention regarding reproductive and sexual health. Therefore, healthcare professionals and policy-makers may help by aggressively tackling these taboos and contribute to a healthier society overall.

IMPACT OF JUDICIAL ACTIVISM

In India, judicial activism has had a considerable influence on breaking down societal taboos in the field of health care. The judiciary has recognized the need of addressing sensitive healthcare issues that have long been associated with stigma in Indian society. For example, in an effort to reduce the stigma attached to mental health, the Supreme Court of India recently ordered the

¹ Admin, 'Judicial Activism - Definition, Types, Examples, Prose & Cons' (BYJUS, 10 November 2015) <<https://byjus.com/free-ias-prep/judicial-activism/>> accessed 15 October 2023.

² Roumen Dimitrov, Alenka Jelen and Jacquie L'Etang, 'Taboos in health communication: Stigma, silence and voice' (2022) 11(1) Public Relations Inquiry 3, <<http://dx.doi.org/10.1177/2046147x211067002>> accessed 15 October 2023.

decriminalization of suicide attempts. This decision emphasizes the importance of having empathy and compassion for those who are struggling with mental health issues and encourages people to seek medical assistance without fear of legal ramifications. Judicial safeguarding women's access to safe abortion procedures has also been a major contribution to breaking social taboos related to reproductive health³. These programmes have not only empowered women to make informed decisions regarding their reproductive health but have also contributed to the advancement and inclusivity of India's healthcare system. The significant impact of judicial activism in shattering social taboos in the healthcare industry has led to a more humane and egalitarian society.

Judicial activism was employed in the well-known case of **Navtej Singh Johar v. Union of India**⁴ to question social taboos related to healthcare in India. The Supreme Court of India overturned laws from the colonial past that criminalised homosexuality and decriminalised consenting to same-sex relationships in this ruling. The court's decision signalled a sea change for LGBTQ rights in India and sparked a national conversation on the importance of inclusion and equality in healthcare. This judicial action not only challenged the stigma that society attaches to homosexuality, but it also demonstrated how important it is for medical personnel to treat patients of all sexual orientations with respect and without prejudice. It also demonstrated the judiciary's dedication to defending the basic freedoms guaranteed by the Indian Constitution and advancing a more inclusive and progressive society.

III. OVERVIEW OF SOCIAL TABOOS IN HEALTHCARE IN INDIA

The topic of menstruation cleanliness is one of the major social taboos in Indian healthcare. Menstruation, a normal biological function, nevertheless carries shame and is veiled in secrecy, which can have a serious negative impact on women's health. The transmission of infections and illnesses is facilitated by a lack of access to hygienic sanitary facilities and appropriate menstrual hygiene products⁵. Gender disparities are further aggravated by cultural norms and practises

³ Anne Andermann, 'Taking action on the social determinants of health in clinical practice: a framework for health professionals' (PubMed Central (PMC), 6 December 2016) <www.ncbi.nlm.nih.gov/pmc/articles/PMC5135524/> accessed 15 October 2023.

⁴ Navtej Singh Johar v. Union of India, Supreme Court, 6 September 2018, 2018 INSC 790 (India)

⁵ Ruchita Wankhede, 'World Menstrual Hygiene Day 2023: What are India's challenges?' (The Hindu, 28 May 2023) <www.thehindu.com/sci-tech/health/menstrual-hygiene-day-india-challenges-taboo-period-equity/article66900205.ece> accessed 15 October 2023.

around menstruation, which frequently prohibit girls and women from fully engaging in social and educational activities. The subject of mental health is another persistent societal taboo since it is still incredibly under-discussed and stigmatised. Instead of being acknowledged as real medical problems, mental illnesses are frequently misinterpreted and linked to supernatural origins or individual flaws. Consequently, those who have mental health concerns confront enormous challenges, perpetuating the cycle of social stigma and suffering⁶.

EXAMPLES OF SOCIAL TABOOS RELATED TO HEALTHCARE IN INDIA

The stigma surrounding mental health is one instance of a societal taboo associated with healthcare in India. Many people suffer in silence because mental diseases have traditionally been linked to shame and disgrace. People are sometimes reluctant to seek the appropriate therapy for mental health concerns because they believe that doing so is a show of weakness or instability⁷. The taboo around talking about and addressing sexual and reproductive health is another example. Particularly in rural regions, themes like menstruation, contraception, and sexually transmitted diseases are frowned upon. Access to appropriate treatment and preventative measures is hampered by a lack of knowledge and education on these issues, which also reinforces myths and prejudices⁸. These societal taboos have an adverse impact on people's general well-being because they keep them from getting the help and healthcare they require.

NEGATIVE CONSEQUENCES OF SOCIAL TABOOS ON HEALTHCARE ACCESS AND OUTCOMES

Healthcare access and results for people and communities are significantly harmed by social taboos. Inadequate public health responses, barriers to reproductive health services, impacts on vulnerable and marginalised populations, increased risky behaviours, delayed seeking of care, avoidance of preventative measures, increased risky behaviours, mental health neglect, social alienation, and reduced quality of life are a few of these⁹.

⁶ Sameen Murtaza, 'Mental Health Still A Taboo in the 21st Century India' (reflections.live, 2 May 2022) <<https://reflections.live/articles/4956/mental-health-still-a-taboo-in-the-21st-century-india-4828-l2ogu1nc.html>> accessed 15 October 2023.

⁷ BhumikaT Venkatesh and others, 'Perception of stigma toward mental illness in South India' (2015) 4(3) Journal of Family Medicine and Primary Care 449 <<http://dx.doi.org/10.4103/2249-4863.161352>> accessed 15 October 2023.

⁸ Linda Sanneving and others, 'Inequity in India: the case of maternal and reproductive health' (2013) 6(1) Global Health Action 19145 <<http://dx.doi.org/10.3402/gha.v6i0.19145>> accessed 15 October 2023.

⁹ The Lancet Global Health, 'Headway and hindrances for sexual and reproductive health and rights' (2020) 8(8) The Lancet Global Health e973 <[http://dx.doi.org/10.1016/s2214-109x\(20\)30316-8](http://dx.doi.org/10.1016/s2214-109x(20)30316-8)> accessed 15 October 2023.

Delaying medical attention can lead to disease progression and worse health outcomes. It is possible to deter people from forgoing preventative treatments like immunisations and early illness diagnosis. The stigmatisation of some health conditions may also contribute to an increase in risky behaviours¹⁰. Stigmatisation of mental health disorders can make mental health neglect worse. Lack of support networks brought on by social alienation and isolation can have an impact on one's mental, emotional, and physical health. In healthcare settings, stigmatisation and discrimination can result in poor treatment, inaccurate diagnosis, and inadequate treatment. Access to necessary healthcare treatments may also be hampered by stigmatised reproductive health services. Due to interlocking societal taboos, vulnerable and marginalised communities, such as LGBTQ+ people or members of particular castes, may experience additional difficulties in getting access to healthcare¹¹.

IV. CASE STUDIES

1. LEGAL RECOGNITION OF THIRD GENDER - NATIONAL LEGAL SERVICES AUTHORITY (NALSA) V. UNION OF INDIA (2014)¹²

The 2014 National Legal Services Authority (NALSA) v. Union of India lawsuit was a significant turning point in the fight for transgender rights in India. The action tackled the systemicized prejudice and exclusion of transgender individuals, who had been deprived of fundamental rights and legal safeguards for an extended period. The National Legal Services Authority launched a Public Interest Litigation (PIL) in an effort to change the legal landscape for transgender individuals. The Supreme Court of India upheld transgender people's fundamental rights, including the acknowledgment of their status as a third gender, which is different from the traditional binary divisions between male and female.

The NALSA verdict required affirmative action laws to address barriers that transgender persons faced while applying for jobs, schooling, and other services. It asked for legal recognition for transgender persons as well as the same rights and benefits accorded to other citizens. The court stressed that in order to eliminate discrimination and create a friendly environment for transgender individuals, strong action is required.

¹⁰ Stephanie Knaak, Ed Mantler and Andrew Szeto, 'Mental illness-related stigma in healthcare' (2017) 30(2) Healthcare Management Forum 111 <<http://dx.doi.org/10.1177/0840470416679413>> accessed 15 October 2023.

¹¹ Lauren Abern and Karla Maguire, 'Breaking Down Barriers to Transgender Health Care' (2018) 131 Obstetrics & Gynecology 8S <<http://dx.doi.org/10.1097/01.aog.0000533310.71561.80>> accessed 15 October 2023.

¹² NALSA vs Union of India, Supreme Court, 15 April 2014, 400 (India).

The NALSA ruling established a crucial legal precedent that influenced later rulings and Indian policy concerning transgender rights. In conclusion, this case marked a sea change in the country's attitude towards inclusiveness and human rights.

2. DISPELLING TUBERCULOSIS - SHOBHA SHUKLA V. UNION OF INDIA & ORS (2018)

In India, tuberculosis (TB) has historically been challenging to treat and manage due to social stigmas and taboos. In order to address these issues, judicial activism has proven essential. The case of **Shobha Shukla v. Union of India & Others (2018)** highlights the significance of judicial activism in breaking social taboos associated with tuberculosis in India¹³. The Delhi High Court has awarded the government several directions that mandate the successful implementation of the National Tuberculosis Elimination Programme (NTEP). Public awareness efforts, patient rights protection, provider responsibility, and patient rights protection were among these mandates¹⁴.

Raising awareness and lessening the stigma associated with the condition, the court decisions in the Shobha Shukla case have altered the way tuberculosis is handled in India. Additionally, there has been a call for improved access to medical care and protection of TB patients' rights. This case demonstrates the tremendous power of judicial activism in breaking social taboos and pushing for legislative changes to address urgent public health concerns, such as tuberculosis in India. By utilising the legal system, advocates and activists may promote more informed, inclusive, and rights-based approaches to healthcare and wellbeing.

3. RIGHT TO HEALTH AND ACCESS TO HIV TREATMENT - PEOPLE'S UNION FOR CIVIL LIBERTIES (PUCL) V. UNION OF INDIA (2002)

The People's Union for Civil Liberties (PUCL) v. Union of India case¹⁵ from 2002 was significant in India's fight against HIV/AIDS. The action, which focused on the right to health, challenged the denial of affected individuals' access to affordable HIV/AIDS treatment. In a Public Interest Litigation (PIL) that was presented to the Supreme Court, the People's Union for

¹³ The Sangai Express English, 'Close the tap : Mopping the floor approach is not enough to end TB' (The Sangai Express - Largest Circulated Newspaper in Manipur, 4 May 2023) <www.thesangaiexpress.com/Encyc/2023/5/4/Shobha-ShuklaAs-per-the-latest-Global-TB-Report-of-the-World-Health-Organization-WHO-globally-1.html> accessed 15 October 2023.

¹⁴ 'National TB elimination programme - What has changed' (PubMed Central (PMC)) <www.ncbi.nlm.nih.gov/pmc/articles/PMC9672688/> accessed 15 October 2023.

¹⁵ People's Union for Civil Liberties v. Union of India, Supreme Court, 18 December 1996, SC 568 (India)

Civil Liberties underlined how urgent it is to ensure that HIV treatment is accessible as a fundamental right.

The Supreme Court's ruling in the PUCL case was a watershed in Indian public health. The ruling established a number of significant points, such as the recognition of the right to health as a fundamental right, the provision of affordable access to drugs, the authorization of compulsory licencing and manufacturing of generic drugs, the assurance of **antiretroviral therapy (ART)** availability, and the emphasis on nondiscrimination and stigma reduction.

The case of PUCL v. Union of India holds noteworthy implications for HIV treatment accessibility and public health in India. By restating the right to health as a fundamental right and creating a strong legal precedent for any future legal conflicts affecting public health, it created a precedent-setting legal precedent. People with HIV/AIDS now have far greater access to life-saving care, especially those who otherwise couldn't afford it, thanks to the requirement requiring the provision of free ART. The decision to require licencing and the emergence of generic medications made essential treatments—not just for HIV/AIDS but also for other critical health conditions—more affordable¹⁶.

4. RIGHT TO LIVE WITH DIGNITY AND ACCESS TO PALLIATIVE CARE - COMMON CAUSE V. UNION OF INDIA (2018)

The Common Cause v. Union of India (2018)¹⁷ ruling in 2018 aimed to break down social taboos related to end-of-life care and the need for terminally ill patients in India to get compassionate, dignified treatment. The case focused on the right to die with dignity and the need for appropriate palliative care for patients with terminal illnesses.

A Public Interest Litigation (PIL) was launched before the Supreme Court by Common Cause, a public interest organisation, to protect the right to a dignified death and access to palliative treatment. The Supreme Court's ruling identified the freedom to refuse treatment and the right to receive palliative care as components of the right to die with dignity.

The decision enables individuals to create "living wills," also known as "advance directives,"

¹⁶ 'Antiretroviral Therapy' (PAHO/WHO | Pan American Health Organization) <www.paho.org/en/topics/antiretroviral-therapy> accessed 15 October 2023.

¹⁷ Common Cause v. Union of India, Supreme Court, 9 March 2018, AIR 2018 SC 1665 (India)

outlining the medical treatment they choose to receive in the event that they are terminally sick and unable to communicate their desires. Guidelines for the withdrawal of life support in cases of incurable terminal diseases were established by the court to guarantee that this treatment is performed compassionately and in compliance with legal and ethical standards.

The court's ruling has far-reaching implications for India's right to a dignified death and its capacity to obtain palliative care. It reduced societal taboos around talking about death and dying and gave explicit legal and ethical rules for the cessation of life support. Additionally, it recognised the person's autonomy in choosing their own end-of-life care.

5. SURROGACY REGULATION IN INDIA - BABY MANJI YAMADA V. UNION OF INDIA (2008)

In the landmark 2008 decision in **Baby Manji Yamada v. Union of India**¹⁸, the Indian Supreme Court tackled the social stigmas surrounding assisted reproduction and surrogacy. The case included Baby Manji Yamada, an Indian surrogate who was born in Japan; but, due to legal complications, her biological parents remained unknown. The event made clear how important it is to have laws and rules regarding surrogacy.

The Supreme Court of India ruled in the case that regulations and legal frameworks for surrogacy agreements are necessary to protect the interests of all parties involved, including intended parents, surrogates, and the child. The government was directed by the court to ensure that Baby Manji Yamada, who was stateless at the time, was granted the appropriate citizenship and legal standing, emphasising that the child's welfare should always come first in surrogacy arrangements.

The case broke social taboos and had significant legal implications for surrogacy. It promoted better understanding and awareness of assisted reproduction in India by drawing attention to the need for legal clarity and regulation of surrogacy agreements. The case also aided in the public and judicial challenge of surrogacy-related social norms.

Other instances in which judicial activism has had a significant impact on societal taboos in

¹⁸ Baby Manji Yamada vs Union Of India & Anr, Supreme Court, 29 September 2008, (2008) 13 SCC 518 (India).

healthcare include **Gian Kaur v. State of Punjab (1996)**¹⁹ and **Nikhil Dey v. Union of India (2006)**²⁰. In the former, the Indian Supreme Court decriminalised attempted suicide, promoting compassionate mental health care and eradicating the stigma attached to mental illness and suicide. In the latter, the Supreme Court modified abortion laws and policies by highlighting women's right to reproductive autonomy and choice. Through expanding access to lawful and safe treatments, these initiatives offered women greater autonomy over their reproductive health. These kinds of legal actions have greatly reduced the stigmas that society attaches to mental illness and suicide, as well as fostering greater empathy for those who are going through difficult times emotionally.

V. IMPACT OF JUDICIAL ACTIVISM & INTERNATIONAL LEGAL FRAMEWORKS

JUDICIAL ACTIVISM AS A CATALYST FOR SOCIAL CHANGE

A significant social change in India's healthcare system has also been largely attributed to judicial activism. By aggressively challenging societal taboos, the court has played a crucial role in furthering equality and guaranteeing that people who are excluded in society have access to healthcare services. The court's intervention in reproductive rights matters, for instance, has granted women greater autonomy and access to safe and approved abortions. By addressing these delicate and sometimes ignored issues, the court has demonstrated that it is a powerful agent for social change and the removal of cultural barriers. This has led to the development of a more progressive and inclusive healthcare system in India.

Awareness and the transmission of standards are necessary if Indian courts are to comprehend and apply legislation in line with international norms, perhaps leading to more progressive decisions. Legal precedent and interpretation may lend support to a certain stance, leading to court decisions that are compliant with international standards. The case for judicial activity can be strengthened by advocacy and civil society involvement because they offer professional advice, academic study, and legal arguments based on universal human rights principles²¹.

¹⁹ Smt. Gian Kaur v. State of Punjab, Supreme Court, 21 March 1996, 1996 AIR 946 (India).

²⁰ Himanshu Jha, 'State Processes, Ideas, and Institutional Change: The Case of the Right to Information Act in India I' (2018) 91(2) Pacific Affairs 309, <<http://dx.doi.org/10.5509/2018912309>> accessed 15 October 2023.

²¹ 'How Social Taboos in India Affect Mental Health Treatment?' (Samarpan Mental Health and Wellness) <www.samarpanhealth.com/blog/how-social-taboos-in-india-affect-mental-health-treatment#:~:text=Ensuring%20people%20have%20access%20to,struggling%20with%20mental%20health%20issues.> accessed 15 October 2023.

Judicial rulings based on international legal norms may also serve as a catalyst for legislative and policy reforms. Courts may order the government to establish or change legislation in order to comply with international standards, resulting in new policies and regulations that challenge societal taboos, enhance access to healthcare, and protect reproductive rights.

As individuals become more aware of their rights and legal safeguards, public awareness and education may help to change society views and lessen social taboos. In order to increase accountability for the government and judiciary, international legal frameworks may force India to report on its success in respecting healthcare and reproductive rights.

INTERNATIONAL LEGAL FRAMEWORKS

International legal frameworks and standards have a big impact on how the law is interpreted across the world, especially in India.²² Here are some significant foreign legal frameworks that have helped eliminate societal taboos in healthcare and shaped Indian courts' rulings:

1. Human Rights Universal Declaration (UDHR):

The United Nations General Assembly ratified the UDHR in 1948, outlining essential liberties and rights for every individual. India's perspective on several healthcare concerns, such as the right to health, non-discrimination, and access to medical treatment, has been greatly influenced by this.

2. International Economic, Social, and Cultural Rights Covenant (ICESCR):

India acknowledged the right to the highest standard of physical and mental well-being when it ratified the ICESCR in 1979. It has an impact on India's legal system in terms of access to healthcare services and the availability of basic medical facilities.

3. International Covenant on Civil and Political Rights (ICCPR):

India ratified the International Covenant on Civil and Political Rights (ICCPR) in 1979. It addresses issues such as individual autonomy and privacy as well as freedom from cruel, inhuman, or degrading treatment. The way India sees issues like mental health, end-of-life decisions, and reproductive rights has been impacted by these sections.

²² India. National Human Rights Commission, A handbook on international human rights conventions (National Human Rights Commission 2012).

4. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW):

India's stance on women's health and reproductive rights has seen substantial shift since the country ratified CEDAW in 1993. It covers topics including maternal mortality, family planning, and access to reproductive healthcare.

5. Convention on the Rights of the Child (CRC):

Children's rights are important, especially those related to health, survival, and development. India ratified the Convention on the Rights of the Child in 1992. It has affected India's policy for immunisation, child healthcare, and protection against risky behaviour.

6. Convention on the Rights of Persons with Disabilities (CRPD):

India joined the Convention on the Rights of Persons with Disabilities (CRPD) in 2007, which emphasizes the rights of individuals with disabilities, especially those related to health, rehabilitation, and access to healthcare services. It has altered India's approach to providing healthcare to those with disabilities.

7. International Conference on Population and Development (ICPD) Program of Action:

A wide range of topics pertaining to reproductive health and rights were the focus of the 1994 ICPD. India's guiding principles and suggestions have influenced the country's policies around family planning, access to contraception, and reproductive healthcare.

8. United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP):

Indigenous peoples are recognized as having rights under the UNDRIP, including the right to healthcare and traditional medicine. Although it isn't directly related to India, it is related to problems with indigenous communities' access to healthcare.

In terms of healthcare and reproductive rights, these international accords and legal frameworks provide a normative foundation that influences India's legal and regulatory environment. Their usage as points of reference by lawmakers and judges facilitates the creation of legal interpretations and reforms aimed at breaking social taboos and advancing rights-based healthcare.

VI. CRITICISMS AND LIMITATIONS OF JUDICIAL ACTIVISM IN CHALLENGING SOCIAL TABOOS IN HEALTHCARE

Judicial activism has made great strides in dismantling social taboos around healthcare in India, but it has also been criticized and has certain limitations. Critics claim that judicial involvement in the healthcare industry violates the separation of powers and the legislative process. They contend that judges lack the expertise and accountability necessary to make difficult decisions about complex healthcare matters because they are not elected officials. Others assert that judicial activism may result in legal ambiguity since it departs from recognized legal standards. Furthermore, judicial activism's ability to break social taboos in the healthcare industry is significantly influenced by the government's willingness to abide with court decisions. Judicial activism may not be enough to modify healthcare practices permanently and dismantle deeply rooted societal taboos without substantial government support and funding. Therefore, it is essential to take into account the drawbacks and restrictions of judicial activism in order to develop thorough and long-lasting strategies for addressing societal taboos in healthcare²³.

OPPOSITION FROM CONSERVATIVE GROUPS AND RELIGIOUS INSTITUTIONS

Challenging societal taboos in healthcare in India has been hampered significantly by opposition from conservative organizations and religious institutions. These organizations contend that judicial activism damages the social fabric and undercuts traditional cultural values. They perceive the judiciary's progressive stance as a restriction on their right to practise their religion and their cultural customs. Conservative organizations and religious organizations frequently put a great deal of political pressure on legislators and policymakers to stop the implementation of court rulings that challenge societal taboos in healthcare²⁴. Additionally, they promote their ideas and mobilize opposition to progressive judicial interventions through media and public dialogue. Due to their persistent opposition, judicial orders have often been unable to be implemented effectively, which has slowed the development of healthcare policies that aim to eliminate disparities.

²³ Supra note³

²⁴ Natalie Boyd Williams and others, 'Challenging perceptions of socio-cultural rejection of a taboo technology: Narratives of imagined transitions to domestic toilet-linked biogas in India' (2022) 92 Energy Research & Social Science 102802, <<http://dx.doi.org/10.1016/j.erss.2022.102802>> accessed 15 October 2023.

IMPLEMENTATION CHALLENGES AND RESISTANCE FROM HEALTHCARE PROVIDERS

The successful implementation of judicial activism in breaking societal taboos in healthcare in India has been hampered by resistance from healthcare practitioners. The profoundly ingrained cultural and societal ideas that continue to be held by healthcare professionals are one significant difficulty. Traditional values, patriarchal norms, and religious beliefs could create opposition to change, which makes it difficult for people to embrace and apply the new strategies that the judiciary has advocated. Additionally, in order to meet the demands put out by the courts, healthcare practitioners may encounter practical challenges including ignorance, insufficient training, or a lack of resources²⁵. Additionally, the hierarchical structure of healthcare facilities sometimes discourages challenging authority, which makes challenging cultural norms harder for practitioners. All of these elements contribute to the slow pace of social issues being addressed.

NEED FOR COMPREHENSIVE LEGISLATIVE REFORMS TO SUSTAIN CHANGE

In India, the influence of judicial activism in addressing societal taboos around healthcare has resulted in substantial social transformation. However, further legislative adjustments are essential to maintain this development over the long term. Although judicial activism might start the reform process by establishing precedents, it is up to the legislature to pass complete laws. By confronting societal taboos in healthcare, these laws can offer a framework for addressing and resolving the complex problems that occur. Reforms to the law can help guarantee that the changes brought about by judicial activism are institutionalized and integrated into the legal system. Comprehensive legislative reforms can also include instructions for putting the changes into practise and keeping track of them, guaranteeing their long-term effectiveness²⁶.

It is impossible to overstate the influence of judicial activism in dismantling societal taboos in India's healthcare system. Over the years, the Indian court has played a pivotal role in addressing a range of societal issues pertaining to healthcare, including discrimination based on gender and the accessibility of healthcare for marginalized communities. Through progressive rulings, the judiciary has dismantled deeply ingrained social taboos by respecting people's inherent rights. In addition, the courts have addressed sensitive cases including surrogacy, access to abortion, and

²⁵ Ety R Nilsen and others, 'Exploring resistance to implementation of welfare technology in municipal healthcare services – a longitudinal case study' (2016) 16(1) BMC Health Services Research <<http://dx.doi.org/10.1186/s12913-016-1913-5>> accessed 15 October 2023.

²⁶ Haferkamp Hans 1939- and Smelser Neil J (eds), Social change and modernity (University of California Press 1992).

reproductive rights, empowering individuals to make informed choices regarding their own bodies. All things considered, it's safe to say that judicial activism has served as a catalyst for the removal of social taboos related to healthcare and the implementation of urgently needed reforms in Indian society.

VII. CONCLUSION

In conclusion, judicial activism has played a critical role in challenging social norms within India's healthcare system. The court has used historic rulings and progressive readings of the Constitution to protect the rights of marginalized persons and address persistent issues with healthcare and social taboos. Because of the Supreme Court's involvement in cases pertaining to gender equality, reproductive rights, and access to healthcare services, significant progress has been made in reducing social barriers. The judiciary's enforcement of strict guidelines on medical ethics and promotion of diversity have paved the way for a more equitable and considerate healthcare system. However, there are still problems, and in order to preserve the values of equality and dignity, the legal system needs to change to meet evolving social norms. However, it's critical to understand that judicial activism cannot be the exclusive means of addressing cultural taboos surrounding healthcare. Government agencies, medical professionals, and members of civil society must work together to find comprehensive and long-lasting solutions to these issues.

Judicial activism will therefore be crucial to the development of healthcare in India in the future. Court intervention has enabled a significant transformation in the healthcare sector and significantly impacted social norms. Through its treatment of issues like female sterilization and mental health, the court has paved the way for a more inclusive and rights-based approach to healthcare. It's important to understand, though, that judicial activism cannot solve every problem with healthcare in the country on its own. It requires sustained efforts from the public sector, medical experts, and society at large. Cooperative initiatives like legislative changes, public awareness campaigns, and increased funding for healthcare infrastructure are essential to ensuring a comprehensive and equitable healthcare system for all Indians. We can only fully achieve the promise of judicial activism to revolutionize the nation's healthcare system by adopting a holistic strategy.

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