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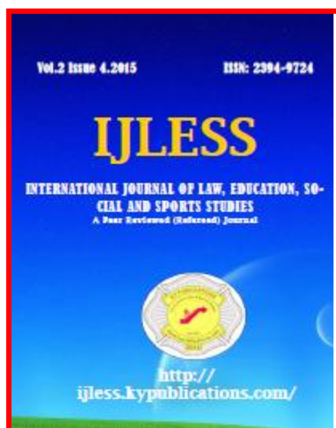
REQUIREMENT OF CHILD RIGHTS TO HEALTH IN INDIA: RIGHTS OF CHILD APPROACHES TO HEALTH THROUGH VARIOUS SCHEMES AND CONSTITUTIONAL MANDATE

BHUPENDRA KUMAR VERMA, SARIT KUMAR SADHU
Department of Law, The University of Burdwan, West Bengal, India

RESEARCH ARTICLE



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ABSTRACT

In this study, we have tried to visualize the current health status of children in India and its States by using some of the important health indicators like infant and under five mortality rates, nutritional status of children and vaccination (BCG, three injections of the DPT, three doses of Polio and Measles) coverage. Here we have discussed some of the important Articles and provisions under Constitution of India and various Schemes that are prevailing in different States and are related to the health of the children. To understand the current health status of the children the suggested health indicators are compared with Millennium Development Goals (MDGs) that is to be achieved by India by 2015. The obtained results show that more vigorous and sustained efforts are required for improving child health in terms of their right will be needed, especially when India is too far to achieve the global target of providing a better health condition to the children in the country.

Keywords: Infant mortality rate, Child mortality rate, Malnutrition, Constitutional provisions

1. INTRODUCTION

The perception of the word ‘Health’ can be understood from the Preamble of the 1946 Constitution of the World Health Organization (WHO) that defines ‘health’ as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity”. The Right to health is one of the important fundamental rights enshrined under Part III of the Constitution of India. The Indian Constitution, by imposing its Article 38 on State ensures well being of the people, which cannot be achieved without consideration of public health, incorporated under Part IV as Directive Principles of the State Policy. But whenever we discuss about the health of a child, then health becomes a very important issue, and has been expressly provided under various articles including Articles 39(e) & (f); 45 and 47,etc. The part of the population who is regarded as a child is the most vulnerable in terms of their health.

A ‘Child’ can be defined according to the Article 1 of the Convention on the Rights of the Child (CRC)[1], which States that “every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier”. This definition specially indicates an upper age limit for childhood, as 18 years. To protect the child rights in terms of their health, Indian legislation has already specified a minimum age limit in accordance with their extent of involvement and the effect which may happen to them in that situation, so that they get a safe, healthy and happy childhood. One can emerge better survival and health status as a goal and a measure of progress for children. It is well known fact that an improved survival of children fundamentally depends upon their health status, lawfully (Pandey, 2005; Bajpai, 2006; Rai, 2008) it is generally ensured to them, by providing a better care to their mother and accessibility of health services for their family, either from the Government or private organizations.

[1] Implementation Hand Book for the Convention on the Rights of the Child, UNICEF, page 1

The importance of the 'child health' is generally contextualized from the perspective of the Convention on the Rights of Child and Human Rights. It is assumed that the rights discussed in a CRC and Human Rights relating to the health of children, can provide a secure and better health standard for children. The principle of these rights is to cicerone their implementation by State Parties, including all "legislative, administrative and other measures" necessary to realize the human rights of children and adolescents.

Therefore, the objective of the present study is to compare the performance of legislative aspects in terms of Articles and Schemes in different States, related to the health status of the children in India. This is done by comparing the changes occurred to some of the important health indicators *viz.,* infant and under five mortality rates, nutritional status of children and vaccination (BCG, three injections of the DPT, three doses of Polio and Measles) coverage, over a period and are compared with Millennium Development Goals (MDGs) that to be achieved by India by 2015.

2. Material & Methods:

Legally the concern regarding child health has been recognized in the various International, National and State level through enactment of various legislations. As children are in vulnerable position and we are aware with the fact that the goal of right to health of a child cannot be achieved without the fulfillment of other rights, including the rights to life, non-discrimination and equality, food, education, privacy, access to information, clean drinking water and hygiene which further includes the child's right to birth registration(as provided in Article 7 of the CRC) also plays a pivotal role in the fulfilment of many other rights, including the right to health. To understand the importance of child health, we first contextualized some of the important Articles and Schemes in some of the selected States that are related to children in terms of their health.

Constitutional Provisions

The **Preamble** of the Constitution of India incoporates some of the golden goals in the form of "JUSTICE" which also includes the concept of 'Social Justice' also[2] (Bakshi, 2013). The concept of 'Social Justice', which also includes protecting the interest of the 'weaker sections' of the society, as held by the Hon'ble Supreme Court in various judicial pronouncements[3](Bakshi, 2013). So in the broader concept as children are also the weaker sections of the society, they also have the right to health which should be protected as being a part of social justice enshrined in the Preamble.

The Constitution of India under its various provisions deals with the child rights to health. The following listicle discuss about some of the important **Articles** and **Schedules** which solely focus or include the child health are mentioned :

Article 15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.-(3) Nothing in this article shall prevent the State from making any special provision for women and children.

Article 21. Protection of life and personal liberty. – No person shall be deprived of his life or personal liberty except accouding to procedure established by law.

Article 24. Prohibition of employment of children in factories, etc. – No child below the age of fourteen years shall be employed to any factory or mine or engaged in any other hazardous employment.

Article 39. Certain Principles of policy to be followed by the State. – The State shall, in particular, direct its ploicy towards securing-

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

(f) that children are given opportunities and facilities to develop in a healthy manner and in conditons of freedom and digniy and that childhood and youth are protected against exploitation and against moral and material abandonment[4].

Article 45. Provision for early childhood care and education to children below the age of six years. – The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years[5]..

Article 47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health. –The State shall regard ther raising of the level of nutrition and the standard of living of its people and the improvement of public

[2] P. A. Inamdar v. State of Maharashtra, (2005) 6 SCC 537: AIR 2005 SC 3226.

[3] Lingappa Pochanna Appealwar v. State of Maharashtra, (1985) 1 SCC 479; D. S. Nakara v. Union of India, AIR 1983 SC 130; Sadhuram Bansal v. Pulin Behari Sarkar, 1984 SC 1471

[4] Subs. by the Constitution (Forty-second Amendment) Act, 1976

[5] Subs. by the Constitution (Eighty-sixth Amendment) Act, 2002

health as among its primary duties and, in particular, the State shall enndeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

Article 51A. Fundamental Duties[6] - It shall be the duty of every citizen of India-

(k)- who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years[7].

Article 243G. Powers, authority and responsinilities of Panchayats. – Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow the Panchayats with such powers and authority and may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level, subject to such conditions as may be specified therein, with respect to –

(a) the preparation of plans for economic development and social justice;

(b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule[8].

Schedule 11.-(Article 243G)[9] - The various Entries has been incorporated under the Eleventh Schedule of the Constitution of India upon which State Legislature is empowered to enact law to protect child health :-

Entry 11. -Drinking water.

Entry 23. -Health and sanitation, including hospitals, primaryhealth centres and dispensaries.

Entry 25. – Women and child development.

Entry 27. – Welfare of the weaker sections, etc.

Article 243W. Powers, authority and responsibilities of Municipalities, etc.[10]**-** Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow-

(a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to-

(i) the preparation of plans for economic development and social justice;

(ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;

(b) the Committees with such powers and arthority as may be necessary to enable them to carry out the responsibility conferred upon them including those in relation to the matters listed in the Twelfth Schedule.

Schedule 12.-(Article 243W)[11] - The following Entries includes the matters, also concerned with the child health, upon which the Legislature of State may make law :-

Entry 3- Planning for economic and social development.

Entry 5- Water supply for domestic, industrial and, commercial purposes.

Entry 6- Public health, sanitation conservancy and solid waste management.

Entry 9- Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.

Entry 12- Provision of urban amenities and facilities such as parks, gardens, play-grounds, and

Entry 16- Vital statistics including registration of births and deaths.

Article 246. Subject-matter of laws made by Parliament and by the Legislatures of States.-This article deals with various subjects upon which the Parliament, State Legislature and Both (i.e.,the Parliament and State Legislature) can make law. All

[6] Ins. by the Constitution (Fourty-second Amendment) Act, 1976.

[7] Added by the Constitution (Eighty-sixth Amendment) Act,2002

[8] Part IX (containing Articles 243, 243A to 243Q) ins. by the Constitution (Seventy-third Amendment) Act, 1992.

[9] Added by the Constitution (Seventy-third Amendment) Act, 1992.

[10] Part IXA (containing Articles 243P to 243Z, 243ZA to 243ZG) ins. by the Constitution (Seventy-fourth Amendment) Act, 1992.

[11] Ins. by the Constitution (Seventy-fourth Amendment) Act, 1992.

such matters are enumerated under Seventh Schedule under three Lists namely, Union List (List I), State List (List II) and Concurrent List (List III) with various 'Entry.'

Schedule 7. (Article 246) **-** All the below mentioned Lists contain various matters upon which law can be enacted under the 7th Schedule. The following are Lists and various Entries which directly or indirectly deals with the protection of child health:-

List I – (Union List):

Entry 28- Port quarantine, including hospitals connected therewith; seamen's and marine hospitals.

Entry 55- Regulation of labour and safety in mines and oilfield, and

Entry 97- Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists.

List II- (State List):

Entry 6- Public health and sanitation; hospitals and dispensaries, and

Entry 9- Relief of disabled and unemployable.

List III – (Concurrent List):

Entry 16- Lunancy and mental deficiency, including places for the reception or treatment of lunatics and mental deficients.

Entry 18- Adulteration of foodstuffs and other goods.

Entry 19- Drugs and poisons, subject to the provisions of entry 59 of List I with respect to opium.

Entry20- Economic and social planning.

Entry20A- Population control and family planning[12].

Entry 23 – Social security and social insurance; employment and unemployment.

Entry24- Welfare of labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits.

Entry25- Education, including technical education, medical education and universities, subject to the provisions of entries 63,64,65 and 66 of List I; vocational and technical training of labour[13]. Entry 26- Legal, medical and other professions, and

Entry 30- Vital statistics including registration of births and deaths.

So, we can say that the Constitution of India expressly or impliedly has mentioned the concept of protection of child health in its Preamble, Fundamental Rights, Directive Principles of State Policy, Fundamental Duties, Panchayats, Municipalities and casts duty upon the Government to protect the rights. The Hon'ble Supreme Court and High Courts, through Judicial Pronouncements and liberal interpretation of Article 21 etc., followed by the Public Interest Litigation, and also has given Directive Principles with a status of Fundamental Rights to fulfill the spirit of social justice and child jurisprudence, has played a pivotal role for protection and safeguard of the health of children .

Schemes:

To provide better health facilities for children, every State have the Women Development and Child Welfare department, this is committed to creating a healthy and safe environment for children. Among the various schemes, the prime objective of some of the schemes is to promote overall development of children in terms of their health, nutrition care and protection of child rights. Some of the important schemes which are currently implemented by some of the selected States are enlisted below:

State	Schemes
Andhra Pradesh	1. ICDS[14] 2. ICPS[15] 3. Girl Child Protection Scheme (GCPS), 4. Bangarutalli, Kishori Shakthi Yojana (KSY), 5. Kishori Sakshi Yojana 6. Rajiv Gandhi Scheme for Empowerment of Adolecent Girls

[12] Ins. by the Constitution (Fourty-second Amendment) Act, 1976.
[13] Subs. by the Constitution (Fourty-second Amendment) Act, 1976.
[14] Integrated Child Development Services (ICDS)
[15] Integrated Child Protection Scheme (ICPS)

Assam	1. ICDS 2. Mukhya Mantri Jiban Jyoti Bima Asoni 3. Supplementary Nutrition Programme (SNP)
Goa	1. ICDS 2. Indira Gandhi Matritva Sahyog Yojana (IGMSY) 3. ICPS 4. Rajiv Gandhi Scheme for Empowerment of Adolescent Girls (RGSEAG) – "SABLA" 5. Foster Care Scheme – Vatsalya
Kernatak	1. ICDS 2. Bhagylakshmi Scheme (2006-07) 3. Creches for children of working mothers
Mizorum	1. Implementation of Supplementary Nutrition Programme
Punjab	1. Balika Samridhi Yojana 2. Kishori Shakti Yojana
Tamil Nadu	1. ICDS
Delhi	1. ICDS 2. Financial Assistance to Lactating and Nursing mothers belonging to weaker section of society 3. Supplementary Nutrition Programme 4. Kishori Shakti Yojana
Haryana	1. ICDS 2. Improving Infant & Young Child feeding Scheme 3. Ladli 4. Haryana State Commission for Protection of Child Rights Programmes and Schemes 5. ICPS
Jharkhand	1. ICDS 2. ICPS 3. Dular
Kerala	1. ICPS 2. Childline 3. Scheme for Welfare of Working Children in Need of Care and Protection 4. ICDS 5. Sisu Greh Scheme
West Bengal	1. ICDS, 2. ICPS

To study the effectiveness of these schemes related to child health, data from different large-scale surveys like National Family Health Surveys (NFHS-3) and District Level Household and Facility Survey (DLHS-3) conducted during 2005-2006 and 2007–08, respectively are used. The reports of Sample Registration System (SRS) and Ministry of Health and Family Welfare, Govt. of India-2011 are also utilized for that purpose. These surveys and published reports provide information regarding some of the important key indicators like nutritional status, mortality patterns (infant and under-5 child mortality rates) and immunization coverage of children in India and its States. The status of the health of children in different States of India can be examined with the help of below discussed indicators.

1. **Infant Mortality Rate (IMR):** It is the number of deaths of infants under one year old per 1,000 live births. This is one of the important indicators that defines the health status of a country or States.

2. **Under-Five Mortality Rate (U5MR):** It is defined as the probability per 1,000 that a newborn baby will die before reaching the age of five, if subject to age-specific mortality rates of the specified year. This defines the risk of a child that it will die before completing five years of age.

3. **Malnutrition:** (Sinha(2006)) It is a condition that results from eating a diet in which nutrients are either not enough or are too many such that the diet causes health problems (Dorland's medical dictionary). Among the different malnutrition types, according to United Nations Children's Fund (UNICEF), Chronic malnutrition, or stunting, is another form of growth failure. Chronic malnutrition occurs over time, unlike acute malnutrition. A child who is stunted or chronically malnourished often appears to be normally proportioned but is actually shorter than normal for his/her age. Stunting starts before birth and is caused by poor maternal nutrition, poor feeding practices, poor food quality as well as frequent infections which can slow down growth.

4. **Full Immunization:** A child is said to be fully immunized if he/ she receives the vaccines of BCG, three injections of the DPT, three doses of Polio (excluding Polio 0) and Measles.

The information which is obtained from above discussed indicators is acting as a proxy measure of the health status of the country and its States. These indicators discussed in different reports for different years, are compared with Millennium Development Goals (MDGs) for 2015 that to be achieved by India. These are the following eight Millennium Development Goals, which are chosen for India: **Goal 1:** Eradicate extreme poverty and hunger; **Goal 2:** Achieve universal primary education; **Goal 3:** Promote gender equality and empower women; **Goal 4:** Reduce child mortality; **Goal 5:** Improve maternal health; **Goal 6:** Combat HIV/AIDS, malaria, and other diseases; **Goal 7:** Ensure environmental sustainability; **Goal 8:** Develop a global partnership for development.

Among the above discussed MDGs, in this study, we focus only on those goals that are directly related to the health of the children and are to be achieved by 2015. The goals whose objectives are related to child health status are discussed below:

Goal 1: Poverty is the main cause of malnutrition and due to malnutrition children becomes underweight. Underweight is measured by comparing the weight-for-age of a child with a reference population of well-nourished and healthy children. Hunger responds sluggishly to growth and requires complementary interventions in several other areas including access to balanced food and medical facilities by the poor, better child nutrition and immunization, adequate sanitation and hygiene, and faster-changing cultural practices to promote nurturing physical and mental environments for development of children and adolescent girls (United Nations ESCAP report 2015).

Goal 4: This includes better managing neonatal and childhood illnesses and improving child survival, particularly among vulnerable communities. Survival risk remains a key challenge for the disadvantaged who have little access to reproductive and child health services. Key to significant progress in reducing U5MR and infant mortality rates rests with reducing neonatal deaths, that is, infant deaths that occur within a year of birth at a fast pace.

Goal 6: This discusses about the efforts which are required for improving the child and maternal health, especially in those contexts where children death occurred due to preventable causes like a vaccine.

3. Results and Discussion:

Figure 1, discuss about the changes in the percentage of children under 3 years who are underweight from 1998-99 to 2005-06 and are compared with expected percentage by the end of 2015 under Goal 1 i.e., 26% (Patwari, 2013). It is found that Mizoram, Sikkim, Manipur, Kerala, Goa, Punjab, Nagaland, Jammu & Kashmir, Delhi and Tamil Nadu have achieved the goal and Arunachal Pradesh, Andhra Pradesh, Himachal Pradesh, Uttarakhand, Maharashtra and Karnataka can be expected to achieve by 2015 and the States excluding them are too far from the goal.

Here we have tried to visualize the pattern of IMR during 2005-2011 in India and its States and territories. It is found from the Figure-2 that over the period of 2005-11 IMR is decreasing. These rates are compared with Goal 4, which is 27 per thousand live births in India. It is found that top three States whose IMR lies between 11-12 per thousand live births, are Manipur, Kerala and Goa, below three States whose IMR lies between 57-59 are Rajasthan, Uttar Pradesh and Odisha, and those States whose IMR lies between 29-32 are about to achieve this goal are Tripura, Punjab, Arunachal Pradesh and West Bengal.

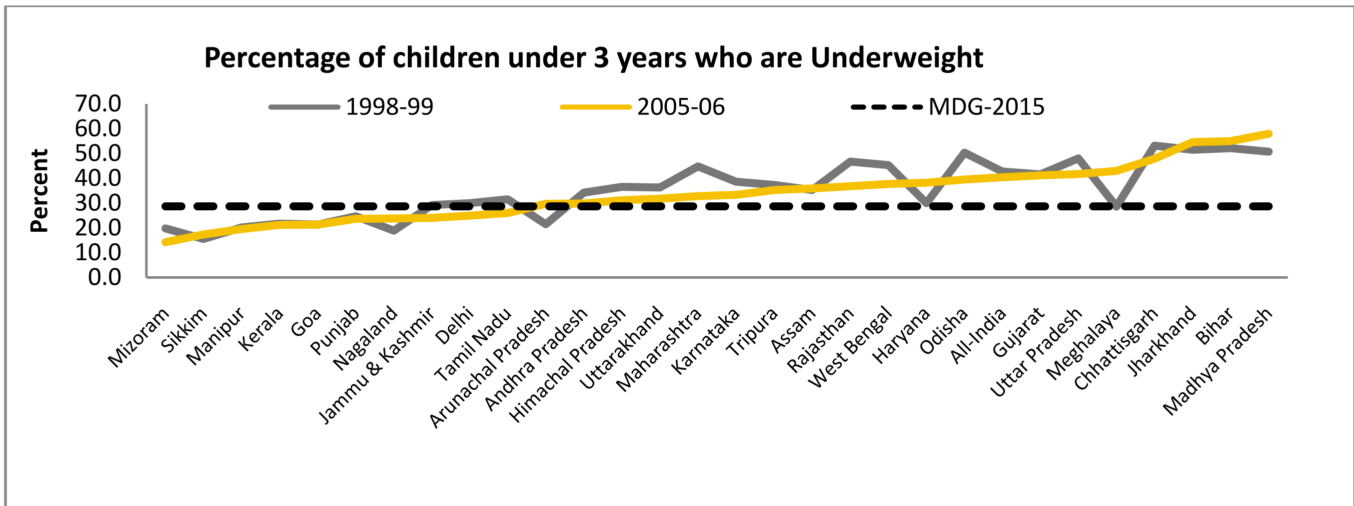
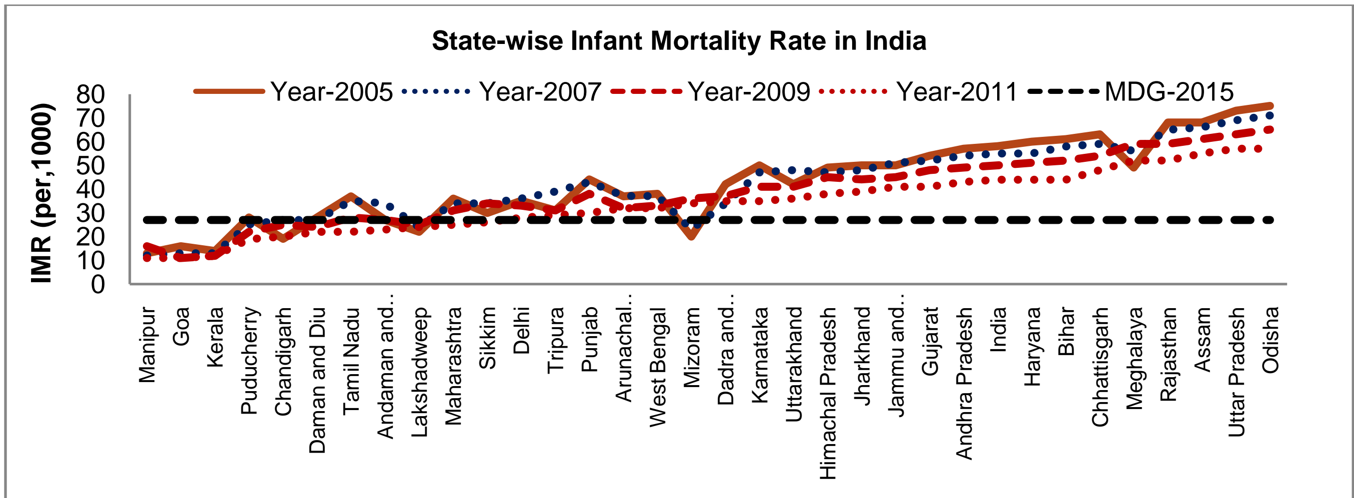


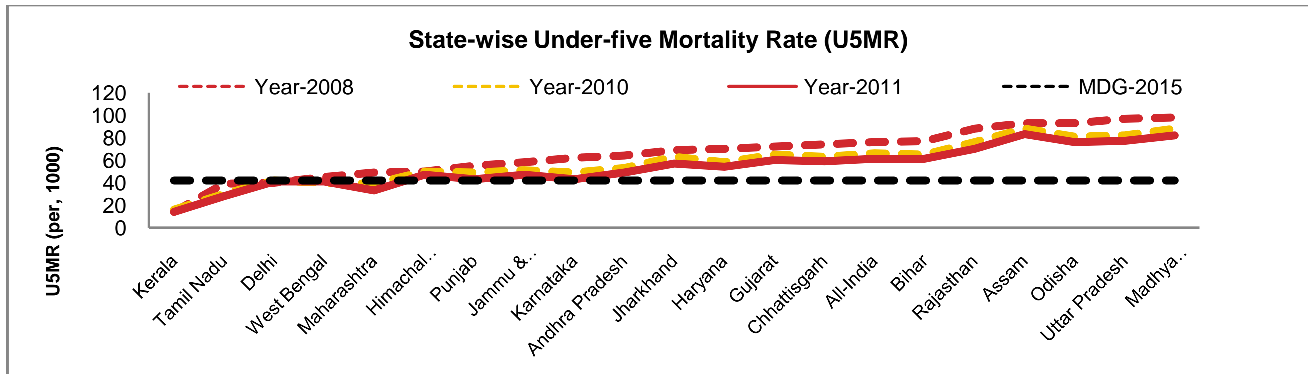
Figure 1: Observed percentage of children under 3 years who are underweight in India and its States (or territories) during 1998-99 and 2005-06, and its expected percentage in India under the Millennium Development Goals -2015

Source: National Family Health Survey (NFHS)-3



Source: Sample Registration System (SRS)

Figure 2. Observed IMR of India and its States & territories for 2005- 2011, and expected IMR of India under the Millennium Development Goals -2015

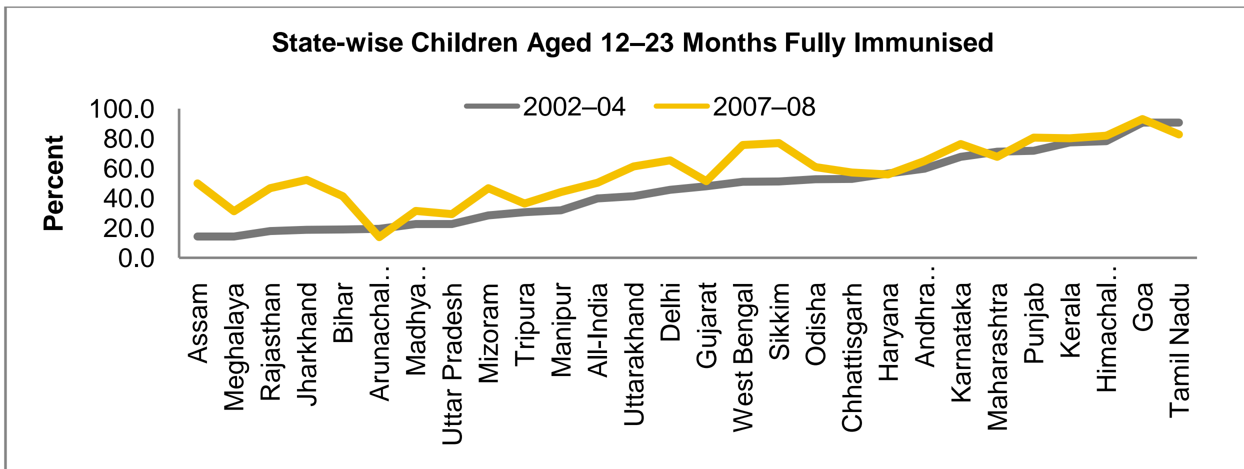


Source: Sample Registration System (SRS)

Figure 3. Observed U5MR of India and its States & territories for 2005- 2011, and its expected value for India under the Millennium Development Goals -2015.

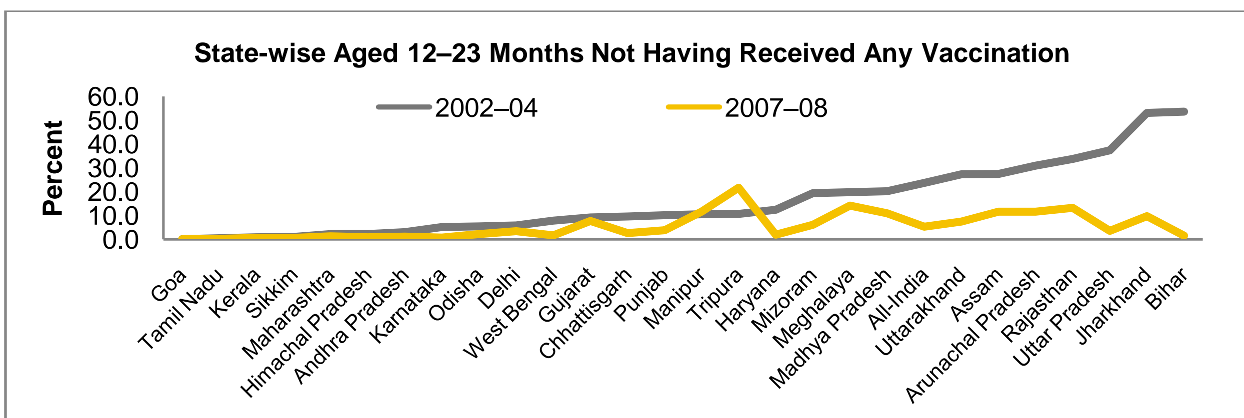
Here, Figure-3 compares the observed pattern of U5MR over the period 2008-2011 of India and its States with the Goal 4, which are 42 per thousand children under age five years in India. Here it is found that top three States whose U5MR < 42 are Kerala, Tamil Nadu and Maharashtra, States whose U5MR are too far from the goal i.e., U5MR >70 are Rajasthan, Odisha, Uttar Pradesh, Madhya Pradesh and Assam, and those States who are about to achieve this goal i.e., 43< U5MR <50 are Punjab, Karnataka, Himachal Pradesh and Jammu & Kashmir.

The contemporary status of health of children in India can also be visible through the report of UNICEF (UNICEF-2013) that scrutinized, among the fifty percent of world's under-five deaths in 2013, 22% of that occurred in India. According to the Census of 2011 (Sample Registration System -2011) report, 13% of the total populations are the children of age group (0-6). And, every year on an average 260 lakhs of children born in India among them estimated children who die every year before completing 5 years of their age are 12.7 lakhs. In addition of this reality, among these 12.7 lakhs, 81%, which is approximately 10.5 lakhs children die within one year of their birth (infant deaths).



Source: District Level Household and Facility Survey (DLHS)-3; 2007–08

Figure 4.1. The Percentage of children (12-23 months) fully immunized in India and its States & territories during 2002- 2004 and 2007-08



Source: District Level Household and Facility Survey (DLHS)-3; 2007–08

Figure 4.2. The Percentage of children (12-23 months) who are not immunized in India and its States & territories during 2002- 2004 and 2007-08

Here Figure-4.1 and 4.2, depicts the changes in the percentages of children (12-23 months) who are immunized with vaccines of BCG, three injections of the DPT, three doses of Polio and Measles, and who do not receive any of these respectively, during 2002-04 and 2007-08. It is found from Figure 4.2 that with the passage of time the percentage of children who are deprived with the vaccination is decreasing. But, it is also found from Figure 4.1 that there a few selected States *viz*., Kerala, Punjab, Himachal Pradesh, Tamil Nadu and Goa where the immunization is above 80%. On the other

hand, the immunization coverage of the States like, Arunachal Pradesh, Uttar Pradesh, Meghalaya, Madhya Pradesh, Tripura, Bihar, Manipur, Rajasthan, Mizoram and Assam is below 50% and the remaining States lies between 50-80%.

4. Conclusion:

From the above discussion of the various provisions under Constitution of India and Schemes it is evident that the Indian legislature is serious regarding the health status of children specially who are under the age of five. It has, in fact, deepened the meaning of health and justified the meaning of the right to life. The results obtained in terms of the rates (i.e., IMR and U5MR), the percentages of children who are underweight and immunization coverage shows that more vigorous and sustained efforts are required for improving child health. The results raise the question of whether an amendment to the Indian Constitution with respect to children's rights to health is desirable. Comprehensive laws and Acts are available which, however, provide health facilities and health conditions of these children cannot use what is available to ensure that fundamental rights of all citizens? The first step with any changes in preventive and beneficial agent, which guarantees the right to health care of a child in India should be a focus. The requirement of the right to health of children becomes high, especially when it is found that the previously discussed framework of justice in terms of the rights and implications of schemes in India and its States are not found to be satisfactory and too far to achieve the global target of providing a better health condition to the children in the country.

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