

RIGHT TO HEALTH AND HEALTHCARE SYSTEM IN INDIA

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ABSTRACT

Health is one of the basic requirements of every human being. The Constitution of India is the supreme law which governs the whole nation. Despite of various regulations and acts the condition of health is worsening day by day. India is facing problem of degradation of health. The framers of Constitution of India have rightly inserted the provisions regarding health of people. The role of Supreme Court of India is significant in giving recognition to Right to Health as a fundamental right under Article 21 through various decisions. The effective implementation of laws based on constitutional provisions will solve the present day problem. World Health Organisation plays a significant role in defining Health and Health Care.

Key Words: Right to Health, Fundamental Rights and Health, Directive Principles and Health, World Health Organization, Health Care.

INTRODUCTION

Every State has its own Constitution to operate its various organs according to some rules and regulations. The constitution of India is the law of the land and is supreme. The constitution of India aims to secure social, economic and political justice for every citizen of India. One of the most important rights under Indian Constitution is Right to Health. It is the duty of State to provide a well-planned mechanism for the welfare of the public.

Health is one of the basic requirements of a human being. It is also one of the important factor for development of country. The Government has to protect the health of people because there is a close relation between Health and the quality of life of a person. Health is the most precious prerequisite for happiness.¹ Various provisions are there in the Constitution of India which deals with the Health of Public at large.

In India there is a very good system of Healthcare. Mainly Healthcare system in India is divided into two sectors i.e. Private Healthcare and Public Healthcare. Despite of having a good Healthcare system there are various paradoxes in the Indian Healthcare system.¹

HISTORICAL BACKGROUNDS AND JURISPRUDENCE TO RIGHT TO HEALTH

Right to Health basically means the most attainable level of Health that every person is entitled to. Health is one of the basic and fundamental human right which is also regarded by the international community under international human rights law. In contrast to all other human rights, the right to health creates an obligation upon the states to ensure that the right to health is respected, protected and fulfilled, and is duly entitled to all its citizens.²

According to Salmond, every right has a corresponding duty to be fulfilled and there can be no right without a parallel element of duty.³

¹ Chouri, Dnyaneshwar, "Constitutional Perspective of Right to Health in India", *The IUP Law Review*, Vol. II No. 1, Jan, 2012, p. 46

² Aart Hendriks, "The Right to health in National and International Jurisprudence" *European Journal of Health Law* 5, 1998

³ Deepika Prasad, "Jurisprudence-relationship between rights and duties" *LegalCrystal Blog*, March 9, 2013

The term Right to Health was originated in 1946 when the very first international organization, World Health Organisation (WHO) came into existence to define Health as a fundamental right. During the industrial revolutions the workers were treated as commodity and the employers paid no attention to insanitary conditions of working areas. Subsequently, the demand for health grew and then it was treated as one of the most important basic and fundamental human rights which every human being needs for his/her existence on earth.

MEANING OF HEALTH AND HEALTHCARE

The widely accepted definition of Health is given by WHO in the preamble of its constitution. According to World Health Organisation, "Health is a state of complete physical, mental and social wellbeing and not merely the absence of disease."⁴ In recent years, this definition has been modified to include the ability to lead a 'socially and economically a productive life'. Also, by explicitly including the mental and social dimensions of wellbeing, WHO has radically expanded the scope of health and by extension, the role and responsibility of health professionals and their relationship to the larger society.⁵

The definition given by WHO clearly indicates that condition of life of a person should have physical, mental and social wellbeing and must be devoid of any kind of disease and infirmity. WHO has played the best supportive in guiding the health policy development. The overall objective of WHO is to ensure and attain the best standards of health care to everyone round the world. WHO has not only given a wider definition to HEALTH but also gave dimension and vision to HEALTHCARE.

Everyone has a Right to good Healthcare and good living conditions which keeps us healthy like adequate food, housing, and a healthy environment.

The basic components of Right to Health are:-

- a) The Right to Appropriate Healthcare
- b) The Right to Healthy Environment and Healthy Working Conditions
- c) The Right to Supply of Water, Food, Nutrition and Housing

⁴ Preamble to Constitution of the WHO, adopted by the International Health Conference, New York (signed on July 22, 1947, entered into force on April 7, 1948)

⁵ Avnish Kumar, " Human Right to Health", *Satyam Law International* (2007)

- d) The Right to Maternal, Child and Reproductive Health
- e) The Right to access Health related Information
- f) The Right to participate in Health related decision making

RIGHT TO HEALTH IN THE CONSTITUTION OF INDIA

If we closely look into the Constitution of India will come to a conclusion that Right to Health has not been directly inserted under fundamental right. However the framers of the constitution had imposed a duty on state under Part IV Directive Principles of State Policy. Under DPSP it is the responsibility of the state to guarantee social and economic justice to every citizen of India. Part IV of the Constitution directly or indirectly deals with the public policy in terms of Health. Not only the state but also the local self-government i.e. panchayat and Municipalities have the responsibility to improve and protect public health.

Right to Health under Directive Principles of State Policies

Part IV of the Constitution of India deals with Directive Principles of State Policies. It is the duty of the state to guarantee social and economic justice to every citizen of India. But in India they are not legally enforceable.

Article 38: State to secure a social order for the promotion of welfare of the people

According to Article 38 of Constitution of India it is the duty of the state to secure a social order for the welfare and promotion of the people. But without securing the public health there cannot be welfare of people. So for the welfare and promotion of the people it is necessary that there should be proper public health care. Without public health welfare of the people is impossible.

Article 39: Certain principles to be followed by the State

Article 39(e) of the Constitution of India, it is the duty of the State to ensure that the Health and Strength of workers, men and women, and the tender age of children are not abused.

Article 39(f) of the Constitution of India, it is the duty of the State to ensure that children are given opportunities and facilities to develop in a healthy manner.

Article 39(e) and 39(f) shows that makers of Indian Constitution were rather desirous to protect and safeguard the interest of workers and children. The working or labour class of the country is very important in the development of nation therefore State shall provide adequate protection to their health. In *Lakshmi Kant Pandey v. Union of India*,⁶ BHAGWATI, J. while delivering the judgment observed that:

‘It is obvious that in civilized society the importance of child welfare cannot be overemphasized because the welfare of the entire community, its growth and development depends upon the health and wellbeing of its children. Children are a ‘supremely important national asset and the future wellbeing of the nation depends on how its children grow and develop.’

Further, In *Sheela Barse v. Union of India*,⁷ Supreme Court held that “A child is a national asset and therefore, it is the duty of the State to look after the child with a view to ensuring full development of its Personality.”

By the Constitution 42nd Amendment Act, 1976 clause (f) of Article 39 of the Constitution of India was modified to secure opportunities for healthy development of children.

Article 41: State to provide public assistance to sick and disabled person

Article 41 of the Constitution of India imposes a duty on State to provided assistance in cases of unemployment, old age, sickness and disablement.

Article 42: Provision for just and humane conditions of work and maternity relief

Article 42 of the Constitution of India, the State shall make provisions for securing just and humane conditions of work and for maternity relief. It also protects the health of infant and mother.

In *U.P.S.C Board v. Harishankar*,⁸ Supreme Court held that Article 42 provides the basis of the larger body of labour law in India. Further referring to Article 42 and 43, the Supreme Court emphasized that the Constitution expresses a deep concern for the welfare of the workers. In *Bandhua Mukti Morcha v. Union of India*,⁹ BHAGWATI, J. observed: ‘This right to live

⁶ AIR 1984 SC 469

⁷ AIR 1986 SC 1786: (1986) 3 SCC 596

⁸ AIR 1979 SC 65: (1978) 4 SC 16

⁹ AIR 1984 SC 802

with dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Article 41 and 42.’

There are other Articles in Part IV of the Constitution which ensures that it is the States responsibility to create a social atmosphere for its citizens to live in. The Court must interpret the provisions set out in DPSP.

Article 47: State to raise the level of nutrition and the standard of living and to improve public health

The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavor to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.¹⁰

According to this Article, primary duty of the State is to raise the level of nutrition and standard of living. State shall also work for the improvement of public health. It is also duty of the State to prohibit the consumption of intoxicating drinking and drugs which are injurious to health. Article 47 is also helpful for imposing strict conditions on liquor trade with reference to Article 19(6) of the Constitution.

In *Vincent Panikurlangara v. Union of India*,¹¹ the court stated that “maintenance and improvement of public health have to rank high as these are indispensable to the very physical existence of the community and on the betterment of these depends, the building of the society of which the Constitution makers envisaged. Attending to public health, in our opinion, therefore is of high priority perhaps the one at the top.”

Article 48A: Protection and improvement of environment and safeguarding of forests and wildlife

¹⁰ The Constitution of India, art. 47

¹¹ AIR 1979 SC 990: (1987) 2 SCC 165

The State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country.¹² This Article was inserted by Constitution 42nd Amendment Act, 1976. It is the duty of the State to provide healthy and pollution free environment.

In *M.C. Mehta v. Union of India*,¹³ it was held that, “Article 39(a), 47 and 48A by themselves and collectively cast a duty on the State to secure the health of the people, improve public health and protect and improve the environment.”

Fundamental Duties and Health

Fundamental Duties are moral obligation of all the citizens which they are bound to follow. It helps in the promotion of patriotism and upholds the unity of country. Part IV-A of the Constitution of India deals with the Fundamental Duties of citizens. It was added in the Constitution by the Constitution 42nd Amendment Act in 1976. Initially Fundamental Duties was ten in number, but it was increased to eleven by the Constitution 86th Amendment Act in 2002.

Article 51-A clause (g) is related to Right to Health. It shall be the duty of every citizen of India-

(g) To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.

Every citizen of India is under the Fundamental Duty to improve and protect the environment as it is also related to public health.

Responsibilities of Local self Government

In India there is a Federal structure of Government. The legislative power is divided between the Union and the States. Therefore, not only the State but the Panchayat and Municipalities are liable to improve and protect public health.

Article 243-W of the Constitution of India states that the legislature of the state may by law, endow the municipalities with such powers and authorities as may be necessary to enable them to function as institution of self-government. The power conferred in this Article is related to matters included in Twelfth Schedule, item 6 i.e. Public health, sanitation conservancy and

¹² The Constitution of India, art. 48A.

¹³ JT 2002 (3) SC 527

solid waste management. “There is, however, a significant difference between local government authorities and the State health authorities, the latter having enormous powers to make available financial resources and make key appointments. Healthy alliances between the two types of authorities are crucial, if health is to be effectively promoted.”¹⁴

“The legislature of a state may endow the panchayats with necessary power and authority in relation to matters listed in the eleventh schedule.”¹⁵ The entries in Eleventh Schedule which have direct influence to health are:

- Drinking water
- Health and sanitation including hospitals, primary health centers & dispensaries
- Family welfare
- Women and child development
- Social welfare including welfare of the handicapped and mentally retarded

Right to Health under Fundamental Right

Part III of the Constitution of India deals with the Fundamental Rights of a citizen of India. The DPSP given under Part IV of the Constitution of India are only directive to the states. No person can claim for the non-fulfillment of these directions. However, the Indian Judiciary has widely interpreted the scope of Right to Health under article 21 of Indian Constitution.

Article 21 of Indian Constitution deals with “No person shall be deprived of his life or personal liberty except according to procedure established by law.” The Supreme Court has given a multi-dimensional view to Article 21 which is an important development in the Indian Constitutional jurisprudence.

Supreme Court gave a landmark judgment in *Parmanand Katara v. Union of India*,¹⁶ the Supreme Court considered a serious problem in the medico-legal field such as in cases of accident doctors usually refuse to provide immediate medical aid to the victim till the legal formalities are completed. In some cases injured lose their life just because the legal formalities

¹⁴ Abhichantani Justice, R. K. , “Health as a Human Right- Role of Courts in Realisation of the Right”, available at: <http://gujarathighcourt.nic.in/Articles/articles.htm> (visited on April 28, 2020)

¹⁵ The Constitution of India, art 243-G

¹⁶ AIR 1989 SC 2039

are not complete. The court stated that preservation of life of a person is of utmost importance. Hence, every doctor is under professional obligation to preserve the life of injured person.

In *C.E.R.C v. Union of India*,¹⁷ Supreme Court held that right to health was also an integral factor to lead a meaningful life and for the right to life under Part III of Constitution of India.

In *Paschim Banga Khet Mazdoor Samity v. State of West Bengal*,¹⁸ the scope of Article 21 was widened; the court held that it is the duty of the government to provide adequate medical facilities to every person. In *State of Punjab v. Ram Lubhaya Bagga*,¹⁹ while examining the issue of right to health under Article 21, 41 and 47 of the Constitution of India, the court observed that right correlates with the duty of another. Hence the right under Article 21 imposes a parallel duty on the state which is further reinforced as under Article 47. It is important to note that Hon'ble Court in this case regarded health to be a sacrosanct, sacred and valuable right.

In *CESC Ltd. V. Subash Chandra Bose*,²⁰ the Supreme Court held that health is a fundamental right and is not only restricted to just absence of disease or sickness. Medical facilities are also part of the social security.

The above judgments extend the view of Article 21 through which the Supreme Court has held that 'Right to Health' is also one of the fundamental rights. Right to life means something more than just survival and existence.

Not only Article 21 but there are also other Articles in Part III of Indian Constitution which directly or indirectly relates to right to health.

of AIDS.

Article 24 of the Constitution of India is related to child labour it says that "no child below the age of 14 years shall be Article 23 clause (1) of the Indian Constitution prohibits traffic in human beings. It is well known traffic in women leads to prostitution, which in turn is a major

¹⁷ AIR 1995 SC 922

¹⁸ 1996 (4) SCC 37

¹⁹ AIR 1998 SC 1703

²⁰ AIR 1992 SC 573

factor in spread employed to work in any factory or mine or engaged in any other hazardous employment. Therefore this Article is related to the child health.

Article 25 of Indian Constitution guarantees to every person and not citizen of India the right to profess, practice and propagate religion of their choice. Article 26 gives special protection to religious denominations. But both can be enjoyed by any person subject to public order, morality and health and other provisions of the respective part of the Constitution. The person has the right to enjoy these freedoms but it should not adversely affect the right of others including that of not being disturbed in their activities.²¹

HEALTH CARE SYSTEM IN INDIA

Health is the responsibility of state as per the Constitution of India. In India, the healthcare sector has shown an incredible improvement, since last few decades. There is improvement in infant mortality, maternal mortality, birth rate, death rate etc. Despite these improvements, India still faces many issues in the healthcare system. Every country has its own health care

system, according to their needs and requirements. In India health care system consists of private hospitals, medical colleges, government hospitals, health personnel. The main function of health care system is to provide quality health care services and facilities and to improve health status of people. The important element of any health care system is good delivery system. Thus, good health care service delivery is playing a very crucial role. It also acts as a basic input to population health status.

Health care is one of the largest sectors in India. India has a mixed health care system including both public and private health care providers. The healthcare system in India is facing some challenges also like shortage of hospitals, hospital beds, trained medical staffs and the accessibility among the public is not also good. Accessibility is low in rural areas as compared to urban areas. The majority of the Indian population is below the poverty line and do not have enough money to take care of their health. The public healthcare sector is very poor and is not able to meet the needs of people. The private health care is mainly responsible for the majority health care in India.

²¹ Church of God in India v. K. K. R. Majestic Colony Welfare Association (2000) 7 SCC 282

Mostly people rely more on private health care rather than public health care because public health care is lacking behind in many areas. Although Indian health care system has best technologies and doctors still it has disappointed people especially in rural areas. In the public healthcare system it consists of primary, secondary and tertiary care. Despite many efforts, the public health care system is still facing challenges. Thus, now it is time to review the health care system in India in the context of other developed country's health care system.

Structure of Health Care System

In India there is a complex network of public and private health care providers consisting of doctors, specialty and multispecialty care hospitals.

Public Sector: The public health care sector system in India consists of a three tier structure comprising of primary, secondary, and tertiary facilities. In rural areas, primary health care services are provided through a network of sub centers, primary health centers, and community health centers.²² The sub center is the point of contact between the primary healthcare system and community. It handles maternal and child health, controls diseases for a population of about 3,000 to 5,000.

The primary health centre is the point of communication between village people and medical officers who provide service to people. Community health centers are maintained by state government and have 4 medical specialists and other staffs, with beds, labs, X-ray, and other facilities.

Finally, district or community health care center is the fully operational unit equipped to provide emergency care. District hospitals are the secondary tier of public health care to the people of rural area. Government hospitals operate according to the annual budget allocated to them.

Private Sector: In India the private healthcare sector has expanded rapidly, and health schemes sponsored by government also rely on private hospitals like public-private partnership. In past years private sector have created more than 60 percent of new beds, leading to 63 percent of total hospital beds. Private hospitals currently provide about 80 percent of outpatient

²² Government of India, Report: *Annual Report, Chapter 1: Organization and Infrastructure* (Ministry of health and Family Welfare, 2015).

care and 60 percent of inpatient care.²³ Until the 1980s, private sector was mainly run by charitable trusts.

With India's economic liberalization, growing middle class, and the rise in medical tourism, the number of private, for-profit hospitals has grown substantially.²⁴ In the private sector the payment of physicians depends on local market conditions. Overall, the private sector physicians are paid better as compared to public sector physicians. However, nurse salaries in the private sector have historically been low; India's Supreme Court is looking into the issue.²⁵

Strategies to improve quality Health care

Over the years, many rules and regulations have been made at both state and national level to protect the health of patients and improve quality of care.

Nursing Home Act and state Drug Controllers ensures quality of care provided by the private health care sector. A major impetus to establishing patient rights was the inclusion of private medical practice under the Consumer Protection Act in 1986.²⁶ To ensure good quality of care several laws were introduced and national accreditation system for primary and secondary health care services was also created. Many hospitals got accreditation and certification from international bodies.

In 2008, The Health Management Information System was launched to monitor health programs. Surveys are conducted periodically at the district, state and national levels. The Indian Council of Medical Research maintains disease registries for cancer, diabetes, and other illnesses.

The 2010 Clinical Establishments (Registration and Regulation) Act calls for prescribing minimum standards for all public and private clinical establishments in the country.²⁷ This act imposes fines and penalties if any provision is breached by any facility. A national council

²³ Government of India, Report: *National Health Policy 2015 (draft)* (Ministry of Health and Family Welfare, 2014)

²⁴ Ibid

²⁵ H. Chhapial, "Now, Equal Pay for private and State-Run Hospital Nurses, Recommends Committee set Up by the Indian Nursing Council" *Times of India*, sept.23, 2016.

²⁶ Y. Balarajan, S. Selvaraj, and S.V. Subramanian, "Health Care and Equity in India" *Lancet* Feb.05, 2011

²⁷ Ministry of Health and Family Welfare, "Notification: *Clinical Establishment Act*," May 23, 2012

oversees the implementation at the national level. Similarly, councils at the state and district levels will also be established to enforce compliance locally. This is one of the most important public health legislation so far.

In past years, there has been progress in government regulation to ensure good quality, but the pace has been slow because there is no single authority responsible for quality assurance. The callous approach has raised concerns to which government can influence the rapidly expanding private sector to adopt better standards of health services.

Paradoxes of Indian Health Care System

Despite of having all the facilities of healthcare in both private and public sector, the Indian Health Care System faces some challenges and has certain paradoxes. ⁱⁱ

Healthcare is a fundamental right, but it is not fundamentally right in India: The Supreme Court of India has held that Right to Health is a fundamental right under Article 21 of Indian Constitution. However country's healthcare need has remained underserved. The fundamental aspect of healthcare i.e. primary healthcare is in state of complete disorder. There is only one primary healthcare centre for more than 50,000 people of the country.

Among the cheapest in the world, yet unaffordable for most: The health care system in India is cheapest in the world, yet some people cannot afford it. Compared to India, the cost of a knee replacement treatment is over twenty times more in the US and double in Malaysia. However, there are millions in India (with a per capita income of less than \$4 a day) who cannot afford this procedure in their country.²⁸

Less than one doctor for 1,000 patients, but medical tourism booms: WHO has prescribed a 1:1000 doctor- patient ratio but in India it is less than that. Most of the hospitals in India are overburdened and ill-equipped. There is a lack of medical schools and clinics. However, all this has not stopped the private healthcare to establish a good medical tourism facility. India treated 3.6 lakh foreign patients in 2016 and the country's medical tourism market is expected to grow to \$7-8 billion by 2020.²⁹

²⁸ Kiran Kabtta Somvanshi, "Five paradoxes of Indian Healthcare" *The Economic Times* Jul.27, 2018.

²⁹ *Id.* at 20.

INTERNATIONAL PERSPECTIVE

India is the third largest economy in terms of Gross National Income and has the capacity to grow more quickly to emerge as one of the developed nation. Increased public health spending on healthcare is about 4.1 percent of GDP in the 11th five-year plan. If observed from the developed nations, it is seen that unless a nation spends at least 5-6 percent of its GDP on health care, the basic health care needs of the country are not met. In India, it is only 1.04 percent of GDP that government is spending on health care.

In India, health expenditure is relatively low as compared to other developed countries. As a result, health indicators like birth rate, death rate, and infant mortality rate shows very poor performance. The needs of people for good health care are enormous, but the financial resources and expenditure on health fall short.

The international organization, World Health Organisation (WHO) is also working for the highest attainment of right to health. There is also Indicatory Metadatd Registry(IMR) which acts as a source of meta-deta and lies down certain indicators for the attainment of highest standards ensuring right to health. The indicators are majorly classified into four heads:

1. Health Status
2. Risk factors
3. Service coverage
4. Health systems

CONCLUSION

Right to Health is not mentioned in the Constitution of India anywhere but the Supreme Court has played an eminent role in interpreting Right to Health as a fundamental right under article 21 of the Indian Constitution. Firstly Right to Health was interpreted under Part IV of Indian Constitution i.e. DPSP and also it is responsibility of municipalities and panchayats to ensure the healthy living conditions of people. It is also a fundamental duty under Article 51 A to improve and protect the environment as it is also related to Health. We can say that Supreme Court of India has played an important role in giving wide interpretation to right to health under fundamental rights.

World Health Organisation has also played a major role in regarding health as the fundamental human right. The member nations have consensually considered that the enjoyment of most attainable standard of health is the basic right of every human being. For achieving the objectives of health care there is a need on the part of the government to mobilize the non-governmental organization. The public should also be motivated for their active participation in monitoring the implementation of health care facilities.

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