

Right to Public Health and India Legislative Reforms: A Socio-Legal Analysis in Present Context

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ABSTRACT

Since ancient times, every civilized community has acknowledged health as a fundamental right, and without which we cannot enjoy our human life. Urbanization and industrialization are causing rapid changes in individual social patterns. The Health and Family Welfare Ministry, along with 'Indian Government', have implemented noteworthy legislative measures aimed at safeguarding and improving the rights of marginalized communities and disadvantaged groups. At International level, the WHO and the United Nations Organization have been essential in directing the creation of health policies and guaranteeing that everyone on the planet receives the best possible medical care.

The growth of technology combined with a weak regulatory framework is endangering people's right to health. In such a setting, without the active participation of local society and NGO's in guaranteeing public health rights, these rights cannot be achieved. After then, a number of laws, policy frameworks, and provisions found in the Constitution have been examined.

The researcher examines the socio-legal issues surrounding public health, including health facilities, the Technological Advancement Regime, awareness campaigns, and population control, as well as the challenges related to the 'right to health' in study.

Key Words: *Right to Health, Legislative Policies, Technological Advancement, Constitution of India, WHO etc.*

INTRODUCTION

Among all the Socio-cultural rights that every human being has is the right to health. The concept of the 'right to healthcare' is intrinsically tied to the idea of the 'right to life' and it also considered a fundamental human necessity. A nation cannot develop if its citizens' health is not in good enough shape. Therefore, one should view health as a fundamental measure of freedom or development.

As part of the right to health, the state ensures the best possible 'standard of health.' In actuality, the government should only be in charge of treatment facilities and access; it cannot ensure that everyone has the 'right to health'. Justice K.G. Balakrishnan observed in seminar on the "Human right to health," made the following observation:

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"Good health cannot be ensured by a state, nor can states provide protection against every possible cause of human ill health. Thus, genetic factors, individual susceptibility to ill health and the adoption of unhealthy or risky lifestyles may play an important role with respect to an individual's health."¹

By passing social welfare laws, the Indian Parliament has made significant progress toward enhancing people's social norms. The Preamble of the Indian Constitution evaluates basic norms for the civilized society. These core values are the foundation of an orderly society. The objectives outlined in our Constitution are intended to be accomplished by these laws. Diverse categories of individuals, including women, children, and workers, are protected by various laws. Our Constitution guarantees a number of essential rights in addition to the objectives stated in it. Prof. Amartya Sen elaborated the concept of 'Idea of Justice' and said

"the importance of having some kind of a guarantee of basic healthcare is primarily concerned with giving people the capability to enhance their state of health. If a person has the opportunity for socially supported healthcare but still decides, with full knowledge, not to make use of that opportunity, then it could be argued that the deprivation is not as much of a burning social concern as would be the failure to provide the person with the opportunity for healthcare."³

The government has not taken anything to draft a Constitution that would recognize the 'right to healthcare' is determined as an *inherent right* derived from *Article 21*, despite numerous Supreme Court rulings to the contrary.

The WHO Constitution, as we have seen, clearly states the right to health. The Constitution WHO declares that right to health a fundamental right.⁴ Additionally, it places moral liability on the member nations safeguards the rights of their citizens by enacting appropriate laws and policies.

Meaning and Conceptual Dimensions

The broad '*concept of health*' encompasses all aspects of daily life. A person can't finish everything he has to do every day. A person's health is their most valuable possession, regardless of age. Humans have rights in life, in contrast to animals. The general well-being of individuals is greatly impacted when they find it difficult to live up to the expectations of a healthy lifestyle. The broad idea of the '*right to health*' encompasses '*social security*' and well-being, public health, sanitation, a clean and healthy environment, a respectable quality of living, and socio-economic rights.

The factors that influence health are environmental, behavioural, social, cultural, economic, and political. Poverty, regardless of whether it is due to lack of knowledge and information, low-income levels, lack of access to basic services or poor environments, is a major cause of poor health status.⁵

The concept of health signifies as "The meaning of health is the state of being free from illness or injury."⁶ Due

¹See Justice Balakrishnan K.G., National seminar on the 'Human right to health' Organized by the Madhya Pradesh State Human Rights Commission (at Bhopal)- September 14, 2008 available at www.supremecourtfindia.nic.in. last visited on 02.12.2023

²(3) (PDF) National Health Policies in India With Regard to Right to Health- An Overview. Available from: https://www.researchgate.net/publication/350123720_National_Health_Policies_in_India_With_Regard_to_Right_to_Health_-_An_Overview visited on Dec 02 2023.

³Sen' Amartya; 'Idea of Justice'; Pub.- Penguin Books India Pvt. Ltd.; at p. 238 New Delhi, 2010.

⁴WHO Constitution: Basic Documents, Forty-fifth edition, Supplement, October 2006; available at: www.who.int/governance/who_constitution, last visited on 2.12.2023

to the fact that *social and economic well-being is integral* to health, health has gained significant importance. Good health is a basic condition of every human activity.⁷ "The state of being free of physical or psychological disease, illness, or malfunction." "The condition of being sound in body, mind or spirit, especially freedom from physical disease or pain."

According to **World Health Organization-**

The World Health Organization's definition has had a role in the change in health thinking from the limited, pathology- and biomedical-focused viewpoint to the more positive idea of "well-being." Additionally, the WHO has significantly broadened the definition of health and, consequently, the obligations and roles of health professionals as well as their interactions with the general public by officially recognising the mental and social aspects of well-being.¹⁰

All individuals are entitled to optimal bodily and mental well-being, encompassing all medical services, hygienic circumstances, sufficient food, suitable housing, secure employment, and pristine surroundings. It is also known as *the human right to health*.

1. Everyone is guaranteed a system of health protection by the human right to health.
2. Everyone has right to the necessary medical care as well as the means of subsisting in a healthy environment, with enough food and housing being just a few examples.
3. Everyone must have access to health care as a public good that is fairly and publicly funded.

National Legislation and Policy Framework

India has a vast amount of laws pertaining to health and medical treatment. These rules are implemented to safeguard people's health and in response to societal demands. The production, marketing, import, export, and clinical research of pharmaceuticals and cosmetics in India are currently regulated by the following Acts.

The right to life and personal liberty embodied under article 21 of the Constitution guarantees and its preamble aims to establish a welfare state with socialistic structures of society. The goal of democratic socialism is to raise the standard of peoples' health care. A few of the Constitution's provisions in parts III and IV also embody the socialist principle when each person's rights are respected and their dignity is preserved, and egalitarian ideals are adhered to public health.¹¹

1. The National Commission for Allied and Healthcare Professions Act,
2. Transplantation of Human Organs Acts
3. Food Safety and Standards Act, 2016
4. Clinical Establishments Act
5. Transplantation of Human Organs Acts and Rules
6. Tobacco Control Act 2003
7. The Epidemic Disease Act 1897
8. Mental Health Act, 1987.
9. Environmental Acts and Rules.
10. The Transplantation of Human Organs Act and Rules.

⁵Unit 6 Meaning and Significance of Health, Diploma in Elementary Education, available at, http://www.nios.ac.in/media/documents/dled/Block2_508.pdf.

⁶FG & H. W. Fowler, *The new Oxford Dictionary*, 9th ed; Oxford; University Press, 2005, P, 418.

⁷Jean Mchale, Marie Fox and John Murphy, *Health Care Law; Text, cases and materials*, London; Sweet and Maxwell, 1997, p, 7

⁸Word Web available at <http://www.wordwebonline.com/search.pl?w=health>.

⁹Webster dictionary.

¹⁰*The role of health sector in food and Nutrition*, (Geneva: WHO 1981), at p-14. Report of the WHO Expert Committee. (WHO Technical Report Series No.667) & Kumar Avani, "Human Right to Health", *Satyam Law International* 2007

11. The Pharmacy Act, 1948.
12. Bio-Medical Waste (Management and Handling) Rules, 1998.
13. Drugs and Cosmetics Act, 1940.
14. The Prevention of Food Adulteration Act, 1954.

National Health Policy

The accomplishments of the National Health Policy, 2002 are expanded upon the National Health Policy of 2017. Informing, bolstering, and prioritizing the govt's role in forming the health care system in all of its facets is the main objective of National Health Policy. By 2025, this initiative aims to raise life expectancy at birth from 67.5% to 70% and lower the stillbirth rate to "single digits". The method outlines a possible achievable aim of increasing public health spending to 25% of GDP in a time-bound manner. In order to empower the environment for health, the strategy highlights seven priority areas for concerted action.

- *The Swachh Bharat Abhiyan, and*
- *Balanced, healthy diets and regular exercises, and*
- *Addressing tobacco, alcohol, and substance abuse, and*
- *Yatri Surakhsha-preventing deaths due to rail road traffic accidents, and*
- *Nirbhaya Nari-action against gender violence, and*
- *Reduced stress and improved safety in work place, and*
- *Reducing indoor and outdoor air pollution.*

The strategy places a high priority on funding and intervention in school health by establishing a primary health care centre, integrating health education into the curriculum, and encouraging hygiene and safe health practices in schools. Under the government of India, low-income earners can obtain free health insurance coverage through the Ayushman Bharat National Health Protection Scheme. In September 2018, this Scheme was unveiled. With this system, 10 crore individuals would have access to health care services, with coverage of up to 5 lakh per family annually for medical treatment at public and private hospitals that have been accredited. Cashless payment and paperless recordkeeping will be provided by the hospitals or doctor's office.

International Legislative Policy:

This phrase immediately implies that determinants of health and illness are not only biological or "natural," but also aspects of society. According to international law, rights to health must be realised intrinsically within the social domain. Therefore, a rights-based viewpoint is completely consistent with epidemiological research that has identified socioeconomic variables as primary drivers of disease.¹⁴

In 1948, the UN General Assembly unanimously adopted the 1948 Universal Declaration of Human Rights (henceforth referred to as the Declaration), which established a universal standard for all humanity. The Declaration sets forth the right to a

*“Standard of living adequate for the health and well-being of himself
and his family, including . . . medical care and . . . the right to security
in the event of . . . sickness, disability . . . or other lack of livelihood in circumstances*

at 21.

¹¹Bakshi, P.M., *“The Constitution of India”, Universal Law Publishing Co. Pvt. Ltd., New Delhi, 2003, http://ijariie.com/AdminUploadPdf/RIGHT_TO_HEALTH_A_CONSTITUTIONAL_MANDATE_IN_INDIA_ijaarii5596.pdf, last visited on 02/12/2023.*

¹²Sharma Yogima Seth(13th september2019) *“Labor Ministry to provide Cashless secondary and tertiary medical care services under AB-PMJAY”*, *The Economic Times*.

¹³UN Committee on Economic, Social and Cultural Rights. *General Comment 14: The Right to the Highest Attainable Standard of Health*. Geneva, Switzerland: United Nations: 2000. UN Document E/C.12/2000/4. Available at: [http://www.unhcr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.2000.4.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(symbol)/E.C.12.2000.4.En?OpenDocument). Accessed April 26, 2005. Yamin AE.

beyond his control." The Declaration does not define the components of a right to health; however, they both include and transcend medical care."

In addition, the United Nations has been essential in advancing and defending human rights. The many human rights agreements recognize health as a human right because, right to adequate health operates directly or indirectly as an essential condition to all other human rights, to deny someone health care is to deny all the individual rights.¹⁶

Article 25 of the Universal Declaration of Human Rights lays down that

"everyone has a right to a standard of living, adequate for the health and wellbeing of himself and his family, including food, clothing, housing, and medical care and necessary social services and right to security in the event of unemployment, sickness, disability, widowhood, old age, and other lack of livelihood in circumstances beyond control".

The International Covenant on Economic, Social, and Cultural Rights, 1966 is critical in ensuring the human right to health. It gives a non-exhaustive list of the steps to be taken by the State parties; from epidemiology, to general health control measure and the promotion of public health, these measures include guarantee to medical services and medical attention.¹⁷ The steps to be taken by the State parties to the present Covenant to achieve full realization of this right shall include those necessary for the provision of reduction of still birth rate of the infant mortality and for the healthy development of the child;¹⁸ the prevention, treatment and control of epidemic, endemic, occupational and other diseases;¹⁹ the creation of conditions in which world would ensure to all the people medical services and medical attention in the event of sickness.²⁰

In addition, State parties are required by the 1966 International Covenant on Economic, Social, and Cultural Rights to take proactive steps to safeguard the health of their citizens. It is the responsibility of every nation that has signed the covenant to abide by its terms. The reporting process is used at the international level to monitor governments' compliance with their legal obligations.

Judicial Responses:

Health is one fundamental human right that must be exercised in order to execute other rights. Every person has the right to the best possible level of health that is appropriate for leading a life with dignity²¹. Henry Sigerist, a prominent historian, says that-

*'Health is one of the goods of life to which man has a right; wherever this concept prevails the logical sequence is to make all measures for the protection and restoration of health to all, free of charge; medicine like education is then no longer a trade it becomes a public function of the State.'*²²

Transformative combinations: women's health and human rights. J Am Womens Assoc. 1997;52:169-173. [PubMed]

¹⁴ BG, Phelan J., *Social conditions as fundamental causes of disease. J Health Soc Behav. 1995;Spec No: 80-94. [PubMed] & Marmot M, Wilkinson RG, eds. Social Determinants of Health. London, England: Oxford University Press; 1999.*

¹⁵ *Universal Declaration of Human Rights. United Nations General Assembly Resolution 217 A (III). New York, NY: United Nations; 1948.*

¹⁶ P. Chouri Dyaneshwar, *right to health and legal Protection, Regal Protection, p,28.*

¹⁷ Patrick A. Molinari. *'The right to health: From the solemnity of Declaration to the challenges of Practice'*(1998)49:11DHL41-60, p-45.

Since the historic ruling in the Maneka Gandhi case, the trend of expanding the definition of "life" has continued. The courts also began to use judicial activism as a weapon to include a variety of rights, such as the right to livelihood, the right to privacy, the right to a speedy trial, the right to a clean environment, and many more. The right to health has been declared an essential complement to the right to life. As observed in **Lakshmi Kant Pandey v. Union of India**²⁸, Bhagawati, J. 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 well-being of its children. Children are a supremely important national asset and the future well-being of the nation depends on how its children grow and develop."

After applying a broad interpretation of Article 21 and considering directions like Article 39 (e), 42, and 47, the Apex Court decided that the right to health follows from Article 21. We will talk about a few significant statements made on this topic in the paragraphs that follow.

In **Consumer Education and Resource Centre Vs Union of India**²⁹ it was held that the right to health is a fundamental component of the right to life since it is necessary for human survival. Article 21 of the Constitution's Fundamental Rights, when read in conjunction with Articles 39(c), 41, and 43, gives labourers a meaningful, purposeful life that upholds their human dignity. The protection of an individual's health and vigour is a fundamental prerequisite for granting them the ability to live with human dignity, and this includes 'the right to life'.

Similarly in **Bandhua Mukti Morcha Vs Union of India**³⁰, According to a ruling of the Supreme Court, having a dignified life is part of the right to life. According to the Supreme Court, a person's right to health care include their entitlement to health determinants, such as access to food, clean water, shelter, and hygienic conditions.

In **Parmanand Katara v. Union of India**³¹, The Supreme Court has taken into consideration a very significant issue that arises in the medico-legal sphere, and such as instances where the victim's doctors typically refuse to provide prompt medical attention until the necessary legal formalities are finished. Accidents can sometimes be fatal because people cannot get medical attention while court cases are pending. The Court declared that maintaining one's health comes first. Life cannot be resurrected once it has been lost. Therefore, it is the responsibility of physicians to protect life without regard to race.

In **Consumer Education and Research Center v. UOI**³², The Court declared unequivocally that a genuine right to life required the right to health. The court found that the right to health and medical care was a fundamental right under Article 21.

¹⁸ ICESCR. Article 12(2) (a).

¹⁹ Ibid Article 12(2)(c)

²⁰ Ibid Article 12(2)(d)

²¹ Dr. Veena Kumari, *Right to Health as Human Right: A Synoptic View*, International Journal of Creative Research Thoughts (IJCRT) www.ijcrt.org.

²² *All India Lawyers Union Delhi Unit V.s Govt. of NCT of Delhi & others LNIND 2009 DEL 1197*.

²³ *Maneka Gandhi V. Union of India AIR 197-8 SC 594*.

²⁴ *Olga Tellis V. Bombay Municipal Corporation AIR 1986 SC 180, (1985) 3 SCC 545*.

²⁵ *R. Rajagopal V. State of T. & N. (1994) 6 SCC 632*.

The Supreme Court has observed in *Paschim Banga Khet Mazdoor Samity vs. State of West Bengal*³³ stating "the State is required by the Constitution to provide appropriate medical facilities to the individuals." All necessary tasks must be completed in order to make this determination. The Court added that "so long as adequate medical accommodations for the people are an indispensable part of the compulsions commenced by the state administration in a welfare era".

In addition, the court mandated that primary healthcare facilities have emergency medical supplies on hand. This ruling has also found that 'the State cannot avoid its constitutional' obligations because it lacks the necessary financial means.

In *State of Punjab v. Ram Lubhaya Bagga*,³⁴ the SC considered the constitutional right to health care under articles 21, 41, and 47. It noted that a person's right is correlated with a duty owed by another person, employer, government, or authority. Thus, the state is obligated by a citizen's right to exist under Article 21.³⁵

The Supreme Court in *C.E.R.C. v. Union of India* declared that a worker's right to health and medical assistance to preserve their health and vitality while their employment or after retirement is a fundamental right under Article 21.

The Supreme Court concluded that, by interpreting Article 21 broadly in the aforementioned decisions, the right to health constituted a fundamental right. The liberal reading of Article 21 holds that the right to life "means something more than mere survival and mere existence."

Conclusion:

The most crucial element in a country's development is its health. It refers to a person's bodily and emotional well-being and denotes their absence of illness or suffering. Without the right to health, it is not possible for anyone to exercise their fundamental human rights. Because there is a direct relation between an individual's *health and their quality of life*, the government has a responsibility to safeguard public health. A person's ability to live a happy and fulfilling life depends on their health. It is a state in which a person is able to utilize all of his resources—physical, emotional, and intellectual—to live as fully as possible.

As of yet, the state has not implemented any noteworthy measures to meet its constitutional duty of ensuring the public's health and wellbeing. It has been said quite correctly that the three inputs that are deemed most important for the development of human resources are diet, health, and education. The government must encourage non-governmental organisations and the general people to participate in the oversight and implementation of healthcare facilities in order to fulfil its "constitutional obligations" and achieve the goals of universal health care.

Numerous causes, such as poverty, low income, ignorance, inadequate health education, and poor cleanliness, might be blamed for the issue. Apart from all of them, the main failing has been the government's steadfast denial that the welfare state has an obligation to ensure the health of all citizens.

²⁶ *Hussainara K.hatoon (No. 1) V. Home Secretary, State of Bihar AIR 1979 SC 1360.*

²⁷ *Subhas Kumar V. State of Bihar AIR 1991 SC 420.*

²⁸ *AIR 1984 SC 469.*

²⁹ *AIR 1955 SC 636.*

³⁰ *AIR 1984 SC 802.*

³¹ *AIR 1989 SC 2039.*

³² *AIR 1995 SC 636.*

³³ *(1996) 4 sec 37.*

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³⁴(1998) 4 SCC 177; AIR 1998 SC 1703.

³⁵AIR 1995 SC 922.