



## Health as a human right: A legal perspective on the public health

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### Abstract

Part III of the Indian Constitution grants its citizens a number of essential rights, and these rights are crucial in relation to health and medical treatment. Although it does not specifically mention healthcare, the Indian Supreme Court's liberal interpretation of the term "life" and its application to healthcare placed it under the purview of "right to life" and proclaimed it to be a fundamental human right for all Indian citizens. Additionally, the Indian court is playing a crucial role in interpreting the Constitution's provisions. The court's rulings demonstrate how seriously they take the general public's health, the environment's health, the avoidance of pollution to the environment, and the preservation and enhancement of nutrition value. In the context of the right to health and relations between India and other countries, international health organisations play a crucial role.

Every person has a fundamental right to maintain excellent health. The Right to Health is explicitly stated in each Constitution. Despite the fact that this right is widely recognised, the incident shows how ineffective the rural health care system is. The decline in rural health is a result of worries about poverty and illiteracy as well as the different government programmes intended to safeguard rural regions' health. The improvement of the rural population will benefit from the statistical data analysis

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### Introduction

Theo Boven, the director of the UN Division of Human Rights, said during a United Nations workshop on The Right to Health in 1979 that "three aspects of the right to health have been enshrined in the unemotional instruments on human rights: the declaration of the right to health as a basic human right; the prescription of standards aimed at meeting the health needs of specific groups of persons; and the prescriptions of ways and means for implementing the right to health." Therefore, the phrase is frequently employed for convenience and denotes a reasonable rather than an unbending norm. Everyone has the right to the highest attainable level of bodily and mental health, according to Article 12 of the International Covenant on Social, Economic, and Cultural Rights (ICESCR).

One of the hardest concepts to define is health. For some people, health might imply different things. According to a stringent interpretation of the right to health, everyone is guaranteed to be in excellent health. In addition to being a basic human necessity, a civic obligation, and a public benefit, access to high-quality healthcare is also a condition for good health, which is necessary to reap the rewards of fair development. The state of one's health and well-being are typically seen as private affairs, but when we or someone close to us becomes ill, we realise that health is actually a public concern, and the relevance of health rights in modern society cannot be overstated. In addition to being a basic human necessity, a civic obligation, and a public benefit, access to high-quality healthcare is a requirement for good health, which is necessary to reap the rewards of fair development. The right to health care would be the first stage, a real and practical demand of contemporary society, even though the right to health would be the ultimate goal. Health does not just refer to physical well-being or the absence of illness, infirmity, or incapacity. It is a condition

of full physical, mental, emotional, social, and spiritual health for both the person and the country. Without any kind of discrimination, every man, woman, child, and young person has the right to the best possible level of bodily and mental health. The fulfilment of the human right to health is essential to a person's life and overall well-being as well as to the enjoyment of many other fundamental freedoms and rights.

Everyone would be guaranteed to be in perfect health under a strict reading of the right to health, which is absurd. In addition to the basic elements that impact health, such as access to clean water, appropriate sanitation, and health information, the right to health includes the right to health care. The right to be free from coerced medical care and discrimination is one of the rights it protects. It also encompasses entitlements like the right to obtain core healthcare.

### The right to health at global level

Human rights are by definition universal since they come from the intrinsic worth of every individual <sup>[1]</sup>. Numerous national constitutions and a number of international accords both firmly establish the right to health. The European Social Charter, the African Charter on Human and Peoples' Rights, and the Protocol to the American Convention on Human Rights are examples of regional treaties in the area of economic, social, and cultural rights. The Universal Declaration of Human Rights is one of the most significant documents guaranteeing the right to health at the international level (UDHR) <sup>[2]</sup>. The UDHR may be legally binding on the nations as either customary international law or as an authoritative interpretation of the U.N. Charter, despite the fact that it is a proclamation of the General Assembly rather than a treaty <sup>[3]</sup>.

The realisation of other human rights, as outlined in the International Bill of Rights, such as the rights to food,

housing, employment, education, human dignity, life, non-discrimination, equality, the prohibition against torture, privacy, access to information, and the freedoms of association, assembly, and movement, are closely related to and necessary for the realisation of the right to health. These and other freedoms and rights deal with crucial elements of the right to health.

According to the World Health Organization, "health" is "a condition of complete physical, mental, and social well-being and not only the absence of sickness or disability [4]." Reduced infant mortality, improved environmental and industrial hygiene, prevention, treatment, and control of epidemic, endemic, occupational, and other diseases, and the creation of conditions that allow everyone to access medical care and attention in the event of illness are all obligations listed in the second paragraph of Article 12 of the ICESCR. Systematically, the state is in charge of respecting, guarding, and providing access to its citizens' benefits and services [5].

The Preamble of the WHO Constitution, which claims to represent the entirety of modern international public health, is a beautifully cohesive statement. The Preamble expresses a contemporary set of global ideals by asserting that the ideas it lays forth are fundamental to all peoples' pleasure, peaceful relations, and security in a manner reminiscent of the United Nations Charter. It asserts that health is a prerequisite for achieving these goals and that everyone, without exception, has a basic right to the best possible state of health. The prologue uses a positive definition of health—as whole physical, mental, and social well-being—rather than a negative one that emphasises the absence of illness or disability [6]. The WHO Constitution was the first international document to declare that every person has a basic right to the best possible level of health ("the right to health") [7].

The Preamble requires the member nations to support cooperative efforts by WHO to improve the health of all people worldwide in addition to advancing the health of their own citizens. Given that health is seen as a fundamental human right, it may be thought to transcend the strict limitations of country and sovereignty [8]. One must concede that the preambular language of the WHO Constitution codifies expansive human rights principles consistent with current public health discourse, resulting in what is sometimes called a "Magna Carta of health" [9]. Representing the "widest and most liberal conception of international responsibility for health ever formally declared" [10], and included the goals set forth in the WHO's mission after the Second World War's devastation [11]. The World Health Organization (WHO) has a unique institutional responsibility to implement the right to health through its directing and coordinating authority in international health as the primary specialised agency of the United Nations (UN) with jurisdiction over the conditions necessary for health.

### **The right to health in India**

A person's health is their most precious asset since it has an impact on all of their activities and shapes their future. Without it, there cannot be a solid foundation for human enjoyment [12]. Health rights in India may be traced back to the early civilizations of Harappa and Mohenjo-Daro, whose well-planned towns with baths and drainage systems were discovered during excavations. Numerous indigenous

medical systems that place more emphasis on maintaining health than merely treating sickness have developed over the millennia [13].

Dharma is a concept that has been advanced and disseminated as an endless spring that will bloom with fragrance in all disciplines such as morality, law, religion, rules and regulations, spiritual pursuits, and regulating the conduct of people with a strong liberating tendency to achieve happiness without any bondage of discrimination and exploitation. The Ayurvedic system was most likely the first to be acknowledged as a systematic study of the science of health and healing that included scientific techniques for sickness diagnosis and treatment. Two important books, the *Susruta Samhita* and the *Charaka Samhita*, both have accounts of this. Including yoga and the *siddha* system, ayurveda emphasises other factors like mental and physical health hygiene in addition to reflecting a full culture drawn from folk traditions. It is an approach to health and medicine that is philosophical, spiritual, and physical. These well-organized and thoroughly researched systems have their origins in folk remedies, herbal cures, and natural cures founded on the idea that disease may frequently be avoided and even treated without the use of medications [14].

India has had local panchayats since ancient times. In the local village community, these panchayats have served as the hub of social activity and a significant economic and administrative power more via wisdom and consensus than by a majority vote. After India's independence, this method significantly contributed to the advancement of the country's healthcare system. The nexus of powers working within and outside the nation has turned health into a lucrative industry while denying even the most basic health and medical treatment to the great majority of the impoverished. Additionally, this approach has shifted focus from health to misguided sickness treatment. Now that panchayati raj has given poor, uneducated, but clever people the power of the vote, they may take charge of their own fate. Community Development Program was launched in 1952 following independence.

A framework for a welfare/socialist pattern of development is provided by the Indian Constitution. While social and economic rights like health, education, and livelihoods are provided for as Directive Principles for the state and are therefore not justiciable, civil and political rights are codified as Fundamental rights that are. The state directs planned development, which includes the latter, through five-year plans and other development-related policy initiatives. The nation attained independence shortly after the Bore Committee's report was published. Following the adoption of the new constitution, the nation started a deliberate economic growth.

### **Constitutional and legal rights relating to health**

In India, promoting and defending human rights has long been a tradition. Even before gaining independence, it led the struggle against apartheid. The vision of our nation's founding fathers, which formed the basis of our constitution, was deeply anchored in a commitment to human rights. Our core belief has always been that actively promoting and defending human rights is the greatest approach to ensure the prosperity and welfare of citizens in a nation as diverse as India [15]. The right to health is justiciable on the basis of the rights to life and liberty, even though the Indian Constitution does not specifically name health or health care

as a basic right <sup>[16]</sup>. Articles 39, 41, 42, and 47 of the different Directive Principles discuss health and health care. The Indian legal system has five primary pieces of legislation that deal with regulating the medical industry and protecting citizens from medical malpractice in addition to the Constitution. These include the Indian Contract Act of 1872, the Law of Torts, the Consumer Protection Act of 1986, the Indian Medical Council Act of 1956, and the Indian Penal Code.

The constitutional method used by the Indian court, which the world has witnessed in action on several occasions, has resulted in the development of two significant rights: the "right to health" and the "right to healthcare." The former requires the State to refrain from any actions that might hurt the physical or mental well-being of the population, whilst the latter is a constructive obligation that requires it to take any actions that would improve its inhabitants' health. Indian courts, for example, have ruled that "health" is crucial to all other activities carried out by persons nearby and have commanded the state to avoid from adopting any measures that might damage it <sup>[17]</sup>. The administrative and judicial agencies are now compelled to always defend people's health since it was determined that it was an integral part of their "right to live their life with dignity" <sup>[18]</sup>. "The mentioned right undoubtedly covers a wide range of rights, which includes the right to sleep <sup>[19]</sup>, the right to live in a pollutant-free environment <sup>[20]</sup>, the right to have access to clean water for drinking <sup>[21]</sup>, the abortion option <sup>[22]</sup>, opposition to rape <sup>[23]</sup>, the right to appropriate medical examination <sup>[24]</sup>, and it may even be used against private agencies since it is so valuable <sup>[25]</sup>. Right to Sanitation <sup>[26]</sup> might also be seen as a crucial aspect of the right to health since, if not handled properly by the government, human waste is dangerous <sup>[27]</sup>. Treatment of patients in accordance with customs that are not sanctioned by the government and cannot be regarded as fundamental rights might potentially be damaging <sup>[28]</sup>. The judiciary is authorised in taking such action to protect people' health since failing to do so would violate the State's obligation to protect citizens' health, which is guaranteed under Articles 39(e), 39(f), Article 41, and even Article 47 of the Indian Constitution <sup>[29]</sup>.

Part IV of the Indian Constitution contains the right to upholding a particular quality of healthcare, and several rulings have recommended interpreting it in conjunction with the Fundamental Rights to advance the interests of the people <sup>[30]</sup> and to provide the best resources for helping the ill and the poor. The need to guarantee the right to health and healthcare arises from the "principle of establishing a Social Welfare State," and as a result, the "protection of life" as envisioned in Article 21 of the Constitution needs to be interpreted as to its "preservation." Building hospitals and ensuring the widespread availability of high-quality medications are signs of responsible governance to that effect. As a result, Medical Assistance has been acknowledged as a basic right, and the State is required to always protect it <sup>[31]</sup>.

Since the right to health is fundamental to the right to dignity, the State is compelled to preserve public health. The medical community is expected to take the necessary

actions to save the lives of individuals being treated by them since protecting health has been identified as one of the most significant constitutional aims to be attained by the State. When the State enables "unqualified doctors" to treat patients in government hospitals, authorises the sale of "substandard food" for human consumption, and even provides the necessary facilities for rehabilitation of people in need, it would be in breach of Article 21. It has been acknowledged as a constitutional offence for the State's hospital authority to fail to uphold the required quality of care for treating its patients. People's right to live in dignity is allegedly violated when the government fails to ensure decent working conditions for its employees, which may significantly impact their health. In spite of this, using or selling dangerous medicines will result in punishment in India.

Consumer Education and Research Centre v. Union of India <sup>[32]</sup> is the first case to support the enforcement of the right to health. Union of India v. Consumer

Education and Research Center an NGO called Consumer Education and Research filed a writ to close legal loopholes surrounding the safety of employees and labourers working in hazardous environments and to establish diagnostic tools in case of an accident brought on by asbestosis exposure. The Supreme Court published guidelines for the welfare of labourers, citing articles in the Universal Declaration of Human Rights, and declared that Article 21 of the Constitution explicitly addresses worker health, safety, and access to medical care.

West Bengal v. Paschim Banga Khet Samity <sup>[33]</sup>, the State's duties to uphold citizens' fundamental rights to life under Article 21 were expanded to include ensuring their well-being. In the current instance, a PIL was filed after a labourer sustained an injury while performing his job, but seven state-run hospitals refused to treat him for it due to a lack of resources. The petitioner claimed that Article 21 had been broken. The Court upheld its arguments and ruled that the State must make arrangements for the applicant's medicine since it has a duty to care for its citizens first and foremost. It was said that a lack of funding does not excuse the government from upholding its constitutional duties; hence the health of the populace should be prioritised by providing enough medical facilities.

Accordingly, it may be claimed that the right to health under the Directive Principles of State Policy is not independently enforceable in India, but it can be rendered legitimate via the guise of Article 21, which constitutes a genus in which the right to health care is its species. India, on the other hand, significantly strengthens its socio-economic rights and does not fall short of their basic function of ensuring a healthy living for all of its citizens.

The Indian Penal Code, 1860, was painstakingly written. Despite being an ancient Act, it has mostly withstood the test of time. There are 23 chapters in it. Sections 269–294A <sup>[34]</sup> and Sections 299–377 of the provisions are particularly significant from a medical and health perspective <sup>[35]</sup>.

On the 7th day of April 1952, the Drugs (Control) Act, 1950 was approved with the intention of regulating the sale, supply, and distribution of drugs. Under the strong direction and leadership of the late Shri Rajiv Gandhi, the Drug Policy of 1986, also known as "Measures for Rationalization, Quality Control and Growth of Drugs & Pharmaceuticals Industry in India," was developed.

Every day, several incidences involving deaths or hospitalization as a result of widespread adulteration in water, milk, spices, paneer, sweets, and prepared meals are reported in the press. The Prevention of Food Adulteration Act, 1954 was passed to stop food from being tainted, and it went into effect on January 1st, 1955. The Act had multiple revisions in the years 1964, 1971, 1976, 1986, and 1999, and the regulations underwent their most recent amendment in 2008.

The Maternity Benefit Act of 1961 was passed to create maternity benefits as well as other benefits and to govern the employment of women in specific enterprises during specific times before and after childbirth. Maternity leave and benefits are intended to uphold motherhood's dignity by covering a woman's and her child's complete and healthy upkeep when she is not working. No employer must knowingly hire a woman in any institution during the six weeks immediately after the day of her delivery or miscarriage in order to preserve the health of the women. Additionally, no pregnant woman shall, upon her request in this regard, be required by her employer to perform any work that is of an arduous nature or that requires prolonged standing or that in any other way is likely to endanger her pregnancy or the normal development of the foetus, or that is likely to result in a miscarriage or otherwise have a negative impact on her health.

The Environment Protection Act of 1986 is a comprehensive piece of law that safeguards both the environment and human health by giving people access to the clean, safe environments they need to live healthy lives. This Act addresses topics related to the environment's protection, enhancement, and preservation. The term "environment" in this context refers to the interconnectedness of water, air, and land with human beings, other living things, plants, microorganisms, and property.

### Conclusion and suggestions

Everyone agrees that having access to health care is beneficial. However, the private sector controls the delivery of healthcare globally. People are at the whim of the market nowadays due to the complete commoditization of health care. The fact that the health care market operates as a supply-induced demand market is concerning. This implies that the market's rules are set by the service providers. While access to health care may not be explicitly recognised as a fundamental right in modern nations, it has been made more or less universal by legislation or specific provisions for people without the financial means. Because of this, budgetary mechanisms have been established in some nations to guarantee basic access, even though the service providers may come from the private sector. Although it is not recognised as a Fundamental Right in India, the Right to Health is covered by the Directive Principles of State Policy. A constitutional revision and the inclusion of health within the scope of Fundamental Rights are required in order to provide Health for all on an equal basis. Since the realisation of both civil and political rights as well as economic, social, and cultural rights reinforce one another, it is urgently necessary to guarantee that there is agreement to include health within the scope of civil and political rights. A human right to health must be justified in accordance with international law.

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