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No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 94896 71437 – info@iledu.in / Chairman@iledu.in



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NAVIGATING THE RIGHT TO HEALTH IN INDIA: CHALLENGES AND PROSPECTS

AUTHOR – TAPAN KUMAR MAITI, PH.D. SCHOLAR AT SCHOOL OF LAW AND JUSTICE, ADAMAS UNIVERSITY, WEST BENGAL INDIA

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Abstract:

It is important to guarantee the right to health because it is about our humanity and quality of life. However, with the diversity and problems in India, this right can be achieved but is not easy. This article examines the right to health in India. We will be looking at its history, current healthcare system, relevant laws related to this topic, and the many obstacles. It examines the social and economic factors, regional disparities, and systemic issues that impact healthcare access. Unlike many articles that only discuss the issues faced in implementing the right to health, this article also includes ideas on how to realize this right in India. It contains examples of best practices and initiatives that have a positive effect, including case studies. Through the article, the concept of health equity and human rights is presented with emphasis on the need for collaboration among policymakers, healthcare workers, civil society, and the community. This article ends with a plea for collective action to eliminate barriers and make quality health care available to all in India.

❖ INTRODUCTION

The meaning and importance of the right to health

As provided for in the international human rights instruments, every person has the right to receive health care that will allow them to reach the maximum level of physical and mental development. This right is very crucial for India to ensure that the health and integrity of every individual are safeguarded.²⁷⁰⁵ It includes more than just avoiding sickness; it also encompasses the availability of prescription medicines, medical care, and hygiene, all of which are essential for a healthy life.²⁷⁰⁶ Health entitlements are significant because of their capacity to lessen health disparities, advance social justice, and foster the holistic development of humankind.

Historical evolution of the Right to Health in India:

The assessment of the right to health in India has taken different trends depending on the domestic and regional changes in the legal systems. The Constitution of India was adopted in 1950 and offered the framework for health rights while respecting provisions like Article 21 that encompass the Right to Life and Directive Principles of State Policy.²⁷⁰⁷ India has acceded to various international conventions and protocols; the ICESCR has been ratified, which contains the right to health. The constitutional provisions, therefore, further evolved over the years owing to various judicial interpretations and legislative measures regarding the right to health in India.²⁷⁰⁸

²⁷⁰⁵ Leary, Virginia A. "The right to health in international human rights law." *Health and human rights* (1994): 24-56.

²⁷⁰⁶ Gostin, Lawrence O. "Meeting basic survival needs of the world's least healthy people: Toward a framework convention on global health." *Geo. LJ* 96 (2007): 331.

²⁷⁰⁷ Sripathi, Vijayashri. "Toward fifty years of constitutionalism and fundamental rights in India: Looking back to see ahead (1950-2000)." *Am. U. Int'l L. Rev.* 14 (1998): 413.

²⁷⁰⁸ Sangameswaran, Priya. *Review of right to water: Human rights, state legislation, and civil society initiatives in India*. Centre for Interdisciplinary Studies in Environment & Development, 2007.

Overview of Health Rights in India Constitution and Laws:

Among India's legal safeguards, the legal frameworks that can be used to address the issue of the right to health are apparent. Laws enshrined in the constitution, like Article 21, which provides for the right to life and personal liberty, also include the right to health as per the courts' ruling.²⁷⁰⁹ Moreover, under the apportioned Directive Principles of State Policy, the state privileges the right to public health and healthcare for every citizen.²⁷¹⁰ The constitutions of different countries contain some fundamental principles that deal with the healthcare system; there are various legislations and policies, like the National Health Policy, that try to implement these principles in measures for the betterment of the healthcare delivery system and its accessibility. The Indian situation points towards the legal structure that goes hand in hand with the judicial activation, which further contributes to the formulation and delivery of health policies and programs in India.

❖ THE CURRENT SITUATION OF HEALTHCARE IN INDIA:

Understanding the Healthcare system of India:

The Indian healthcare sector is one of the most complex healthcare structures in the world.²⁷¹¹ The challenges that the system experiences include poor infrastructure, scarcity of health care personnel, and inequitable distribution of resources.²⁷¹² Although there has been some improvement in some areas, like maternal and child mortality, there are still challenges in the provision of healthcare, especially in rural and remote areas in both the private and public sectors.

²⁷⁰⁹ Parmar, Sharanjeet, and Namita Wahi. "Citizens, courts and the right to health: between promise and progress." *Litigating Health Rights* 3 (2011): 155.

²⁷¹⁰ Leary, Virginia A. "The right to health in international human rights law." *Health and human rights* (1994): 24-56.

²⁷¹¹ Berman, Peter A. "Rethinking health care systems: Private health care provision in India." *World Development* 26.8 (1998): 1463-1479.

²⁷¹² Dussault, Gilles, and Maria Cristina Franceschini. "Not enough there, too many here: understanding geographical imbalances in the distribution of the health workforce." *Human resources for health* 4 (2006): 1-16.

Disparities in assessing healthcare services between urban and rural:

The accessibility of healthcare centers in India is a concern, and it has been observed that the rural population is lagging far behind the urban population. Health facilities in urban areas are more likely to be well-equipped and staffed than those in rural areas.²⁷¹³ On the other hand, rural areas have limited or no access to health facilities and are facing a shortage of human resources for health. This is a clear indication of the urban-rural divide in the provision of health care services, which is one of the reasons why health inequalities and social and economic injustice continue to prevail.

Healthcare Services and Infrastructure, in terms of quality

The quality of healthcare services in India is not consistent and varies from one healthcare facility to another and from one region to another.²⁷¹⁴ While some of the hospitals and clinics are well endowed with modern amenities and qualified personnel, others are overcrowded, manned by a few, and poorly equipped. Some of the quality assurance measures include accreditation programs and standard treatment guidelines that have the aim of enhancing the quality of health care services. However, challenges like few employees, no training, and no evaluation indicators persist in the quality of service delivery.

Healthcare financing and insurance Coverage:

Funding healthcare in a country like India is a challenging task and involves both the public and private sectors.²⁷¹⁵ Government spending on health is still low, and this has resulted in high out-of-pocket expenses for a large number of people. Lack of insurance coverage also increases financial constraints on

²⁷¹³ Ghosh, Soumitra. "Equity in the utilization of healthcare services in India: evidence from National Sample Survey." *International journal of health policy and management* 2.1 (2014): 29.

²⁷¹⁴ Balarajan, Yarlina, Selvaraj Selvaraj, and S. V. Subramanian. "Health care and equity in India." *The Lancet* 377.9764 (2011): 505-515.

²⁷¹⁵ Duran, Antonio, Joseph Kutzin, and Nata Menabde. "Universal coverage challenges require health system approaches; the case of India." *Health policy* 114.2-3 (2014): 269-277.

accessing healthcare services, especially for the poor and vulnerable groups. Though programs like Ayushman Bharat and Swastha Swathi (in West Bengal) are designed to increase health insurance coverage and financial risk protection for the vulnerable population, there are still issues with access to affordable healthcare for everyone.²⁷¹⁶

❖ CONSTITUTIONAL NORMS, LEGAL & POLICY FRAMEWORKS FOR THE RIGHT TO HEALTH:

Constitutional articles related to right to health in India:

The Constitution of India not only provides for the healthcare of the people but also directs the state to take necessary measures to improve the condition of their health. Article 21 of the Constitution of India guarantees a fundamental right to life and personal liberty.²⁷¹⁷ The right to health is inherent in a life with dignity. Articles in DPSP, i.e., 38, 39, 42, 43, and 47, place the obligation on the state to ensure the effective realization of the right to health. The Directive Principles of State Policy require the state to provide for the health and welfare of the people by providing health care, sanitation, and nutrition. These constitutional provisions form the basis of policies, health legislation, and judicial activism in India.

Some of the Major Legislative and Policy Reforms in Health:

India has passed laws and developed policies to safeguard its citizens' right to health. The National Health Policy was framed in 1983; later, it was revised in 2002 and in 2017 to tackle healthcare problems and strive for achieving 'Universal Health Coverage'. Some other crucial legislation includes the Clinical Establishments (Registration and Regulation) Act, the Drugs and Cosmetics Act, and the Mental Healthcare Act. These laws cover different areas of healthcare provision, including drugs and

mental health, with the objective of promoting the quality, safety, and availability of health care for all citizens.

The Judiciary and the Enforcement of the Right to Health:

The judiciary especially has a major role in enforcing the right to health and in giving meaning to constitutional provisions in India. Over the last few years, courts have made landmark judgments that created new possibilities in the area of health rights and also made sure that governments are accountable for their responsibilities. For instance, in *Bandhua Mukti Morcha v. Union of India*,²⁷¹⁸ the Supreme Court ruled that the right to health is encompassed within Article 21 of the Constitution. Judicial activism has also led to interference in such areas as access to basic products such as drugs, environmentalism, and the healthcare of special groups. Judicial activism has also intervened in areas like access to essential medicines, environmental health, and healthcare for vulnerable groups. It also plays a significant role in protecting health rights and enforcing legal and constitutional provisions that support the right to health in India.

❖ Major problems and challenges in this area:

Concerns Pertaining to Accessibility, Cost, and Relevance of Healthcare Services:

Inequalities in health status in India are also caused by problems with healthcare quality, affordability, and accessibility.²⁷¹⁹ Whereas the urban centers boast of good hospitals and specialized medical care, the rural areas are characterized by inadequate health facilities, human resources, and drugs. Furthermore, the cost of medical treatment is still high, and insurance coverage is still limited, which makes many people either drop out of health services or spend a lot of money on their treatment. Another issue is the quality of care, which has

²⁷¹⁶ Lahariya, Chandrakant. "Ayushman Bharat program and universal health coverage in India." *Indian pediatrics* 55.6 (2018): 495-506.

²⁷¹⁷ Pallathadka, Harikumar, Sanjeev Kumar, and L. K. Pallathadka. "Right to Health Vis-a-Vis Health Care." *Journal of Cardiovascular Disease Research* 12.04 (2021): 903-909.

²⁷¹⁸ AIR 1984 SC 802.

²⁷¹⁹ Balarajan, Yarlina, Selvaraj Selvaraj, and S. V. Subramanian. "Health care and equity in India." *The Lancet* 377.9764 (2011): 505-515.

been reported to be poor due to medical malpractice, failure to follow standard protocols, and poor facilities that endanger the lives of the patients and affect their health.

Healthcare Access: Socio-Economic Challenges:

The lack of socio-economic access to healthcare services is one of the major obstacles to the realization of the right to health in India.²⁷²⁰ Lack of access to resources such as food, water, and healthcare, poor infrastructure, and transportation are major challenges, especially for the poor and rural populations. Due to high costs, many people of the lower and lower middle classes in India still struggle with accessibility, keeping them from receiving early medical care. Other factors, like gender disparity, not having a proper education, and the caste system, also plays a role in increasing the gap between the health needs of the population and the available healthcare services.²⁷²¹

Impact of Privatization and Commercialization of Healthcare:

The trends of privatization and commercialization of health care in India have been a cause for concern for equity, affordability, and quality of healthcare services. The private sector has a large stake in the delivery of health care, particularly in urban areas, but it is profit-oriented and may not have the best interest of public health in mind. Expenses, unneeded procedures, and immoral actions lead to financial pressures and violations of the right to health. Equal access to healthcare and the distribution of resources are further challenges brought on by the separation of healthcare services between the public and private sectors.²⁷²²

²⁷²⁰ Pandya, Apurva kumar, and Alex Redcay. "Access to health services: Barriers faced by the transgender population in India." *Journal of Gay & Lesbian Mental Health* 25.2 (2021): 132-154.

²⁷²¹ Ahmed, Shakeel, and Sandhya Mahapatro. "Inequality in Healthcare Access at the Intersection of Caste and Gender." *Contemporary Voice of Dalit* 15.1_suppl (2023): S75-S85.

²⁷²² Purohit, Brijesh C. "Private initiatives and policy options: recent health system experience in India." *Health policy and planning* 16.1 (2001): 87-97.

Discrimination and Inequalities in Healthcare Access:

Socio-economic status, gender, caste, religion, and ethnicity are some of the factors that are still used to deny people their right to health and healthcare. Women, children, Dalits, Adivasis, and the LGBTQ+ community are often discriminated against and denied their rights to health care. These groups' rights are also violated, and their marginalization is sustained by discrimination in healthcare facilities that takes the form of denial of care or unequal treatment. To ensure that everyone in India has access to healthcare, we must combat discrimination.²⁷²³

❖ CASE STUDIES AND BEST PRACTICES:

Landmark Judicial Decisions:

Some of the prominent case laws led to the emergence of right to health in India. Some of them include *Paschim Banga Khet Mazdoor Samity v. State of West Bengal*²⁷²⁴ and the *Consumer Education and Research Centre (CERC) v. Union of India*,²⁷²⁵ where subject matters have varied from essential commodities such as medications to pollution and the health perils of people engaging in certain jobs. These judgments have broadened the framework of health rights, set legal authorities, and brought pressure upon governments involving health rights.

For instance, in the case of CERC, the Supreme Court of India ordered the government to provide the necessary facilities for the availability of essential medicines at a reasonable price, after which the government promulgated the Drugs (Prices Control) Order for the purpose of regulating the prices of the essential drugs. Likewise, in *Paschim Banga Khet Mazdoor Samity vs. Statutory Our*, the Court gave some directions in order to protect occupational diseases and secure the health of workers employed in hazardous establishments.

²⁷²³ Reddy, K. Srinath, et al. "Towards achievement of universal health care in India by 2020: a call to action." *The Lancet* 377.9767 (2011): 760-768.

²⁷²⁴ AIR 1996 SC 2426.

²⁷²⁵ AIR 1995 SC 922.

Thus, apart from the subject-specific judgments, these interventions have had important impacts on the formulation of health jurisprudence in India.

Analysis of Best Practices in Implementing Initiatives and Programs:

Evaluating different initiatives undertaken at the grassroots level in India offers rich insights about program design and implementation to improve healthcare access and quality. Similarly, the National Rural Health Mission (NRHM), initiated in 2005, had the objectives of developing rural health infrastructure, upgrading human resources and focusing on providing basic health access to rural folk. Through innovative strategies such as the Accredited Social Health Activist (ASHA) program and Janani Suraksha Yojana (JSY), NRHM succeeded in improving maternal and child health indicators in many states.

Additionally, initiatives like the Pulse Polio Program, which aimed to eradicate Polio through mass vaccination campaigns, and the Pradhan Mantri Swasthya Suraksha Yojana (PMSSY), which focused on upgrading medical education and healthcare infrastructure, have demonstrated the potential for targeted interventions to address specific health challenges. Through experiencing lessons learned from the design, implementation, and findings of those campaigns, planners can amass a large sum of experience to aid in the planning of future programs in health.

International comparisons and lessons learned:

It is thus important to have knowledge about other countries so as to determine the possible best practices and even possible solutions to the healthcare challenges. It is suggested that a comparative analysis with countries that face similar issues in the sphere of health care, such as Tanzania, Brazil, South Africa, and Thailand, will be helpful in determining the most effective strategies for the implementation of UHC, the

reduction of gaps, and improvements in the health of the population.

For instance, Brazil's Family Health Program, which has been aimed at enhancing primary healthcare and community involvement, has been attributed to the improvement of health outcomes and the diminishing of health disparities in the country. In the same way, Thailand's universal health coverage system, which is a program that offers health insurance to all Thais, regardless of their income, has been described as a successful model of UHC.

The details of the above interventions and their outcomes, if adopted by Indian policymakers, will help in understanding which strategies are most effective in addressing the healthcare problems in the Indian context. Such comparisons can assist policymakers, planners, and implementers in the decision making, planning, and prioritization of programs and resources to enhance access, quality, and equity of health care in India.

❖ WAY FORWARD:

Strategies for Improving Healthcare Infrastructure and Service Delivery:

A primary requisite that needs to be undertaken to promote the aspect of 'health for all', thus improving the comprehensiveness of health care for all citizens, is to concentrate development on improving infrastructure and service delivery. Healthcare infrastructure development, specifically in rural and remote regions, as well as improvements in the accessibility of healthcare services for programs, require investment. Also, addressing challenges such as inadequate financing of primary healthcare services, strengthening human resources, and embracing the use of technologies in the delivery of health services will also solve the challenge relating to the inefficiency of the healthcare system.

For example, the government can ensure focused expenditures on the construction or renovation of more health facilities and the acquisition of relevant infrastructure,

equipment, and stocks. Also, the approaches to increase enrollment and production of HCPs, alongside with efforts aimed at enhancing the health workforce pipeline through training and deployment of healthcare professionals within specialties of need, will significantly contribute to the reduction of shortages and an overall improvement of the quality of health systems. Furthermore, there is merit in using and integrating digital health solutions, including telemedicine and Electronic Health Records (EHRs), to increase the availability of medical services and information, especially in environments where there are few human healthcare facilities.

Recommendations for Strengthening the Legal and Policy Framework:

To advance the right to health in India, there is a need to strengthen the legal and policy framework governing healthcare. This includes reviewing the nation's health-related laws and policies to ensure that they are consistent with the Constitution and other international human rights instruments. While formal changes may require amendments to the laws themselves, they may be incomplete or contradictory. System changes may include policies that enhance the availability of healthcare services to all, as well as disease prevention and the protection of sensitive groups.

In the same way, the evidential government may consider approving a health law that reaffirms the right to health and creates new norms and standards that are based on several principles, including universalism, equality, and the non-discrimination principle. Further, simplification of laws and regulations where implied, as is integration of policies to ensure that the given legislation is coherent and does not contain repeated provisions. There is a need to enhance monitoring, evaluation, and enforcement structures to ensure that duty-bearing officers are contingent on their requisite responsibilities toward health rights.

Proposals for Enhancing Healthcare Financing and Insurance Coverage:

These include issues of widening healthcare financing and insurance coverage in order to minimize financial transaction costs of high-quality health services and shield people from excessive amounts of health expenditure. Healthcare policy reforms, which include raising government expenditure on health insurance coverage and the introduction of additional innovative health financing structures, will enhance the availability and affordability of all manner of healthcare services delivered by healthcare facilities, especially to the needy and the poor in society.

For instance, one area that the government may consider is increasing the provisions for healthcare in the annual financial budget and how to source more money by including policy changes such as taxes, PPP, and donors. Further, attempts to increase the enrolment of families under the existing health insurance schemes of the country, including the Ayushman Bharat, Rashtriya Swasthya Bima Yojana and Swastha Swathi (in West Bengal), along with the addition of more families in the area of coverage under these schemes, will also go a long way in ensuring that the poor and vulnerable sections of the population are protected financially in cases of illness and disease. Also, the measures for increasing and extending community and microinsurance could also help to establish communities as a tool for people to join forces and share risks to improve their access to financial services for health.

Role of Public-Private Partnerships and Community Participation

Preferred organizational structures of Public-Private partnerships (PPPs) and community engagement have the potential to encourage the advancement of the right to health in India. Multi-sectorial and multi-stakeholder engagement to address health challenges can mobilize the necessary resources and knowledge formerly dispersed and incompletely harnessed, thereby ensuring healthcare

provision and delivery. Addressing health inequalities, promoting citizens' participation, and increasing the accountability of health care organizations guarantee health systems' functionality at the grassroots level.

For example, the government may develop strategic alliances with other individuals, companies, and agencies with the aim of extending the network and improving the standard of services and healthcare in India, especially where there is a shortage of such services. As for approaches that can encourage private sector engagement while at the same time making life-enhancing services available and affordable to everyone, PPP models like social franchising, vouchers, and output-based aid are quite effective. Furthermore, efforts to improve the community structures involved in providing health care services, which include offering training to community health workers and the formation of community health committees, are effective in enhancing community involvement in healthcare decisions.

Thus, India can follow the above recommendations and strategies for improving healthcare. In this way, India will be able to deliver the right to health to its citizens. It requires a multi-sectoral approach, strong political commitment, and the active participation of stakeholders at all levels to address the complex challenges facing the healthcare system and ensure that every individual has access to affordable, equitable, and quality healthcare services.

❖ **CONCLUSION**

Recap of the Main Findings and Arguments:

To sum up, this article has unveiled a view and vision of the right to health in India that gives an insight into what reality today looks like as well as points out the prospects for its achievement. In light of this, it has outlined the status of healthcare as well as the legal frameworks and essential challenges relating to it in India, with the aim of highlighting the complications and inequities prevailing in the sector. Socio-

economic challenges, stigma, and prejudice, inclusive of discrimination and inequalities, deprive millions of Indians of their right to healthcare and to access comprehensive health services.

Emphasis on the Importance of a Rights-Based Approach to Healthcare:

The foundation of the discussion itself lies in the understanding of the affirmation of healthcare as one of the rights well-guarded in the basic human rights that people need to have in order to maintain their dignity and lead healthy lives. This brings us to the adoption of a rights-based approach to health care since the state has the legal obligation to guarantee that everyone is assured the right to the highest attainable health without suffering from financial depletion in the process. This right is more than addressing the need for immediate healthcare services; it also involves addressing socio-structural factors that influence health, and empowering health is indeed a right, as is social justice.

Call to Action for Policymakers, Healthcare Providers, and Civil Society:

The analysis confirms that the realization of the right to health in India is owed as a collective responsibility where legislators, healthcare practitioners, civil society groups, and communities have a mutual responsibility to create the enabling environment in a bid to guarantee health rights for all. Listen, it entails visionary policy changes, greater commitment to rein in costs and upgrade health facilities and the workforce, and better systems of performance and financial accountability. Also, it requires thinking about a new model of healthcare and patient-centeredness, community engagement, and human rights that shifts a focus toward human agency and self-organization in the formation of healthcare and the protection of health rights.

In conclusion, it is important to note that there are still challenges, but there are also possibilities for positive change. India has the



potential to overcome the challenges in the health sector through the implementation of a rights-based approach, collaboration, equity, and social justice for all citizens. The struggle for the realization of the right to health continues, and it is a process that needs constant work and dedication from all the actors involved so that everyone in India can have access to health care that is affordable, equitable, and of good quality.

