

RIGHT TO HEALTH AS A FUNDAMENTAL RIGHT: CONSTITUTIONAL AND JUDICIAL PERSPECTIVES

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Abstract

The concept of the right to health, though not expressly articulated as a fundamental right in the Indian Constitution, has found strong backing through judicial interpretation under Article 21, which guarantees the right to life and personal liberty. This paper examines the constitutional provisions and landmark judicial decisions that have contributed to the development of the right to health in India. By interpreting the right to life in a holistic manner, the judiciary has firmly incorporated the right to health within the ambit of enforceable fundamental rights. The article also discusses the challenges in implementing this right, the role of international obligations, and offers suggestions to strengthen health jurisprudence in India.

Keywords – Right to Health, Fundamental Rights, Constitution of India, Judicial Interpretation, Article 21, Public Health, Directive Principles, Welfare State

I. Introduction

Health is a basic human necessity and an essential element for the attainment of a life with dignity. Although the Constitution does not explicitly declare the right to health as a fundamental right, it has been progressively interpreted under the wider umbrella of Article 21 by the judiciary. Over the years, the Supreme Court and High Courts have repeatedly highlighted that the right to health is intrinsic to the right to life, thus placing an obligation on the State to ensure access to healthcare services.

This paper explores how this interpretation has developed over time and the extent to which constitutional and judicial tools have been used to make health a justiciable and enforceable right.

II. Definition of health by world health organization

The World Health Organization's (WHO) Constitution, adopted in 1946, defines health as

"a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity," and states that "the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being".

III. Constitutional Provisions Relating to Health

A) Directive Principles of State Policy (DPSP)

While fundamental rights are enforceable by courts, the Directive Principles of State Policy (DPSPs), under Part IV of the Constitution, serve as guiding principles for governance and policy formulation. Several DPSPs emphasize the importance of health:

1. Article 38 – The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice—social, economic and political—shall inform all the institutions of the national life.

2. Article 39(e) & (f) – The State shall, in particular, direct its policy towards securing that the health and strength of workers, men and women, and the tender age of children are not abused.
3. Article 41 – The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education, and to public assistance in cases of unemployment, old age, sickness, and disablement.
4. Article 42 – The State shall make provision for securing just and humane conditions of work and for maternity relief.
5. Article 47 – 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.

B) Fundamental Rights and Health

The judiciary has interpreted Article 21, which states that “No person shall be deprived of his life or personal liberty except according to procedure established by law,” to include the right to health, clean environment, medical care, nutrition, and sanitation.

C) Right To Health and Fundamental Duties:

PART- IV-A of Indian Constitution deals with fundamental duties of citizens.

Article 51A (g): Fundamental duties:

It shall be the duty of every citizen of India–To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.

It shows that every citizen is under the fundamental duty to protect and improve natural environment since it is closely related to public health.

IV. Judicial Expansion of the Right to Health under Article 21

The Indian judiciary has played a crucial role in transforming non-enforceable directives into enforceable rights through broad interpretation. Public Interest Litigations (PILs) have led to court directives ensuring access to emergency

medical services, maternity benefits, and public health measures.

Paschim Banga Khet Mazdoor Samity and Others v. State of West Bengal and Another

1996 SCC (4) 37

The Supreme Court of India affirmed the state's obligation to provide immediate and adequate medical care, holding that denial of timely treatment violates the right to life under Article 21 of the Constitution.

Pt. Parmanand Katara v. Union of India & Ors 1989 AIR 2039

Emphasized the duty of the State and medical professionals to provide immediate medical assistance to preserve life.

Rudul Sah v. State of Bihar and Another 1983 SCC (4) 141

Affirmed that denial of medical treatment could amount to a violation of the right to life under Article 21.

Bandhua Mukti Morcha v. Union of India AIR 1984 SC 812

The Supreme Court held that although the DPSP are not binding obligations but hold only persuasive value, yet they should be duly implemented by the State. Further, the Court held that dignity and health fall within the ambit of life and liberty under Article 21.

State of Punjab and Others v. Mohinder Singh Chawla Etc 1997 (2) SCC 83

The right to health is integral to right of life. Government has constitutional obligation to provide the health facilities. If the Government servant has suffered an ailment which requires treatment at a specialized approved hospital and on reference whereas the Government servant had undergone such treatment therein, it is but the duty of State to bear the expenditure incurred by the Government servant. Expenditure, thus, incurred requires to be reimbursed by the State to the employee.

V. Right to Health and State Obligations

Under a social welfare-oriented government model, the government is expected to provide basic necessities, including healthcare. State obligations include:

- Availability
- Accessibility
- Acceptability
- Quality

VI. Right to Health in International Law

India's obligation to protect and promote the right to health is reinforced by international legal instruments, including:

Article 25 of Universal Declaration of Human Rights, 1948

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

Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

International Covenant on Economic, Social and Cultural Rights, ICESCR (1966)

Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

- (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

- (b) The improvement of all aspects of environmental and industrial hygiene;

- (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

- (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, ICMW (1990)

Article 28

Migrant workers and members of their families shall have the right to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the State concerned. Such emergency medical care shall not be refused them by reason of any irregularity with regard to stay or employment.

Article 43

1. Migrant workers shall enjoy equality of treatment with nationals of the State of employment in relation to:

- (e) Access to social and health services, provided that the requirements for participation in the respective schemes are met;

Article 45

1. Members of the families of migrant workers shall, in the State of employment, enjoy equality of treatment with nationals of that State in relation to:

- (c) Access to social and health services, provided that requirements for participation in the respective schemes are met;

Declaration of the Rights of the Child, 1959

As per principle 2 of the Declaration of the Rights of the Child, 1959 – Every child is entitled to the right to special protection for the child's physical, mental and social development.

As per principle 4 of the Declaration of the Rights of the Child, 1959 – Every child is entitled to the right to adequate nutrition, housing and medical services.

VII. Legislations related to Right to Health

The Epidemic Diseases Act, 1897 – Provides for the prevention of the spread of diseases. A Legislation used extensively during the COVID – 19 pandemics, giving governments power to implement quarantines and restrictions.

The Drugs and Cosmetics Act, 1940 – Regulates the manufacture, distribution and sale of drugs.

The Clinical Establishments (Registration and Regulation) Act, 2010 – Regulates the registration and functioning of clinical establishments to ensure quality health services.

Mental Healthcare Act, 2017: Ensures rights-based treatment and dignity for persons with mental illness.

Food Safety and Standards Act, 2006: Regulates food safety to prevent disease outbreaks and health hazards.

National Health Mission and allied schemes: Administrative frameworks complementing legal mechanisms in healthcare delivery.

VIII. Impact of COVID-19 on Health Rights:

The COVID-19 pandemic highlighted severe inadequacies in the public healthcare system and the need for stronger legal frameworks. Key impacts included:

1. **Judicial Interventions:** Courts ordered governments to ensure oxygen supply, vaccine distribution, and protection for healthcare workers.
2. **Government Policies:** Introduction of emergency health measures, including lockdowns, testing protocols, and vaccination campaigns.
3. **Human Rights Concerns:** Issues related to migrant workers' health, mental health crisis, and accessibility to medical facilities.

4. **Need for Stronger Health Laws:** The pandemic reinforced the urgency of universal healthcare, better preparedness laws, and increased healthcare budget allocation.

IX. Challenges in Implementing the Right to Health

Despite legal recognition, several challenges persist:

1. Inadequate healthcare infrastructure
2. Limited access to quality medical services in rural areas
3. Budgetary constraints in public health spending
4. Shortage of healthcare professionals
5. High costs of medical treatment and medicines

X. Conclusion

The Indian judiciary has significantly broadened the scope of the right to life to include the right to health. Through progressive judicial interpretation, courts have ensured that health is not merely a Directive Principle, but an enforceable right. However, the lack of legislative progress, inadequate infrastructure, and budgetary constraints continue to hinder its effective realization.

To ensure universal access to healthcare, the government must:

- Strengthen statutory backing through legislative measures.
- Increase budget allocation for public health.
- Ensure accountability in healthcare delivery.

A holistic legal and policy framework is crucial to achieve health justice in India.

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