

Right to Health in India “An Urgent Need for Express Legal Recognition”

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Abstract— “Right to health” is a cornerstone of human dignity, enshrined in various constitutional provisions, international covenants, and judicial interpretations. This research explores the recognition, implementation, and challenges surrounding the right to health, with a particular focus on Article 21 of the Indian Constitution, which ensures the right to life and personal liberty, encompassing the right to health. It further examines Article 25 of the Universal Declaration of Human Rights (UDHR)² and Article 12 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR)³, both of which affirm health as a ‘fundamental human right’. The study delves into judicial interventions that have expanded the ambit of the right to health in India, analyzing landmark cases that demonstrate the judiciary’s proactive role in interpreting constitutional guarantees. A comparative analysis with South Africa and Brazil highlights progressive legislative frameworks and policy implementations that provide valuable insights for India. South Africa’s constitutional guarantee of the right to health and Brazil’s innovative public health programs, such as its universal healthcare system, underscore the need for a similar explicit recognition in India. In conclusion, the paper advocates for the explicit recognition of the right to health in India’s Constitution, alongside the establishment of robust legal and policy mechanisms to ensure equitable access to healthcare services. Suggestions include increased budgetary allocations, strengthening public health infrastructure, and fostering international cooperation to adopt best practices. By addressing these challenges, India can move closer to realizing the constitutional vision of justice and dignity for all citizens.

Indexed Terms- Right to Health, Fundamental Right, UDHR, ICESCR, DPSP, International, Government, Indian Constitution, WHO.

I. INTRODUCTION

Right to health is one of the basic “fundamental human rights” guaranteed under a host of international instruments. Among such international human rights instruments, two most significant instruments are the

Universal Declaration of Human Rights² and the International Covenant on Economic, Social, and Cultural Rights³. Though India has an international obligation, there is no recognition of the right to health as a fundamental right in its Constitution. Although some provisions under ‘The Indian Constitution’ deal with certain aspects of health, the absence of a well-defined legal structure that guarantees this right has led to inconsistent policies and implementation. The paper discusses why the right to health needs explicit recognition in India, its legal status at present, and what would happen without it being a part of the list of fundamental rights.

II. INTERNATIONAL OBLIGATIONS

The right to health is recognized as a fundamental human right under various international instruments, which impose obligations on states to respect, protect, and fulfill this right. India is a signatory to numerous international conventions which assure the right to health, such as the UDHR (Article 25)² and the ICESCR (Article 12)³ which obligates a right to the highest attainable standard of physical and mental health. WHO⁴ also declares health as a fundamental right and commits member states to promote health standards universally. Similarly, Sustainable Development Goals (SDGs) Goal 3: Ensure healthy lives and promote well-being for all at all ages and calls for universal health coverage, access to essential medicines, and combating epidemics such as HIV/AIDS⁵. These instruments oblige governments to make healthcare accessible, available, and equitable. Still, India has remained a signatory to these conventions, but it has not enacted domestic legal provisions for the right to health.

III. CONSTITUTIONAL PROVISIONS IN INDIA

Although the Indian Constitution does not directly confer the right to health, indirect protection is given through various provisions. Article 21, which guarantees the "right to life and personal liberty,"¹ has been interpreted by the judiciary to include the right to health. In *Parmanand Katara v. Union of India* (1989)⁶, the Supreme Court held that the right to life includes the right to emergency medical treatment, thereby making health an essential aspect of life.

These have an obligation to the state to promote public health and provide health care under Articles 39(e), 42, and 47 in DPSP. However, the DPSPs, having no enforceability via laws, are a guiding principle rather than a binding obligation on the government.

IV. JUDICIAL INTERPRETATION OF THE RIGHT TO HEALTH

The Indian judiciary has played a pivotal role for the extension of the connotation that comes along with Article 21, to include rights in health and well-being. In *State of Punjab v. Mohinder Singh Chawla* (1997)⁷, it was determined by the Supreme Court that the right to health is essential for the right to life. The state should then ensure all citizens have healthcare facilities. Similarly, in *Paschim Banga Khet Mazdoor Samity v. State of West Bengal* (1996)⁸, the Court restated the obligation of the state to provide adequate medical facilities and ensure that no person is deprived of healthcare due to lack of resources. Next, *Consumer Education and Research Centre v. Union of India* (1995)⁹, The Court stressed that Article 47 places a duty on the state to improve public health, and the right to health is implicit in the right to life. In *Subhash Kumar v. State of Bihar* (1991)¹⁰, The Supreme Court held that the right to pollution-free air and water is a part of the right to life. Another important decision was in *Parmanand Katara v. Union of India* (1989)¹¹, The Court held that, no person shall be denied medical emergency care on procedural grounds. The Indian judiciary has proactively recognized the right to health as fundamental to human dignity and life. Its progressive judgments have laid down the state's obligations to improve healthcare infrastructure, ensure equitable access, and uphold the constitutional

mandate of providing health for all. These judicial pronouncements have, in a way, widened the scope of Article 21 to include the right to health¹, but the absence of explicit constitutional or statutory recognition of the right to health makes it impossible to implement it uniformly across the country.

V. THE NEED FOR EXPRESS RECOGNITION

The COVID-19 pandemic has laid bare the deep flaws in India's healthcare system, especially regarding accessibility, affordability, and quality of care. Public health infrastructure was overwhelmed, and many citizens were denied essential medical services. The lack of a coherent legal framework guaranteeing the right to health has resulted in a patchwork of policies, often leaving the most vulnerable populations at risk. The right to health, expressed in this way, would provide a much stronger legal basis for citizens to demand better healthcare services. It would also clearly place a constitutional obligation on the state to allocate sufficient resources to healthcare and ensure that healthcare policies are implemented uniformly across the country. This would not only address the inequities in access to healthcare but also improve accountability mechanisms in the public health system.

VI. COMPARATIVE ANALYSIS

Most countries, including South Africa and Brazil, have incorporated the right to health in their constitutions. Section 27 of the South African Constitution¹² enshrines the right to have access to healthcare services and places an obligation on the state to take reasonable legislative measures toward progressive realization of the right. Brazil's Constitution of 1988¹³ similarly provides for health as a fundamental right with a duty placed upon the state to provide universal and comprehensive health through a single, unified health system.

India can take these lessons from other countries to frame its own legal provisions for the right to health. If there is an express provision in the Constitution, then the legal framework becomes much stronger. The state will be under a compulsion to fulfill all commitments made toward health care, and the right to health of citizens will be ensured.

VII. CHALLENGES TO IMPLEMENTATION

Despite the obvious need for express recognition, there are many challenges to implementing a right to health in India. The first challenge is the lack of adequate resources. India spends less than 2% of its GDP on public health, which is far below the World Health Organization's recommended 5%. The lack of infrastructure, especially in rural areas, further exacerbates the problem.

Another challenge is the uneven distribution of healthcare services. While urban areas may have access to relatively better healthcare facilities, rural areas suffer from a shortage of hospitals, doctors, and medical supplies. Any legal framework on the right to health must address these disparities and ensure equitable access to healthcare across the country.

VIII. SUGGESTIONS AND CONCLUSION

The right to health is an essential human right, which needs to be recognized and explicitly articulated in the Indian legal framework. Even though the judiciary has significantly contributed to expanding the scope of Article 21 by including health within it, which cannot be a substitute for an express constitutional provision. The recognition of the right to health would serve not only the international obligations but also ensure the state is liable for providing access, affordability, and quality care to all. Government should be more concerned about good infrastructure and funding clarity regarding public health matters. While health rights remain an important dimension of human dignity and well-being, they remain under-expression in legal systems around the globe. The recent health crises; systemic inequalities in health care services; and, environmental challenges which have become one of the contemporary issues make such legal recognition of this right now more imperative. 'International human rights instruments' and several constitutional provisions on the right to health are reported to exist across jurisdictions, while gaps in implementing, accessing, and holding perpetrators accountable persist.

The right to health through legal expression requires aspirations to translate into concrete commitments and be encapsulated within a wide legislative frame,

standards with some teeth, and remedies for violations. It also demands intervention on health determinants, including education, housing, and the environment, besides fair access to healthcare. There also has to be inter-government, inter-legal systems, and civil society coordination toward health governance responsibility, accountability, and transparency. Global health emergencies, such as pandemics, underscore the urgency of this legal articulation. It exposes and exacerbates existing vulnerabilities and, in this way, would protect not only the individual but also strengthen public health systems, making societies more resilient. In conclusion, embedding the right to health within the legal framework is a moral and practical imperative to uphold justice, equality, and humanity in the 21st century. It is high time for India to take that decisive step to enshrine the right to health as a fundamental right in order to let every citizen attain the highest standard of health possible.

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