



RIGHT TO HEALTH AS A HUMAN RIGHT: A SYNOPTIC VIEW

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Abstract: Health is called the true Wealth and a healthy body is the very basis of all human actions. Right to life as a natural, fundamental and human right has become an integral part of every positive legal order in the world. Right to Life is, in fact, incomplete without the health of individual. This right has been recognized internationally through various Declarations and Covenants by the efforts of United Nation, and in India by various legislative provisions. Indian Judiciary also has played a very active role in recognizing this right. Despite all these facts, the health problems that India faces are highly complex and challenging. It is still struggling with health hazards of communicable diseases, AIDS, cancer, Diabetes, Heart diseases that are further aggravated by widespread poverty, malnutrition, illiteracy and ignorance. In India, approx. 1.5% of the GDP is spent on the health care, which is expected to be increased in the coming years to improve the health care in India.

COVID 19 has proved a fatal blow to the entire World. The world has drastically changed during this pandemic. It has been observed that any such disease not only affects the health of people, but also the economy and over all development. This endemic has also brought new issues which need immediate attention, like threats of manmade viruses, proper distribution of medicines in the time of medical emergency, need of expansion of the infrastructure in the hospitals. It is a challenge before the government to take immediate steps in order to ensure the right to health to every citizen of India.

Key Words: Health, Human Rights, Right to life, Legislations

Introduction

Right to life (with Dignity), Right to Development and Right to Health are now recognized as components of human rights. As health is a fundamental human right, every human being is entitled to the enjoyment of highest enjoyable standard of health conducive to living a life of dignity¹. The right to health is one of the economic, social, and cultural human right that requires affirmative Government actions to create better conditions for people rather than just government restraint vis-a-vis citizens². Health care and medical facilities and availability of important drugs to all are essential to protect the human right to health. But these are not the only parameter inclusive in right to health. Health is a very wider concept. This not only includes the Physical health but also the mental/psychological health. Health and human rights are both powerful modern approaches to defining and advancing well being.³ The relationship of health and human rights refers to the understanding that health status is in a large measure determined by the degree to which human rights are enjoyed. Poor health and inadequate food care are often related to human right violations. The violations and under fulfillment of human rights are often due to poor health and lack of access to health care.

Historically speaking the right to health has roots back in the 19th public health movement in Europe and US, who produced sanitization reforms designed to reduce the burden of infectious diseases. These reforms helped to solidify the belief that government had a fundamental duty to provide for and protect the public health. In the human right evaluation, the Government, had a fundamental duty to provide for and protect the public. In the human right evaluation, the Government's duty in the health field was translated into the right to health.⁴

Definition:

Health signifies "The state of being well and free from illness⁵ mentally or physically". Good health is a basic condition of every human activity⁶. The right to health is considered as a fundamental human right of economic and social nature in a number of International Human rights aims at bringing about a basic and commonly in terms of dignified treatment of human beings by virtue of being human irrespective of any man made differences. The concept of health is multi dimensional. The widely accepted definition of health is that given by WHO in the Preamble to its Constitution, which says "Health is a state of complete physical, mental and social well being and not merely an absence of disease or infirmity"⁷. Through this definition, WHO has helped to move the concept of health beyond a limited and Pathology- based

¹ P. Chouri Dnyaneshwar, "Right to Health and Legal Protection" Regal Publication, 2013, p11

² Avinash Kumar, "Human right to health" satyam Law International, 2007, p 1

³ B. R. P. Bhaskar, Human rights, 2001, Bangalore, Vigil India Movement, 2001. P 119

⁴ David P. Filder, International Law and Infectious Diseases (Oxford. Clarendon Press, 1999), p, 179-180

⁵ F G & H .W. Fowler, The new Oxford Dictionary, 9th ed; Oxford; University Press, 2005, P, 418

⁶ Jean Mchale, Marie Fox and John Murphy, Health Care Law; Text, cases and materials, London; Sweet and Maxwell, 1997, p, 7

⁷ Constitution of World Health Organization, Basic Documents, 36th edition (Geneva: WHO 1986) p.1-18

perspective to the more positive domain of “well being”. This definition has included social and mental dimensions of the well being. Recently, WHO has expanded the scope of health, and by extension, the role and responsibilities of health professionals and their relationship to the larger society⁸.

The physical dimension of health or state of health implies the notion of ‘*perfect functioning*’ of the body. It conceptualizes health biology as a state in which every cell and every organ is functioning at the maximum capacity and in a perfect harmony with the rest of the body. Mental health is not mere absence of mental illness. Good mental health is the ability to respond varied experiences of life with flexibility and a sense of purpose. More recently, mental health has been defined as “A state of balance between the individual and the surrounding world, a state of harmony between oneself and that of other people and that of the environment”⁹. The social well being of a human being means the harmony and integration within the individual, between each individual and the world in which they live. The social skills one possesses, social functioning and the ability to see oneself as a member of the larger society.

Right to health as a human right:-

Health is universally recognized as essential to the basic human condition. A healthy body and mind, is not only important for individual but also for the entire society. More over an individual’s health is directly related to the enjoyment of all other human rights and it is a mere pre- condition for the full participation in the social, political, and economic life. The preamble of the Constitution of the World Health Organization (WHO) says that “the enjoyment of the highest attainable standard of health is one the fundamental rights of every human being without distinction of race, religion, and political belief, economic or social conditions”. Apart from the Constitution, right to health is considered as basic right in various international instruments also. The right to health has been reaffirmed by the commission on human rights¹⁰.

The Indian legal system’s ability to guarantee the right to health is provided in the Indian Constitution and the creative initiative of the Supreme Court. After independence, India has been committed to in providing for social welfare of its citizens. Article 39(e) of the Indian Constitution directs State to protect the health and strength of workers and the tender age of children. Article 47 of the Constitution also provides for raising the level of nutrition and improvement of the public health. However, Supreme Court has carried the right to health under Article 21. The extent of this provision is very vast. Under Article 21, the word ‘Life’ is not just a physical demonstration of breathing. It has a lot more extensive importance which incorporates the right to live with human nobility, right to livelihood, right to health, right to proper nutrition, right to pollution free air and so on. In *State of Punjab V/s M. s.*

⁸ 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)

⁹ N. Sartorius “Mental Health in the early 1980, s: Some Perspectives.” (1983) 61:1 Bulletin of WHO 1-6 at p-5

¹⁰ Dash, L. N., Health, Gender and Development, Regal Publications, New Delhi, 2015, p-1

*Chawala*¹¹ it was held by the Supreme Court that right to life ensured under Article 21 has incorporated inside its ambit the right to health and the clinical consideration. In 2019, it was recommended by a high level group constituted under the 15th Finance Commission that right to health be declared a fundamental right. It also put forward a recommendation to shift the subject of health from the State List to the Concurrent List. . However, the latter recommendation to shift health to the Concurrent List will lead to a constitutional conundrum on whether the centralization of public health will be helpful in the context of Indian cooperative federalism

International Perspective:-

United Nation has played a very vital role in the promotion and protection of human rights. Health as a human right is recognized by the several human rights instruments because, right to adequate health operates directly or indirectly as a essential¹¹ condition to all other human rights, to deny someone health care is to deny all the individual rights.¹²Article 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 of Economic, Social, and Cultural rights play a very important role in providing 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.¹³The 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;¹⁴the prevention, treatment and control of epidemic ,endemic, occupational and other diseases;¹⁵the creation of conditions in which world would ensure to all the people medical services and medical attention in the event of sickness.¹⁶ Apart from this, the International Covenant on the Economic, Social, and Cultural Rights, 1966, also imposes positive obligation on the State parties to protect the health of its subjects. All the Countries, which have signed the covenant have obligation to comply with the provisions of the Covenant. The accountability of governments for their legal commitments is monitored at the International level through the reporting process. All the major human rights treaties has its own monitoring body which meets regularly to review State party reports and guide them for the promotion of the human rights.

¹¹ AIR (1997) SC 1225

¹² P. Chouri Dyaneshwar, right to health and legal Protection, Regal Protection, p,28

¹³ Patrick A.Molinari.”The right to health :From the solemnity of Declaration to the challenges of Practice”(1998)49:1IDHL41-60, p-45

¹⁴ ICESCR. Article 12(2)(a)

¹⁵ Ibid Article 12(2)(c)

¹⁶ Ibid,article 12(2)(d)

In addition to these Covenants, number of Conventions have been signed by the State parties, with the help of the United Nations Organizations to protect the right to health of different categories of persons like, children, women, disabled persons, mentally retarded persons, old aged persons etc. WHO is playing a very important role in ensuring the right to health throughout the World. The preamble of UN Charter of the WHO says that health was an essential condition for their attainment, and the highest possible attainment of health was a fundamental right of every human being without distinction of any kind¹⁷.

Indian Approach to Health Protection:-

There are different aspects of health like physical health, mental health, psychological health etc. In order to the right to health, Government will have to ensure adequate and healthy food. In India, where 6.7% of Indian population lives below the poverty line¹⁸, it is a challenge to provide adequate food at affordable prices. India is one of the few countries which have experimented with a broad spectrum of programmes for improving food security. It has already made substantial progress in terms of overcoming transient food insecurity by giving priority to self-sufficiency in food grains and through procurement and public distribution of food grains, employment programmes, etc¹⁹. However, despite a significant reduction in the incidence of poverty chronic food insecurity persists in a large proportion of India's population. Under food safety and standard act, 2006, it is the duty of the government to provide food safety in India.

In order to ensure health of people immunization of children is of prime importance. India is carrying on the largest immunization programme under National Health Mission. Universal Immunization Programme (UIP) is one of the largest public health programmes targeting close of 2.67 crore newborns and 2.9 crore pregnant women annually. It is one of the most cost-effective public health interventions and largely responsible for reduction of vaccine preventable under 5, mortality rate. Under UIP, immunization is providing free of cost against 12 vaccine preventable diseases: Nationally against 9 diseases - Diphtheria, Pertussis, Tetanus, Polio, Measles, Rubella, severe form of Childhood Tuberculosis, Hepatitis B and Meningitis & Pneumonia caused by Homophiles Influenza type B.²⁰ Government of India has taken many initiatives to protect the health of the masses. One of such effort is to establish *AYUSH Mantralya*. AYUSH is an abbreviated form for Ayurveda, Yoga & Netropathy, Unani, Siddha and Homoeopathy. Ministry of AYUSH was formed in 2014 with the objective of creating a focus on providing attention to the development of the prevalent and practiced these six Indian systems of

¹⁷ Frank P Grad, "The preamble of the Constitution of the world Health Organization" (2002) 18:12 bulletin of the WHO, p 981

¹⁸ Puja Mehra (2nd April) "8% GDP Growth helped reduce Poverty": (The Hindu).

¹⁹ R. radhakrishanan and K. Venkata reddy, Food Security and Nutrition: Vision 2020, https://niti.gov.in/planningcommission.gov.in/docs/reports/genrep/bkrap2020/16_bg2020.pdf

²⁰ National Health Mission, <https://nhm.gov.in/index1.php?lang=1&level=2&sublinkid=824&lid=220>

medicines. Basic objective of AYUSH is to strengthen the implementation of national and community health programmes.

National Health Policy

The National health policy 2017 continues to build the progress made by the National Health Policy 2002. The prime objective of National Health Policy is to inform, strengthen, and prioritize the role of the Government in shaping health system in all its dimensions. This policy aims at increasing life expectancy at birth from 67.5% to 70% by 2025 and reduces the still birth rate to 'single digit'. The policy proposes a potentially achievable target of raising public health expenditure to 25% of the GDP in a time bound manner. The policy identifies coordinated action on seven priority areas for empowering the environment for health firstly; The Swachh Bharat Abhiyan, Secondly; Balanced, healthy diets and regular exercises, Thirdly; Addressing tobacco, alcohol, and substance abuse, Fourthly; Yatri Surakhsha-preventing deaths due to rail road traffic accidents, Fifthly; Nirbhaya Nari-action against gender violence, Sixthly; Reduced stress and improved safety in work place, Seventhly; Reducing indoor and outdoor air pollution. The policy lays greater emphasis on investment and action in school health by incorporating health education as a part of the curriculum promoting hygiene and safe health practices with in schools and by acting as a site of primary health care.

Ayushman Bharat National Health Protection Scheme is a scheme of Government of India, which provides for free access to health insurance coverage for low income earners of the country. This Scheme was introduced in September 2018. This scheme aims to provide health coverage to 10 crores households providing for a cover of 5 lakh per family per year for medical treatment in empanelled hospitals, both public and private, offering cashless payment and paperless recordkeeping through the hospitals or doctors office²¹.

²¹ Sharma Yogima Seth(13th september2019) "Labor Ministry to provide Cashless secondary and tertiary medical care services under AB-PMJAY", The Economic Times.

Legislations

In India, we have a large number of legislations in the field of medicine and health. These legislations are passed keeping in view of the need of the society and to protecting the health of the people. At present the following Acts are in force in order to govern the manufacture, sale, import, export and clinical research of the drugs and cosmetics in India.

- The National Commission for Allied and Healthcare Professions Act,
- Transplantation of Human Organs Acts
- Food Safety and Standards Act, 2016
- Clinical Establishments Act
- Transplantation of Human Organs Acts and Rules
- Tobacco Control Act 2003
- The Epidemic Disease Act 1897
- Mental Health Act, 1987.
- Environmental Acts and Rules.
- The Transplantation of Human Organs Act and Rules.
- The Pharmacy Act, 1948.
- Bio-Medical Waste (Management and Handling) Rules, 1998.
- Drugs and Cosmetics Act, 1940.
- The Prevention of Food Adulteration Act, 1954.

Judicial Perspective

Health is a fundamental human right indispensable for the exercise of other human rights. Every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity. Henry Sigerist, a prominent medicine 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 State²². It is the fundamental right of everyone in this country, assured under the interpretation given to Article 21 by this Court in Francis Mullin case to live with human dignity, free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f)

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

of Article 39 and Articles 41 and 42, therefore, it must include protection of the health and strength of the workers, men and women, and of the tender age of children abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and human conditions of work and maternity relief. These are minimum requirements which must exist in order to enable a person to live with human dignity and neither the Central Government nor any State Government has the right to take any action which will deprive a person of the enjoyment of these basic essentials²³. Health care is an essential concomitant to quality of life. Its demand and supply cannot therefore be left to be regulated solely by the invisible hands of the market. The State must strive to move towards a system where every citizen has assured access to basic health care, irrespective of capacity to pay²⁴.

The right to life includes within it, the right to health and right to health includes within it, the right to affordable treatment. The State has not only a duty but a positive obligation is cast upon it to ensure that the health of its citizens is duly protected.²⁵ The Supreme Court has observed in *Paschim Banga Khet Mazdoor Samity*²⁶ that “it’s the Constitutional responsibility of the State to offer suitable medical facilities to the individuals. Whatever is required for this determination has to be finished. The Court further observed 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”. The government régime discharges this responsibility by running sanatoria and fitness/health centers which provide medical care to the person seeking to advantage of those conveniences”. In *State of Punjab V/s Ram Lubhaya Bagga*,²⁷ the Supreme Court observed that Government hospitals and health centers should be easily accessible to the people of all sections and they should be of good quality. The State should allocate sufficient funds for this purpose. The State can never disown its responsibility to provide medical facilities, as it would be a violation of Article 21.

Conclusion

Good health is essential for the happy and productive life of a person. It is not only the absence of illness or infirmity, but it is a condition under which any individual is able to use all his resources – physical, emotional, intellectual for the optimum living. Right to health has been included in right to life under Article 21 of the Indian Constitution, by wide interpretation by the judiciary. At the International level also Health is considered as a human right of first generation, Under Universal Declaration and

²³ Hari D Akoliar V.s The Director General & others LNIND 2008 kant.

²⁴ Mohd Ahmad Minor V.s Union of India & Others LNIND 2014 DEL 1020

²⁵ Gurcharan Singh V.s Ministry of finance(Deptt of Revenue), Govt. of India LNIND2021 Del 979

²⁶ AIR1996, SC2426

²⁷ 1996(2) SCC 336

different convents and conventions, State have recognized and are committed to provide this right to their citizens. The dimensions of right to health have been widened over the years. Now it not only includes physical health, but social, mental, economical, cultural and spiritual dimensions also. In order to promote and develop the AYUSH systems of health care and medicine in India, Ministry of AYUSH is working on the development of the prevalent six Indian systems of medicine. This has resulted in the strengthening of public health services, utilization of local untapped AYUSH therapeutics, and workforce and management principles for health problems at different level. The National Health Policy 2017 aims to increase health expenditure by the government as a percentage of GDP from existing 1.15% to 2.5% by 2025 and to increase the life expectancy of the individual from 67.5 to 70%. Apart from this , the government has introduced the Ayushman Bharat –National health protection mission under which the insurance cover up to 5 Lakh will be provided to approximately 10 crore families with low income. These are some of the important steps taken by the government; however the need is to effectively implement these programmes.

ⁱ Avinash Kumar," Human right to health "satyam Law International, 2007, p 1

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