

RIGHT TO HEALTH AND ACCESS TO HEALTHCARE AND MEDICINES: JUDICIAL PERSPECTIVE

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INTRODUCTION

So far as the Constitution of India is concerned, it has given rise to the Constitutional dimension of having a holistic scenario of developmental process. It is already known to us that the political and civil version of rights have been embedded in to the fundamental right regime as provided within the Indian Constitution and such rights have also been held to be justiciable. On the other hand, we have caught hold of rights like health and healthcare, which have had such underpinnings under the umbrella of directive principles of state policy¹. If we consider for our discussion over here the developing phase of such rights after independence, attempts were made in order to address the issues pertaining to the accessibility of essential commodities including better health facilities to all especially for the poor population of countries like India.

Accordingly, the private sector in India also got a tremendous boost in order to make its presence felt. Therefore, the state at that point of time did support the public as well as the private sector endeavours to develop the depleted economy of the state thereby reviving especially the dying health infrastructure gradually. There have been so many examples such as the pharma sector being supported and promoted by way of much needed subsidies being provided to them so that it could grow perpetually and could satisfy the needs of the people of India with regard to their protection of health from life threatening diseases. Accordingly, the main focus of the state was to improvise the health facilities thereby create an equitable space for all which could be utilized by especially the poor and needy.

Access, availability and affordability of essential medicines was also a part of this dreamy drive in our country. There had also been developmental programs from time to time being launched by the state with the help of stakeholders concerned but the desired results have not come out even until now.

Though medical facilities like:

1	Affordable access to hospitals/dispensaries/private hospitals.
2	Availability of essential medicines at Govt owned hospitals/PHCs/Health centres/Jan-aushadhiKendras.
3	Affordable access to medical treatments for deadly diseases. ²
4	Disseminations of information about the access, availability and affordability of such medical facilities in transparent manner.
5	Check and balance to be made more robust over there for preventing counterfeit medicines form being introduced into the market.
6	National health legislation to be made available to the public of India.

Though the State had taken measures thereby establishing requisite number of health centres at the primary level especially in the remotest areas of our country, but they had never been right oriented attempts and accordingly the desired outcome could not be seen. The national health plans³ so made from time to time had not had much impact on the improvisations needed in the health sector of India. Under such plans, very limited number of sources had been taken care of in India for the sake of inviting investments in this under developed arena. Therefore, it could have been deduced from such attempts made by our state that such developmental action plans so made had weakly supported the health infrastructural advancements in India.

¹Part-iv of the Constitution of India which is also known as directive principles of state policy where Article 47 talks about raising the level of nutrition and the standard of living of people and to improve public health.

²Diseases like Cancer, TB, HIV/AIDS, Heart diseases, Diabetes. Such diseases need affordable treatments and innovative practices in the research and development sector in India. Web source: <https://pages.questnetwork.com/rs/294-MQF-056/images/The%20Top%2015%20Best%20Selling%20Cancer%20Drugs%20in%202022.pdf> (Aug 12 2021 12.30PM)

³ National plans for health infrastructure development in India. Web source: https://www.niti.gov.in/sites/default/files/2020-12/PHS_13_dec_web.pdf (July 12 2021 11.00PM).

It could also be said at this juncture that the political class in India had not been much concerned about such developments. The elite class of India society had only the facilities of such sorts and the major chunk of people remains out of such health facilities even today too.

The accessibility, availability and the affordability of better health facilities has still been a dream to come true. Though investments were made in those sectors where there could be more profits in no time. Accordingly, even during the COVID-19 pandemic, the health infrastructure in our country was once again exposed and the facilities in terms of essential medicine or vaccine were still not timely made available to millions of people living below poverty line. Not much heed has been paid till date to improve this sector in spite of the many directions so given by the Apex Court of India and various other High Courts. The well-planned developmental strategies without having a well-placed right based attempt may give rise to minimum outcomes and accordingly the international obligations pertaining to right to health and better healthcare could not be concretely realized thereby ensuring them to the general public of India.⁴ The need was therefore felt to consider such right to health and healthcare including access to essential medicines as very part and parcel of Article twenty-one of the Constitution of India.⁵

HEALTH AND LAW IN INDIA

According to the constitution of India, the maintenance of the health and healthcare has to be done by the governments of the states concerned, but there is enough space for the centre to do the needful as and when required and the same is provided under the umbrella of concurrent list.⁶ Over the years, it has been seen that the central government in India has improved upon its ways to expend its decisive control over the health regime. The policy making process pertaining to the maintenance of health and healthcare has been taken care of by the central government. The government of India from time to time has been promoting State wise programs for the eradications of deadly diseases.⁷

Such developmental programs are being monitored by ministry of health, Government of India along with its various agencies and departments working under it in collaboration with States. Such an exercise though has given rise to the cancer eradication, HIV/AIDS eradication programs being launched years back but not much satisfying results have been found at the ground level because of the fact that the infrastructural advancements need complete overhaul to be done and even in order to fight with COVID-19 pandemic⁸, the reachability of vaccines and essential medicines to the poorest has still been a dream, as it may take couple of more months to fight out with such virus.

As has been declared by many national daily newspapers and media that such attempts being made by the States have borne fruits in most of the urban segment of population of India and the rural segment of the population has remained untouched by such programs of the states and benefits coming out of such programs have not reached out to them manifold. Even today, the rural India lacks in having access to medical doctors, nurses, treatments, essential medicines and affordable drug regime because of which the life-threatening diseases have taken away lots of lives and even today, the graph of such deaths has not been reported to have come down.⁹

The scenario with regard to primary health centres (PHCs) in states like Himachal Pradesh, Uttarakhand, Bihar, Madhya Pradesh and some north eastern states is very troublesome and tiresome too.¹⁰

Therefore, it could be said that the realization of right to health and healthcare of the common man and woman has still been at stake. The approachability to such essential basic amenities is still far away from the needy and the poor section of India society.¹¹

⁴UDHR,1948.The Universal Declaration of Human Rights (UDHR) is a milestone document in the history of human rights. Drafted by representatives with different legal and cultural backgrounds from all regions of the world, the Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (General Assembly resolution 217 A) as a common standard of achievements for all peoples and all nations. It sets out, for the first time, fundamental human rights to be universally protected and it has been translated into over 500 languages. The UDHR is widely recognized as having inspired, and paved the way for, the adoption of more than seventy human rights treaties, applied today on a permanent basis at global and regional levels (all containing references to it in their preambles).

⁵ Article 21 of the constitution of India talks about the right to life and personal liberty. The Supreme court of India has also widened its horizon hereby interpreting it taking in view all aspects of the human existence from time to time.

⁶ Union List, State List, Concurrent list (Constitution of India).

⁷ Supra, n-494.Cancer, TB, Malaria, Diabetes, HIV-AIDS etc.

⁸ The rural population in India has received relatively fewer doses in every State, though it has 135 crores of people to be vaccinated in toto .Web source:<https://www.thehindu.com/data/data-covid-19-cases-surge-in-rural-india-even-as-vaccination-rates-are-lower-than-urban-areas/article34607195.ece> (Aug 24 2021 11.20PM).

⁹ Life threatening diseases like cancer, Corona, TB, HIV/AIDS, Heart disease, Respiratory issues etc are still very prevalent in the developing world including India. The total prevention from such ailments has not been possible until now in such nations.

¹⁰ The remotest segment of the population living over there do lack in the very basic essential medical facilities to be made available to them at nearby health centers. Web source: https://main.mohfw.gov.in/sites/default/files/Final%20RHS%202018-19_0.pdf(Aug 12 2021 11.00PM).

¹¹Schedule-7, attached to the constitution of India (Union list, State list, Concurrent list). Article 246 of the Constitution of India.

JUDICIAL INTERPRETATION OF RIGHT TO HEALTH

so far as the Constitutional undertones in India about the right to health and healthcare is concerned, we may touch upon Article 21 .

“No person shall be deprived of his life and personal liberty except through the procedure established by the law...”

If we see the jurisprudential aspect of this right, we can say that till the year 1970, the meaning of life has been merely not to get killed. After this, the Apex Court of India¹² started elaborating upon various connotations coming out of it thereby magnifying the meaning of life and personal liberty. Therefore, it was also believed that, life meant more than merely a physical existence like animals but there were so many other dignified attributes so as to live a peaceful and respectful life. Accordingly, such an existence of human being did include the healthy ambience and very good amenities pertaining to health and healthcare.

Let us find out the stand points taken by supreme court /high courts of India. we shall be in better position to understand the ever-growing aspect of right to health as part of right to life.

In a case **“Municipal Council Ratlam v. Verdnichand& others”**¹³ the said municipal council had been proceed against by some of the citizens for not being able to clear the garbage stuff. It was said by the corporation that the finances were not available with them. Having not accepted the said notion, apex court of India had an observation:

“It is for the State to ensure that Article 47 gives rise to a genuine principle of governance where by the requisite steps are to be taken in order to improvise upon the public health and healthcare at the minimum level.....”

In another historic case **“CESC Ltd. V. Subash Chandra Bose”**¹⁴

Indian Supreme Court had shown so much reliance upon the international covenants/protocols and come to the conclusion that having access to right to health and healthcare is a right to be accepted fundamentally. In this case the court said, *“The meaning of health is more than that of being sick. Accordingly, the health facilities do provide protective cover to the man force which gives rise to the stable economic developmental process. If such facilities are ensured to the workers, they can contribute in their spheres in a big way to uplift the economic state of our state physically and mentally too. Having done so, the connect in between mind, body and soul will be much better.....”*

We can say that having access to such medical facilities including essential medicines becomes very part and parcel of the society oriented social progress. Health therefore gives rise to the holistic development process so associated with the human existence. Having given due regard to the notions expressed under Articles 22 and 25 of Universal Declaration of Human Rights 1948¹⁵ of an international document and keeping in view the golden words of our constitution pertaining to socio economic rights, health and healthcare as a right is to be regarded as a fundamental right.

In a case “M.P Singh v. State of Orissa”¹⁶

“It was noticed by the court that big attributes and goal achievements in one’s life are only possible provided we are given an opportunity to have access to health and health care facilities. Health is very important component to grow in one’s life meaningfully. So far as India is concerned, the marginalised, weaker section of our society need special attention and healthcare at affordable pricing. Therefore, the State has to create a holistic ambience for all to take care of their right to health and healthcare.”

So far as the health of a worker is concerned, there has been another historic judgement given by Supreme Court of India.

“InCERC V. Union of India”¹⁷the court had shown concerns about the private employees so associated with the mining pursuits. It was noticed by the court that health and health-oriented right of such workers was very

¹² Web source: <https://indiankanoon.org/doc/595099/> (Aug 15 2021 11.00PM)

¹³ 1986 SC Cri. L J 1075.

¹⁴ AIR 1992 SC 573,585.

¹⁵Article 22,25 of UDHR,1948.Article 22: Right to Social Security: After spelling out a long list of civil and political rights, the Universal Declaration of Human Rights (UDHR) now turns to economic, social and cultural rights with Article 22 and the six following Articles. These rights, mostly developed in the 20th century, include the right to work, an adequate standard of living, education, maternity and childhood, social security, and the right to take part in cultural life.

Inclusion of these economic and social rights give effect to one of U.S. President Franklin Roosevelt’s “Four freedoms” – freedom from want, which is mentioned explicitly in the preamble of the Declaration. “For the UN, health care, education, housing, and the fair administration of justice are not commodities for sale to the few, but rather rights to which all are entitled without discrimination.”Article 25 of UDHR 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. Web source: https://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf (July 23 2021 11.00PM).

¹⁶ AIR 1997 Ori. 37.

¹⁷1995, 3.SCC.42.

much embedded in Article 21 of the constitution of India. The court went on saying that in accordance with Article 38(1) of Constitution of India,

Human rights concerned are taken care of and State is destined to promote the socio-economic welfare of people. Moreover, Article 46 of the Constitution of India makes it mandatory for the state to take care of the vulnerable class of people from being exploited.

So far as the purport of Article 39e of the Constitution of India is concerned, it is the paramount duty of the state to ensure better health and health facilities to its people. So far as the language of the Article 43 of the Constitution of India is concerned, by way of effective law, the State has to ensure better health conditions for working class of people. The construct under Article 48a of the Constitution of India says that State is to take care of the environmental concerns too.

Form the above discussion, it could be concluded that right to life does include right to health and healthcare. If the health of the worker is ensured by the State through all needed infrastructural engagements, the economic wheel of the nation as a whole shall keep on moving ahead.

In another case **“State of Punjab v. M S Chawla”**¹⁸

The court had taken up the issue pertaining to the medical treatment to be provided to the employee of the State governments. It was observed herein by the court that “it has now become a well settled principle right to health and healthcare is embedded in right to life as provided under Article 21 of the Constitution of India. Having been a part of International Conventions, State is under duty to make available best health infrastructure. If there is any health issue being faced by the government employee, wherever the servant of the government has gone for treatment, the government has to bear the expenses so incurred on the employee. The court had provided such guidelines.

In most of the public interest litigations with respect to environmental hazards, the courts in our country had developed a casual connect in between environment being polluted and health being deteriorated.

In another case **“T R Rao v. Hyderabad Development Authority”**¹⁹

“It was observed by the High Court of Andhra Pradesh that the environmental protection cover is to be taken care of by the state because only in a congenial environment, all faculties of human being could be made to develop manifold. The same language is also used under Article 21 of the constitution of India. Therefore, the degrading scenario to the environment may deplete the enjoyment of healthy life as a matter of life and personal liberty.”

In another case **“T D Rao & Others v. Special officer, Municipal Corporation Hyderabad”**²⁰

“.....The Court said that the courts have to decisively propel the goals of Constitution of India thereby not endorsing the so called actions of the State to upset the ecological stabilities....”

In another historic case **“Virender Gaur v. State of Haryana”**²¹

“.....It was held by the court that the degrading environment hazards do come in a way to realize right to health as right to life as stumbling block and does violate such rights”

In a case **“Consumer Education & Research centres v Union of India”**²²

“.....It was held by the court that the ambit of Article 21 of the Constitution of India is incomplete if it is not interpreted in the light of right to health and is a fundamental right keeping in view Articles 21, 39e, 42 and 43 of the Constitution of India....”

In a case **“Subash Kumar v. State of Bihar”**²³

“It was observed by the court that right to health and better access to health facilities including essential medicines was declared the part and parcel of Article 21 of the Constitution of India....”

In a case **“M C Mehta v Union of India”**²⁴

“..... The Apex Court of India had called for the imposition as a positive obligation to be fulfilled by the State thereby promoting better health facilities from time to time as envisaged under Articles 21, 39e, 42, 43 of the Constitution of India....”

In a case **“Unnikrishnan J P v. State of AP”**²⁵

“.....It was observed by the court that it is the foremost obligation of a State to keep improvising public health infrastructure thereby fulfilling its commitments as envisaged under the umbrella of Article 21 of the Constitution of India.....”

*“.... In numerous cases, courts in India have given judgments about the quality Medicare including essential medicines to be interpreted as very important part of the right to health and right to life....”*²⁶

¹⁸ 1997 (2) SCC 83.

¹⁹ WP(36929, 2001).

²⁰ AIR 1987 AP 171.

²¹ 1995 (2) SCC, 577.

²² 1995(3)SCC, 42.

²³ 1990 SC 630.

²⁴ 1987 SC 359.

²⁵ AIR 1993 SC 2178.

²⁶ S K Garg v. State of UP 1998.

CONCLUSION

Having gone through the above cited case laws, we have come to know of the developing phase of judicial underpinnings for the past more than thirty years. We have seen also as to how the Courts in India and abroad have given new dimensions to the right to health care and health itself thereby broadening the horizons of the constitutional domains of the right to life. We have also been able to see that how the courts have taken a call on the state and private pharma sector people considering the manufacturing of such medicines and their affordability into the societies of the developing world including India. But states like India still lack most of such dimensions while providing adequate health infrastructure at the grassroot level. Therefore, onus lies on the state to go for such mechanisms including the creation of National health legislation to meet with the health requirements of its people keeping the global standards of such products intact and worth affording.