

Global Health Governance and International Law in India: A Socio-Legal Study

Darshi Sharma¹, Amit Dahiya²

¹Assistant Professor, Department of Law, Kalinga University, Raipur, India

²Research Scholar, Department of Law, Kalinga University, Raipur, India

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ABSTRACT

India is a culturally and historically rich nation. India has hosted several ancient civilizations that differed greatly from one another in many aspects of life due to its large geographic expanse, varied climate, and unique environmental conditions. India boasts a vast diversity and cultural ethos that is unmatched in comparison to other regions of the world, encompassing a wide range of faiths, dialects, cuisines, climates, cultures, and social systems. It is a well-established truth that health problems existed wherever there were humans. Given that India is the starting point of early organised communities and historical civilizations, it is evident that healthcare and health were prevalent there long before. Since the beginning of time, historical texts have been filled with references to a wide range of health-related topics. An attempt will be made to conduct a study on court rulings and reports of the Government of India in the proper places in order to support the proposed study and determine how the law pertaining to the right to health is being implemented. Thus, the study's technique, which is an analytical doctrinal approach, has been used.

1. Introduction

Since the concepts of health and the right to health are complimentary and additional, it's critical to define "health" while debating the idea of the right to health. Because the fundamental truth of human vulnerability is universal and terrible, the concept of health is a complicated one that touches on profound and unresolved medical, ethical, and legal questions [1]. The meaning of the term "health" varies from person to person based on the context in which it has been used as well as the many factors that influence health. "Health" denotes "the normal physical state, i.e., the state of being whole and free from physical and mental disease or pain, so that the parts of the body can carry on their proper function," according to Butterworths Medical Dictionary [11]. In most cases, during the first half of the 20th century, this disease-based definition of health was accepted. The conventional medical understanding of health was predicated on the idea that both illness and health were observable, objective entities [2]. The main drawbacks with this notion of health were that It exclusively considered illness when defining health; It overlooked the person as a whole by highlighting certain illnesses and body parts; and It assumed which may or may not be true that there is a binary distinction between health and illness. Consequently, the significance of the social, psychological, cultural, and environmental determinants of health has not been taken into account in this definition. It is crucial to remember that there is still very little guarantee of access to healthcare in India. Many people in the population have restricted access to medical treatment [13]. While having a disproportionately high disease burden, the impoverished typically have less access to medical care. Medication was only marginally involved in the treatment of diseases in the early days of medical research [3]. However, in the current medical science approach to the prevention, treatment, and management of diseases, medication is viewed as an essential, crucial, and necessary component of therapy. As a result, it is the duty of the States to ensure that enough supplies of currently available medications are accessible inside their borders. In most cases, during the first half of the 20th century, this disease-based definition of health was accepted. The study's methodology and area of inquiry must be stated before the framework for the investigation is explained. The study's focus will be on how India's sociolegal perspective on the right to health is applied in laws and policies [4]. Since then, countries all over the world have been developing laws pertaining to the right to health [5]. This trend has either directly or indirectly led Indian politicians to pass a number of laws pertaining to health rights [14]. In addition to a vast array of books, studies, journals, records, and background papers from technical conferences, it is suggested that the implementation mechanisms of the right to health be examined in this regard [8]. In this instance, section 1 of the article examines the introduction, and section 2 examines the relevant literature. Section 3 outlines the work plan; Section 4 presents the work's outcomes; and Section 5

concludes the project.

2. Literature Review

Due to its recognition by human rights legislation, the necessity to safeguard everyone's right to health and access to healthcare has become more pressing as time has gone on. Numerous projects pertaining to health rights under international human rights legislation have been started. Among the significant publications are those by Brigit Toebes [6], *The Right to Health as a Human Right in International Law*, and A. Ely Yamin [17], "The Right to Health under International Law and Its Relevance to the United States." However, there is no mention of the law's application to the right to health in these publications. Durga Das Basu [7], *Introduction to the Constitution of India*, Mahendra P. Singh, and V. N. Shukla's [15] *Constitution of India* are a few significant publications on the right to health under the Indian Constitution. However, the execution of the fundamental right to health protection received very little consideration in these volumes. In his book *Right to Health: A Socio-legal Perspective*, Md. Zafar Mahfooz Nomani [9] severely analysed the state of Indian healthcare operations today. Similarly, Avanish Kumar correctly points out in his book *Human Right to Health* that one of the most important health issues facing India today is medical malpractice, both real and perceived, particularly in light of the country's rapid technological advancements and the rising number of related lawsuits [10]. However, these studies don't shed any light on how the law's right-related implementation mechanisms work. Furthermore, a number of studies have been conducted recently to determine the relationship between medical malpractice and the Consumer Protection Act's remedies for it.

Contemporary Framework

It is crucial to take into account the development of the right to health in India after talking about it internationally. The historical perspective is rich and helps us comprehend the usefulness of various medical wings in Indian civilization as a result of health difficulties and their growth over different times and cultures. The following various phases can be used to study the historical perspective of the right to health and related issues in India. As a means of averting conflict and preserving peace between warring States, the right to health was recognised. As a result, the right to health has developed under international law, and the normative elucidation of this right has important conceptual and practical ramifications for the formation of state legal frameworks pertaining to the right to health, particularly in India [18]. To get a clear understanding of the necessity of protecting the right to health in Indian domestic laws, it is therefore necessary to examine the recognition of rights relating to the protection of health under various international instruments before examining the scope and ambit of the right to health under the Indian legal framework. [16]. In numerous cases, the Indian judiciary has interpreted Article 21 of the Indian Constitution to declare the right to health as a fundamental right. Additionally, Article 47 of the Constitution places a positive obligation on the State to enhance public health, raise living standards, and improve nutrition in order to uphold the right to health. As a result, a wide range of judicial aspects pertaining to the right to health have surfaced.

Right to Health under Article 21

The Indian Constitution lacks a specific provision addressing the right to health; however, the Supreme Court has declared, through a dynamic interpretation of Article 21, that the right to health is implicit in the right to life and personal liberty that are guaranteed by the Constitution. Accordingly, Article 21 of the Constitution recognises the right to health as an unnumbered right. The Supreme Court reviewed the State's various roles in ensuring the safety and health of workers in *C.E.S.C. Ltd. v. Subhash Chanda Bose*. It highlighted the necessity of providing workers with medical care to prevent illness and raise their general standard of health in a way that upholds their human dignity and right to privacy. As a result, it was decided that being "healthy" meant more than just not being ill. In addition to providing disease prevention, medical services and amenities provide a steady labour supply for economic growth. Therefore, medical facilities are covered by life insurance and social security. Enhanced security, it would provide an instant return to the employer in the form of higher output, and it would lower absence due to illness, etc.

Right to Access to Medical Aid

Public health protection is now mostly seen from a rights viewpoint, and securing one's right to health requires having access to medical care. The Indian Constitution requires the State to take the necessary actions to provide an atmosphere that permits individuals to obtain health care. It has become widely acknowledged over time that life is not limited to animal existence but also includes the life of a respectable human being with all of its accompanying characteristics. Among them would be efficient medical facilities. In *Manmohan Kaul v. Hindustan Copper Limited*, the Madhya Pradesh High Court ruled that the respondent is the State as defined by Article 21 of the Constitution and that the State has a duty to protect the lives of its workers by giving them access to emergency medical care. According to Articles 21, 39(e), 41, and 43 of the Constitution, the right to health and medical treatment is a fundamental freedom that upholds an employee's human dignity and gives their life meaning and purpose. The High Court of Gauhati said in *Sheri Sarif Mullah v. State of Assam* that the State's commitment to provide medical treatment is carried out in light of its basic duties as a welfare state and in accordance with the victims' fundamental rights under Article 21 of the Constitution. The State has these obligations out of compassion. Nonetheless, in situations in which such empathy is lacking, it might be argued that the duty to administer medical care to a victim stems from the provisions outlined in Article 21 of the Indian Constitution.

Right to Receive Medical Treatment in Emergencies

There is no particular law in India that addresses the obligations of medical professionals to treat patients in an emergency. A medical disease that exhibits acute symptoms severe enough that it would be reasonable to assume that failure to receive immediate medical treatment will result in

- (i) The person's death,
- (ii) Severe disruption of physiological processes,
- (iii) Grave danger to one's own health or, in the case of a pregnant woman, to both her unborn child's health and one's own; grave malfunction of any organ or component of the body.
- (iv) In India, Article 21 supersedes all other matters pertaining to health facilities, including the right to emergency medical treatment.

Stated differently, in the event that a patient's right to life under Article 21 of the Constitution is violated and treatment is refused, the patient may file a claim with the court for damages.

Right to Access to Medical Records

Medical records are an essential component of medical practice, and one of the fundamental rights recognised by both national and international legal frameworks is the patient's right to access their own medical information. Medical records are often private documents with restricted access. All healthcare providers are required by law and ethics to keep patient treatment records current. Though patient welfare-oriented health care concepts serve as the primary guidance for patients' treatment records, the record is also a legal document. All parties involved in the delivery of healthcare have their legal interests safeguarded by it. Thus, strict safeguards for medical records have been introduced as a result of these ethical and legal concerns, particularly those pertaining to secrecy.

Right to Medical Reimbursement

Governments have traditionally utilised medical reimbursement programmes to safeguard the finances of people and families impacted by illness and injury as well as to achieve universal health coverage for all residents. According to contemporary medico-legal law, medical costs for the claimant's alleged injury's care and treatment frequently make up a sizeable amount of the damages that could be awarded at trial in India. The judiciary was crucial in securing the general public's right to medical reimbursement by recognising it under Article 21. In *Kartar Singh Virk v. State of Punjab*, the Punjab and Haryana High Court held that the right to health is an essential component of the right to life. The government

must supply suitable facilities and pay back retired or active civil servants' expenses related to treatment directives it issues.

Right to Health Care of Prisoners

The Apex Court has interpreted Article 21 of the Constitution to grant the right to healthcare to prisoners and under trailers, and it has expressed a strong interest in jail reform. The Supreme Court is always working to strike a balance between the theories of punishment that emphasise reformation and retribution.

Right to Access to Medicine

Another facet of healthcare that can regulate the healing component of health is medicine. This factor is increasingly more important for both public and individual health due to advancements in medical science. Improving access to medications is one of the numerous issues governments confront in their quest for better health care outcomes. The cost of medications can also pose obstacles to this goal. In India today, access to medicine is a major challenge. The judiciary was compelled to incorporate the ability to access medicine as a fundamental right under Article 21 in order to address the issue of impoverished people's lack of access to healthcare in India. This included placing responsibility for securing medicine access on the State. Human rights must take precedence over even these rights to intellectual property. Based on Article 21 of the Indian Constitution, the Government has a duty to save lives by providing life-saving medications to those who cannot afford them.

Right to Clean, Hygienic and Safe Environment

Another right identified by Article 21 of the Constitution as a requirement for the enjoyment of the right to health is the right to a clean, hygienic, and safe environment. The Supreme Court reviewed the applicability of Article 21 against a private company involved in an activity that may have an impact on people's lives and health in *M. C. Mehta v. Union of India*. Drawing from Article 21, the Court issued specific directives concerning hazardous chemicals. It noted that an organisation involved in a hazardous or inherently dangerous industry, which may endanger the health and safety of those working in the factory and living nearby, has an unwavering and non-delegable obligation to guarantee that no one is harmed as a result of the activity it has undertaken. The business must also guarantee that any hazardous or inherently dangerous activity it engages in is carried out with the highest standards of safety. Should any harm arise from this activity, the business must bear full responsibility for covering the damages and cannot claim that it took all reasonable precautions and that the harm was not the result of negligence on its part. Given the recent advancements in the medical field, every country aspires to provide high standards of medical care. However, medical services are a subjective, multifaceted, and multidimensional notion.

The foundation of health is solely based on our own actions and decisions; the influence of heredity is no longer acceptable in today's culture. The only way to ensure significant progress in the health sector and related concerns is to incorporate health considerations into all projects, plans, programmes, and policies within the governance process. Ordinarily speaking, policy is described as "the method by which the courses of action for accomplishing the appropriate goals are determined, or the course of action or inaction chosen by the Government to address a given problem or interrelated set of problems." To put it another way, it can also be described as "government deliberate action that modifies or affects society or the economy outside of government" [12]. It covers a wide range of topics, such as taxes, regulations, spending, information, declarations, mandates from the law, and restrictions from the law. The policy can be preventive or reactive because it is typically developed in response to perceived societal needs or problems; this is also true with regard to health Whereas preventative policy is a planned approach to build a component of society, like a healthy neighbourhood, reactive policy is created in reaction to a problem or emergency, like the spread of illness. Therefore, the ultimate goal of any public policy is to accomplish those objectives that are thought to be in the best interests of society as a whole. Through a formulation process that includes

- (i) identifying a desired goal and
- (ii) analysing a variety of measures that may lead to supporting the realisation of that goal within the community, the policy offers recommendations for addressing a problem.

The decision makers require an evaluation and justification of every option, taking into account the choice's cost, prospective effectiveness, political climate, and degree of community support. The process of justification should also involve the general public. Generally speaking, the fundamental components of policy making—accountability, collecting precise and objective data, applying well-thought-out criteria, adhering to a strict and equitable process—are beneficial in creating solid policies. Upon identification of viable solutions, choices must be taken regarding the degree to which each solution will be applied at that particular moment. As a result, policy is an intentional, deliberate attempt to create programmes and guiding principles intended to solve perceived issues. Making policy, then, is a dynamic process that involves a number of interrelated aspects, including politics, power, the needs of the society at large, and the resources that are available.

3. Conclusion and future scope

The right to health has taken on global relevance because it is fundamental to human existence. However, by looking at the concept's long history of use as well as its current application, we can understand the fundamental issues that motivated this articulation. A number of venerable old Indian literature provided an overview of the prior system of health rights protection. The inclusion of health conditions and health treatment in the normative formulation of the right to health is a recent development. This right demands the abolition of systemic discrimination in order to realise the right to health. It also extends to the right to participate in decisions that impact one's health, linking health issues with active social citizenship and ensuring equal access to care and other prerequisites for good health. Furthermore, as human rights evolved, the Supreme Court acknowledged a number of additional rights that were connected to the right to health, including the right to immediate medical attention. The Supreme Court has made it possible for any citizen to immediately approach the court for the preservation of their constitutionally guaranteed human rights through the Public Interest Litigation process. Thus, the extent and boundaries of the right to health have been discussed internationally throughout the past few decades as well as in India

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