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Right to Health in Terms of Law, Management and Humanities

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ABSTRACT

The right to health is the essential and utmost importance of fundamental rights. The right to health is interdependent on right to life and right to dignity. World Health Organization had introduced the concept of right to health in 1946, the idea of the right to enjoy to highest attainable standard of physical and mental health. We as the human being, we care and concern most about our life and our loved and dear ones which day-to-day matter. The research paper to understand what is right of health in terms law, management and humanities. Today's time the virus has given an alarm to the individuals and organisation towards to right to health. The question raised when the people faced difficult during the pandemic, when crisis broke down at health care system. There is need to change to concept that the government and the private organization cannot come together. The need to work hand-in-hand these both entities are the need to provide and protect the right to health and health care access. This right was undervalued and unknown until the pandemic crisis raised. The key factors such as political, social and economic will be stable factor if and only if right to health is implemented. The person will be productive only if free from the tension of health and mental diseases. A productive person is the key factor for the economic growth and survival. The right of health is not limited to the citizen but also other stakeholders to the healthcare industry. The research method of this paper is secondary data. The secondary data is primarily the reports and submission made by international organizations and case laws in India. The research paper aims to explaining what the right to health is and illustrating its implications for specific individuals and groups, and then elaborates upon States' obligations with respect to the right. It ends with an overview of national, regional and international accountability and monitoring mechanisms. To conclude the paper aims to understand the history, the future, the scope, the interpretation and the limitation of the right to health under the perspective of the International Law and Constitution of India.

Keywords: *Right to health, fundamental right, fundamental duty, Covid-19.*

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I. HISTORY

The human race has always been evolving and have been facing many struggles to achieve the goal for better quality of life. The destination from the jungle ‘where the survival of the fittest’ theory given Charles Darwin to the modern time theory ‘survival of weakest’. The reason for shift from the fittest to weakest in our drastic change in the lifestyle and food consumption pattern.

Early in the Kingship rule, who treated the people as ‘the subjects’ and failed to consider their rights and duties which resulted into disaster without accountability such as colonial rules, Nazi Rule etc. The Age of Revolution was started after the breakdown of the kingdom and introduced the concept of privatization since the late 18th-19th centuries such as: -

1. *Industrial Revolution (1760- 1840 approx.)*
2. *American Revolution (1765-1783)*
3. *French Revolution (1789-1799)*
4. *Spanish American wars of Independence (1808-1826)*
5. *European Revolution (1848)*
6. *Russian Revolution (1917)*
7. *Chinese Revolution (1940s)*
8. *Cuban Revolution (1959)*
9. *Iranian Revolution (1979)*
10. *European Revolution (1989)*

This resolution introduced and gave base for the fundamental rights in the UDHR, WHO, UNO and other Constitution of many countries. Fundamental rights were recognised and implied to uplift the political, social and economic factors of all countries.

II. INTRODUCTION

In recent years, the increasing attention has been paid to the right to the highest attainable standard of health, for instance by human rights treaty monitoring bodies, by WHO and by the Commission on Human Rights (now replaced by the Human Rights Council), which in 2002 created the mandate of Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health. These initiatives have helped clarify the nature of the right to health and how it can be achieved.

Health is essentials factor for the national development. It the precondition requisite for the well being of human to free from physical and mental disease. The Government of India are

always obliged to protect and provide right to health and health care.

Article 21 of the Constitution of India which provides the freedom to life and personal liberty which includes right to health and right to livelihood.

Every State in the modern era has its own Constitution to operate its organs according to some fundamental rules. The Constitution of India is the law of the land. The fundamental rule governs the relationship between State and its citizens. The very purpose behind Constitutional framework is to achieve goals set out in its Preamble. The Preamble to the Constitution of India confers rights on citizens, imposes duties on them and issues directives to State to protect the rights of its citizens. The Constitution of India is the basic law of India; it aims to secure social, economic and political justice. Among the various rights under Indian Constitution, Right to Health is an important one. Development of the nation depends upon the healthy population. The basic law of the State safeguards individual rights and promotes national wellbeing. It is the duty of the State to provide an effective mechanism for the welfare of the public at large. Health is the most important factor in national development. It is a condition of a person's physical and mental state and signifies freedom from any disease or pain. Right to health is a vital right without which none can exercise one's basic human rights. The Government is under obligation to protect the health of the people because there is close nexus between Health and the quality of life of a person. There are various provisions under the Constitution of India which deal with the Health of the Public at large. The founding fathers of the Indian Constitution rightly inserted Directive principles of State Policy (DPSP) with a view to protect the health of the public at large. Health is the most precious prerequisite for happiness.³

(A) WHAT IS THE RIGHT TO HEALTH?

The right to health means an individual has right to access to safe food, drinking water and adequate nutrition to intake and perform their social duties on the individual capacity.

The right to health is clear need for the right to livelihood. In order to earn, it is important to be in a healthy state.

The right to health has following features: -

1. THE RIGHT TO HEALTH IS INCLUSIVE RIGHT

The word inclusive means the right to life is interdependent on other fundamental rights and duties. It cannot be achieved independently or separately by any stakeholder to the society. the

³https://www.academia.edu/7692842/Right_to_Health_in_IndiaA_Study_of_Constitutional_and_Judicial_Attitude.

right to health is inclusive in nature. The health is subjective nature, changes as per person to person.

2. THE RIGHT TO HEALTH SUPPORTS FREEDOM

Any person should be free from non-consensual medical treatment such medical experiments, research or any form of torture as kind of punishment for treatment. The freedom to right to life is essential factor for any being to be motivated to work, study or other reasons.

3. THE RIGHT TO HEALTH MEANS ENTITLEMENT TO SOMETHING CERTAIN;

Every human is entitled to be treated and respected well when if any health crisis arises. The govt should facility and support the citizen.

4. ACCESS TO HEALTH CARE SHOULD BE BASED ON NON-DISCRIMINATION PRINCIPLE'

Non person should be denied for any medical attention or care for his/her colour, race, caste, religion, social status etc.

5. HEALTHCARE OF THE COUNTRY MUST BE AVAILABLE, ACCESSIBLE AND ACCEPTABLE AND OF GOOD QUALITY.

Every country should have access to better and best medical care in order to improve the standard of living, life expectations and economic development.

6. RIGHT OF HEALTH IS THE KEY INTERLINK BETWEEN OTHER HUMAN RIGHTS.

Right to livelihood, Right to life and other all depend on the health of any individual. Hence, right to health is important base and interlink to other human rights.

(B) THE RIGHT TO HEALTH IN INTERNATIONAL LAW:

The right to the highest attainable standard of health is a human right recognized in international human rights law.

1. CONSTITUTION OF WORLD HEALTH ORGANIZATION [1946]:

The Preamble of the 1946 World Health Organization (WHO) Constitution defines health broadly as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity”.⁴ The Constitution defines the right to health as “the enjoyment of the highest attainable of health” and provides principles of the right as healthy child development; equitable dissemination of medical knowledge and its benefits and government-provided social measures to ensure adequate health. The WHO Constitution notably marks the

⁴ *Constitution of the World Health Organization* (PDF). Geneva: World Health Organization. 1948. Archived (PDF) from the original on 21 March 2014. Retrieved 14 October 2013

first formal demarcation of a right to health in international law.

2. UNIVERSAL DECLARATION OF HUMAN RIGHTS [1948]:

Article 25 of the United Nations' 1948 Universal Declaration of Human Rights states that "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, includes food, clothing, housing and medical care and necessary social services".

3. INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION [1965]:

The United Nation's International Convention on the Elimination of All Forms of Racial Discrimination which was adopted in 1965 but came into effect in 1969. The Conventions call upon States to 'prohibit and to eliminate racial discrimination in all its forms. It has provision for 'The Right to public health, medical care, social security and social services'.

4. INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS [1966]:

The United Nations further defines the right of health in Article 12 of the 1966 recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The steps to be taken are as follows;

- *The reduction of the stillbirth-rate and of infant mortality and for healthy development of the child;*
- *The improvement of all aspects of environmental and industrial hygiene;*
- *The prevention, treatment and control of epidemic, endemic, occupational and other diseases;*
- *The creation of conditions which would assure to all medical service and medical attention in the event of sickness.*

5. CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN:

Article 12 of the 1979 United Nations Convention of the Elimination of All Forms of Discrimination against Women outlines women's protection from gender discrimination when receiving health services and women's entitlement to specific gender-related health care provisions. It states:

"Article 12:

States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

Notwithstanding the provisions of paragraph, I of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.”

(C) THE RIGHT TO HEALTH AND HEALTH DUTIES IN SELECTED NATIONAL CONSTITUTIONS:

1. CONSTITUTION OF SOUTH AFRICA (1996):

Chapter II, Section 27: Health care, food, water and social security:

“(1) everyone has the right to have access to

a. health-care services, including reproductive health care;

b. sufficient food and water; [...]

(2) The State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of each of these rights.

(3) No one may be refused emergency medical treatment.”

2. CONSTITUTION OF INDIA (1950):

Part IV, art. 47, articulates a duty of the State to raise the level of nutrition and the standard of living and to improve public health: “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.”

3. CONSTITUTION OF ECUADOR (1998):

Chapter IV: Economic, Social and Cultural Rights, art. 42: “The State guarantees the right to health, its promotion and protection, through the development of food security, the provision of drinking water and basic sanitation, the promotion of a healthy family, work and community environment, and the possibility of permanent and uninterrupted access to health services, in conformity with the principles of equity, universality, solidarity, quality and efficiency.”

(D) THE RIGHT TO HEALTH IN THE CONSTITUTION OF INDIA:

The Constitution of India was adopted at the same time UDHR was setup in 1948. The Indian constitution recognized the importance of health and health care for the attainment of its socio-

economic goal.

Article 21 of the Indian constitution ensures Right to Health and pollution-free environment.

Article 39 (e) directs the state for the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter evocation unsuited to their age or strength.

Article 39 (f) provides that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Article 41 of the constitution ensures protection in old age, sickness, and disablement of the persons irrespective of their status. There are several provisions in the constitution those ensures the protection of health.

Article 38, 42, 43, 47, 48 (A) of the constitution directs state for the promotion of health and strength of the people. These principles are adopted as guidelines for the state to provide just and human conditions for living. It forms the responsibility of the state to raise the level of nutrition and standard of living and improve public health and maternity relief. It becomes the constitutional obligation of the state to improve the environment for better protection of life.

Under Article 51 (A), it become the fundamental duties of every citizens to protect and improve the natural environment including forest, lakes, rivers, and wild life and to have compassion for living creatures. It will foster a good condition for better health of the people. Under seventh schedule, the states empowered to make legislation in different aspects, which will provide better health care and protection.

The entries 6, 8, 17, and 51 of the State lists provide that the state may make law for betterment of public health, sanitation, water supply, etc. The states are empowered to regulate production, sale, purchase, and possession of alcoholic substance and liquors. The state may make law to establish and regulate hospital, dispensaries, and medical institutions for the health care.

Similarly, the entries 18, 19, 20-A of concurrent list empowers central government and state to make law to stop adulteration of foods, food stuffs, and other goods not congenial for health. Both governments have power to make regulatory measures for population control and family planning. Regulatory measures may be made to sale, purchase, and possession of intoxicating liquors, opium, and other narcotic substances.

Article 243 (G) empowers panchayats to deal with health and sanitary measure. It becomes the responsibility of panchayats to improve the health condition. The panchayats may establish and

manage hospitals and dispensaries for the better health and family welfare.

Under Article 243 (W), municipalities are empowered to make safety provisions for sanitation and health protection of the public. The municipality under obligations to supply water for domestic, industrial, and commercial purposes. It is the responsibility of the municipality to remove public nuisance and take steps for the improvement of slum. They are duty bound to construct drain and parks for better living. The above discussion establishes that the government is under constitutional obligation to protect the health and living condition of the people.

CASE LAWS PERTAINING TO INDIA: -

1. RAM LUBHAYA CASE 1998-

The case had issue to right to health under Article 21, 41 and 47 of the Constitution of India. The court observed that right of one associate with obligation of another. Subsequently, the right is empowered under Art.21 to force equal obligations on the state and additional provision under Art.47. Despite the fact that some schools and emergency clinics are set up by the administration but the obligation isn't satisfied until reaches the whole population.

OBLIGATIONS ON STATES AND RESPONSIBILITIES OF OTHER TOWARDS THE RIGHT TO HEALTH⁵:

States have the primary obligation to protect and promote human rights. Human Rights obligations are well defined and guaranteed by international agreement and different constitutions.

GENERAL OBLIGATIONS- Article 2 (1) of the International Covenant on Economic, Social and Cultural Rights underlines that States have the obligation to progressively achieve the full realization of the rights under the Covenant. This is an implicit recognition that States have resource constraints and that it necessarily takes time to implement the treaty provisions. Consequently, some components of the rights protected under the Covenant, including the right to health, are deemed subject to progressive realization.

It is necessary to take steps to realize the right to health by setting up free medical camps, affordable medicine and necessary drugs availability.

The Committee on Economic, Social and Cultural Rights has also stressed that States have a core minimum obligation to ensure the satisfaction of minimum essential levels of each of the

⁵ <https://www.ohchr.org/Documents/Publications/Factsheet31.pdf>

rights under the Covenant. The following need to ensure:

- *The right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups;*
- *Access to the minimum essential food which is nutritionally adequate and safe;*
- *Access to shelter, housing and sanitation and an adequate supply of safe drinking water;*
- *The provision of essential drugs;*
- *Equitable distribution of all health facilities, goods and services.*

THREE TYPES OF OBLIGATIONS- State obligations fall into three obligations as follows: -

1. THE OBLIGATION TO RESPECT-

All state needs to respect the individuals chose to have received any disease and treat it and enforce to right to privacy.

Example States should refrain from denying or limiting access to health-care services; from marketing unsafe drugs; from imposing discriminatory practices relating to women's health status and needs; from limiting access to contraceptives and other means of maintaining sexual and reproductive health; from withholding, censoring or misrepresenting 26 health information; and from infringing on the right to privacy (*e.g., of persons living with HIV/AIDS*).

2. THE OBLIGATION TO PROTECT-

The State needs to prevent any third party to intervenes any right to health for their unfair advantage. State needs adopt legislation or other measures to ensure that private organization to meet the highest standard and availability to necessities drugs and facilities for treatment.

3. THE OBLIGATION TO FULFIL-

The State needs to fund the health care related projects and policies to the betterment for the society and the future generations.

III. CORE PRINCIPLE AND ELEMENT TO RIGHT TO HEALTH⁶: -

(A) CORE PRINCIPLES OF HUMAN RIGHTS:

1. ACCOUNTABILITY

⁶ <https://www.who.int/news-room/fact-sheets/detail/human-rights-and-health>

States and other duty-bearers are answerable for the observance of human rights. However, there is also a growing movement recognising the importance of other non-state actors such as businesses in the respect and protection of human rights. (2)

2. EQUALITY AND NON-DISCRIMINATION

The principle of non-discrimination seeks ‘...to guarantee that human rights are exercised without discrimination of any kind based on race, colour, sex, language, religion, political, or other opinion, national or social origin, property, birth or other status such as disability, age, marital and family status, sexual orientation and gender identity, health status, place of residence, economic and social situation’.

Any discrimination, for example in access to health care, as well as in means and entitlements for achieving this access, is prohibited on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation ,and civil, political, social or other status, which has the intention or effect of impairing the equal enjoyment or exercise of the right to health.

The principle of non-discrimination and equality requires WHO to address discrimination in guidance, policies, and practices, such as relating to the distribution and provision of resources and health services. Non-discrimination and equality are key measures required to address the social determinants affecting the enjoyment of the right to health. Functioning national health information systems and availability of disaggregated data are essential to be able to identify the most vulnerable groups and diverse needs.

3. PARTICIPATION

Participation requires ensuring that all concerned stakeholders including non-state actors have ownership and control over development processes in all phases of the programming cycle: assessment, analysis, planning, implementation, monitoring, and evaluation. Participation goes well beyond consultation or a technical addition to project design; it should include explicit strategies to empower citizens, especially the most marginalized, so that their expectations are recognised by the State.

Participation is important to accountability as it provides “...checks and balances which do not allow unitary leadership to exercise power in an arbitrary manner”.

4. UNIVERSAL, INDIVISIBLE AND INTERDEPENDENT

Human rights are universal and inalienable. They apply equally, to all people, everywhere,

without distinction. Human Rights standards – to food, health, education, to be free from torture, inhuman or degrading treatment – are also interrelated. The improvement of one right facilitates advancement of the others. Likewise, the deprivation of one right adversely affects the others.

(B) CORE ELEMENTS OF A RIGHT TO HEALTH

1. PROGRESSIVE REALIZATION USING MAXIMUM AVAILABLE RESOURCES

No matter what level of resources they have at their disposal, progressive realisation requires that governments take immediate steps within their means towards the fulfilment of these rights. Regardless of resource capacity, the elimination of discrimination and improvements in the legal and juridical systems must be acted upon with immediate effect.

2. NON-RETROGRESSION

States should not allow the existing protection of economic, social, and cultural rights to deteriorate unless there are strong justifications for a retrogressive measure. For example, introducing school fees in secondary education which had formerly been free of charge would constitute a deliberate retrogressive measure. To justify it, a State would have to demonstrate that it adopted the measure only after carefully considering all the options, assessing the impact and fully using its maximum available resources.

(C) CORE COMPONENTS OF THE RIGHT TO HEALTH

The right to health (Article 12) was defined in General Comment 14 of the Committee on Economic, Social and Cultural Rights – a committee of Independent Experts, responsible for overseeing adherence to the Covenant. (4) The right includes the following core components:

1. AVAILABILITY

Refers to the need for a sufficient quantity of functioning public health and health care facilities, goods and services, as well as programmes for all. Availability can be measured through the analysis of disaggregated data to different and multiple stratifiers including by age, sex, location and socio-economic status and qualitative surveys to understand coverage gaps and health workforce coverage

2. ACCESSIBILITY

Requires that health facilities, goods, and services must be accessible to everyone. Accessibility has four overlapping dimensions:

- *non-discrimination*

- *physical accessibility*
- *economical accessibility (affordability)*
- *information accessibility.*

Assessing accessibility may require analysis of barriers – physical financial or otherwise – that exist, and how they may affect the most vulnerable, and call for the establishment or application of clear norms and standards in both law and policy to address these barriers, as well as robust monitoring systems of health-related information and whether this information is reaching all populations.

3. ACCEPTABILITY

Relates to respect for medical ethics, culturally appropriate, and sensitivity to gender. Acceptability requires that health facilities, goods, services and programmes are people-centred and cater for the specific needs of diverse population groups and in accordance with international standards of medical ethics for confidentiality and informed consent.

4. QUALITY

Facilities, goods, and services must be scientifically and medically approved. Quality is a key component of Universal Health Coverage, and includes the experience as well as the perception of health care. Quality health services should be:

- *Safe* – *avoiding injuries to people for whom the care is intended;*
- *Effective* – *providing evidence-based healthcare services to those who need them;*
- *People-centred* – *providing care that responds to individual preferences, needs and values;*
- *Timely* – *reducing waiting times and sometimes harmful delays.*
- *Equitable* – *providing care that does not vary in quality on account of gender, ethnicity, geographic location, and socio-economic status;*
- *Integrated* – *providing care that makes available the full range of health services throughout the life course;*
- *Efficient* – *maximizing the benefit of available resources and avoiding waste*

IV. RIGHT TO HEALTH IN TERMS OF MANAGEMENT AND HUMANITARIAN:

(A) MANAGEMENT:

The private organization in term as pharmaceutical companies, hospital, research centre and

other need to work non-profit motive. There needs the management to have price equilibrium, so no one is denied for health care for basic needs.

(B) HUMANITARIAN:

The research for vaccination, medicine production policies from govt and private needs to with introspective to protect and promote mankind.

V. CONCLUSION:

The right to health is an essential right which should not be deprived. The conclusion was to understand the scope and importance of this article. The aim as law student to ensure all the people are aware of this right and avail it.

Law cannot work single handed. Hence there is need for new management and govt policies to protect and empower the right to health.
