

PROMOTION OF RIGHT TO HEALTHCARE IN INDIA: ENSURING ACCESS TO HUMAN RIGHTS

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ABSTRACT

The right to health is a fundamental aspect of human rights and is closely tied to our overall well-being and dignity. It encompasses the right to achieve the highest possible standard of physical and mental health, as recognized by the World Health Organization (WHO). Health is not merely the absence of disease or infirmity but a state of complete physical, mental, and social well-being. This right applies to every individual, regardless of their race, religion, political belief, or socio-economic status. It acknowledges that everyone should have equal access to healthcare services and the opportunity to lead a healthy life. The recognition of the right to health emphasizes the importance of prioritizing health as a basic human need and underscores the obligation of governments and societies to promote and protect the health of their citizens.

Health is indeed considered the true wealth, and the right to life is inseparable from the right to health. This right has gained international recognition through various declarations and covenants, including efforts by the United Nations, as well as in India through legislative provisions. The Indian judiciary has also played an active role in recognizing the right to health. However, India continues to face complex health problems, including communicable diseases, AIDS, cancer, diabetes, and heart diseases, exacerbated by poverty, malnutrition, illiteracy, and ignorance. Currently, India spends approximately 1.5% of its GDP on healthcare, but there is an expectation that this allocation will increase in the future to improve healthcare in the country.

The COVID-19 pandemic has had a profound impact on the world, highlighting the interconnectedness of health, economy, and overall development. It has not only affected people's health but also brought new issues that require immediate attention, such as the threat of man-made viruses, proper distribution of medicines during medical emergencies, and the need for expanding hospital infrastructure. It is a challenge for the government to take prompt steps to ensure the right to health for every citizen of India in the face of such challenges. Addressing these issues is crucial to safeguarding the health and well-being of the population and promoting overall development in the country.

INTRODUCTION

The recognition of the right to health is not limited to the World Health Organization and the Universal Declaration of Human Rights. It has also been acknowledged in the 1966 International Covenant on Economic, Social and Cultural Rights and other international human rights treaties. Various human rights treaty-monitoring bodies, as well as organizations like WHO and the former Commission on Human Rights (now replaced by the Human Rights Council), have increasingly focused on the right to the highest attainable standard of health. In 2002, the mandate of the Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health was established, further highlighting the importance of this right. These developments have contributed to a better understanding of the nature of the right to health and how it can be realized. States have committed themselves to protecting this right through international declarations, domestic legislation, policies, and participation in international conferences. These efforts signify the global recognition and commitment to achieving and upholding the right to health for all individuals.¹

The right to health is now recognized as an essential component of human rights, along with the right to life with dignity and the right to development. It entails that every individual is entitled to enjoy the highest attainable standard of health, which promotes a life of dignity. This right requires proactive actions from the government to improve conditions for the people, rather than just refraining from infringing upon citizens' rights. It encompasses not only access to healthcare and essential medications but also extends to mental and psychological well-being. The relationship between health and human rights acknowledges that the enjoyment of human rights significantly impacts health status. Violations and inadequate fulfillment of human rights often contribute to poor health and limited access to healthcare.²

The roots of the right to health can be traced back to the 19th-century public health movement in Europe and the United States, which introduced sanitation reforms aimed at reducing the burden of infectious diseases. These reforms solidified the belief that governments have a fundamental responsibility to provide and protect public health. In the context of human rights,

¹ Audrey R. Chapman, *The Right to Health*, 22 HEALTH HUM. RIGHTS 331 (2020).

² The Health Case for Economic and Social Rights Against the Global Marketplace: Journal of Human Rights: Vol 10, No 2, <https://www.tandfonline.com/doi/abs/10.1080/14754835.2011.568915> (last visited Jun 20, 2023).

the government's duty in the field of health was translated into the right to health, emphasizing the importance of ensuring the well-being of individuals and society as a whole.¹

Health is universally recognized as a fundamental aspect of the human condition, not only for individuals but also for society as a whole. It is closely linked to the enjoyment of all other human rights and is a prerequisite for full participation in social, political, and economic life. The Constitution of the World Health Organization (WHO) emphasizes that the highest attainable standard of health is a fundamental right for every human being, without any distinctions based on race, religion, political belief, or economic and social conditions. This recognition of the right to health is echoed in various international instruments.

In the Indian legal system, the guarantee of the right to health is enshrined in the Indian Constitution and has been further strengthened by the proactive approach of the Supreme Court. Since gaining independence, India has been committed to ensuring social welfare for its citizens. Article 39(e) of the Indian Constitution directs the State to protect the health and well-being of workers and the tender age of children. Article 47 of the Constitution specifically focuses on raising the level of nutrition and improving public health.

Furthermore, the Supreme Court has interpreted the right to health as an integral part of Article 21 of the Constitution, which guarantees the right to life. The scope of this provision is extensive and goes beyond mere physical existence. It encompasses the right to live with human dignity, the right to livelihood, the right to health, the right to adequate nutrition, the right to a pollution-free environment, and more. By recognizing health as a fundamental right under Article 21, the Supreme Court has played a crucial role in ensuring the protection and promotion of the right to health in India.

The United Nations has played a crucial role in promoting and protecting human rights, including the right to health. Health is recognized as a human right in several human rights instruments because it is essential for the realization of other individual rights. Denying someone access to healthcare is tantamount to denying their other rights. Article 25 of the Universal Declaration of Human Rights asserts that everyone has the right to a standard of living adequate for health and well-being, including access to medical care and necessary social services. The International Covenant on Economic, Social, and Cultural Rights (ICESCR) is instrumental in guaranteeing the right to health. It outlines various steps to be taken by State parties to ensure public health, including the provision of medical services and attention, prevention and treatment of diseases, and the healthy development of children.² The Covenant imposes positive obligations on State parties to protect the health of their citizens. Countries that have ratified the Covenant are obligated to comply with its provisions, and their adherence to these commitments is monitored at the international level through reporting processes. Monitoring bodies associated with major human rights treaties regularly review State party reports and provide guidance to promote and protect human rights. The accountability of governments for their legal obligations is a key aspect of ensuring the realization of the right to health.³

THE IMPORTANCE OF HUMAN RIGHTS WITH A PERSPECTIVE ON RIGHT TO HEALTH

A comprehensive analysis of the implementation of the right to health requires an understanding of the rationale behind the elevation of certain moral considerations to the level of universal human rights. The aforementioned statement implies that there exists a prescribed obligation, which may be subject to enforcement, for individuals, organizations, and legal entities to satisfy the stipulations of said rights. Although there is ongoing debate surrounding the underpinnings of human rights, there is a consensus that one of their fundamental objectives is to provide a moral and legal structure to safeguard the interests of vulnerable individuals who may otherwise be marginalized or subjected to persecution.⁴

The significance of human rights lies in their ability to prevent the marginalization of susceptible groups by precluding the neglect or disregard of their interests as issues that they have caused themselves.⁵ As an illustrative example, one may contemplate the scenario of incarcerated women who are compelled to don handcuffs during the process of childbirth. What is the public's response? There are divergent views on the matter, with some expressing dismay at the perceived infringement of human dignity, while others may attribute culpability to the mother, positing that her conduct precipitated her incarceration. The latter viewpoint tends to dominate when the female individual in question is either a non-citizen of the nation or is a member of a minority community. Nonetheless, in order to uphold human rights, it is imperative that we assume the viewpoint of the individual who has suffered harm. Irrespective of her conduct, she is entitled to dignity and safeguarding. The notion that human rights discourse can hold those in power accountable may elicit discomfort, leading some government officials to attempt to undermine it. Although the concept of human rights enjoys widespread recognition, it is not uncommon for such rights to be derided or scorned when they are sought in particular instances. This, consequently, highlights their indispensability to a greater extent.

The Universal Declaration of Human Rights (UDHR) provides limited emphasis on the human right to health within the context of international law. As per the declaration, individuals are entitled to a level of living that is sufficient for maintaining good health. Additionally, the declaration acknowledges the entitlement to several fundamental factors that contribute to health, including but not limited to sustenance, apparel, shelter, and healthcare. The authors of the ICESCR, which succeeded the UDHR, adopted a more all-encompassing perspective. A declaration was made regarding the universal entitlement to the

¹ E. E. Bartlett, *The contributions of consumer health education to primary care practice: a review*, 18 MED. CARE 862 (1980).

² Jaime Gofin, *Planning the teaching of community health (COPC) in an MPH program*, 30 PUBLIC HEALTH REV. 293 (2002).

³ J. ASHTON, *Regional Conference on Public Health in South East Asia in the 21st century, Calcutta, 22-24 November 1999*, 54 J. EPIDEMIOL. COMMUNITY HEALTH 749 (2000).

⁴ Zahara Nampewo, Jennifer Heaven Mike & Jonathan Wolff, *Respecting, protecting and fulfilling the human right to health*, 21 INT. J. EQUITY HEALTH 36 (2022).

⁵ Mary Robinson, *The value of a human rights perspective in health and foreign policy*, 85 BULL. WORLD HEALTH ORGAN. 241 (2007).

utmost achievable level of physical and mental well-being. Notwithstanding, this assertion presents a difficulty for advocates of the human entitlement to healthcare.¹

Onora O'Neill presents a cogent argument concerning the concept of the "maximum achievable level of health." In contexts characterized by limited resources, such as rural India or sub-Saharan Africa, the adoption of a globally highest attainable standard would result in an unattainable utopian objective. Alternatively, if we regard it as the standard of maximum achievement within a particular locality, we may risk establishing a suboptimal objective.²

Joseph Raz identifies a related challenge, albeit with a generally more favorable stance towards the human right to health in comparison to O'Neill. The author highlights that the concept of the "highest attainable" standard lacks clarity regarding whether it pertains solely to the highest attainable standard or the highest attainable standard in conjunction with due regard for other moral rights and valuable objectives.³

ADDRESSING THE PROLIFERATION OF DUTIES IN ECONOMIC, SOCIAL, AND CULTURAL RIGHTS

A prevalent counterpoint to the recognition of economic, social, and cultural rights, such as the right to health, is the contention that these rights entail a multitude of obligations, which may impose impracticable responsibilities on individuals. The argument posits that the failure to maintain global well-being and vitality would render any individual a violator of human rights, given the universality of such rights. The utilization of an excessive number of responsibilities has been employed as a *reductio ad absurdum* argument to question the legitimacy of economic, social, and cultural rights.⁴

Nonetheless, this assertion is presently acknowledged as a fallacious tactic, as it neglects to differentiate between various categories of obligations linked to a privilege. Comment 14 pertains to a broad topic. The Right to the Highest Attainable Standard of Health elucidates that the entitlement to health, akin to other entitlements, engenders a threefold framework of obligations: to uphold, safeguard, and satisfy. The notion of obligations can be traced back to Henry Shue's publication *Basic Rights*, which accentuates that entitlements such as autonomy, safety, and sustenance give rise to responsibilities to abstain from certain conducts, safeguard individuals from infringements, and assist individuals in achieving their entitlements. It is important to acknowledge that the aforementioned responsibilities do not inherently require the involvement of a singular entity.⁵

One proposed solution to the issue of an excessive proliferation of responsibilities is to assign the state as the primary duty bearer for the right to health. In the event that a state is incapable of fulfilling its obligations, the responsibility is assumed by the international community. Although subject to criticism for its broad scope, this approach considers the predicament of statelessness and recognizes the potential human rights obligations of non-state entities, including multinational corporations and private individuals.

Non-state actors who bear responsibilities can be classified into different categories, which comprise primary legal and care duty-bearers, such as parents, teachers, police officers, healthcare professionals, and employers. Additionally, secondary duty-bearers refer to institutions and organizations that have immediate jurisdiction over primary duty-bearers, while tertiary duty-bearers are institutions and organizations at a higher level or with more remote jurisdiction. External duty-bearers include countries, institutions, and organizations with no direct involvement, and private individuals, corporations, and business entities.

Although the legal responsibility for upholding treaties ultimately falls on states, it is important to acknowledge the significant contribution of non-state actors in advocating for, safeguarding, and honoring the right to health. The international community has yet to provide a clear and concise delineation of the responsibilities of non-state entities, as the emphasis has predominantly been placed on the obligations of states.⁶ General Comment No. 14 underscores the notion that the realization of the right to health is a collective responsibility that extends to all members of society, including but not limited to individuals, health professionals, families, local communities, intergovernmental and non-governmental organizations, civil society organizations, and the private business sector. It is within the purview of states to exercise their discretion in determining the manner in which non-state entities fulfill their obligations pertaining to human rights. However, it is incumbent upon states to establish a conducive environment that enables the discharge of these responsibilities.

The issue of international aid and collaboration in the field of healthcare is currently receiving increased scrutiny, particularly in relation to the varying economic statuses of states and the trade agreements that exist between them, both multilaterally and bilaterally. It is incumbent upon states to uphold the preservation of the right to health in foreign nations and to forestall any transgressions of this right by external entities, provided that they possess the ability to exert influence over such entities through legal and political channels. It is imperative for states to ensure access to vital health facilities, goods, and services in foreign nations and extend requisite assistance as needed, while taking into account their available resources.

Entities such as corporations, businesses, and third parties bear moral and potentially legally enforceable obligations with respect to human rights, including the right to health. It is anticipated that businesses will uphold, safeguard, execute, and endorse human rights in the context of their operational activities. The UN Norms for Corporations and Businesses acknowledge the obligations of corporations and business entities to uphold and advance human rights, while states bear the responsibility of ensuring their adherence. The matter at hand pertains to the effective means by which corporations and third-

¹ H. Lauterpacht, *The Universal Declaration of Human Rights*, 25 BR. YEAR B. INT. LAW 354 (1948).

² Alicia Ely Yamin, *The Right to Health Under International Law and Its Relevance to the United States*, 95 AM. J. PUBLIC HEALTH 1156 (2005).

³ Joseph Raz, *The Role of Well-Being*, 18 PHILOS. PERSPECT. 269 (2004).

⁴ Chapman, *supra* note 1.

⁵ Nampewo, Mike, and Wolff, *supra* note 6.

⁶ Duncan B. Hollis, *Why State Consent Still Matters: Non-State Actors, Treaties, and the Changing Sources of International Law*, (2005), <https://papers.ssrn.com/abstract=722126> (last visited Jun 20, 2023).

party entities can be compelled to make contributions towards the attainment of the right to health, as well as the standards that ought to be upheld in this regard.

RIGHT TO HEALTH- CONSTITUTIONAL PERSPECTIVE

The notion of the entitlement to health has undergone a transformation throughout history and has been acknowledged globally as a fundamental human entitlement. The entitlement to health surpasses mere corporeal subsistence and encompasses the entitlement to reside with honor, obtain healthcare, inhabit an unpolluted milieu, and possess the entitlement to subsistence. The Indian Constitution's Article 21 provides a guarantee for the right to life and personal liberty. The Supreme Court has interpreted this right to include the right to health and medical care.

The entitlement to healthcare is widely regarded as a fundamental human right, imposing a duty on governments to guarantee its observance, safeguarding, and realization for every person. The state is subject to both affirmative and negative duties. Affirmative duties encompass the provision of healthcare infrastructure, guaranteeing equitable availability of healthcare amenities, and establishing circumstances that foster sound health. Negative obligations encompass the responsibility of safeguarding individuals from detrimental practices and substances that could potentially have adverse effects on their well-being.¹

The fundamental right to health is not explicitly incorporated in the Constitution of India. The Directive Principles of State Policy, as outlined in Part IV of the Constitution, place an obligation on the state to guarantee social and economic equity, which has an indirect bearing on public health policy.

Numerous provisions within the Constitution address the topic of health and healthcare. Article 38 highlights the obligation of the state to ensure social stability in order to advance the well-being of its citizens, encompassing public health as a crucial component thereof. The provision of Article 39(e) pertains to safeguarding the well-being of laborers in terms of their physical health. Article 41 concerns the provision of public aid in situations involving illness, disability, advanced age, and other related circumstances. Article 42 of the legislation guarantees the protection and promotion of the health and welfare of mothers and infants, with a particular focus on the provision of maternity benefits. The provision outlined in Article 47 places a fundamental obligation on the state to enhance the overall well-being of the populace, ensure equitable labor conditions for employees, and expand entitlements pertaining to ailments, impairments, seniority, and childbirth. Furthermore, it is the responsibility of the state to restrict the public consumption of alcohol in the interest of the common welfare as stipulated in Article 47. According to Article 48A, it is the responsibility of the state to safeguard and enhance the environment in order to promote a healthy and unpolluted atmosphere.

It is noteworthy that the Directive Principles of State Policy lack enforceability in a court of law and possess only persuasive significance. The utilization of non-justiciability has frequently been employed by the state as a mechanism to evade accountability in the provision and safeguarding of public health. The intervention of the Supreme Court of India led to an expansion of the right to health under Article 21 of the Constitution, which provides for the right to life and personal liberty for all individuals, regardless of their citizenship status. The interpretation of personal liberty as per Article 21 encompasses a range of rights that may or may not have a direct bearing on an individual's life and liberty. This includes the right to health.

The recognition of the right to health as a fundamental right has been significantly influenced by the decisions of the Supreme Court. The judiciary has established in multiple instances that safeguarding public health is a fundamental obligation of healthcare practitioners. The judiciary has underscored the significance of health as an essential and inviolable entitlement, and has articulated the state's duty to furnish sufficient medical infrastructure to its populace. The judiciary has construed Article 21 to encompass the entitlement to healthcare and has mandated the state to guarantee availability of medical assistance for achieving the optimal quality of life.

The Supreme Court of India acknowledged the fundamental right to health in the matter of *CESC Ltd. v. Subash Chandra Bose*². The Court drew upon international instruments as a basis for its rationale. The Court emphasized that the notion of health surpasses the mere lack of illness. The statement highlights the significance of medical care and health facilities in not only safeguarding individuals against illnesses but also contributing to the promotion of stable employment for the purpose of economic advancement. The availability of healthcare and medical amenities fosters a sense of dedication and devotion among employees, thereby enhancing their physical and mental well-being, ultimately resulting in heightened productivity. The judiciary regarded medical establishments as an integral component of the social security system and underscored their significance in fostering a thriving economic, social, and cultural existence. Nevertheless, the Court observed the inadequacy of governmental focus and funding in this particular industry.

SUGGESTIONS

The following recommendations are proposed for the advancement and preservation of the right to health in India:

1. It is recommended to allocate resources towards enhancing healthcare infrastructure, encompassing medical facilities such as hospitals, clinics, and primary healthcare centers, with a specific focus on rural and underprivileged regions. This measure would guarantee equitable access to high-quality healthcare services for every member of the population.
2. To enhance healthcare provision, it is recommended to increase the budgetary allocation for healthcare, with the aim of meeting the recommended target of allocating a certain percentage of GDP towards healthcare. This measure

¹ Ellie Collier, *Duty of Care in Health and Social Care: Responsibilities & Examples*, THE HUB | HIGH SPEED TRAINING (2021), <https://www.highspeedtraining.co.uk/hub/duty-of-care-in-health-and-social-care/> (last visited Jun 20, 2023).

² 1992 AIR 573, 1991 SCR Supl. (2) 267

- would facilitate the government in enhancing healthcare provisions by improving the quality of facilities, equipment, and the proficiency of medical personnel.
3. The proposal is to establish a comprehensive and robust program for universal health coverage that guarantees access to essential healthcare services, encompassing preventive, curative, rehabilitative, and palliative care. This measure would potentially mitigate financial obstacles and promote equitable healthcare accessibility for all members of society.
 4. The promotion of health education and awareness programs is recommended to disseminate knowledge among the populace regarding preventive healthcare practices, hygiene, and healthy lifestyles. This measure would enable individuals to make knowledgeable choices concerning their health and overall welfare.
 5. The enhancement of primary healthcare can be achieved by enhancing the accessibility and availability of essential medicines, diagnostic facilities, and trained healthcare professionals at the grassroots level. The implementation of early detection and management strategies would potentially alleviate the strain on secondary and tertiary care facilities, thereby improving the overall management of diseases.
 6. To mitigate health disparities, it is imperative to devise interventions and policies that are tailored to specific groups based on factors such as income, gender, caste, and geographic location. It is imperative to undertake measures aimed at guaranteeing equitable accessibility of healthcare services to populations that are marginalized and vulnerable.
 7. The implementation of Public-Private Partnerships is recommended to foster collaborations between the government and private healthcare providers, with the aim of addressing the disparities in healthcare service delivery. The act of collaborating has the potential to optimize resources, knowledge, and creativity towards enhancing the healthcare system as a whole.
 8. Place Emphasis on Preventive Healthcare: Give priority to preventive healthcare measures, including vaccination drives, screening initiatives, and health examinations. Encourage the adoption of healthy behaviors, such as consistent physical activity, a well-balanced diet, and the regulation of tobacco and alcohol consumption, as a preventative measure against the development of chronic illnesses.
 9. The establishment of a strong health information system and the promotion of healthcare research are crucial in gathering precise data, monitoring health patterns, and facilitating evidence-based policy decisions. The facilitation of effective planning, resource allocation, and implementation of health programs would be enabled by this.
 10. To enhance the regulatory framework, it is recommended to establish and enforce rigorous regulations and quality standards for healthcare facilities, medical practitioners, pharmaceutical products, and health technologies. The implementation of this measure would guarantee the safeguarding of patient well-being, the provision of high-quality healthcare services, and the establishment of responsibility and liability in the healthcare sector.

It is noteworthy that the aforementioned recommendations are of a general nature, and the implementation process would necessitate particular considerations and contextual modifications.

CONCLUSION

The fundamental human right to health encompasses not only the absence of disease, but also the provision of sufficient healthcare and the capacity to live a dignified and healthy life. This highlights the importance of ensuring access to healthcare services for all individuals. Although the Constitution of India does not overtly acknowledge the right to health as a fundamental right, it has been broadened in scope through several provisions, such as the Directive Principles of State Policy and interpretations of Article 21, which have affirmed the state's responsibility to guarantee healthcare accessibility to all citizens.

In order to ensure the effective promotion and protection of the right to health in India, it is imperative to accord priority to critical domains such as enhancing healthcare infrastructure, augmenting healthcare expenditure, instituting universal health coverage, and emphasizing primary healthcare. Furthermore, the incorporation of health education and awareness, the mitigation of health disparities, the cultivation of public-private partnerships, the prioritization of preventive healthcare, the promotion of health data and research, and the reinforcement of the regulatory framework are crucial elements in the establishment of a resilient and impartial healthcare infrastructure.

The allocation of adequate resources, the formulation of evidence-based policies, and the successful implementation thereof are crucial for the government to attain fair and impartial access to healthcare services for all members of society, particularly those who are marginalized and vulnerable. The achievement of the right to health in India necessitates the collaboration of various stakeholders, including the government, healthcare providers, civil society organizations, and the international community. This is crucial in addressing the complex challenges that arise in this pursuit.

India can make progress towards creating a society where every individual has access to affordable, quality healthcare and can lead a healthy and fulfilling life by prioritizing the right to health and implementing comprehensive and proactive measures. Acknowledging the importance of the entitlement to healthcare not only confers advantages to individuals but also fosters the comprehensive socio-economic advancement and welfare of the country at large.