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RIGHT TO HEALTHCARE –AN OVERVIEW

Introduction

As human beings, our health and the health of those we care about is a matter of daily concern. Regardless of our age, gender, socio-economic or ethnic background, we consider our health to be our most basic and essential asset. Ill health, on the other hand, can keep us from going to school or to work, from attending to our family responsibilities or from participating fully in the activities of our community. By the same token, we are willing to make many sacrifices if only that would guarantee us and our families a longer and healthier life. In short, when we talk about well-being, health is often what we have in mind.

The right to health is a fundamental part of our human rights and of our understanding of a life in dignity. Internationally, it was first articulated in the 1946 Constitution of the World Health Organization and it defines health as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity” and pursuant to the preamble it states that the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition.

The 1948 Universal Declaration of Human Rights also mentioned health as part of the right to an adequate standard of living (art. 25). The right to health was again recognized as a human right in the 1966 International Covenant on Economic, Social and Cultural Right.

In India the Directive Principle of State Policy under Article 47 thinks of it as the essential obligation of the state to improve general health, However, the Supreme Court has carried the right to health under Article 21 and Right to health is integral to the right to life so the government has a constitutional obligation to provide health facilities. The Fifteenth Finance Commission recommended that Right to Health must be declared a fundamental right on the 75th Independence Day in 2022.



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Meaning of Right to Healthcare

Right to healthcare implies a person's right to safeguard his health from any hazardous state action and state's obligation to provide sponsored health care at an affordable price and it includes Right to appropriate medical care and human treatment, right to choose healthcare provider and facility and Right to medical Rerecords.

In the case of **State of Punjab v. M.S. Chawala**¹ it was held by the Supreme Court that right to healthcare and clinical consideration is an integral part of right to life under Article 21.

National Digital Health Policy 2017, it was announced by the Prime Minister on 74th Independence Day, in which AYUSHMAN Scheme Bharat Yojana provides health insurance to the poor and The Right of Persons with Disabilities Act 2016 & Senior Citizen Act 2007 directs for equal facilitation of healthcare to the disabled and senior citizens.

Important Schemes

CHCHIS² Scheme is launched by the government of Tamil Nadu through United Insurance Company Ltd, a public sector insurance company, at Chennai. It delivers equality in the provision of health care to eligible person through the empaneled government and private hospitals with the aim to reduce the financial hardship to the enrolled families. During a medical emergency, the beneficiary should produce the maruthuva Kapitu Thittam Card or the smart card to the hospital. The hospital authorities will send the related information to the insurance company. The claim amount will be settled directly between the hospital and the insurance company.

Pradhan Mantri Jan Arogya Yojana introduced by the government of India on 23 September 2018, it is an ambitious government-sponsored health scheme. It was introduced with the intent to reduce the financial burden on poor and vulnerable groups as a result of hospitalization and ensure they get access to quality healthcare.

The Ayushman Bharat Health Scheme offers an annual health cover of Rs. 5,00,000 per family (on a family floater basis). It covers medical and hospitalization expenses for nearly all secondary care and tertiary care procedures. The government-backed program has defined 1,350 medical packages covering surgery, medical and day care treatments including medicines and transport.

¹ AIR 1996

² The Chief Minister Comprehensive Health Insurance Scheme



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Performance of different States

As of 2020 news only six states have enacted a public health law, nine are in the process of formulating one, while eight have no plans to bring in any such law oriented towards providing protection and fulfilment of rights related to health. A bench led by Chief Justice S.A. Bobde had directed the central government to advise all states and union Territories to formulate a legal framework, similar to the National Health Bill, 2009.

According to the ministry's affidavit, Tamil Nadu, Uttar Pradesh, Andhra Pradesh, Goa, Assam and Madhya Pradesh have their own public health Acts, Both Andhra Pradesh and Tamil Nadu enforced the law in 1939 and have amended it from time to time.

Uttar Pradesh, the law was framed in 2020, after the Covid breakout, meanwhile, Punjab, Sikkim, Odisha, Karnataka, Jharkhand, Manipur, Maharashtra, Meghalaya and the UT of Dadra and Nagar Haveli and Daman & Diu plan to enact such a law in the near future, but Chandigarh, West Bengal, Jammu and Kashmir, Mizoram, Uttarakhand, Nagaland Mizoram, Haryana, and Andaman and Nicobar Islands have no plan to legislate a public health law.

The Rajasthan Right to Health Care Bill, 2022 was introduced by the Rajasthan state government in September, 2022 in the state legislative assembly. This Bill shall provide protection and fulfillment of rights, equity in relation to health and well-being for achieving the goal of health care for all through guaranteed access to quality health care to all the residents of the State. And it shall be duty of the Rajasthan government to ensure that people's right to health care is realized as the most important stakeholders in realization of right to health care are the people themselves.



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Judicial Interpretations

The Right to Health does not expressly recognized under Part III of the Constitution of India. However, through judicial interpretation this is considered as the part of Article 21 (Right to Life & Personal Liberty).

In *State of Punjab and ors vs. Mohinder Singh Chawla*³, it was held by the Supreme Court that right to life includes within its fold the right to health, and it is the obligations of the government to provide health services.

In *State of Punjab vs. Ram Lubhaya*⁴, it was held by the Supreme Court that every right had a corresponding duty and duty of the state as mentioned in Article 47 – improving public health standard is attracted by the Article 21 in this case.

In *Consumer Education and Research Centre v. Union of India*⁵, held that right to health and medical aid to protect the health and vigor of a worker, both while in service and post retirement, is a Fundamental Right under Article 21.

In *Paschim banga khet mazdoor samity v. The State of West Bengal*⁶, the Supreme Court while broadening the extent of Article 21 and the administration's obligation to give clinical guidance to each individual in the nation, held that in a government assistance express, the essential obligation of the administration is to make sure about the government assistance of the individuals. Giving satisfactory clinical offices to the individuals is a commitment embraced by the administration in a government assistance state.

³ AIR 1996

⁴ AIR 1998

⁵ AIR 1995 SC 922

⁶ AIR 1996



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Conclusion

So far as the concept of the right to health is concerned it is nowhere mentioned in Constitution of India. The Apex Court has interpreted the right to health right under the right to life provided under Article 21. Right to Health is an inclusive right. Further it can be said that the quality growth of a Nation depends upon the sound public health in that particular territory. The role of the Supreme Court is significant as there is no Indian legislation that gives the right to health to the people at large.

It is only the desire of the state which can fulfil the public health needs. From the law point of view the State is under a legal obligation to protect the right to health as India is a party to various international treaties on health rights. In a welfare country like India welfare of the people is the prime responsibility of the government.

The basic right of access to health care of appropriate quality is a fundamental humanitarian principle that should be enjoyed by all citizens of all countries, and the government and other agencies should jointly work towards fulfilment of the right to health.

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¹ Majesty legal is law firm, established in 2013 by Ms. Mahi Yadav and aim of the present article is to provide insights on law and statutes. The opinion presented in the article are personal in nature and not to be deemed as legal advice.