

Access to healthcare : International and National Legal Perspectives

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Some examples of human rights include the access to adequate nutrition and food, the access to know and be informed, the access to an education, the access to exist and be healthy, and the access to be free from physical and mental harm. Everyone, no matter where they are or what they're going through, has the right to be protected by human rights. Because one's health is directly related to one's ability to get legal protections and medical treatment, access to healthcare is one of the most fundamental human rights. Beyond a person's emotional and physical well-being, the term "access to healthcare" encompasses a wide range of factors essential to their ability to maintain a healthy lifestyle, including Part three of the Indian Constitution deals with fundamental freedoms, and Article 21 may touch on this matter. This is in addition to the following international documents and bodies that deal with healthcare access: "the World Health Organization, the European Convention on Human Rights, the International Covenant on Civil and Political Rights, and the Universal Declaration of Human Rights". When people have enough housing, healthcare, food, and sanitation, they are better able to take care of themselves physically and mentally. A quality education, safe drinking water, and equality are all available to all people. Therefore, it is crucial for the state to ensure healthcare access and safeguard citizens. The author of this piece tries to highlight the roles of international organizations, the state's duty to guarantee healthcare access, and the judiciary's position on the subject. Instead of viewing health care as a luxury, people should view it as an essential economic activity. Putting money into this can help you amass a fortune.

Key Words: Health, access to healthcare, Health Care, WHO, UDHR, ICCPR ICESCR, Article 21

Introduction :

The fundamental access to healthcare was the focus of this investigation into other health-related rights, such as the right to access health care. The access to healthcare as it exists in international and national legal frameworks can be better understood by taking a global-local perspective. According to the WHO constitution, "Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity¹." In healthcare, the three main tenets are illness prevention, treatment, and management; consequently, accessibility, quality, acceptability, and availability are also important. The service that doctors and other medical professionals offer is health care, which encompasses all aspects of well-being. Having enough accessible goods and services, including health care facilities, is essential. In healthcare, the three main tenets are illness prevention, treatment, and management; consequently, accessibility, quality, acceptability, and availability are also important. The service that doctors and other medical professionals offer is health care, which encompasses all aspects of well-being. Having enough accessible goods and services, including health care facilities, is essential.

Health Care is linked with *Roti Kapda Makaan* (food, cloth, and home) water clean environment, job, education transport, lifestyle last but not list space for recreation. Health Care is a service sector or Health Care falls within the service sector which is provided under the access to healthcare. Access to health care is a road to access to healthcare. The access to healthcare is multi-faceted. Accessibility and the ability to adapt within a reasonable time frame are essential components of the access to healthcare.

Constitution and access to healthcare: Basic rights available against the state are addressed in the third part of the Indian Constitution. Article 14 states that the state must treat all citizens equally and provide them with the same protections under the law. Article 14 specifies that can make laws through which similar people can be treated similarly. The state can make positive discrimination with reasonable classification and

¹ "<https://apps.who.int/gb/bd/PDF/bd47/EN/constitution-en.pdf?ua=1>"

without arbitrariness. The state has to follow the rule of law to make the laws for which everyone within the territory of India can get better services in the health sector. When we talk about life here, we mean dignified life, not savage existence. Dignified living entails maintaining one's health and living with respect. When people have access to medical treatment, they are able to live fulfilling lives. As part of the right to life guaranteed by Art. 21, the ability to access medical treatment is an essential component.² One can lead a healthy life only if he can develop all the faculties of his body.³ The Religious freedoms and affairs can be restricted on health grounds⁴.

Each individual has an inherent right to a life that is free from want or oppression, and the state has an obligation to ensure that its citizens have access to the healthcare, education, and other necessities that are necessary to fulfill this right, as outlined in Article IV of the Constitution..⁵ At the same time the health service providers are next to God and they should provide their professional services with utmost good faith and care.⁶

A real welfare state can only be established by implementing the Directive Principles. A welfare state's primary responsibility is to ensure its citizens' well-being. The concept of social justice is a tool for states to guarantee their citizens a minimum level of health and a decent standard of living.⁷ The crux of Article 39(e), Article 41, Article 43 and Article 48 A is that strength and health of the worker is an essential fabric of the Article 21.⁸ Article 38 is core of the directive principles which provides that state try to promote the welfare of the people⁹. Article 39 provide that state shall make the policy in such a manner that all persons have life of quality and livelihood. There will be no discrimination against women or children in the workplace, and all employees, regardless of gender, will receive equal pay for equal work. Article 42 provides maternity benefits Article 43 helps to secure the living wages so that decent standard

² “*State of Punjab v. M.S Chawla*” AIR 1997 SC 1225

³ “*Mr. X v. Hospital Z*” AIR 1999 SC 495

⁴ Art. 25 of the Constitution of India

⁵ “*State Of Punjab & Ors v. Ram Lubhaya Bagga Etc.*, 1998 AIR SCW 1480”

⁶ *Parmanand Katara v UOI* AIR 1998 SC 1703

⁷ “*Consumer Education and Research Centre v UOI* AIR 1995 SC 922”

⁸ *Ibid.* “*Kirloskar Brothers Ltd. vs. Employees’ State Insurance Corporation* JT 1996 (2), 159 1996 SCALE (2)”.
⁹ Art. 38, Constitution of India, 1950

of life can be achieved and enjoyed. Article 47 imposes the “duty on the state to raise the level of Nutrition and the standard of living and two improve public health.”¹⁰

Historical perspective

Health is connected with the social, mental and physical aspect. Health care is system where people provide medicare to the patient. Health care law is law which deals with relationship between those provide medical facilities and who receives.

Earlier the meaning of ‘Health’ is taken as absence of diseases or infirmity but now the more refined and evolved version of health is total well being,

Health is prime focus in every era and Very much regard for health.

In India, the concept of “health” has been of utmost importance at every stage of every era. In ancient times, hygiene and a clean environment were of utmost importance and were the key to good health.

The Harappan and Indus Valley civilization: The earliest civilizations recorded in the history. The people of these civilization have health is prime and important part of their life. We can trace that there remnants of well planed cities, drainage system, environment sanitation.

Vedic Period: In India, the concept of ‘health’ has been given premier value at all platform of its historical evolution. In the ancient period, high earliness was given to hygienic and a clean environment which is key to health. It was in the reign of **King Ashoka’s** reign and hygiene give prime importance¹¹. During the Mughal Rule, the Unani and Siddha system medicine flourished and thereafter, during the British Rule the modern medical science was born. Various laws and hospital came into existence. During this period, the Ayurveda Medical System flourished, and great doctors, such as *Shark* and *Susutsu*, provided a wonderful ministry as sick humanity. During the reign of Mughal , medical *Unani* and *Siddha* flourished, and then a modern medical system was born during the ruling of the UK. In democratic republic India, "health" was kept in non justiciable part *i.e.*, the “*Directive Principles of State Policy*”. The Apex Court of India interpreted the "health" as a fundamental right and held it falls within “right to life” under Article 21.

¹⁰ Thr Constitution of India, 1950 Art. 47

¹¹ <https://egyankosh.ac.in/bitstream/123456789/92667/1/Unit-1.pdf> retrieved on Nov. 2017

After independence, India became the member state of WHO. Welfare state came into existence Constitution and Planning commission. The main focus of of the planning commission shifted to was the prevention the disease but later on shifted to promotion of health.

Health Policy of 2017 came with various motions and changes and centering is shifted from ‘prevention of diseases’ to ‘promotion of health’. The decision taken to Invest 2.5 percent of GDP in public health sector.

In a global context, the access to healthcare care: Every aspect of a person's life is impacted by their access to healthcare. It could be anything having to do with politics, culture, education, or the economy. Treaties between nations, such as the "Convention on the Rights of Persons with Disabilities" (2006), the "International Covenant on Economic, Social and Cultural Rights" (1966), and the "Universal Declaration of Human Rights" (1948) all include the access to healthcare.

“International Covenant on Economic, Social and Cultural Rights”: “The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The track to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for reduction of the stillbirth-rate, reduction of infant mortality, For the healthy development of the child, The improvement of environmental and industrial hygiene; The prevention, treatment and control of epidemic, endemic, occupational diseases. The creation of conditions which would assure to all medical service and medical attention in the event of sickness.¹²”

International human rights treaties recognizing the access to healthcare

Agenda for Sustainable Development Goals (SDGs): With 169 objectives and 17 SDGs, the 2030 goals of SDG aims to tackle global poverty and promote sustainable development for all.

These are

1. **“No poverty:** *There is direct link between poverty and health. It may may included in main enemy of the promotion of health*
2. **Zero hunger-** *Hungary free society in precondition to achieve the healthy society.*

¹² Article 12

3. ***Good health and well-being:*** the third goal directly dealing with the good health and well being
4. ***Quality Education:*** Education is source of maximum rights. The quality of education means quality of health.
5. ***Gender equality***
6. ***Clean water and sanitation***
7. ***Affordable and clean energy***
8. ***Decent work and economic growth***
9. ***Industry, innovation and infrastructure***
10. ***Reduced inequalities***
11. ***Sustainable cities and economies***
12. ***Responsible consumption and production***
13. ***Climate action***
14. ***Life below water***
15. ***Life on land***
16. ***Peace, justice and strong institutions***
17. ***Partnership for the goals***¹³

The healthy life is a key component of every Sustainable Development Goal. The access to healthcare is directly or indirectly related to all of the SDGs.

The Constitution of the 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." This right is defined in the Constitution as "the enjoyment of the highest attainable standard of health," and it includes a number of principles, such as the following: every individual has the right to a safe and healthy environment in which to grow up, to fair access to healthcare and its benefits, and to social programs funded by the state that guarantee sufficient medical care.

Art. 25 of UDHR states that “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. With special mention of care given to those in motherhood or childhood”.

¹³ “<https://www.undp.org/sustainable-development-goals>”

“United Nations further defines the access to healthcare in Article 12 of the 1966 International Covenant on Economic, Social and Cultural Rights”, which states Art. 12 “Provides for

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.”

Article 5(iv) of the “International Convention on the Elimination of All Forms of Racial Discrimination” (1965) declares having access to social services, healthcare, social security, and public health; According to the Convention, States to “Prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law,” and references under this provision “The right to public health, medical care, social security and social services. It recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: The reduction of the stillbirth-rate and of infant mortality and for the 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”.

“1979 Convention on the Elimination of All Forms of Discrimination against

Women”: preamble,

Preamble is more concerned about the fact that women in low-income situations have the lowest access to basic necessities like food, healthcare, education, and training, as well as job opportunities and training,"

Art. 10 (h): “Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning”.

Article 11 (f) “The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction”.

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”.

Article 14 (2) (b): “To have access to adequate health care facilities, including information, counselling and services in family planning”¹⁴

“The 1989 Convention on the Rights of the Child”:

Article 14 (3): “Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others”.¹⁵

Article 24 (1): “States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.”¹⁶

“The Declaration of Alma-Ata”: The Declaration of Alma-Ata jointly hosted by WHO and UNICEF, with the objective to alert globe on primary health care. The obligation and duty is lying upon the state to get every human a healthy life.

“The Convention on the Rights of Persons with Disabilities, 2006” (CRPD): CRPD

is an international instrument of the United Nations for the protection the rights of disabled. The states to CRPD to promote, protect, rights of disable persons. India being signatory to the CRPD as a result, the ‘**Mental Healthcare Act, 2017**’ approved

¹⁴ <https://www.ohchr.org/sites/default/files/cedaw.pdf>”

¹⁵ <https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/crc.pdf>”

¹⁶ Ibid.

by the central legislative authority to guarantee that individuals suffering from mental illness can obtain the medical treatment and social assistance they need to live with respect and dignity.

Art. 21 of law of the land i.e. Indian constitution : “Protection of Life and Personal Liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law.” 'Life' in Article 21 refers to more than just the existence of animals. It is only right that the Constitution, being a living document, be understood and implemented in a way that safeguards the basic rights of the people.

Many different things can be considered a right to life, and all of them have an impact on the dignity of human existence: the ability to die with respect, a clean environment, a means of subsistence, an improved quality of life, safe working conditions, etc.

The Constitution constitutes the country and welfare State. The welfare state pays the parental role from cradle to grave. It includes providing *eudaimonial* justice by providing up to medical facilities for the people by running hospitals and health centers, Mohala clinics. Preservation of human life is main duty by providing medical assistance¹⁷. The fiscal limitation will not be let be an exculpation before *grundnorm* targets.¹⁸

Way forward: it is right time to create trust between patient and doctor relationship. The state should come with clean hands and follow the principle of equity, justice while dealing with health issues. In present time State and citizen should along with civil society play constructive role is one of the main challenges of the 21st century. The access to healthcare with health care be ensured to every citizen if properly educated and and scientific temper approach inculcated.

Education, prevention, and promoting one's well-being all rely on raising awareness. The healthcare industry can benefit from the prudent application of AI.

Other basic rights, such as the right to an education, a job, and an environment free of pollution, are related to the access to healthcare. A person's access to healthcare encompasses not only their physical and mental well-being, but also their access to

¹⁷ “*State Of Punjab & Ors v. Ram Lubhaya Bagga Etc.* AIR 1998 SC 1703”

¹⁸ “*Vincent Panikurlangara v. Union of India (1987 AIR 990) and Unnikrishnan JP v. State of A.P. (1993 AIR 2178)*”

medical treatment, the protections afforded by law, and the establishments that provide it. On one hand, the Indian Constitution addresses basic rights; on the other, international organizations like the UDHR, ICCPR, ICESCR, and World Health Organization address different parts of the access to healthcare.

The access to healthcare has close association with right to nutrition, sanitation and clean water. Therefore the state must give priority and due respect to the protection and fulfillment of the access to healthcare. Health to be taken as an economic activity rather than expensive active. It is an investment and leads to creation of wealth. The state should increase number of hospital with strength of doctors.

Now we are facing global health issues in the era of Globalisation . The global health issues can be resolved by global legislation and global accountability. International Institutions be inclusive institutions having central idea is to generate healthy environment with prosperity. The international institutions should play constructive role by ignoring the regional and financial constraints. There is need to change structure and nature where ever required.