The Intersection of Public Health and Human Rights Law in India

Surbhi Agrawal[1], Anuradha Tandon[2]

[1]*Assistant Professor, Department of Law, Kalinga University, Raipur, India*
[2]*Research Scholar, Department of Law, Kalinga University, Raipur, India*

KEYWORDS

Public Health, Law, Health and rights

ABSTRACT

A primary fundamental right guaranteed by the Indian constitution is health. Not every member of a community, including different groups (such as ecologists, health administrators, social scientists, and biological experts), maintains their health in the same way. In today's dynamic society, novel ideas emerge from fresh ways of thinking. Over an extended duration, health has evolved from an individual's concern to a global social objective that encompasses all aspects of life quality. The right to health has evolved from legislation as a source of law to a widely acknowledged human right. The ultimate goal is to establish a thorough legal foundation for the right to health. However, India lacks particular legislation pertaining to the right to health, in contrast to international and national provisions. This paper provides a brief discussion of how human rights law and public health overlap in India.

1. Introduction

Even with lip service, health is still an undervalued concept. It is impossible to say that health is important on an individual basis. It is typically subordinated to other demands that are deemed more crucial, such as material prosperity, status, authority, knowledge, and safety. After World War I, the League of Nations treaty was drafted, and health was "forgotten" on a global scale. When the United Nations drafted its charter at the close of World War II, health was once more "forgotten." At the 1945 United Nations Conference in San Francisco, the topic of health had to be brought up on the spur of the moment [1]. Nonetheless, there has been a resurgence of interest in health over the last several decades. It is now accepted that good health is a fundamental human right and an international social objective. It is necessary for meeting fundamental human needs and enhancing quality of life, and everyone should be able to obtain it. For lack of a better term, "Health for All," was established by the 30th World Health Assembly in 1977 as the primary social goal for governments and the WHO in the ensuing decades. This goal is to "achieve by the year 2000 by all citizens of the world a level of health that will permit them to lead a socially and economically productive life." The UN recognised health as a crucial component of socioeconomic development in 1979. Although health is a goal unto itself, it has also grown into a vital tool for broader socioeconomic development and the establishment of a new social structure. Each person's final quality of life will ultimately depend in part on the health-related decisions they make [2]. Because of our actions and choices, our health is always changing and evolving. Being in a condition of being at ease with our social, emotional, and physical surroundings is not what makes one healthy; rather, it is a process. The attainment of optimal wellness necessitates the balance of numerous intricate and interconnected elements that make up health [9].

In this instance, section 1 of the article examines the introduction, while section 2 examines the relevant literature. The purpose of the right to health is explained in Sections 3 and 4, the work is discussed in Section 5, and the project is concluded in Section 6.

2. Literature Review

One of the key industries is the health sector. Previous research is evaluated in relation to the current issue in the literature. Every researcher benefits from the information that has been accumulated over time as a result of ongoing human endeavour; literature is a critical synthesis of earlier study [11]. Research on the same or related issues cannot be conducted in a vacuum from previous efforts. Previous work is entitled to the health of the impoverished elderly: the author's national and international perspective. This essay primarily addresses the right to health of underprivileged senior citizens, taking into account numerous international and national laws, government initiatives, and the ways in which these are implemented and addressed by the courts. The concluding remarks of the article included

some recommendations for improving the deplorable living circumstances of impoverished senior citizens in India. One of the most crucial phases in the design of any research project is a careful evaluation of the associated literature, which includes encyclopaedias, research journals, magazines, abstracts, book material, and other sources of information on the problems similar to or linked to the one being examined [4].

In a welfare state, the government's main responsibility is to ensure citizens' well-being by providing access to quality healthcare [14]. Since nature plays a significant role in human growth on all levels—physical, mental, social, political, and economic—every human being wishes to experience excellent and sound health. One's human right is the right to health and medical care. It is true that Article 21 of the Indian Constitution guarantees everyone the right to health and medical care [3]. But the judiciary hasn't really done much to provide guidance on how to carry out this right [5]. Medical negligence was rare until the Consumer Courts / Forums were established. Some cases have been brought before the Court since then. When it comes to cases involving medical negligence and ethics, we still lack our own medical jurisprudence. The Medical Council is tasked with answering ethical problems, but it has been said that their processes for handling instances of medical malpractice and ethics lack openness. Conversely, the courts are infamously slow.

Meaning Of Right To Health

In the current globalisation period, public services are gradually becoming privately run and subject to market forces. As a result, access to these services is correlated with income distribution, leaving the poorest segments of society to fend for themselves in a society that is becoming more and more unequal. Rather of massive five-star hospitals in every megacity, we need a vast number of public health care centres in every town and public hospitals that are easily accessible to the impoverished. A common theme throughout most cultures and civilizations is health. As a fundamental component of their culture and civilization, all societies have their own conceptions of health. There is no statutory acknowledgment of the right to health for the majority of the population in the nation [12]. At most, constitutional recognition can only offer the foundation for more statutory intrusions. Thus, judicial declarations gain importance. Public interest litigation has arisen, and as a result, many topics pertaining to the underprivileged and marginalised are being debated in courts nationwide [6]. It's critical to follow the courts' reasoning on these matters. Judicial rulings constitute the law in certain circumstances, even if they may not have the same legal force as statutory laws. Furthermore, these declarations lend credibility, acknowledgment, and societal acceptance to a range of concepts and frameworks that can be employed to fortify rights-based advocacy efforts related to certain matters.

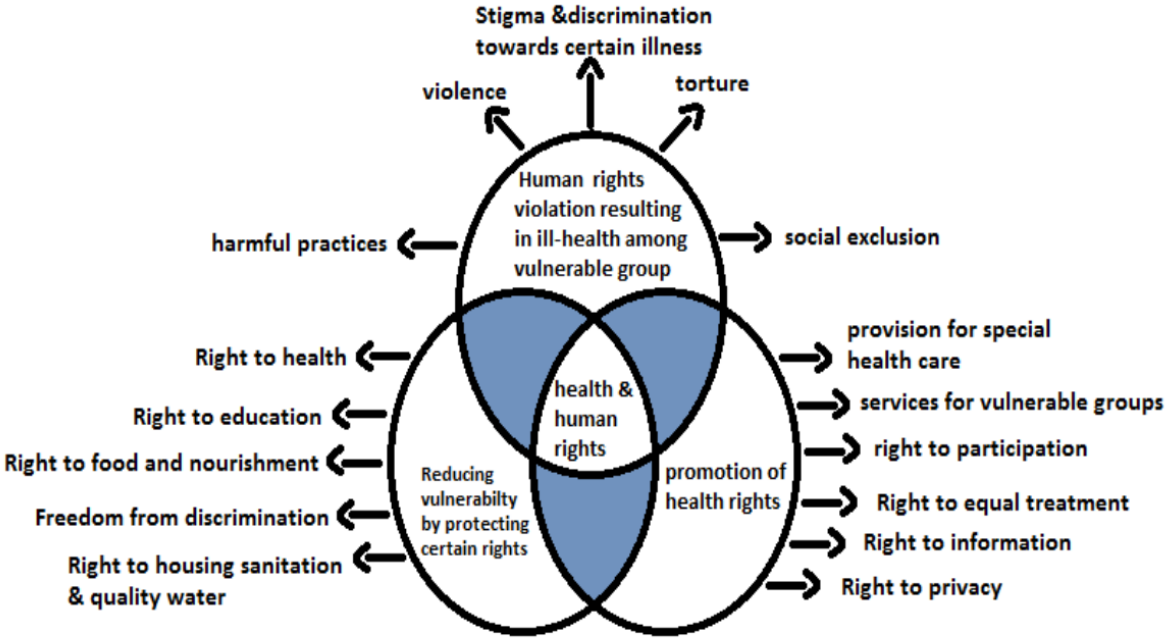

Figure 1: Public health and Guman rights

The primary focus of this study project is judicial rulings and constitutional recognition. The legal basis for the right to health and care is established by these cases. Additionally, an effort has been made to make the information easily comprehensible for the general public and to clarify the rules so that the rulings can be a powerful instrument for advocating for the right to healthcare. Although knowledge of these rulings does not guarantee their easy implementation, it is unquestionably necessary for future action and the development of legal and non-legal methods aimed at achieving the right to health. In addition to being the foundation of social and economic growth, health is a crucial measure of human development [7]. The right to life is one of the fundamental human rights that is violated when health care services are not provided. Health services are a right that everyone should be able to access, not just a luxury for a select few. There is an urgent need. Man has the right to request adequate medical treatment anywhere in the world, yet when this right is violated, we hardly ever consider it to be a violation of human rights. Therefore, a society's ability to survive depends critically on the health of its members. The following succinctly describes the requirement of the Right to Health:

In numerous nations, the right to health has been deemed justifiable; nevertheless, in far too many others, access to care and the necessary conditions for good health remain unattainable goals. Furthermore, there are still a lot of unanswered questions regarding the best ways to encourage actions that increase fairness in the health system and in our incredibly unequal societies as a whole.

The issue of the state's financial capacity had been one of the main obstacles to the recognition of a fundamental right to health following India's independence. In fact, in order to enact national health policies, succeeding governments have opted to operate under the pretence that resources are scarce. Numerous high-level committee reports have refuted the notion that there are budgetary restrictions and demonstrated that the availability of free and mandatory health services.

A right cannot be fulfilled just by being declared; rather, one can only "actually enjoy" a right when there are strong institutions in place to protect it.

It is imperative that the right to health be included in Part III of the Indian Constitution by means of legislative action.

The Act protects citizens' right to health and requires the government to guarantee that all citizens have access to healthcare services. It also forbids any government or private healthcare provider from

denying anyone healthcare directly or indirectly. The Act's capacity to give the state health department the authority to determine the departments and agencies involved in a recurring outbreak of communicable, viral, or waterborne diseases is another important feature.

The Constitution Of India And Judicial Adventurism On The Right To Health

Making decisions is the judges' main duty. FortyThe right to health is now acknowledged as a fundamental human right by everybody. Thus, it might serve as a lead-up to the Right to Health Care being an enforceable basic right. The Indian Constitution incorporates implicit provisions that ensure everyone's right to the best possible level of physical and mental health, even if it does not specifically mention the right to health as a basic right. Part IV of the Indian Constitution addresses a person's health. Every individual is entitled to the protection of their life and personal liberty under Article 21 of the Constitution. Life is intended to be more than just an animal's existence. [8].

Being well is essential for living a purposeful and honourable life. According to the Supreme Court, the government is required by the Constitution to provide health facilities since the right to health is inextricably linked to the right to life.

Since it is a fundamental right protected by article 21 of the Indian Constitution, among other things, that no one may be deprived of their life without following a legally established procedure, why should a nonsmoker suffer from a variety of illnesses, such as heart or lung cancer, simply because they must enter public spaces? Does this not essentially rob him of his life without following the proper legal procedures? In the case of Murli S. Deora v. Union of India, the Supreme Court deliberated over this significant query. [13]

Given the seriousness of the situation and the detrimental effects that smoking has on both active and passive smokers, the court ordered that smoking be prohibited in public places. It also directed the Union of India, state governments and union territories to take appropriate action to guarantee that smoking is not permitted in public places, which include auditoriums, court buildings, hospitals, health institutions, educational institutions, libraries, public offices and public transportat It is argued that it is difficult to comprehend why the national government did not respond to this crucial matter pertaining to the nation's health. If there is no spirit or determination to carry out the rules as intended, they are useless.

Right To Health In Emergency

There is no particular legislation in India addressing the obligations of healthcare facilities and staff to provide emergency medical care. Like public health facilities, emergency medical care is governed by Article 21. Put differently, in the event that a patient's right to life is violated and treatment is refused for an emergency, the patient may file a claim for damages with the court. According to the Supreme Court, not receiving medical attention in a timely manner violates a person's fundamental right to life. In these situations, the state has a duty to provide medical facilities; lack of resources or infrastructure is not an excuse to escape this duty. A public-spirited individual or group may also file a case with the court since, as the Supreme Court has stated in several rulings, the traditional meaning of "locus Standi" does not always apply in these situations. A letter pertaining to any matter of public concern may also be converted into a Public Interest Litigation (PIL) suomoto by the Supreme Court or the High courts (at its own initiative). Civil and consumer courts handle cases involving a doctor or hospital's tortuous liability, or carelessness. A consumer court or civil court may be contacted if a hospital declines to treat a patient in an emergency since this would undoubtedly constitute negligence in the discharge of the hospital's responsibility to the patient. One argument against it is that the patient might not have the money available right away for emergency medical care [10]. Doctors and hospitals occasionally demand payment right away. Certain other people are ill-prepared to handle situations in which the patient lacks insurance or access to medical reimbursement through their work or another programme. These and other issues require the creation of a particular statutory provision requiring hospitals and physicians to treat patients who are in critical medical situations or who have been harmed in accidents.

Prioritising the patient's needs, they must first treat him, screen him, stabilise him, and provide any emergency medical attention that the doctor's clinic or hospital may need. Additionally, we are putting out a statutory plan for State Government reimbursement.

3. Conclusion and future scope

The right to health is not so much a barrier to protection as it is a claim to an entitlement, a positive right. The emphasis needs to change from "respect" and "protect" to "fulfil," as entitlement rights are compared to privileges, group ideals, society obligations, or acts of charity. Once legislated, these rights become demands justified by state laws. The best resources required to accomplish the fundamental duties must be made available and used efficiently for the right to be effective. The concept of the right to health, which refers to everyone's inherent right to health, necessitates a human rights perspective. The universality of entitlement is implied by the human rights concept as well. This means that no one is excluded from the measures meant to guarantee healthcare on the basis of any kind of discrimination, including purchasing power, job status, place of residence, caste, religion, gender, or handicap. However, this does not minimise the unique requirements of marginalised and vulnerable populations, who might require specific rights through affirmative action to make up for past or current injustices they have experienced. It is impossible to overestimate the significance of the right to health in the contemporary context.

Reference

[1] SPENCE, Samantha, and Naveen Suresh. "Divergent Interpretations of the Intersection of Health, Harmful Practices and Women in India." (2023).

[2] Salunke, Siddhi Sudeshkumar. "At the intersection of health care and human rights: Violations of medical neutrality and the emergence of medical resistance." *Intersect: The Stanford Journal of Science, Technology, and Society* 14, no. 3 (2020).

[3] S. Neelima, Manoj Govindaraj, Dr.K. Subramani, Ahmed ALkhayyat, & Dr. Chippy Mohan. (2024). Factors Influencing Data Utilization and Performance of Health Management Information Systems: A Case Study. Indian Journal of Information Sources and Services, 14(2), 146–152. https://doi.org/10.51983/ijiss-2024.14.2.21

[4] Dasgupta, Jashodhara, Marta Schaaf, Sana Qais Contractor, Amanda Banda, Marisa Viana, Oksana Kashyntseva, and Ana Lorena Ruano. "Axes of alienation: applying an intersectional lens on the social contract during the pandemic response to protect sexual and reproductive rights and health." *International journal for equity in health* 19, no. 1 (2020): 130.

[5] Reddy, Asritha. "Navigating the Intersection of Family Law and Mental Health: Protecting the Rights of Unsound Mind Individuals." *Issue 2 Indian JL & Legal Rsch.* 5 (2023): 1.

[6] Kodric, Z., Vrhovec, S., & Jelovcan, L. (2021). Securing edge-enabled smart healthcare systems with blockchain: A systematic literature review. Journal of Internet Services and Information Security, 11(4), 19-32.

[7] Meier, Benjamin Mason, and Lawrence Ogalthorpe Gostin, eds. *Human rights in global health: Rights-based governance for a globalizing world*. Oxford University Press, 2018.

[8] Ayala, Ana, and Benjamin Mason Meier. "A human rights approach to the health implications of food and nutrition insecurity." *Public Health Reviews* 38 (2017): 1-22.

[9] Lomotey, R.K., & Deters, R. (2013). Facilitating Multi-Device Usage in mHealth. Journal of Wireless Mobile Networks, Ubiquitous Computing, and Dependable Applications, 4(2), 77-96.

[10] Utyasheva, Leah, and Michael Eddleston. "Prevention of pesticide suicides and the right to life: The intersection of human rights and public health priorities." *Journal of Human Rights* 20, no. 1 (2021): 52-71.

[11] Chaney, Paul. "India at the crossroads? Civil society, human rights and religious freedom: critical analysis of CSOs' third cycle Universal Periodic Review discourse 2012–2017." *The International Journal of Human Rights* 24, no. 5 (2020): 531-562.

[12] Bhaghamma, G. "Exploring the Intersection of Menstrual Leave and the Right to Health in India." *Journal on Vulnerable Community Development* 1, no. 1 (2023): 168-177.

[13] Rebouché, Rachel. "Reproducing rights: the intersection of reproductive justice and human rights." *UC Irvine L. Rev.* 7 (2017): 579.

[14] Bobir, A.O., Askariy, M., Otabek, Y.Y., Nodir, R.K., Rakhima, A., Zukhra, Z.Y., Sherzod, A.A. (2024). Utilizing Deep Learning and the Internet of Things to Monitor the Health of Aquatic Ecosystems to Conserve Biodiversity. Natural and

Engineering Sciences, 9(1), 72-83.