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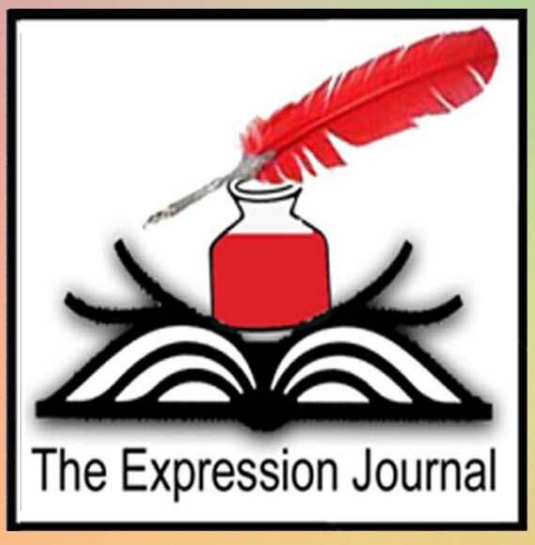

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THE PROGRESSION OF INDIA'S RIGHT TO HEALTH

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Abstract

At all phases of its historical history, India has placed more importance on the notion of "health." In the ancient time, hygiene and a clean atmosphere were given top emphasis since they are critical to health. Furthermore, throughout that time, the Ayurveda medical system evolved, and brilliant physicians like as Charaka and Susruta dedicated their lives to helping the sick. Unani and Siddha medicine thrived during the Mughal rule, while the contemporary system of medical science was developed during the British rule. Following independence, 'health' was listed in the group of non-justifiable rights under the Directive Principles of State Policy, whose execution was dependent on the decision of the states. However, the Supreme Court of India, recognizing the importance of 'health,' given it the status of Fundamental Rights by placing it within the purview of the 'Right to Life' under Article 21 via historic judgements. Because this right is not specifically listed in the Constitution, there is a lack of knowledge, leading in a violation of this vital right. As a result, in order to increase public awareness, the 'Right to Health' under Article 21 must be formally included by constitutional amendment, just as the 'Right to Education' under Article 21A is.

Keywords

Article 21, Five Year Plan, Judiciary, Medicine, Health, Right to Health.

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THE PROGRESSION OF INDIA'S RIGHT TO HEALTH

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1. INTRODUCTION

The idea of 'right to health' is a fundamental human right that has been a highly contested topic all over the world, particularly after the onset of the COVID-19 outbreak. India is a democratic country that has prospered on the concept of establishing a welfare state in the country by guaranteeing different rights and liberties to the people. The many essential rights are guaranteed in Part III of the Indian Constitution under Articles 12-35. Although the right to health is not officially stated in the Indian Constitution, it has now risen to the level of a fundamental right due to the activist role played by the country's Hon'ble courts, which has gave a broad interpretation to the right by issuing numerous landmark judgements. Thus, the scope of Article 21 is expanded to include the 'right to health,' implying that the right to life encompasses far more than basic right. The Supreme Court recognized the significance of the right to health as the foundation of all basic rights since the different rights and freedoms granted by the Constitution can only be enjoyed constructively by persons who are healthy and do not lack sound thinking.

The architects of India's Constitution recognized the importance of the idea of right to health, but did not put it in the list of Fundamental Rights due to the country's economic position shortly after independence. They integrated many provisions under the heading of Directive Principles of State Policy under Part IV of the Indian Constitution but left execution to the economic ability of the states, which implied that individuals could not approach the judiciary for its enforcement on violation. As a result, they had adopted these rights without remedy. In such a case, the Supreme Court, which is considered as the protector of the Constitution and also the guardian of the people's rights and liberties, stepped in and granted the status of Fundamental Right to Health.

2. CONCEPT OF HEALTH

The right to health is among the fundamental human rights recognized by different national and international agreements. When we talk about the right to health, we generally mean easy access to health care facilities without discrimination, as well as the development of hospital infrastructures for the provision of health care facilities, but the right to health includes a wide range of other factors such as clean drinking water, sanitation, nutritious food, proper housing facilities, a clean environment and healthy working conditions, health education, and so on. Thus, the right to health cannot be seen as a single right, but rather as the

parent of multiple fundamental rights. The right to health furthermore encompasses some critical yet fundamental liberties such as freedom from non-consensual medical treatment or medical research, freedom from forced sterilization, and freedom from inhuman, cruel or degrading treatment or punishment. The preamble of the World Health Organization (WHO) defines health as, "a state of complete physical, mental and social well-being and not merely absence of disease or infirmity". The International Covenant on Economic, Social, and Cultural Rights (hereinafter referred as ICESCR) which came into force on January 3, 1976, is another significant instrument that highlights the right to health and defines it as "enjoyment of the highest attainable standard of physical and mental health." The Universal Declaration of Human Rights discusses the significance of health and defined as, "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, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control".

3. INDIA'S RIGHT TO HEALTH : DEVELOPMENT STAGES

The progressive evolution of people's health rights in India at various stages of history may be understood by a thorough examination of the priority placed on health at various times, as well as the quality of treatment available at those times. The stages of evolution of the right to health in India can be classified into the following periods:

3.1. Ancient period
3.2. The Medieval period
3.3. British period
3.4. Post-independence period

3.1. Ancient Period: Since time immemorial, humans wanted to be the masters of their own health and happiness, and they have been keen to exercise their dominance and control over sickness. In ancient times, illnesses were primarily seen from a cosmological or anthropological viewpoint, and treatments were based on miraculous and religious beliefs. The growth of man's understanding occurred gradually through time. The Indus Valley Civilization, which is said to have lived between 3300 and 1900 B.C., was one of the most advanced civilizations in the world, and archaeological digs showed the existence of organized townships, meticulously designed sewage systems, and remarkable engineering methods, all of which highlighted the significance these ancient people placed on their health and cleanliness. In the ancient Harappan Civilization, there was indications of root canal therapy and the practice of consuming high protein 'laddoos.' According to history, the Aryan Invasion occurred, and the Vedic age began. As a result, the Ayurvedic medical system developed, which is thought to be based on the Vedas. Ayurveda is based on the "tridosha" principle, which is built on vata (wind), pitta (gall), and kapha (mucus). This period also saw the development of some of the finest physicians, such Atreya, Charaka, Susruta, and Vagabhatta, who gave their services to safeguard people's health, and various public hospitals were constructed to serve the public.

3.2. The Medival Period: The mediaeval period starting from the 6th Century in the Indian sub-continent witnessed a major change in the political state of affairs, where the Ayurvedic system of medicine faded on account of change in the political structure. This period largely encompassed invasions and differences resulting in war on account of religion, due to such frequent events a large part of the Ayurvedic medicinal work and history was wiped out and lost.

With the establishment of Mughal Empire In the 8th Century, a new medicinal system entered India through the passage of Eurasia, this system was the "Unani System". Thus, during the pre-modern era. Islamic medical and other sciences leaned heavily upon local medical practices, as well as on works translated from Greek. This scenario remained in the country's health-care system until the British arrived.

3.3 British Period: During the British period, India's medical system came into contact with the West's advanced science and technology. The Allopathic system of medicine was another medical system that existed in the country during the British period. The British are unquestionably responsible for the contemporary health-care system. Until 1885, the British developed almost 1250 hospitals and clinics, the majority of which were state-sponsored. The British government established various commissions, including the Royal Commission in 1859, to recommend steps to improve the health of Army officials on duty in the nation, including pure drinking water, sanitation, and epidemic prevention. The British also enacted various pieces of health legislation, including the Vaccination Act of 1880, the Birth and Registration Act of 1883, and the Epidemics Act of 1897.

Several commissions, like the Sokhey Committee and the Bhore Committee, were formed to recommend improvements to the country's current health situation. The Bhore Committee, chaired by Joseph Bhore, issued a number of significant recommendations in its report in 1948. The Bhore Committee suggested that the country's health system be made freely available to the general public, and that no one be refused the right to treatment due to inability to pay. The Bhore Committee also advocated a health-care system structure consisting of primary health care facilities, secondary health care facility, and a three-tier district healthcare system.

Thus, compared to the earlier periods of Indian history, the British colonial period did not view public health as an integral part of social life. But rather the circumstances which affected the European population forced the British to incorporate the concepts of public health in their social life in India. A large part of the interpretation of the policies formed the foundational basis of the concept of public health in the post-Independence period.

3.4 Post-Independence Period: India gained independence in 1947; a democratic regime was set up with its economy established in the midst of a socialist concept of "welfare state". With the establishment of the welfare state, the Central Government was under the burden to improve public health in India and also because India became a member state of the World Health Organisation in 1948, Several health committees were formed after independence, including the Bhore Committee(1948), the Mudaliar Committee (1961), the Chaddah Committee (1965), the Mukherjee Committee (1963), the Jungalwalla Committee (1967), the Kartar Singh Committee (1973), and the Shrivastava Committee (1974). These Committees released numerous key guidelines and offered critical suggestions for improving the country's present health issues.

Although health was not protected as a Fundamental Right, it was linked to the non-justiciable Directive Principles of State Policy established in Part IV of the Indian Constitution, which included various provisions such as Articles 38, 39 (e) (f), 42, 47, and 48A. Article 38 of the Indian Constitution states that the state must seek to construct a social order to promote the welfare of the people, and there can be no wellbeing without health protection. Article 39(e) of the Indian Constitution states that the state shall implement a policy to safeguard and protect the health and strength of workers and children. Article 39(f) of the Constitution also imposes an obligation on the states to offer chances for the nation's children to develop in a

healthy way. The Constitution also assigns to the states the task of providing adequate working conditions and maternity leave under Article 42, as well as raising the standard of nutrition, improving public health, and prohibiting intoxicating liquor save for medicinal reasons under Article 47. Furthermore, under Article 48 A of the Indian Constitution, the state has a constitutional commitment to safeguard the environment, and it is a well-accepted universal truth that environmental conservation has a direct influence on people's health.

4. HEALTH AND FIVE-YEAR PLANS

In the year 1950, the model of Five Year Plans was developed for the overall growth of the country, with the health sector playing a significant role. The key goals of India's Five Year Plans were development, modernization, self-sufficiency, and the formation of an equal society, in which health care playing a significant role. The First Five Year Plan (1951-56) concentrated on communicable disease management and prevention, family planning, research, water supply, hygiene and sanitation, and the development of Public Health Centers throughout the country. These aspects were given greater weight in the Second Five Year Plan (1956-61). Along with these features, family planning was a major priority of the Third Five Year Plan (1961-66). The Fourth Five Year Plan (1969-74) concentrated on preventive health care services and the management of numerous illnesses like as tuberculosis, leprosy, malaria, and the elimination of small pox. The Fifth Five Year Plan (1974-79) established several health programmes such as the Minimum Needs Program, which resulted in the integration of family planning, nutrition, and vaccination. During the Fifth Five Year Plan, the Integrated Child Development Scheme (ICDS) was inaugurated in 1975, the Multipurpose Workers Scheme in 1971, and the Community Health Guide in 1977.

With the announcement of National Emergency in the nation in 1975, as well as the change in government at the Centre, influenced the focus of Five Year Plans, with the Sixth Five Year Plan shifting from family planning to infrastructural development (1980-85). During this time, India attended the International Conference on Public Health in Alma Atta, Kazakhstan, and became a signatory to the Alma Atta Declaration, which set the objective of delivering Health for all by the year 2000. In order to realize this objective, the First 'National Health Policy' was implemented in 1983. The Seventh Five Year Plan (1985-90) placed a strong focus on decentralized health-care planning and also community engagement in health-care planning. Numerous important health laws were enacted during the Eighth Five Year Plan (1992-97), including the Infant Milk Substitute, Feeding Bottles, and Infant Foods (Regulation of Production, Supply, and Distribution) Act, 1992, the Prenatal Diagnostic Technique (Regulation and Prevention of Misuse) Act, 1994, and the Transplantation of Human Organs Act, 1995. During this Plan, new policies like as user fees, privatization of government-run institutions, and public-private participation were implemented, resulting in high health-care costs and making health-care facilities unavailable to the general public.

The Ninth Five Year Plan (1997-2002) focused on the participation of Panchayati Raj Institutions, Auxiliary Nurse Midwife, Multipurpose Worker, and Anganwadi Workers in the implementation of the Reproductive and Child Health Program, which was launched in 1997 and was a comprehensive programme to combat, reduce, and control the mortality rate of mothers, infants, and children. During this time, the National Family Health Surver-2 too was conducted. The Tenth Five Year Plan (2002-2007) aimed to improve the level of health by closing gaps in the execution of several policies. During this Plan, the 'National Rural Health Mission' was initiated in 2005, with a focus on reducing Infant Mortality Rate (IMR) and Maternal Mortality Rate (MMR). The Eleventh Five Year Plan (2007-2012) prioritised clean

water supply and sanitation in both urban and rural areas. During this time, the 'National Urban Health Mission' was established, which was later combined with the 'National Rural Health Mission' to become the 'National Health Mission.' The Twelfth Five Year Plan (2012-2017) prioritises access to health services for both urban and rural populations, with a specific emphasis on women and other weaker sections of the society, community engagement in health, and maternal and child health. In 2017, the "National Health Policy" was also implemented during this Plan. The Planning Commission has been replaced by the NITI Aayog (National Institution for Transforming India), which is now in charge of developing policies for the country's overall development, including the health sector.

In addition to all of these provisions the Central and State Governments have launched multiple health schemes and insurances to ensure the right to health of the people in a much more fruitful way. The following are some of the health programmes and health insurances:

a. Pradhan Mantri Jan Arogya Yojna (PMJAY)
b. Aam Admi Bima Yojna (AABY)
c. Rashtriya Swasthiya Bima Yojna (RSBY)
d. Employees State Insurance Scheme (ESIS)
e. Central Government Health Scheme (CGHS)
f. Universal Health Insurance Scheme (UHIS)
g. Awas Health Insurance Scheme
h. Bhamashah Swasthya BimaYojna
i. Chief Minister's Comprehensive Health Insurance Scheme (CMCHIS)
j. Karunya Arogya Suraksha Paddhati (KASP)
k. Mahatma Jyotiba Phule Jan ArogyaYojna Scheme (MJPJAY)
l. Mukhyamantri AmrutamYojna (MAY)

5. THE INDIAN JUDICIARY'S ROLE

Despite numerous provisions made by the proponents of the Indian Constitution to ensure the right to health of the people under Part IV of the Constitution, the implementation of these provisions was dependent on the mercy and will of the states, and because these provisions were non-justiciable, citizens had no recourse against the states through the judicial system for the execution of these provisions. The Supreme Court recognized the value of the right to health for the existence of the world's greatest democracy, which is dependent on the diligent behaviour of its people. It is an indisputable truth that citizens can only act properly towards their country if they are physically and mentally fit.

The Hon'ble Supreme Court concluded in Bandhua Mukti Morcha v. Union of India ,1984 SCR (2) 67, that the right to health is indeed an intrinsic aspect of the right to life (Article 21) which is drawn out from Directive Principles of State Policy.

The Supreme Court declared in Consumer Education and Resource Centre v. Union of India, 1995 SCC (3) 42, that the 'Right to Life' (Article 21) includes the protection of employees' health and strength, which is necessary for making workers' lives purposeful and dignified. In this decision, the Court placed duty on the stakeholders, even if they're the Union/State/industry, public or private, to guarantee that all efforts are taken to preserve the health and enjoyment of workers both during and after employment.

The Supreme Court of India declared in Parmananda Katara v. Union of India, 1989 SCR (3) 997, that all medical personnel, whether government or private, have a responsibility to provide urgent medical help to accidental instances in order to save human life without waiting for the completion of procedural requirements by the police.

In Common Cause v. Union of India and Others, 1996 SCC (4) 33, the Supreme Court provided rules for the operation of blood banks, holding that it is critical to guarantee that the blood accessible in blood banks is healthy and free of infection.

In State of Karnataka v. Manjanna, 2000 SCR (3)1007, the Supreme Court stated that particularly in rural regions, physicians in public hospitals refuse to evaluate and treat rape victims except referred by the police, resulting in exceptional delay as well as evidence destruction.

Thus, it is clear that the Hon'ble Supreme Court has performed a very constructive and active role in creating the right to health available to the general public by elevating it to the rank of Fundamental Rights under Article 21 of the Constitution. However, there is still a long way to go until health and health care services are accessible to the whole public. People must be made aware of this fundamental right, as well as other fundamental rights. Thus, including this right as part of Article 21 by constitutional change will make the people more watchful, and also the government more devoted to this fundamental right of the people.

6. CONCLUSION AND SUGGESTIONS

The right to health is unquestionably a fundamental and inherent right of every individual. Following the onset of the COVID-19 pandemic, the right to health has suddenly taken precedence. Despite all of the government's efforts, there are numerous instances where people's health rights are violated. In many circumstances, individuals are not aware about their right to health as well as the remedies accessible to them when it is violated. Although the Hon'ble Supreme Court has recognised the 'right to health' as a fundamental right, it would be more fruitful if it were made a part of Article 21 by Constitutional Amendment, as similarly the 'right to education' was inserted into Article 21A by the 86th Constitution Amendment Act, 2002. Article 21A explicitly stated that the right to education is a basic right and also set the conditions wherein the State should grant this right to its citizens by offering free and compulsory education to all children aged six to fourteen years. Thus, including the 'Right to Health' through constitutional amendment and establishing the limitations within which the State would supply this right will undoubtedly make the people more aware of their right and the remedy available in the form of writ petition under Articles 32 or 226 of the Indian Constitution in case of infringement. As it is rightly said, Good health raises the quality of life of the people impacted while also strengthening that respective country's human resource and economy.

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Bio Note

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