



**ORIGINAL RESEARCH PAPER**

**Law**

**RIGHT TO HEALTH VIS A VIS HEALTH LAWS: AN OVERVIEW OF LEGISLATIVE PERCEPTION AND JUDICIAL RESPONSE**

**KEY WORDS:**

**Dr. Sanjay Sindhu**

Professor, Faculty Of Law, Himachal Pradesh University, Summerhill, Shimla 171005 India

**Ms Deeksha Kumari**

Research Scholar, Faculty Of Law, Himachal Pradesh University, Summerhill, Shimla 171005 India

“It is health that is real wealth. And not pieces of gold and silver.”

–Mahatma Gandhi

**INTRODUCTION**

The healthcare entitlement is a longstanding and fundamental concept, often encapsulated by the saying "health is wealth." A robust health is cornerstone in all human actions, and access to healthcare assistance is not merely a charity or a honor for a select some, but a prerogative that should be available to everyone. This tenet is embedded in Article 25 of the UDHR, which states "everyone has the right to a standard of living adequate for the health and well-being of himself and his family." Similarly, the Constitution of the WHO affirms "the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being." Beyond these international declarations, the entitlement to healthcare is also protected under various global human rights frameworks, consisting of the International Covenant on Economic, Social and Cultural Rights. In India, the law and regulations associated with healthcare is robust as well as multifaceted. The aforementioned can be attributed to legal doctrines under the "Law of Torts," which address civil wrongs and injuries. Additionally, the Indian Constitution plays a crucial role in this domain, particularly through its directive principles, which guide the state in policy-making to ensure public health. Various statutes and laws further bolster the right to healthcare in India. These include the Fatal Accidents Act of 1855, which addresses compensation for wrongful death; the Drugs and Cosmetics Act of 1940, which administers safety as well as efficacy of drugs; the Prevention of Food Adulteration Act of 1954, aimed at ensuring food safety; the Medical Termination of Pregnancy Act of 1971, which supports legal abortion under specific conditions; and the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act of 1994, which criminalizes sex-selective abortions and protects against misuse of diagnostic techniques. Additionally, the Transplantation of Human Organs Act of 1994 regulates organ transplants, ensuring ethical practices and safeguarding donors and recipients. These laws collectively create a comprehensive legal framework that not only supports public vitality measures but also protects individuals against discrimination and ensures their right to receive adequate and prompt medical treatment. This paper is an attempt to highlight the concept of health, to highlight the relevant provisions dealing with the right to health and to focus on the role of the Apex court in protecting the right to health in India. As the landscape of public health evolves, it is crucial to continue refining and enforcing these legal protections to meet the needs of all citizens, thereby upholding the fundamental principle that health is indeed wealth.

**Meaning, Definition and Concept of Health, Right to Health and Health Laws**

**Meaning of Health:**

Health, which is the derivation of old English 'hoelth' and 'hale' simply means soundness and strength. But it is difficult to

define health precisely by synchronising different aspects and perspectives on state of health. Health consists diverse assortment of connotations spanning from an optimal health to the absenteeism of clinically confirmed disease. The Oxford Dictionary meaning of health is that 'it is the soundness of the body or the condition in which its functions are duly and effectively discharged'. The WHO has endeavoured to develop a optimistic interpretation of health and characterized it as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity". As per the words of Terrence E. Deal and Allan A. Kennedy (Organisational Theorists): "health is a state of being in which an individual's physical, emotional, mental and social dimensions are in harmony and balance." All these definitions emphasise the multifaceted nature of health, going beyond just the absence of illness to include overall well-being and the ability to function effectively in various aspects of life.

The concept of health is multifaceted and encompasses several dimensions:

1. **Physiological health:** alludes to the optimal bodily function and its organs. It comprises aspects such as physical readiness, nutritional care, sleep, and the absenteeism of chronic diseases in other words acute illnesses.
2. **Psychological State:** Encompasses sentimental, psychological, and social wellness. It impact how people thought, feel emotions and behave and determine how they deal with stressfulness, interact with others, and make decisions.
3. **Social Cohesion:** Relates to ability to form satisfying interpersonal relationships and adapt to social situations. It includes the support networks and connections individuals have with family, friends, and the community.
4. **Environmental Health:** Involves the external conditions that affect health, such as clean air, water, and living conditions. It also includes workplace safety and broader environmental factors that impact health.
5. **Spiritual Health:** Involves a feeling of direction and significance in life, which can incorporate spiritual conviction, core values, and an insight into connectedness to more elevated ideal than oneself.
6. **Intellectual Health:** Pertains to cognitive abilities and the capacity to learn, grow, and engage in mentally stimulating activities. It includes creativity, critical thinking, and lifelong learning.

The holistic view of health recognizes that these dimensions are interconnected and that overall health is achieved through the balance and integration of these different aspects.

**Meaning of 'Right to Health'**

Healthcare entitlement entails a diverse array of aspects that can facilitate a healthy way of living. Mervyn Susser sets four requirements that he regards as falling under the right to healthcare: unbiased availability to healthcare and medical care; a "good-faith" foster equal health outcomes among diverse social groups; strategies and monitor health equity and fair socio-political to give each party an individual voice

in health endorsement and advancement. The authority charge of overseeing the International Covenant on Economic, Social and Cultural Rights refers to certain essential elements as "underlying determinants of health." These encompass availability to clean water and proper sanitary practices, safe-to-eat food, appropriate diet and accommodation, safe working conditions and ecological circumstances, and health education and awareness, the freedom from non-consensual medical treatment, as well as freedom from mistreatment as well as other brutal and inhumane, or disparaging management and penalty. It also encompasses the entitlement of health security that grants equitable access to everyone to achieve the optimal state of health. The system should include availability of crucial mother and infant health services and equal and fair and prompt access to core healthcare services. Health services, goods, and amenities must be equipped to everyone non-discriminately. Additionally, these assistance must adhere to medical ethics, be sensitive to gender and cultural needs, and be appropriate based on scientific and medical standards and of high quality. This necessitates the presence of proficient medical personnel, clinically tested and out-of-date medication, ample medical resources, proper sanitation, and drinkable water. Similarly, Article 25 of the Universal Declaration of Human Rights, 1948, asserts that each individual has the right to quality of life sufficient for their wellness and vitality along with their family's well-being. This pertains to food availability, apparel, shelter, healthcare, and necessary welfare services. Likewise, it encompasses the right to financial security when unemployed, illness, incapacitated, bereavement, advanced age and other unforeseen events that may result in a lack of livelihood. In the Indian context, the health protection right is not explicitly mentioned as a constitutional right. However, it is derived from various constitutional provisions (Art. 21, 38, 39(a), 39(d), 39(e)&(f), 41, 42, 47, 48A, 243G, 243W, etc.) and Judicial interpretations such as, in case of *Vincent Panikurlangara v. Union of India* asserted that a robust health is the bedrock of every individual pursuits in a system designed for social support as a result, the State is required to facilitate and preservation of environment conducive to health. Further, in *N.D. Jayal & ors. V. Union of India Rajindra Babu, J.* of the Apex Court proclaimed that health right is fundamental right in Art. 21. Safeguarding this is indissolubly connected to access to clean and healthy environment is considered a basic right.

**Framework for Health Law:**

Health law is comprehensive term. Law of health is the national, state and municipal laws, guidelines and jurisprudential concepts between services providers, payment entity and supplier to the medical field and its patient; and administration of healthcare services; all centered on operational performance, regulatory and contractual legal concerns. Correspondingly, The Florida Bar articulates it as "legal issues involving federal, state, or local law, rules or regulations and health Care provider issues, regulation of providers, legal issues regarding relationships between providers, legal issues regarding relationships between providers and payers, and legal issues regarding the delivery of health care services." American University's College of Law, in the realm of healthcare law and protocol, categories health law into four distinct domains; medical jurisprudence, epidemiological law, clinical ethics, worldwide health policy.

Health law covers several areas, consisting, contractual Jurisprudence, clinical negligence, medical Jurisprudence, criminal law, Administrative jurisprudence, public health jurisprudence, etc.

**Constitutional Mandates towards Right to Health and Health Laws:**

The Constitution of India requires not just the delivery of

healthcare services to its citizens but also guide the State to actively work towards enhancing healthcare conditions. The Preamble of the Constitution seeks to guarantee societal as well as financial equity for the entire population and provides a foundation for achieving these goals. This vision is further detailed in the Directive Principles of State Policy, which direct the state authorities to put into effect these goals.

Article 14, guarantees that everyone is treated equitably by the legal system and that laws are executed uniformly without discrimination.

Article 21, certifies that an individual's life or freedom unassailable unless it adhere to a statutory procedure.

Article 38 directs the State to work in relation to the humanitarian concern by instituting and upholding a social order where social equity, economic fairness and political integrity surpass across the span of all nationwide institutions.

Article 39, (a) commands that the State should emphasis to confirming that all citizens, both males and females, have provision of essential means for earning a living; (e) this provision seeks to safeguard workers and children from profiteering and emerge that fiscal strain do not force them into unfit and hazardous employment; (f) this provision is intended to safeguard children from mistreatment and oppression, ensuring their well-being and safeguarding their developmental needs.

Article 41, obligates the State to provide for the right to pursue employment, education, and financial aid in cases of lack of employment, elderly years, ailment, and disability, within the constraints of its financial capability and development..

Article 42 emphasizes the State's obligation to assure appropriate and humane work environment and to offer maternity assistance.

Article 43 directs the State to strive, through appropriate legal framework or fiscal measures, to ensure that all workers—whether in agriculture, industry, or other sectors—receive a fair wage, work under humane conditions, and enjoy a decent standard of living, along with adequate leisure and opportunities for social and cultural engagement. Article 47 stipulates that the State should consider improving public health and increasing nutritional standards as among its foremost responsibilities.

Article 48A, obligates that the State should strive to shield and advance environmental conditions and conserve the country's forest ecosystems and wildlife.

Article 51A, it is incumbent—(g) requires every citizen to conserve and upgrade natural environment, including, forested areas, bodies of water, and fauna, and to show empathy towards all life forms; (h) mandates that every citizen should foster a scientific attitude, embrace humanism, and engage in assessment and transformation; (j) requires every citizen to work in regard to virtue in all aspects of personal and aggregated endeavors, aiming to advance the nation to higher levels of accomplishment and progress.

Article 32, guarantees individuals the right to approach the Supreme Court through relevant procedures enforce their Fundamental Rights as outlined in Part III of the Constitution.

Article 226: Power of High Courts to issue certain writs.— grants every High Court the authority to issue directions, orders, or writs—such as habeas corpus, mandamus, prohibition, quo warranto, and certiorari—to enforce Fundamental Rights under Part III of the Constitution and for

other purposes. This power is in addition to the rights provided under Article 32.

Article 243G, introduced the 73rd Amendment Act of 1992, grants Panchayats authority over various local governance functions. The 11th Schedule outlines 29 areas of responsibility that State Legislatures can delegate to Panchayats. These responsibilities cover diverse sectors such as agriculture, rural health, sanitation, and infrastructure maintenance. For instance, a Panchayat may manage local water supply systems, oversee sanitation projects, or promote agricultural initiatives, thus playing a crucial role in enhancing rural life through decentralized administration.

Article 243W, introduced by the 74th Amendment Act of 1992, defines the roles and responsibilities of Municipalities, which handle governance in urban areas. The 12th Schedule lists 18 functions that Municipalities can be assigned, including urban planning, road maintenance, public health, and sanitation. For instance, Municipalities might be tasked with constructing and maintaining city roads, managing waste collection and disposal, or ensuring access to clean drinking water in urban settings. These responsibilities enable municipalities to contribute significantly to the advancement and management of urban infrastructure and services.

**Provisions under the Criminal Law Related to Health.**

Criminal law has a crucial function in protecting public health by establishing legal standards and enforcing penalties for actions that harm individuals' health and community. The Bharatiya Nyaya Sanhita (BNS) 2023, proposed to replace Indian Penal Code 1860, plays a pivotal role in health law by addressing various offences and providing a legal framework that impacts public health. Here are some key areas where BNS influences health law: Section 2(11), 22, 25, 26, 27, 30, 211, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 286, 292, 10, 88, 89, 114, 116, 63, 64, and 70.

Section 2(11): elucidate "good faith" an action or belief to be regarded as genuine and honest, it must be carried out or held with appropriate care and consideration. If such attention is absent, the credibility and sincerity of the action or belief can be doubted.

Section 22: states that an act performed by a person with an unsound mind is not considered an offense if, due to mental illness, they were incapable of understanding the nature of their actions or recognizing that their actions were wrong or illegal.

Section 25 & 26: discuss definitions and scope of criminal offences, including the nature of consent and its legal implications.

Section 27: Pertains to the burden of proof and circumstances under which a defendant may be held liable.

Sections 30, 211, and 271-279: Cover various aspects of procedural law, including the roles and responsibilities of law enforcement, judicial procedures, and the treatment of evidence.

Sections 280-286: Discuss offences related to public safety and health, including regulations on public nuisance and the spread of infectious diseases.

Sections 292, 10, 88, and 89: Include offences related to public morality, decency, and laws concerning sexual offences.

Sections 114, 116, 63, 64, and 70: Detail specific offences and their punishments, ranging from conspiracy and abetment to penalties for various crimes.

**Special Legislations dealing with the Health Laws:**

There are a large number of legislations related to specific medical and health aspects. Some of these are:

- The Consumer Protection Act, 2019
- The Mental Health Act, 1987
- The Fatal Accidents Act, 1855
- The Medical Termination of Pregnancy Act, 1971
- The Medical Termination of Pregnancy Rules, 1975
- The Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994
- Indian Medical Council Act, 1956
- The Indian Medical Council Rules, 1957
- The Indian Medicine Central Council Act, 1970
- The Code of Medical Ethics
- The Epidemic Diseases Act, 1897
- The Indian Medical Degrees Act, 1916
- The Dentists Act 1948
- The Dentists (Code of Ethics) Regulations, 1976
- The Homoeopathy Central Council Act, 1973
- The Indian Nursing Council Act, 1947
- The Pharmacy Act, 1948
- The Pharmacy Council of India Regulations, 1952
- The Drugs (Control) Act, 1950
- The Drugs and Cosmetics Act, 1930
- The Dangerous Drugs Act, 1930
- The Drugs (Prices Control) Order, 1987
- The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954
- The Narcotic Drugs and psychotropic Substances Act, 1985
- The Transplantation of Human Organs Act, 1994
- The Factories Act, 1948
- The Employees State Insurance Act, 1948
- The Dangerous Machines (Regulation) Act, 1983
- The Dock Workers (Safety, Welfare and Health) Act, 1986
- Rehabilitation Council Of India Act, 1992
- Persons with Disabilities (Equal Opportunities, Protection of Rights and full Participation) Act, 1995.
- The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999
- The Prisoners Act, 1894
- The Prevention of Food Adulteration Act, 1954
- Essential Commodities Act, 1955
- The Environment (Protection) Act, 1986 etc.,

**Judicial Approach towards the Right to Health:**

The judicial system in India is indispensable in ensuring the right to health by interpreting Art. 21 of the Constitution of India, affirms the right to life, encompass health rights. In State of Punjab v. Ram Lubhaya Bagga, the Apex court considered the human right to healthcare under Art. 21, 41, and 47 of the Indian Constitution. The Court remarked that an individual's entitlement implies a corresponding duty on others, whether they be individuals, employers, or government authorities. Therefore, the right to life pursuant to Article 21 places a liability on the Government. This duty is strengthened further by Art. 47, which mandates the Government to prioritise the healthcare for its citizens as a foremost responsibility. Further, in the case of Murli S. Deora v. Union of India, represented as a PIL, the Apex Court banned public smoking across country, citing harmful effects of second-hand smoke on passive smokers. The Court directed the State administration and Union-administered Territories, to put certain measures into practice effectively to enforce this forbiddance. Furthermore, in the landmark case of Bandhua Mukti Morcha v. Union of India, the court acknowledged rights of workforce, including theirs entitlement to essential health care services as per the Constitution. This right to basic health facilities is also supported by international conventions to which India is a signatory. Again, In Parmanand Katara vs. Union of India, the court stretched the interpretation of Art. 21, ruling that all doctors, whether working in government or private-owned sector, bear a professional responsibility to equip prompt medical care to afflicted in order to sustain life, without

waiting for legal requirements under Criminal Procedure Code (Cr.P.C.).

In *Consumer Education and Research Centre & Ors. v. Union of India*, SC affirmed the right to health and treatment, necessary to maintain wellness and vitality during employment or subsequent to retirement, is a core entitlement under Right to Life. In the same way, in *Paschim Banga Khet Mazdoor Samity & Ors. v. State of West Bengal & Ors.*, the court broadened the domain of Article 21, emphasising the governance duty to render medical assistance to everyone in India. It stated that in a socially-oriented nation, State' foremost commitment to uphold welfare of its people. The Apex court also adjudged that right to health, which embraces the ultimate feasible standard of physiological and psychological well-being and ingress to healthcare services, is an vital element of inherent right to life, and thus, government bears a responsibility to protect health of citizens.

In *Kirloskar Brothers Ltd. v. Employees' State Insurance Corporation*, the Court recognized the entitlement to healthcare and clinical services is a core entitlement as per Art. 21, in conjunction with Articles 39(e), 41, and 43 of Indian Constitution. Additionally, in *Unnikrishnan, J.P. v. State of Andhra Pradesh*, Court emphasised that it is the responsibility of the State authorities to maintain and elevate public wellness as part of its constitutional obligations under Article 21. In another case, *D.K. Joshi v. Chief Secretary State of Uttar Pradesh and Ors* the SC had addressed concerning public issues on the State of UP and directed to state administration to curb the threat of unlicensed and unaccredited medial personnels increasing across the State.

Despite various legislations and judicial initiatives, there are still certain shortcomings in the Indian health laws that need to be addressed and these shortcomings often include: Firstly, even laws exist, they are not effectively enforced or implemented due to lack of resources, inadequate infrastructure, or insufficient training for officials or there is often a disparity in access to healthcare services, especially between urban and rural areas. Secondly, the quality of healthcare services is inconsistent such as issues like outdated equipment, lack of medical supplies, do not address contemporary health challenges like mental health and emergency diseases and overcrowding in hospitals affect the standard of care provided. Thirdly, the private healthcare sector, which serves a significant portion of the population, is not adequately regulated which leads to issues like high treatment costs, lack of transparency, and variable quality of care. Fourthly, despite schemes like *Ayushman Bharat*, many people still face financial barriers to accessing healthcare. Out-of-pocket expenses can be high, and health insurance coverage is not comprehensive for all. Last but not least, with the increasing use of digital health records, there are concerns about data privacy and protection, which current laws may not adequately address.

In sum, the access to healthcare is constitute as a core human right, widely recognized and shielded by international and national legal frameworks. In India, this right is reinforced through the Constitution and various statutes, with the judiciary playing a crucial role in interpreting and expanding these protections under Article 21. Despite this strong legal foundation, significant challenges persist. Issues such as ineffective enforcement, disparities in healthcare access between urban and rural areas, inconsistent quality of care, inadequate regulation of the private healthcare sector, financial barriers to accessing services, and concerns about digital health data privacy need urgent attention. Addressing the limitations of health laws in India requires a multifaceted approach that involves legal, administrative, financial, and educational strategies such as, firstly, by improving the capacity of regulatory bodies to enforce health laws. This

includes better training for officials, reducing bureaucratic delays, increasing transparency, and ensuring accountability through strict penalties for non-compliance. Secondly, streamline and harmonise existing health laws to eliminate overlaps and contradictions. Implement policies that specifically target underserved and marginalised populations. This could involve more substantial government funding for public health services in rural and remote areas, as well as legal mandates ensuring equitable distribution of resources. Thirdly and most importantly, advocate for an explicit constitutional amendment that enshrines the right to health. This would provide a stronger legal basis for judicial review and enforcement of health-related rights and obligations and conduct regular reviews of health laws and policies to ensure they remain relevant and effective in addressing current and emerging health challenges. Fourthly, by allocating more resources to the healthcare sector to ensure that laws and policies can be effectively implemented. This includes investing in public healthcare infrastructure, training healthcare workers, and ensuring that public health programs are well-funded and sustainable. Fifthly, by strengthening the regulatory framework governing private healthcare providers, focusing on quality assurance, price controls, and patient rights. This could include mandatory accreditation of healthcare facilities and regular audits. Lastly, by launching public education campaigns to raise awareness about health rights and legal protections will definitely strengthen the spirit of existing health laws to protect the society at large. This includes educating people on how to access healthcare services and legal remedies, and informing healthcare providers about their legal obligations.

**REFERENCES:**

1. SK Verma, *Legal Framework for Health care in India 1* (LexisNexis Butterworths, New Delhi, 2002).
2. Caesar Roy, *Health Laws in India 2* (Manakin Press Pvt Ltd, New Delhi, 2019).
3. M.C. Gupta, *Health and Law 11* (Kanishka Publishers, Distributions, New Delhi, 1st edn., 2002).
4. Dakshita Sangwan, *Health Law in India 35* (Dominant Publishers & Distributors Pvt Ltd, New Delhi, 2018).
5. Pushpalata Pattnaik, *Public Health Law, Ethics and Human Rights 163* (Black Prints, New Delhi, 2013).
6. Ibid.
7. AIR 1987 SC 990.
8. 2003 Supp (3) SCR 152.
9. Supra note 3 at 1.
10. Ibid.
11. The Constitution of India, art. 14.
12. Id., art. 21.
13. Id., art. 38.
14. Id., art. 39.
15. Id., art. 41.
16. Id., art. 42.
17. Id., art. 43.
18. Id., art 47.
19. Id., art 48A.
20. Id., art 51A.
21. Id., art 32.
22. Id., art 226.
23. Id., art. 243G.
24. Id., art. 243W.
25. (1998) 4 SCC 117.
26. (2001) 8 SCC 765.
27. AIR 1984 SC 802.
28. (1989) 4 SCC 286.
29. 1995 AIR 922.
30. (1996) 4 SCC 37.
31. (1996) 2 SCC 682.
32. AIR 1993 SC 2178.
33. AIR 2000 SC 384.