



ORIGINAL RESEARCH PAPER

Law

HUMAN RIGHTS VIS-A-VIS FUNDAMENTAL RIGHTS: AN INTERLINKING FROM RIGHT TO HEALTH PERSPECTIVE

KEY WORDS:

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ABSTRACT

Human Rights are legally guaranteed by human rights law protecting individuals and groups against actions that interfere with fundamental freedoms and human dignity. They encompass what are known as civil, cultural, economic, political and social rights. Human Rights are principally concerned with the relationship between the individual and state, therefore, the government's obligation with respect to human rights broadly falls under the principle of respect, protect and fulfil.

The international framework for protecting and promoting human rights worldwide has been embodied in the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social and Cultural Rights (1966), cumulatively which is called as the International Bill of Human Rights. In India, human rights recognition and protection are anchored in the Country's Constitution, wherein, the link between fundamental rights and human rights can be traced back to the forces that operated in the national struggle during British rule. Indian Judiciary has also made significant strides in recognizing and protecting human rights with a view to making fundamental rights compatible with the International Bill of Human Rights, moreover, there are ongoing discussions and debates about the recognition and enforcement of these rights particularly in the phase of complex social and political dynamics.

The normative content of each right is fully articulated in human rights instruments. The right to health is a comprehensive one that includes access to appropriate healthcare as well as the fundamental factors that affect health, such as a sufficient supply of safe water, safe food, adequate nutrition, adequate sanitation, healthy occupations, a wholesome environment, and information and education about health, non-discrimination in health care including sexual and reproductive health etc. Here, the distinction between the "right to health" and the "right to health care" may not appear significant, but from the human rights perspective, the difference is important when the obligation of the State to provide health care comes into question. Although with respect to the right to health, there is no express provision in the Indian Constitution, there are certain Articles that impliedly impose a Constitutional mandate upon the Government to protect the right to health and to provide healthcare facilities. This paper outlines, the delict contiguous relation between human rights as recognized by the International Law and the Fundamental Rights enshrined in the Indian Constitution including their progressive interpretation given by the Indian Judiciary in consonance with the universally recognized rights.

INTRODUCTION

"It is my aspiration that health will finally be seen not as a blessing to be wished for, but as a human right to be fought for"

United Nations Secretary General, Kofi Annan
Human Rights are fundamental entitlements and freedoms that every person possesses simply by virtue of being human. They are universal, inalienable, interconnected and indivisible, and they apply to all individuals without discrimination. Human rights encompass a wide range of civil, political, economic, social, cultural rights which serve as a foundation for dignity, equality and justice for all. They are codified in international documents and that are upheld through various legal advocacy methods worldwide.

The right to health is a fundamental human right that recognizes every individual's entitlement to the highest attainable standard of physical and mental well-being. It is a crucial component of the broader concept of human rights. This right encompasses a range of elements including access to healthcare services, clear drinking water, sanitation, nutrition and other conditions necessary for a healthy life. Governments are typically responsible for ensuring that their citizens can access healthcare and the other conditions necessary for good health also, and they are obligated to progressively realize this right over the time. Right to health plays a vital role in promoting equality, social justice and in overall well-being of community.

Human Rights

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interfere with fundamental freedoms and human dignity. They encompass what are known as civil, cultural, economic, political and social rights. Human Rights are principally concerned with the relationship between the individual and the State, therefore the Governmental obligations with regard to human rights broadly fall under the principles of respect, protect and fulfil.

International Human Rights Mechanism

Governments decide freely whether or not to become parties to human rights treaties. once this decision is made, however, there is a commitment to act in accordance with the provisions of the treaty concerned. The key international human rights treaties, the International Covenant on Economic Social and Cultural Rights (1966) and the International Covenant on Civil and Political Rights (1966), further elaborate the content of the human rights set out in the Universal Declaration of Human Rights (1948), and contain legally binding obligations for the governments that become parties to it. Together these documents are often called the "International Bill of Human Rights".

Right To Health And Right To Healthcare

The right to the highest attainable standard of health was first reflected in the World Health Organisations Constitution and then reiterated in the 1978 declaration of Alma Atta and in the World Health Declaration adopted by the World Health Assembly in 1998. It has been firmly endorsed in a wide range of international and regional human rights instruments. The most authoritative interpretation of the right to health is outlined in Article 12 of the ICSCR, which has also been ratified by the Indian Parliament. In May 2000, the Committee

on Economic, Social and Cultural Rights which monitors the Covenant, adopted a General Comment on the right to health. The General Comment recognized that the right to health is closely related to and dependent upon the realization of other human rights, including the right to food, housing, work, education, participation, the enjoyment of the benefits of scientific progress and its application, life, non-discrimination, equality, the prohibition against torture, privacy, access to information and the freedom of assembly and movement

The committee on Economic, Social and Cultural Rights also interpreted the right to health as an inclusive right extended not only to timely and appropriate healthcare but also to the underlying determinants of health, such as access to safe and portable water and adequate sanitation, and adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, excess to health-related education and information, including on sexual and reproductive health. The distinction between the right to health and right to healthcare and the obligation of State to provide healthcare may not appear significant as far as the observable outcomes on the ground are concerned, but from the human rights perspective the difference is important. There is no right to healthcare in the Indian Constitution but the Supreme Court of India has interpreted the Constitution's Article on the protection of life and personal liberty so as to include access to healthcare into the Article's scope. However, there are some Articles under the Indian Constitution which impliedly put some mandate upon the Government to provide adequate access to healthcare to its citizens.

Right To Health And Right To Life

Health is the most important factor in nations development. Right to health is a vital right without which no one can exercise one's basic human rights. Although the Constitution of India, 1950, does not contain any provision that explicitly recognises the right to life yet there are various provisions which deal with the health of the public at large as health is the most precious prerequisite for happiness. Article 21 is the most extensive Article in Part III of the Indian Constitution which is also known as the residuary Article with respect to fundamental rights. This Article has also been interpreted by the Apex Court in its broadest sense as the expression "life" has been interpreted as not just to have the living identity of an individual rather also to include his dignity and well-being.

The right to health is not explicitly mentioned as fundamental right in the Indian Constitution. However, it is derived from Article 21, which guarantees the right to life and personal liberty. Indian courts have interpreted this to include the right to access healthcare and basic medical facilities. Additionally, the Directive Principles of the State Policy in the Constitution lays down the Government's responsibility to provide healthcare and improve public health.

Article 41 imposes duty on State to provide public assistance to those who are sick and disable. Article 42 makes provision to protect the health of infant and mother by maternity benefit. Article 39 (e) also makes implicit provision with respect to Securing the health of workers through effective State's policy.

The Directive Principles of State Policy in the Indian Constitution, specifically Article 47, emphasis the duty of the State to raise the level of nutrition and the standard of living, and to improve public health. while the directive principles are not legally enforceable, they guide the Government in making policies and promote the welfare of the people. Moreover, part 4A of the Indian Constitution under Article 51A(g) which was added by the 42nd Amendment in 1976 also implicitly imposes the fundamental duty upon the citizens of the country to protect and improve natural environment, since it is closely related to public health.

The right to life and personal liberty which is contemplated under article 21 of the Indian constitution is considered as the most precious, sacrosanct, inalienable right off citizens. However, today the right to life and personal liberty does not mean mere physical existence or being medically alive, but it also includes the right to essential means and facilities which make life worth living with comfort and dignity. Article 21 of the Indian constitution is in continents with the article three of the Universal Declaration on human rights, 1948.

Under United Nations Conventions the right to health not only exists as a universally recognized legal right but it has some broader connotations, because right must be recognised inherently within the social sphere, this formation immediately suggests that determinants of health and ill health are not purely biological or natural, rather, also social as well as economical.

The initial notion of right to health under International Law is found in the 1948 Universal Declaration of Human Rights, which was proclaimed by the United Nations General Assembly, is a common standard for all humans . This Declaration 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. However, this instrument does not explicitly mention right to health as a human right, yet, the subsequent instruments, treaties and other documents further developed and elaborated the position of right to health under International Law. in 1966, twin conventions on civil and political rights, and economic, social and cultural rights were promulgated. The Article 12 of the International Convention on Economic Social and Cultural Rights in unequivocal terms states that ; 1) The State parties to the present Convention recognise the right of everyone to enjoyment of the highest attainable standard of physical and mental health; 2) The steps to be taken by the State parties to the present Convention to achieve the full realisation of this right shall include those necessary for, a) the provision for the reduction of the still birth rate 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.

This Article establishes the right to help and outlines the measures that States should take to ensure its realisation, including improvement in healthcare, hygiene, disease prevention and medical services for everyone. The International Law emphasises that States have a responsibility to take steps to progressively recognise right to health and ensure access to healthcare services, particularly for vulnerable and marginalised populations. This can involve measures to prevent, treat and control diseases, as well as creating healthcare systems that are accessible, available, acceptable and of good quality.

A review of the international instruments and interpretative documents makes it clear that, in addition to UDHR, 1948 and ICESCR, 1966, a wide array of international and regional treaties recognise health as human right. The International Convention on Elimination of all forms of Racial Discrimination, (ICERD), is a United Nations treaty adopted in 1965. While the convention primarily focuses on combating racial discrimination, it indirectly addresses the right to health in the context of ensuring equality and non-discrimination. ICERD requires that ...States parties to eliminate of Racial Discrimination and ensure that all individuals have equal enjoyment of human rights, including the right to health.... Discrimination in access to healthcare services or in the provision of healthcare based on race or ethnicity is contrary to the principles of ICERD. Furthermore,

the Committee on the elimination of racial discrimination which monitors the implementation of the Convention, has highlighted the importance of ensuring equal access to healthcare for all without discrimination. This includes addressing health disparities that may be linked to social or ethnic factors.

International Convention on the Protection of Rights of all Migrant Workers and Members of Their Families also recognises that migrant workers and members of their families shall have the right to receive any medical care that is urgently required for the preservation of their life or avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the State concerned. Such emergency medical care shall not be refused to them by reason of any irregularity with regard to stay or employment. It further lays down that, "...migrant workers shall enjoy equality of treatment with nationals of the State of employment in relation to... (e) access to social and health services, provided that the requirements for participation in the respective schemes are met" Further it requires the State parties to the Convention to provide... "members of the families of migrant workers shall in the State of employment, enjoy equality of treatment with nationals of that state in relation to.... (c) access to social and health services, provided that requirements for participation in the respective schemes are met...."

The Convention Concerning Indigenous and Tribal People in Independent Countries (also known as ILO Convention No.169), is an international treaty adopted by the International Labour Organisation ILO in 1989. While the convention primarily focuses on the rights of indigenous and tribal people, it also addresses their right to health in several ways. It states that.... (1) Indigenous and tribal people have the right to enjoyment of the highest attainable standard of physical and mental health. (2) States shall take the necessary steps to ensure that they have access to health services and facilities, including culturally appropriate services. (3) Indigenous and tribal peoples should participate in the planning, implementation and administration of health services affecting them" ...

Convention on the Rights of the Child (CRC), is an International Human Rights Treaty adopted by the United Nations Assembly in 1989, which primarily outlines the rights that children around the world are entitled to. This convention focuses on the right of every child to the highest attainable standard of health and on facilities for treatment of illness and rehabilitation of health. It emphasises the importance of access to health care services, nutritious food, clean water, and a healthy environment for children. It says that... "children have the right to the best healthcare possible, clean water to drink, healthy food and, a clean and safe environment to live in. All adults and children should have information about how to stay safe and healthy"

Convention on the Rights of Persons with Disabilities, (2006), recognises that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability.

Human Rights And Health.

There are very complex linkages between health and human rights;

- violations or lack of attention to human rights can have serious health Consequences;
- Health policies and programmes can promote or violate human rights in the ways they designed or implemented;
- Vulnerability and the impact of ill health can be reduced by taking steps to respect, protect and fulfil human rights.

Right To Health And Right To Equality

The normative content of each right is fully articulated in

human rights instruments. In relation to right to health the normative content of right to freedom from discrimination is very much relevant. The vulnerable and marginalised groups in societies tend to bear an undue proportion of health problems. Overt or implicit discrimination violates a fundamental human rights principle and often lies at the root of poor health status. In practise discrimination can manifest itself in inadequately targeted health programmes and restricted excess to health services.

In relation to health and healthcare the grounds for non-discrimination have evolved and can now be summarised as proscribing any discrimination in access to healthcare and the underlying determinants of health on the grounds of race, colour, language, sex, religion, political or other opinion, place of birth, sexual orientation social status, any type of disability, health status or any other status which affects the equal enjoyment of right to health.

In *Paschim Banga Khet Mazdoor Samity and Others v. State of West Bengal and others* the Supreme Court addressed the issue of discrimination in providing medical services to poor labourers. The court emphasised that the right to health and medical care is an integral part of the right to life under Article 21 of the Constitution of India. This case highlighted the obligation of the state to ensure that medical treatment is available to all especially vulnerable and marginalised communities. It established the principle that denial of medical care due to financial constraints or any other reason amounts to a violation of fundamental right. This case reaffirmed the Commitment of the judiciary to uphold the right to health without discrimination and emphasised the State's responsibility in ensuring equal access to healthcare services.

In *National legal Services Authority of India v. Union of India* while referring to Article 16 and Article 17 (2) of the International Covenant on Civil and Political Rights 1966 the Apex court addressed the issues of discrimination in healthcare services for transgender, while recognising the right of transgender to self-identity also affirmed their entitlement to all fundamental rights including the right to healthcare. The judgement acknowledged that transgender individuals face discrimination and marginalisation in various aspects of life including healthcare and emphasised the need to provide them non-discriminatory healthcare services including the patients who are going through HIV/AIDS treatments.

Article 17(2) of (International Covenant on Civil and Political Rights) 1966, says that everyone has the right to the protection of law.....

The Supreme Court of India in plethora of cases has followed the expanding frontier of Article 21 with a view to make it compatible with the other human rights recognised by the International Convention pertaining to the present topic. Even though right to health not been expressly mentioned yet its underlying determinants do have very close bearing with the life of an individual. In *Subhash Chandra v. State of Bihar*, the Apex Court explicitly recognised right to wholesome environment as a fundamental right covered under Article 21. In *Vincent v. Union of India*, the two judges' bench of the Supreme Court of India nearly accepted right to health as a part of fundamental Right and the supreme Court observed that healthy body is the very foundation for all human activities. In *Consumer Education and Research Centre v. Union of India*, the labourer's right to protect his health was also recognised as fundamental right.

In *Khadak Singh v. State of U.P.*, the Supreme Court held that the word "life" as it occurs in 5th and 14th Amendment of the US Constitution correspond to Article 21 of the Indian Constitution.

The Supreme Court of India also interpreted the right to life under Article 21 to include right to shelter is a basic human right. The court emphasised that the Government has a duty to provide adequate shelter to its citizens. This interpretation was given in various cases notably in the case of *Chameli Singh v. State of U.P.*, and also in *Olga Tellis v. Bombay Municipal Corporations*.

K. K. Mathew was of the view that "...everyone has the right to standard of living adequately for the health and well-being of himself and his family, including food, clothing, housing, medical care and the necessary social services and the right to security in the event of unemployment, sickness, disability, old age and other lack of livelihood in circumstances beyond one's control. The above rights as mentioned by K. K. Mathew are also the other key underlying determinants of health. Moreover, the language used in human rights instruments also articulate the normative content of the other key human rights relevant to health, which are as follows:

Torture

"No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation"

In *Khadak Singh v. State of U.P.* the supreme Court of India while adopting the extended connotation of word "life", occurring under Article 21 of the Constitution of India stated that human life is ".... something more than mere animal existence. The inhabitation against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by amputation of an arm or a leg, or pulling out of an eye or destruction of any organ of the body through which the soul communicates with the outer world." The Supreme Court also in *President, Citizen for Democracy v. State of Assam*, issued direction that there should not be hand cutting of prisoners except under special circumstances as handcuffing unreasonably is the right to dignity of a person.

In *Khatri v. State of Bihar* when 24 prisoners which were in Bhagalpur jail alleged that they were blinded by the members of police after their arrest, the Supreme Court while recognizing their right to receive compensation for such heinous atrocious acts by the state functionaries itself , also stated that such cruel acts are clearly the violation of Article 21 that not only protects person's life rather also covers such acts that stops him from peacefully enjoying his life with all faculties of his body in good conditions .There are plethora of cases in which the Apex court has enforced the individual's rights through appropriate remedy whenever the victim was tortured by the State instrumentality because such odious acts violate Article 21 of the Constitution of India which recognizes the right to health as inalienable part of right to life.

Right To Life – Includes Right To Health – Compensation

The Constitution envisages the establishment of a welfare State at the federal level as well as at the State level. Providing adequate medical facilities for the people of a welfare state is an essential part of the obligation undertaken by the Government in a welfare State. Article 21 of the Constitution imposes an obligation on the state to safeguard the right to life of every person. In *Paschim Banga Khet Mazdoor Samity v. State of W.B.* it was held by the Supreme Court that Government hospitals run by the State are duty bound to extend medical assistance for preserving human life. Failure on the part of the hospital to provide timely treatment to a person in need of such treatment results in violation of the right to life under Article 21 of the Constitution. Due to non-availability of beds, the petitioner, who was seriously injured was denied treatment in Government hospital. It was held by the Apex court that it amounted to violation of the right to life and a

Compensation of Rs. 25000 was granted to the petitioner.

The State is enjoined to take all such action which will promote health strength and vigour of the workmen during the period of employment and leisure and health even after retirement as the basic essentials to life and happiness . Article 21 of the Constitution of India casts a duty on the State to preserve life and doctors at the Government hospitals positioned to meet the State obligation are duty bound to extend medical assistance for preserving life.

In *Parmanand Katara's* case the Supreme Court also held that, when an injured person is brought for medical treatment, it is the duty of medical professional that he should be instantaneously attended and procedural criminal law should be allowed to operate thereafter because Article 21 casts the obligation on the State to preserve one's life.

Right to health and Right to Health Care

The Supreme Court in *Consumer Education and Research Centre* observed that the Compelling economic necessity to work in an industry exposed to health hazard due to indigence to bread-winning to himself and his dependents, should not be at the cost of the health and vigour of the workmen. Facilities and opportunities, as provided under Article 39, should be provided to protect the health of workmen. Continued treatment, while in the secure and after retirement is a moral, legal and Constitutional Commitment and duty of the employer and the State. Therefore, it must be held, that right to health and medical care is a fundamental right under Article 21 read with Articles. 39 (C), 41 and 43 of the Constitution and make the life of the workmen meaningful and purposeful with dignity of person.

Information And Education

"Freedom to seek, receive and impart information and ideas of all kinds"

Position under Indian law. Article 19 (1) (a) right to freedom of speech and expression.

The right to education, including access to education in support of basic knowledge child health and nutrition, the advantages of breast feeding, hygiene and environmental sanitation and prevention of accidents.

According to Husbandry's Laws of England, the true import and meaning of the words "freedom of expression," incorporates both the right to receive and to express ideas and information.

In *Bandhua Mukti Morcha v. Union of India*, while interpreting the scope of right to life under Article 21 of the Constitution of India the Supreme Court held that it included educational facilities.

In *Mohini Jain v. State of Karnataka*, the Court held while holding right to education as fundamental right described the right to life as a compendious expression for all those rights which the courts must enforce because they were basic to the dignified enjoyment of life. The right to education was also recognised as a basic human right in *Unni Krishnan, J. P. And Others v. State of Andhra Pradesh*.

After the 86th Constitutional Amendment in 2002 the right to education became the Fundamental Right through the insertion of Article 21A in the Constitution of India.

Food And Nutrition And Standard Of Living.

The right of everyone to adequate food and the fundamental right of everyone to be free from hunger....

Everyone has the right to an adequate food clothing housing and medical care, and necessary social services....

In *Khadak Singh v. State of U.P.*, The right to Livelihood upon which the right to food and standard of living are so dependant, was recognised as the fundamental right of person emanating from article 21 of the constitution of India. similar observations but also made in *Olga Tellis* and other cases.

In *Olga Tellis* the Right to livelihood was held to be the part of Article 21 of the Constitution of India by the Supreme Court. Similar observations were made by the Calcutta High Court in *Mohd. Farooqui v. State of West Bengal*. However, in *Delhi transport corporation*, the Supreme Court concluded that the right to livelihood as protected by Article 21 of the Constitution is only right to earn such a livelihood age is necessary for the subsistence of the person and the deprivation of which would threaten their existence.

Right To Healthy Environment

Even though the Universal Declaration on Human Rights does not explicitly mention “right to healthy environment” however, the right to life and the right to enjoy the highest attainable standard of physical and mental health can be interpreted to encompass aspects of right to pollution free environment.

In *Ratlam Municipality v. Vardhichand*, the right to life under Article 21 was held to include in its ambit the right to live in a wholesome environment, free from the dangers of diseases and infection. There are series of Supreme Court's rulings in which the right to wholesome environment was held to be the fundamental right emanating from Article 21 of the Constitution of India.

CONCLUSION

The right to health and human rights are intimately connected, as the right to health is a fundamental aspect of the broader framework of human rights. This intimate relationship between the right to Health and Human rights is a testament to the comprehensive and holistic nature of the human rights. Both the right to health and human rights anticipates the inherent dignity of every individual which is recognised and protected universally. They affirm that every individual, regardless of their circumstances, heads intrinsic value and deserves a life which is free from suffering and illness.

Right to Health and Human rights are mutually reinforcing in nature because the enjoyment of other human rights, such as the right to life, education, work, freedom, etc. are closely tied to one's health therefore, without good health, individual cannot fully realise these rights.

The interlinking of these rights underscores the importance of ensuring that healthcare services and the other determinants of health are accessible to all without discrimination. Upholding right to health as an integral part of human rights means addressing disparities in healthcare excess and addressing social determinants. Also, the human rights mechanism provides avenues for individuals and community at large to hold government responsible for the violation of right to health.

This accountability strengthens the protection of fundamental right and individual can seek remedy for the enforcement of right to health under the human right enforcement mechanism. Being an inalienable part of human rights, for the violation of right to health, in addition to domestic mechanism, governments may be held accountable internationally through human rights treaties and reporting to international bodies. These mechanisms help in and ensuring the Government's adherence to their commitments to protect and fulfil the right to health.

In essence, the right to health is not an isolated concept but an

integral part of the broader tapestry of human rights and recognising this interlinking reinforces the commitment to create a world where all individuals can lead healthy lives in conditions of dignity, equality and respect.

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8. See Articles 39 (e) and (f), 42, 47 as well as 48A which is an indirect recognition of right to health of human beings.
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11. The State shall make provision for securing just and humane conditions of work and for maternity relief.”
12. Article 39 ... “The State shall in particular, direct, its policy towards securing... (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuitable to their age or Strength...”
13. Article 47, “The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and in particular, the State shall endeavour to bring about prohibition of the consumption except for medical purposes of intoxicating drinks and of drugs which are injurious to health”
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