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RIGHT TO HEALTH IN INDIA

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ABSTRACT:

As there is no law available in India about Health Right and no expressed provision in Constitution, which deals with or expressly talk about the Health Rights in India (except Rajasthan Right to Health Care Act, 2023)¹, the implied responsibility of State and Judiciary to recognize and protect Human Rights of Citizens have been increased. Through Judicial Activism, Court have been dealt with numerous cases by expanding horizons of Article 21 of the Indian Constitution and gave so many directions to State to protect the Health Rights. State as well have taken steps to lessen the plight of citizens in health area by adhering to International Treaties. The role of UN (United Nation) and its branch (i.e. WHO – World Health Organization) to guide member state cannot be neglected. The multidimensional and interdisciplinary character of health rights has made the legislative process in India complex and time-consuming. As this research is doctrinal one, the data collected through secondary sources. The researcher wants to trace out the intertwined relationship between WHO and Health Rights of the Indians. Due to lack of expressed provisions in India, the work of WHO is of extra importance.

KEYWORDS: Right to Health, Health Rights, Article 21, Judicial Activism, WHO

INTRODUCTION:

The life without Health Rights is unimaginable as there is no meaning to live a life without it. The life will be futile if the health is not well. It would be mere animal existence without Right to Health. Here Health Rights includes not only physical health rights but mental health

and social wellbeing as well. The WHO defined health as, “ a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.”² India is the member state of UN and it is the primary duty of the State to improve the public health of the Nation. With the help of Various Schemes and Missions, United Nation and India trying to mitigate lacunas in health sector.

As already have been mentioned earlier, there is no law, (except Rajasthan Right to Health Care Act, 2023), governing Health Rights in India, Judicial Activism played a vital role to protect Health Rights of the citizens. Through various case laws the ambit of the Article 21 of the Constitution has been enlarged. This is a difficult task and two authors rightly stated that, “A report card on health laws and right to health is difficult to make, given the complex nature of issues involved and the nature of developments happening in society, technology and governance.”³

The other legal provisions are embedded in Preamble, Fundamental Rights and Directive Principles of State Policy of the Indian Constitution. All these legal provisions discuss about Human Rights and not about Health Right. But interpretation by judiciary is path showing one. Beside this, there are other Acts which deals with various health issues of citizens.

In the present era the Governmental Activism⁴ also contributing and protecting the Health Rights of the Citizens. The State as a whole, from Apex level to Ground level, helping people by providing health facilities in both private and public sector.

1) ARTICLE 21 OF THE INDIAN CONSTITUTION & JUDICIAL ACTIVISM

Article 21 of the Indian Constitution reads as bellow:

“Protection of life and personal liberty – No person shall be deprived of his life or personal liberty except according to procedure established by law.”⁵

“Through various judgements, right to health was brought under the wide ambit of Article 21 which imposes a duty on the state to ensure that no person is deprived of his right to health except in a situation that law demands.”⁶

a) CASE LAWS

It is not possible to discuss each and every case in detail. so we will highlight only few cases here. Through Judicial Activism, Court have been enhancing the ambit of Art.21. The very first case which discuss about right to health is ParmanandaKatara v Union of India⁷ wherein Court stated that right to access to emergency medical treatment comes under the ambit of right to life.⁸In previous case named Lakshmi Kant Pandey v. UOI⁹ court observed that as being the national asset and future of nation, the children's health is a matter of concern.¹⁰The health rights of the workers and right to medical assistance were recognized in Consumer Education and Research Centre v. UOI.¹¹ The Apex Court stated that right to maintenance and improvement of public health is an integral part of the right to live with human dignity enshrined under Article 21, in Vincent Parikurlangra v. UOI.¹² Right to education includes right to medical education and this view put forth in Samir Das Gupta v. State of Bihar.¹³ In State of Punjab v. Mohinder Singh Chwla, the Court held that because the "right to life is included in Art. 21, state personnel are entitled to medical reimbursement of treatment expenses and room rent charges in an approved specially hospital outside of government hospitals."¹⁴In Navtej Singh Johar v. UOI, Supreme Court held that, "Article 21 does not impose upon the State only negative obligations not to act in such a way as to interfere with the right to health. This court also has the power to impose positive obligations upon the State to take measures to provide adequate resources or access to treatment facilities to secure effective enjoyment of the right to health."¹⁵ In *SukdebSaha v. State of Andhra Pradesh*, "the Supreme Court elevated **mental health** from a mere policy matter to a constitutional guarantee under Article 21. The Court declared that the Right to Life encompasses the right to psychological safety. The judgment directed educational institutions and state authorities to provide adequate counselling services, reduce intense academic stress, and create psychologically safe environments."¹⁶ In *Dr. Jaya Thakur v. Government of India (2026)* The Supreme Court officially recognized **Menstrual Health and Hygiene (MHH)** as a fundamental right under Article 21 (Right to Life) and Article 21A (Right to Education).¹⁷ In *Prisoner Healthcare & Medical Neglect (2025)*, High Courts across the country—most

notably the Himachal Pradesh High Court—have ruled that the State has an absolute duty to provide adequate health and medical aid to incarcerated individuals.¹⁸

There are cases about passive Euthanasia encompasses right to life includes right to die with dignity. Sometimes it happens that living with disease is impossible and hence right to live with dignity cannot meet. So in such matters right to die with dignity allowed by the Court, but in active Euthanasia it is strictly restricted. The cases are, P. Rathinam v. Union of India¹⁹ (right to life includes right to not live hence declared section 309 of IPC unconstitutional) , GianKaur v. State of Punjab²⁰ (the Court overruled P. Rathinam stating that right to life does not include the right to die or commit suicide. However, it established a vital legal concept: the "right to life" includes the right to live with human dignity up to the end of life, which paved the way for dignified dying), ArunaShanbaug v. Union of India²¹(While the court denied active euthanasia, it legally permitted **passive euthanasia** in India for the first time, setting up strict medical and judicial guidelines to authorize the withdrawal of life support), Common Cause v. Union of India²² (the "**right to die with dignity**" is a **fundamental right** under Article 21. The Court formally recognized 'Living Wills' or advance medical directives, allowing competent adults to declare in advance that they refuse medical treatment or life support in the event of a terminal illness or irreversible condition), Common Cause Modification (2023) (The Supreme Court relaxed the procedural complexities that were originally laid out in the 2018 judgment. The Court simplified the execution and enforcement of 'Living Wills' to make passive euthanasia practically accessible to patients and their families).

2) OTHER LEGAL PROVISIONS OF THE INDIAN CONSTITUTION

a) PREAMBLE

Our preamble followed the socialistic approach of society. The State is bound by the welfare state to its citizens and protect health rights of the citizens. It mandates the State to secure social, political and economic justice to all. Though health rights are not mentioned in Constitution anywhere, it derived from the egalitarian approach and considered integral part of the right to life.

b) FUNDAMENTAL RIGHTS(FRs)

Again right to health not mentioned anywhere directly but due to Judicial Activism it got legalized in India. Apart from Article 21 of the Constitution there are two Articles indirectly talk about the Right to Health. Those are Article 23 (1) and Article 24 under the head of 'Right against Exploitation'.²³ Article 23(1) prohibits traffic in human beings and forced labour. Article 24 prohibits children under the age of 14 to work in factory, mine or any hazardous employment.

c) DIRECTIVE PRINCIPLES OF STATE POLICY (DPSP)

DPSPs are not justiciable rights. They are only directive in nature. Hence a State is not binding to fulfill these rights. Still the significance of DPSP is vital one. The Articles 38(2), 39(a) and (e), 41, 42, 43, 47, 48-A. It is up to State to exercise these Articles within the limits of its Economic capacity. Article 38(2) talks about elimination of inequalities in status, facilities, opportunities; Art. 39(a) talks about right to an adequate means of livelihood; Art. 39(e) tells that the health and strength of workers are not abused, Art. 41 talk about State shall make effective provisions for assistance in sickness and disablement; Art. 42 states as Provisions for just and humane conditions of work and maternity relief; Art. 43 talks about a decent standard of life and full enjoyment of leisure; Art. 47 states that it is the duty of State to raise the level of nutrition and the standard of living and to improve public health; Art. 48-A states that the protection and improvement of environment and safeguarding of forests and wild life.²⁴

3) OTHER ACTS IN INDIA

Apart from above mentioned legal provisions, there are Acts which deals with various aspects of Health Rights. Those are: Indian Penal Code, 1860; The Consumer Protection Act, 1986; The Water Act, 1974; The Environment (Protection) Act, 1986; The Air Act, 1981; The Drugs and Cosmetics Act, 1940; The Drugs and Magic Remedies Act, 1954; The Narcotic and Psychotropic Substance Act, 1985; The Epidemic Diseases Act, 1897; The Transplantation of Human Organs Act, 1994; The Mental Health Act, 1987; Indian Medical Council Act, 1956; Indian Medicine Central Council Act, 1970; The Homeopathy Central Council Act, 1948; Indian Nursing Council Act, 1947; Dentist Act, 1948; The Pharmacy Act, 1948; The factories Act, 1948; employees State Insurance Act, 1948; The Maternity

Benefit Act, 1961; The Mines Act, 1952; The Plantation Labour Act, 1951; Workmen's Compensation Act, 1923; Pre-conception and Pre-Natal Diagnostic Techniques Act, 1994; The Medical Termination of Pregnancy Act, 1971; The child Labour Act, 1986; The Infant Milk Substitutes, Feeding Bottles and Infant foods Act, 1992; The Juvenile Justice (care and protection) Act, 2000; The Food Safety and Standards Act, 2006; The Prevention of Food Adulteration Act, 1954; The 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 Mental Healthcare Act, 2017.

4) NATIONAL HEALTH BILL, 2009

“This Bill Acknowledged that the exercise of all other Human Rights is intricately linked with getting health recognized as a fundamental human right and there is need of legal framework and a common set of standards, norms and values to facilitate the Government's stewardship of private sector as a partner in future public health.”²⁵

5) WHO & RIGHT TO HEALTH

Even on international level Health Right is not mentioned anywhere. All rights related to Health were mentioned under the heading of ICCPR²⁶ and ICESCR²⁷, both 1966. The word 'Health' first insisted to insert in UN charter by Brazilian Delegate Dr. De Paula Souza.²⁸

In 1946, The Constitution of World Health Organization adopted wherein 'enjoyment of the highest attainable standard of health' has been recognized as a 'Fundamental Right'.²⁹ By the adopting the Constitution, WHO is bound to follow the principles³⁰ enshrined under the Constitution.

- Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.
 - The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition.
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- The health of all peoples is fundamental to the attainment of peace and security and is dependent on the fullest co-operation of individuals and States.
- The achievement of any State in the promotion and protection of health is of value to all.
- Unequal development in different countries in the promotion of health and control of diseases, especially communicable disease, is a common danger.
- Healthy development of the child is of basic importance; the ability to live harmoniously in a changing total environment is essential to such development.
- The extension to all peoples of the benefits of medical, psychological and related knowledge is essential to the fullest attainment of health.
- Informed opinion and active co-operation on the part of the public are of the utmost importance in the improvement of the health of the people.
- Governments have a responsibility for the health of their peoples which can be fulfilled only by the provision of adequate health and social measures.

The WHO and UN organised an international conference in Alma Ata, situated in Kazakhstan. The Alma-Ata Declaration of 1978 emerged as a major milestone of the twentieth century in the field of public health, and it identified primary health care as the key to the attainment of the goal of Health for All. The following are excerpts from the Declaration:

- The Conference strongly reaffirms that health, which is a state of complete physical, mental, and social well-being, and not merely the absence of disease or infirmity, is a fundamental human right and that the attainment of the highest possible level of health is a most important world-wide social goal whose realization requires the action of many other social and economic sectors in addition to the health sector.
- The existing gross inequality in the health status of the people, particularly between developed and developing countries as well as within countries, is politically, socially, and economically unacceptable and is, therefore, of common concern to all countries.
- The people have a right and duty to participate individually and collectively in the planning and implementation of their health care.
- Primary health care is essential health care based on practical, scientifically sound, and socially acceptable methods and technology made universally accessible to individuals and families in the community through their full participation and at a cost

that the community and country can afford to maintain at every stage of their development in the spirit of self-reliance and self-determination. It forms an integral part both of the country's health system, of which it is the central function and main focus, and of the overall social and economic development of the community. It is the first level of contact of individuals, the family, and community with the national health system bringing health care as close as possible to where people live and work, and constitutes the first elements of a continuing health care process.

- An acceptable level of health for all the people of the world by the year 2000 can be attained through a fuller and better use of the world's resources, a considerable part of which is now spent on armaments and military conflicts. A genuine policy of independence, peace, détente, and disarmament could and should release additional resources that could well be devoted to peaceful aims and in particular to the acceleration of social and economic development of which primary health care, as an essential part, should be allotted its proper share.³¹

India became party to World Health Organization on 12 January 1948, when it officially became signatory to the Constitution. Hence India have to follow the WHO guidelines. WHO's technical support to the Government of India comes under four strategic priorities to contribute India's health agenda³²:

STRATEGIC PRIORITY 1 : ACCELERATE PROGRESS ON UHC

1. Implementing Ayushman Bharat: Health and Wellness Centres and hospital insurance scheme
2. Monitoring and evaluation of health sector performance
3. Improving access to priority health services such as immunizations, maternal and child health, tuberculosis, hepatitis
4. Digital health ecosystem
5. Eliminating neglected tropical diseases and control of vaccine-preventable and sector-borne diseases

STRATEGIC PRIORITY 2 : PROMOTE HEALTH AND WELLNESS BY ADDRESSING DETERMINANTS OF HEALTH

1. Non-communicable diseases (NCDs) action plan roll-out
2. Environmental health, including air pollution
3. Mental health promotion and suicide prevention
4. Nutrition and food safety
5. Road safety
6. Tobacco control
7. Integration of NCD and environmental risk factors in the digital health information platform

STRATEGIC PRIORITY 3 : BETTER PROTECT THE POPULATION AGAINST HEALTH EMERGENCIES

1. Disease surveillance and outbreak detection and response, including International Health Regulation
2. Roll-out of integrated disease surveillance programme using the real-time integrated health information platform(IHIP)
3. Preparedness for, and response to all, emergencies
4. Containment of antimicrobial resistance

STRATEGIC PRIORITY 4: ENHANCE INDIA'S LEADERSHIP IN HEALTH

1. Improving access to medical products of assured quality made in India
2. Development and information sharing of innovations in health practices and technologies including IHIP
3. Strengthening India's leadership in digital health

CONCLUSION

In a present era, the importance of health issues is increasing day by day. The right to health nowhere mentioned in Indian Constitution as well as on International Level. With practice, it falls under the Human Rights. Indian Judiciary through Judicial Activism highlighted the issue and pull it under the ambit of Art.21. The role of WHO is extraordinary to recognize and protect the Health Rights on International level. The parties are binding by the Constitution of WHO.

Because health rights involve legal, medical, social, economic, ethical, psychological, environmental, public administrative and international dimensions, the legislative bodies in India face significant challenges in enacting comprehensive law in this subject.

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