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## "Health as a Fundamental Human Right: A Socio-Legal Analysis of Evolution, Challenges, and Judicial Perspectives in India"

1. **Matam Siva linga Murthy,**

Research Scholar (ICSSR), Department of Human Rights, Dr. B. R. Ambedkar college of law, Andhra University

E-mail: [sivamaha64@gmail.com](mailto:sivamaha64@gmail.com)

M:9441618532

2. **Prof. (Dr). S. Sumitra**

Dr. B. R. Ambedkar College of law, Andhra University.

3. **Yellapu prasad,**

Research Scholar, Dr. B. R. Ambedkar College of law Andhra University

4. **Kosaraju Suman Krishna**

Research Scholar (ICSSR), Department of Business Law, Dr. B. R. Ambedkar College of law, Andhra University

5. **Dr. Mothrapu Amulya,**

Assistant Professor, Malla Reddy Engineering College (A)

Email: [amulya.mothrapu@gmail.com](mailto:amulya.mothrapu@gmail.com)

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### Abstract:

The study examines the connection between health and human rights, highlighting the importance of health as a fundamental human right. It examines the evolution of the right to health within the Indian legal system, the state's role in ensuring equitable access to quality healthcare, and the obstacles to realizing the right to health. The research also reviews landmark judicial cases in India that have shaped the understanding and enforcement of health rights. The paper advocates for inclusive and accountable governance, calls for comprehensive reforms, and suggests a strategic path forward for advancing healthcare rights. The study contributes to the ongoing discourse on health and human rights, providing a socio-legal analysis that underscores the importance of recognizing and enforcing health as a fundamental human right.

**Key Words:** Right to Health, Legal frame work, Health Policy reforms, Landmark Health cases in India, Public Health Law, Socio-Legal Analysis, Health care Governance.

## INTRODUCTION

***“Health care is not a privilege. It’s a right. It’s a right as fundamental as civil rights. It’s a right as fundamental as giving every child a chance to get a public education”<sup>1</sup>***

**...Rod Blagojevich**

The World Health Organisation recognizes healthcare as a fundamental human right, ensuring equal access to quality healthcare for all individuals, regardless of socioeconomic status or location. This promotes individual well-being and promotes equal health policies, promoting a more fulfilling life for all<sup>2</sup>.

Health as a human right ensures everyone, regardless of socioeconomic status or location, has the right to quality healthcare services. Health encompasses physical, mental, and social well-being, not just disease absence. The World Health Organization defines health as a fundamental right, making access to high-quality healthcare a basic right<sup>3</sup>.

**IMPORTANCE OF HEALTH AS A HUMAN RIGHT:** Recognizing health as a fundamental right is crucial for reducing healthcare inequities and promoting overall well-being. It involves recognizing individuals' right to quality medical care, regardless of financial circumstances, and addressing access barriers like affordability, service availability, and quality. Health rights also address social health determinants like poverty, education, and environmental factors. They ensure the rights of vulnerable populations and promote non-discrimination and equality in healthcare delivery, fostering a just and equitable society<sup>4</sup>.

Healthcare access is a fundamental human right recognized by the WHO and UN, essential for a fulfilling life, basic rights, and societal contribution. Despite efforts, disparities persist, promoting equal access and prioritizing individual well-being regardless of economic status or location<sup>5</sup>.

Access to healthcare is a critical issue, requiring individuals to freely access services without discrimination or geographical limitations. The World Health Organization (WHO) recognizes it as a human right, emphasizing the need for governments and policymakers to develop strategies for affordable, high-quality healthcare<sup>6</sup>.

**LINKAGES BETWEEN HEALTH AND HUMAN RIGHTS:** India's right to health is a fundamental principle in international conventions and national laws, emphasized in ICESCR and CERD, emphasizing maintaining optimal mental and physical well-being.

<sup>1</sup> Right To Health In India: A Constitutional and Judicial Perspective » (lawaudience.com)”.  


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<sup>2</sup> World Health Organization, Basic Documents [forty-eighth edition]. 2014. Available from: <http://apps.who.int/gb/bd/PDF/bd48/basic-documents-48th-edition-en.pdf#page=7> [accessed 22 June 2019]-visited”.

<sup>3</sup> “United Nations. Universal Declaration of Human Rights. Available from: <https://www.un.org/en/universal-declaration-human-rights/> (accessed 22 June 2019)-visited”.

<sup>4</sup> United Nations. (1966). International Covenant on Economic, Social and Cultural Rights. Retrieved from [<sup>5</sup> “Kruk ME, Gage AD, Arsenault C, Jordan K, Leslie HH, Roder-DeWan S, Adeyi O, Barker P, Daelmans B, Doubova SV, English M, García-Elorrio E, Guanais F, Gureje O, Hirschhorn LR, Jiang L, Kelley E, Lemango ET, Liljestrand J, Malata A, Marchant T, Matsoso MP, Meara JG, Mohanan M,](https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights-/[accessed 10 august 2019]-visited”.</a></p>
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<sup>6</sup> National Academies of Sciences, Engineering, and Medicine; Health and Medicine Division; Board on Health Care Services; Committee on Health Care Utilization and Adults with Disabilities. Health- Care Utilization as a Proxy in Disability Determination. Washington (DC): National Academies Press (US); 2018 Mar 1. 2, Factors That Affect Health-Care Utilization. Available from:

Violations of human rights, such as access to clean water, sanitation, and education, can significantly impact an individual's health and well-being, highlighting the importance of addressing these issues. Health policies can either promote or violate human rights, and poorly executed policies can inadvertently infringe on individual or community rights, making it crucial to carefully consider these implications. Vulnerable populations, including children, ethnic minorities, refugees, the elderly, and disabled individuals, are at high risk of health disparities due to factors like gender, race, religion, or health status.<sup>7</sup>

The Universal Declaration of Human Rights (1948) emphasized health as a fundamental human right, with the World Health Organisation (WHO) leading the charge in promoting it, irrespective of race, religion, political beliefs, economic or social conditions<sup>8</sup>. Paul Hunt, a former UN special rapporteur, has extensively studied and advocated for the right to health, emphasizing the importance of a rights-based approach in health policy formulation. Indian constitutional provisions, including Article 21, have transformed the right to health, as highlighted by legal scholar Upendra Baxi, who argues the judiciary has expanded the scope of life rights<sup>9</sup>.

**Case: In *K. S. Puttaswamy v. Union of India* (2017):** The Indian Supreme Court's landmark case recognized privacy as a fundamental human right, promoting health as a human right. The National Health Policy (2017) aims for good health and well-being for all citizens, emphasizing state responsibility and multi-sectoral collaboration<sup>10</sup>.

**EVOLUTION OF HEALTH AS A HUMAN RIGHT:** The concept of health as a human right has a long history, with its connection to human dignity and well-being. The 1948 Universal Declaration of Human Rights, a significant milestone, recognized health's importance in the right to an adequate standard of living, underscoring the indivisible nature of human rights. The 1966 World Convention on Culture, Economic, and Society solidified the right to health as an essential human right, ensuring individuals have the highest possible standard of physical and mental health. Global recognition of health rights and quality services is widespread, with organizations like UN, WHO, UNICEF, UNDP, UNFPA, ECOSOC, and bilateral agencies adopting resolutions to safeguard individual interests<sup>11</sup>.

The World Health Organization's 1995 Constitution identifies health as the highest essential human right, with major international resolutions affirming its priority for governments worldwide, ensuring equal rights for all. The United Nations General Assembly endorsed the Universal Declaration of Human Rights in 1948, encompassing 30 articles on basic rights like health, food, shelter, clothing, employment, and security. The United Nations adopted the International Covenant on Economic, Social, and Cultural Rights in 1966, emphasizing health, education, and living standards. Other covenants, including the Declaration on ICCPR, DEDAW, CEDAW, and CRC, aimed to preserve healthcare rights for women, children, and marginalized populations.

<sup>7</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR), G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 UNTS 3, entered into force Jan. 3, 1976.

<sup>8</sup> <https://whrpc.org/wp-content/uploads/2021/02/human-rights-artical.pdf/>; <https://link.springer.com/referencework/10.1007/978-3-319-95687-9>; [accessed 10 June 2020]-visited”.

<sup>9</sup> Neetishri Sharma, Ph.D. Scholar, Faculty of Law, University of Lucknow, India, *Journal of Emerging Technologies and Innovative Research (JETIR)* [www.jetir.org](http://www.jetir.org), (ISSN-2349-5162) / [accessed 10 June 2023]-visited

<sup>10</sup> “Hunt P. Interpreting the International Right to Health in a Human Rights-Based Approach to Health. *Health Hum Rights*. 2016 Dec;18(2):109-130. PMID: 28559680; PMCID: PMC5394996”.

“Transformative Constitutionalism: A Conceptual Journey from South Africa to India, Author-”.

<sup>11</sup> UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at: <https://www.refworld.org/docid/3ae6b36c0.html> [accessed 26 December 2023]-visited.

The United Nations adopted the International Covenant on Economic, Social, and Cultural Rights in 1966, emphasizing health, education, and living standards. Other covenants, including the Declaration on ICCPR, DEDAW, CEDAW, and CRC, aimed to preserve healthcare rights for women, children, and marginalized populations. The World Health Organization (WHO) has been promoting health well-being globally since 1948, with notable declarations like the Alma Ata and Astana Declarations. India has ratified international treaties and enacted legislation to implement health provisions, demonstrating the global consensus on upholding health as an inalienable human right<sup>12</sup>.

**LEGAL FRAME WORK – INTERNATIONAL PERSPECTIVE:** International human rights law, including the Universal Declaration on Economic, Social, and Cultural Rights, establishes the right to health, including access to medical care, nutritious food, clean water, and safe housing. Regional treaties, like the African Charter and European Union Charter, enforce these rights.

#### **Universal Declaration of Human Rights (UDHR):**

The Universal Declaration of Human Rights, adopted by the United Nations General Assembly in 1948, outlines fundamental rights and freedoms for all individuals, including life, discrimination, and education. Translated into over 500 languages, it serves as a foundation for global human rights laws and policies. Amla-Ata, a 1978 declaration by UNICEF and WHO, aimed to achieve 'health for all by 2000' in developing countries by adopting primary health care as a key approach, shifting human rights to horizontal public health systems.

**The Declaration includes:** Health is a fundamental human right, requiring collaboration between societies and governments to ensure its realization. Addressing health inequities, particularly between poor and rich countries, is crucial for social and economic development and world peace. Participation in healthcare is a right and duty, and universally accessible primary health care is essential<sup>13</sup>.

#### **Conventions and Treaties on Economic, Social, and Cultural Human Rights:**

The International Covenant on Economic, Social and Cultural Rights (ICESER), adopted by the UN General Assembly in 2006, emphasizes the importance of economic, social, and cultural rights for human dignity and freedom. It includes provisions for work, social security, education, and health<sup>14</sup>.

**Article 12: International Convention on Economic, Social and Cultural Rights – Health Perspective:** The International Covenant on Economic, Social and Cultural Rights (ICESER) emphasizes the right to high physical and mental health standards, preventive measures, and equitable distribution of health services, particularly for marginalized individuals. It also emphasizes access to essential medicines and scientific research in healthcare, recognizing health as a human right for all.

#### **Article 25: UDHR - The Right to Health:**

<sup>12</sup> Ibid

<sup>13</sup> Arcaya MC, Arcaya AL, Subramanian SV. Inequalities in health: definitions, concepts, and theories. *Glob Health Action*. 2015 Jun 24;8:27106. doi: 10.3402/gha.v8.27106. PMID: 26112142; PMCID: PMC4481045

<sup>14</sup>UN General Assembly, International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights and Optional Protocol to the International Covenant on Civil and Political Rights, 16 December 1966, A/RES/2200, available at: <https://www.refworld.org/docid/3b00f47924.html> [accessed 26 December 2023]-visited”.

48 Kumar R. Right to health: Challenges and Opportunities. *Indian J Community Med*. 2015 Oct-Dec; 40(4):218-22. Doi: 10.4103/0970-0218.164379. PMID: 26435593; PMCID: PMC4581140- [accessed 10 December 2018]visited.

The Universal Declaration of Human Rights acknowledges the fundamental right to physical and mental health, including access to healthcare services, context-specific health information, education, sanitation, and healthy living and work environments. Governments must prioritize facilities, training, and health promotion programs, with the World Health Organization established for global health promotion<sup>15</sup>.

**Other International and Regional Conventions or Declarations:** There have been various international and regional interventions and declarations that support the idea that health is a right. The Universal Declaration of Human Rights (UDHR), adopted in 1948 by the United Nations General Assembly, the right to health in its article 25. The International Covenant on Economic, Social and Cultural Rights (ICESCR), also adopted by the UN in 1966, outlines the right to highest attainable standard of mental health in its article 12. Regional interventions such as the African Charter on Human and Peoples Rights and the European Social also recognize the right to health. These interventions and declarations emphasize importance of ensuring that all individuals have access to adequate healthcare services irrespective of their socio-economic backgrounds

**Key Aspects of the Right to Health:** Health is a fundamental human right, a responsibility of governments, and a right to be achieved through collective action. It is crucial for social and economic development and world peace. Participation in healthcare is a right and duty, and universally accessible primary health care is essential. Coordination from all sectors is necessary, and political will is required for resource mobilization<sup>16</sup>.

#### **ENFORCEMENT OF RIGHT TO HEALTH – INTERNATIONAL PERSPECTIVE:**

Implementing the right to health is a complex task that requires comprehensive policy development, resource allocation, capacity building, and monitoring. The World Health Organization emphasizes government leadership, legal frameworks, and transparent resource allocation. Collaborative efforts among governments, civil society, private sector, and multilateral organizations are crucial for achieving health for all<sup>17</sup>.

#### **LEGAL FRAME WORK – INDIAN PERSPECTIVE**

##### **Evolution of Right to Health in India:**

The right to health in India, established in the 1950s through Article 21, is a fundamental right recognized by the Indian Constitution and judiciary, allowing individuals to directly seek protection through the apex court<sup>18</sup>.

**“The Supreme Court in 1995, in the case of Parmanand Katra” observed:** “The patient whether he be an innocent person or a criminal liable to punishment under the laws of the society, it is the obligation of those who are in charge of the health of the community to preserve life so that the innocent maybe protected and the guilty may be punished. Social laws do not contemplate death by negligence to tantamount to legal punishment”. Therefore, the recognition of dignity and fundamental right led to the recognition of the importance of health<sup>19</sup>.

<sup>15</sup> United Nations. Universal Declaration of Human Rights. Available from: <https://www.un.org/en/universal-declaration-human-rights/> (accessed 22 June 2019)-visited.

<sup>16</sup> Yamin AE. The right to health under international law and its relevance to the United States. *Am J Public Health*. 2005 Jul;95(7):1156-61. doi: 10.2105/AJPH.2004.055111. Pub 2005 Jun 2. PMID: 15933233; PMCID: PMC1449334.

<sup>17</sup> Bloland P, Simone P, Burkholder B, Slutsker L, De Cock KM. The role of public health institutions in global health system strengthening efforts: the US CDC's perspective. *PLoS Med*. 2012; 9(4):e1001199. Doi: 10.1371/journal.pmed.1001199. Epub 2012 Apr 3. PMID: 22509137; PMCID: PMC3317896.

<sup>18</sup> Narayan CL, Shikha D. Indian legal system and mental health. *Indian J Psychiatry*. 2013 Jan; 55(Suppl 2):S177-81. Doi: 10.4103/0019-5545.105521. PMID: 23858251; PMCID: PMC3705679.

<sup>19</sup> Parmanand Katara vs. Union of India & Ors, 1989 Air 2039, 1989 Scr (3) 997, 1989 Scc (4) 286, Jt

**Right to Health – Constitutional Frame Work:** India, as a signatory to various international treaties, echoes its commitment to ensure the right to health through constitutional provisions as a fundamental right and also in directive principles of the state.

**Preamble of the Indian Constitution:** The Preamble of the Indian Constitution broadly explains about the interest of ‘social, economic and justice. The right to health is indirectly mentioned in the Part III of the Indian Constitution which deals with various fundamental rights, which are related to the right to health and precautionary measures for all citizens of India as well as human right for non-citizens of India<sup>20</sup>.

### Fundamental Rights

**Article 14 - Equality before law:** According to the spirit of this article, the accessibility to the health care facilities is not the privilege of certain sections of the society

**Article 21: Protection of Life and Personal Liberty:** Which guarantees the right to life and personal liberty, has been interpreted by the Indian Supreme Court to encompass the right to health. Additionally, Article 47 places the duty on the state to improve public health, indicating the proactive role of the government in safeguarding the health of its citizens<sup>21</sup>.

**Directive Principles of State Policy (DPSP):** Part IV of Indian Constitution, deals with the direction to various State Governments to undertake and initiate required measures in the interests of the community.

*The following provisions refer to the right to health implicitly:*

**Article 39 (e) and Article 39 (f): Ensures the Health & Strengths of Citizens:** Opportunities and resources are provided for workers, both male and female, as well as young children, to grow up in a healthy way with freedom and dignity, the childhood and adolescent are protected against exploitation, moral and material abandonment<sup>22</sup>.

**Article 41: Economic capacity and Public Assistance:** The Article emphasizes that the State has a duty, considering its economic capacity and developmental progress, to actively strive towards securing the rights to employment, education, and public assistance in circumstances of unemployment, old age, sickness, disability, and other conditions of extreme need<sup>23</sup>.

**Article 42: Humane Work Conditions and maternity relief:** This Article ensures humane work conditions and provides for maternity relief-“The state shall make provision for securing just and humane conditions of work and for maternity relief”<sup>24</sup>.

**Article 47: State to raise the level of Nutrition, Public Health and Standard of Living as Primary Duty:** This article deals about prohibition for consumption of intoxicating drinks and drugs. It empowers the development of nutritional status and public health among the residents of the state as one of primary duty<sup>25</sup>

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1989 (3)496 1989 Scale (2)380, Bench: Misra Rangnath.

<sup>20</sup> Tiwari, Manwendra, Adjudication and Enforcement of Socio-economic Rights under the Indian Constitution: A Critical Study (August 30, 2017). Ph.D. thesis in Law submitted in Dr. R M L National Law University, Lucknow, 2017, Available at SSRN: <https://ssrn.com/abstract=3437899> or <http://dx.doi.org/10.2139/ssrn.3437899> [accessed 10 June 2018]-visited.

<sup>21</sup> Nampewo, Z., Mike, J.H. & Wolff, J. Respecting, protecting and fulfilling the human right to health. *Int J Equity Health* 21, 36 (2022). <https://doi.org/10.1186/s12939-022-01634-3> [accessed 10 October 2023]-visited.

<sup>22</sup> “Gowd KK, Veerababu D, Reddy VR. COVID-19 and the legislative response in India: The need for a comprehensive health care law. *J Public Aff.* 2021 Nov; 21(4):e2669. Doi: 10.1002/pa.2669. Epub 2021 Mar 21. PMID: 34230815; PMCID: PMC8250373”

<sup>23</sup> Gowd KK, Veerababu D, Reddy VR. COVID-19 and the legislative response in India: The need for a comprehensive health care law. *J Public Aff.* 2021 Nov; 21(4):e2669. Doi: 10.1002/pa.2669. Epub 2021 Mar 21. PMID: 34230815; PMCID: PMC8250373”

<sup>24</sup> Rishi Saraf , Paternity Leave – Amending Article 42, 4 (2) *IJLMH* Page 2902 - 2912 (2021), DOI: <http://doi.one/10.1732/IJLMH.26629>.

<sup>25</sup> Shahid, Mohammad, and Krishna Kumar Singh. "Indian democracy and women's human rights." *Madhya*

**Schedule 7 - relating to the Right to Health****Public health and sanitation, hospitals and dispensaries: State List- List-II, Entry-6:**

This provision deals with the powers of the state assembly to make acts with respect to public health, sanitation, Public clinics and dispensaries<sup>26</sup>.

**Social security and social insurance List III, Concurrent List- Entry 23:** This refers to the power of both centre as well as states to make provisions to ensure that members of a society have sufficient means to meet the basic human needs such as food and shelter, health, economic risk of human life etc<sup>27</sup>.

**Medical Education and awareness: Concurrent List – Entry 25, 26 and 29:** The central and state government is empowered to make laws/ rules and regulation to control the profession of medicine and medicinal education etc.

**Legislations that deal with the regulatory aspects of health care delivery in a given context:**

Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954; Medical Termination of Pregnancy Act, 1971; Medical Termination of Pregnancy Rules, 1975; Medical Termination of Pregnancy Regulations, 1975; Mental Health Act, 1987; Central Mental Health Authority Rules, 1990; State Mental Health Authority Rules, 1990; The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994; Transplantation of Human Organs Act, 1994; The Transplantation of Human Organs Rules, 1995; The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995; Bio-Medical Waste (Management and Handling) Rules, 1998; National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 and etc.<sup>28</sup>.

**Obligation of States to Ensure Health as a Human Right:** States have an obligation to ensure that the right to health is for all individuals within their jurisdiction. This mandate is grounded in recognition that access to healthcare services is crucial for maintenance of personal health and wellbeing, as well as the development prosperity of communities at large. Furthermore, given the overarching role that health plays in our lives, it is essential that states adopt a rights- based approach to uphold the principles of dignity, equality, and fairness. In fulfilling their obligation to ensure health as a human right states must prioritize the development of a comprehensive and accessible healthcare system that is equitably available to all citizens. This includes support primary healthcare services, preventative measures, and the development of medical services where necessary. By promoting access to healthcare as a human right, states can improve the lives of their citizens and promote the wellbeing of them<sup>29</sup>.

**Health and Infrastructure:** Access to proper health infrastructure is fundamental in achieving health as a human right. This includes access to clean water, sanitation, and

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Pradesh Journal of Social Sciences, vol. 13, no. 2, July-Dec. 2008, pp. 68+. Gale Academic OneFile, [link.gale.com/apps/doc/A205747235/AONE?u=anon~426f0813&sid=googleScholar&xid=d66b3126](https://link.gale.com/apps/doc/A205747235/AONE?u=anon~426f0813&sid=googleScholar&xid=d66b3126). [Accessed 26 Dec. 2023]-visited.

<sup>26</sup> “Gowd KK, Veerababu D, Reddy VR. COVID-19 and the legislative response in India: The need for a comprehensive health care law. J Public Aff. 2021 Nov;21(4):e2669. doi: 10.1002/pa.2669. Epub 2021 Mar 21. PMID: 34230815; PMCID: PMC8250373”.

<sup>27</sup> Summers JK, Smith LM. The role of social and intergenerational equity in making changes in human well-being sustainable. Ambio. 2014 Oct;43(6):718-28. doi: 10.1007/s13280-013-0483-6. Epub 2014 Jan 9. PMID: 24402649; PMCID: PMC4165836.

<sup>28</sup> “Behera BK, Prasad R, Shyambhavee. Primary health-care goal and principles. Healthcare Strategies and Planning for Social Inclusion and Development. 2022:221–39. doi: 10.1016/B978-0-323-90446-9.00008-3. Epub 2021 Nov 19. PMCID: PMC8607883”.

<sup>29</sup> “Yamin AE. The right to health under international law and its relevance to the United States. Am J Public Health. 2005 Jul;95(7):1156-61. doi: 10.2105/AJPH.2004.055111. Epub 2005 Jun 2. PMID: 15933233; PMCID: PMC1449334”.

facilities that are equipped with vital medical equipment and without these basic facilities, impoverished areas may struggle to maintain their health and may fall victim to easily preventable illnesses. Furthermore, poor infrastructure can lead to the spread of disease and, posing a threat to the health of entire communities. It is essential that governments and healthcare organizations work together ensure that proper health infrastructure is in place to provide access to necessary resources and ultimately, uphold health as a fundamental human right<sup>30</sup>.

**Promoting Equal Access to Quality Healthcare:** Guaranteeing access to high-quality healthcare is essential in upholding health as a universally recognized human right. It not only facilitates the prevention treatment of illnesses but also enhances overall well-being. However, it is important to note that access to healthcare from country to country depends on various factors such as economic development, government policies, and social determinants of health. Lack of quality health services leaves the vulnerable populations marginalized and powerless to attain optimum health outcomes. Therefore, governments and policymakers need to invest in healthcare infrastructure, improve healthcare delivery systems, and eliminate the financial barriers that prevent people from accessing healthcare so that everyone can exercise the right to health<sup>31</sup>.

**Availability:** Availability refers to the extent in which healthcare services and facilities are accessible to all individuals, regardless of their socio-economic status. It entails ensuring that there are enough healthcare professionals, hospitals, and clinics to meet the needs of the population. It also means that services must be affordable and located in a convenient manner, such that all individuals access them without any hindrances. Accessibility to medical services should not be based on one's wealth, social, or place of residence. Additionally, availability also involves making for essential medicines that are effective and affordable, as well as efforts to promote preventative care to avoid medical interventions. Achieving as a fundamental human right requires a focus on reducing economic disparities and bridging the gap between different social groups<sup>32</sup>.

**Accessibility:** Accessibility refers to the extent to which healthcare services are available and affordable to everyone, regardless of socio-economic status or location. Achieving accessibility requires that healthcare services be located in accessible areas, be at affordable prices, and provided in a way that is culturally appropriate and meets needs of diverse populations. In order to achieve health as a right, accessibility must be ensured in all aspects of healthcare including care, diagnosis, treatment, and rehabilitation. This requires strong policies, adequate funding, and collaboration among healthcare providers, governments, and civil society organizations. Ultimately, access to healthcare is for improving health outcomes, promoting social inclusion, and health inequities<sup>33</sup>.

**Acceptability:** Acceptability refers to willingness of individuals to utilize the health services

<sup>30</sup> Kruk ME, Gage AD, Arsenault C, Jordan K, Leslie HH, Roder-DeWan S, Adeyi O, Barker P, Daelmans B, Doubova SV, English M, García-Elorrio E, Guanais F, Gureje O, Hirschhorn LR, Jiang L, Kelley E, Lemango ET, Liljestrand J, Malata A, Marchant T, Matsoso MP, Meara JG, Mohanan M, Ndiaye Y, Norheim OF, Reddy KS, Rowe AK, Salomon JA, Thapa G, Twum-Danso NAY, Pate M. High-quality health systems in the Sustainable Development Goals era: time for a revolution. *Lancet Glob Health*. 2018 Nov;6(11):e1196-e1252. doi: 10.1016/S2214-109X(18)30386-3. Epub 2018 Sep 5. Erratum in: *Lancet Glob Health*. 2018 Sep 18; Erratum in: *Lancet Glob Health*. 2018 Nov;6(11):e1162. Erratum in: *Lancet Glob Health*. 2021 Aug;9(8):e1067. PMID: 30196093; PMCID: PMC7734391

<sup>31</sup> Kruk ME, Gage AD, Arsenault C, Jordan K, et al., 2018 High-quality health systems in the Sustainable Development Goals era: time for a revolution. *Lancet Glob Health*. 2018 Nov;6(11):e1196- e1252. doi: 10.1016/S2214-109X(18)30386-3. Epub 2018 Sep 5. Erratum in: *Lancet Glob Health*. 2018.

<sup>32</sup> Bhatt J, Bathija P. Ensuring Access to Quality Health Care in Vulnerable Communities. *Acad Med*. 2018 Sep;93(9):1271-1275. doi: 10.1097/ACM.0000000000002254. PMID: 29697433; PMCID: PMC6112847.

<sup>33</sup> McLaughlin CG, Wyszewianski L. Access to care: remembering old lessons. *Health Serv Res*. 2002 Dec;37(6):1441-3. doi: 10.1111/1475-6773.12171. PMID: 12546280; PMCID: PMC1464050.



that are available to them. It is important that health services are acceptable to all individuals, regardless of their ethnicity, culture, or background. Health services that are culturally tailored to meet the needs of individual communities are more likely to be accepted. The acceptability of health services affects the ability of individuals to access necessary treatments and services, which can in turn impact their health outcomes. As such, it is important that health services are designed and implemented in a way that the acceptability of all individuals, ensuring that everyone has access to the necessary care to maintain their health and well-being<sup>34</sup>

**Addressing Inequalities in Health:** Access to healthcare is a human right that should be available to all. However, inequalities in healthcare access remain a persistent problem in societies around the world. People with lower income, racial and ethnic minorities, as well as those living in rural areas, face a higher of poor health due to barriers to healthcare access. These barriers can include a lack of insurance coverage, inadequate transportation and inadequate healthcare facilities in their community. Addressing these inequalities in access requires a comprehensive approach that improving access to affordable healthcare and investing in healthcare infrastructure in underserved communities. Only by ensuring that everyone has access to healthcare we can truly realize the right to for everyone<sup>35</sup>.

**Challenges in Ensuring Health as a Human Right:** Ensuring health as a right is a challenging feat due to various factors. One of the key challenges is the unequal distribution resources, primarily in low-income countries where access to basic healthcare services is limited. Lack of infrastructure and healthcare also pose a significant challenge, further exacerbated by limited funding and inadequate public policies. Additionally, social determinants as poverty and education level play a role in determining access to healthcare services, further widening existing health disparities lack of accountability and weak governance also hinder to understand the health is a human right. Addressing these challenges requires a concerted effort from civil societies and the international community to create sustainable solutions for ensuring health as a universal human right<sup>36</sup>.

**Comparison between Public and Private Health Systems:** Health can be viewed as both a private good and a public good. As a private good, health is understood as an individual personal asset that can be bought and sold in the market. In this context, health care is considered as a commodity that can be conserved by individuals based on them to pay. On the other hand, health can also be understood as a public good, which is not limited to individual consumption but is to everyone in the community. This means that access to health care services should be based on need rather than the ability to pay. The debate between healths a private good versus a public good has significant implications for health policy and resource allocation. It highlights the tension between individual rights the collective responsibility to enable access to medical treatments as a basic human right<sup>37</sup>.

**Political Will and Resource Allocation:** Political will and resource allocation plays a vital role in ensuring health as a human right. To this fundamental right, governments must have a strong political commitment to invest in universal health coverage, social protection, a strong health system that prioritize the health needs of the population. Resource allocation is also a key factor in addressing health and promoting equitable access to health and interventions, particularly for marginalized and vulnerable populations. Without sufficient resources and a

<sup>34</sup> McLaughlin CG, Wyszewianski L. Access to care: remembering old lessons. *Health Serv Res.* 2002 Dec;37(6):1441-3. doi: 10.1111/1475-6773.12171. PMID: 12546280; PMCID: PMC1464050.

<sup>35</sup> Williams DR, Rucker TD. Understanding and addressing racial disparities in health care. *Health Care Financ Rev.* 2000 Summer;21(4):75-90. PMID: 11481746; PMCID: PMC4194634.

<sup>36</sup> Barik D, Thorat A. Issues of Unequal Access to Public Health in India. *Front Public Health.* 2015 Oct 27;3:245. doi: 10.3389/fpubh.2015.00245. PMID: 26579507; PMCID: PMC4621381.

<sup>37</sup> Institute of Medicine (US) Committee on Implications of For-Profit Enterprise in Health Care; Gray BH, editor. *For-Profit Enterprise in Health Care.* Washington (DC): National Academies Press (US); 1986. Ethical Issues in For-Profit Health Care. Available from: <https://www.ncbi.nlm.nih.gov/books/NBK217902/>

robust system health inequality will persist and access to health services will remain limited, many effectively violating their basic human rights. Political will is therefore, an essential resource for ensuring the right to health, as it plays a critical role in driving health system reforms, raising funds, anodizing resources to achieve universal health<sup>38</sup>.

**Global Health Disparities:** Global health disparities refer to inequalities in health status and access to healthcare across different regions, and populations worldwide. These disparities are characterized by differences in morbidity and mortality rates, disease burden, life expectancy, and health. The root causes of these disparities are complex and multifaceted including social, economic, political, and environmental determinants. Among the most significant factors contributing to global health disparities are poverty, lack of education, access to healthcare services. Despite significant progress in improving global health in the past few decades, significant disparities persist, particularly among vulnerable and populations. Addressing global health disparities is a critical component of health as a human right and equitable and sustainable development<sup>39</sup>.

**Systemic Discrimination:** Systemic discrimination refers to widespread and institutionalized mistreatment of certain groups of people based on their race, gender, ethnicity, religion, or other factors. It is deeply ingrained in many societies and typically manifests as disparities in access to opportunities, such as healthcare, education, and employment. This form of discrimination is often perpetuated by laws, policies, and practices have been designed to safeguard the interests of powerful groups while marginalizing and excluding others. As a result, marginalized communities may experience high rates of illness, injury, and premature death compared to more privileged groups. Addressing systemic discrimination is crucial in ensuring that all people are able to access the resources and opportunities that they need to achieve good health<sup>40</sup>.

**Health as a Basic Human Right:** Health can be viewed as a basic human right that all people are entitled to access. The concept of health as a human right was initially proposed by the World Health Organization (WHO) in 1946 and has since been widely accepted across the globe. Health is fundamental leading a meaningful and fulfilling life, and access to healthcare services is essential to achieve good health. Health as a human right is grounded in the principle that every individual should have the opportunity to attain the highest level of health possible, regardless of their socioeconomic status, race, or any other factor. The right to health is ensured in several international treaties and agreements, including the Universal Declaration of Rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention on the Rights of the Child, all of recognize health as a fundamental<sup>41</sup>.

**RIGHT TO HEALTH FROM JUDICIAL POINT OF VIEW:** While the Constitution does not directly mention the right to health as a fundamental right, it has been acknowledged as such through progressive judicial interpretation. The Supreme Court's ruling in the Menaka

<sup>38</sup> “Darrudi A, Ketabchi Khoonsari MH, Tajvar M. Challenges to Achieving Universal Health Coverage Throughout the World: A Systematic Review. *J Prev Med Public Health*. 2022 Mar;55(2):125-133. doi: 10.3961/jpmph.21.542. Epub 2022 Mar 8. PMID: 35391524; PMCID: PMC8995934”.

<sup>39</sup> “National Academies of Sciences, Engineering, and Medicine; Health and Medicine Division; Board on Population Health and Public Health Practice; Committee on Community-Based Solutions to Promote Health Equity in the United States; Baciu A, Negussie Y, Geller A, et al., editors. *Communities in Action: Pathways to Health Equity*. Washington (DC): National Academies Press (US); 2017 Jan 11. 3, The Root Causes of Health Inequity. Available from: <https://www.ncbi.nlm.nih.gov/books/NBK425845/>[accessed 20 November 2023]-visited”.

<sup>40</sup> Banaji MR, Fiske ST, Massey DS. Systemic racism: individuals and interactions, institutions and society. *Cogn Res Princ Implic*. 2021 Dec 20;6(1):82. doi: 10.1186/s41235-021-00349-3. PMID: 34931287; PMCID: PMC8688641.

<sup>41</sup> Meier BM. Human Rights in the World Health Organization: Views of the Director-General Candidates. *Health Hum Rights*. 2017 Jun;19(1):293-298. PMID: 28630561; PMCID: PMC5473058.

Gandhi v. Union of India case laid the groundwork for this interpretation, emphasizing the significance of fairness, reasonableness, and justice in the established legal procedures. Consequently, the State is now bound to guarantee all necessary rights for safeguarding the right to life in its various dimensions. This includes ensuring the right to health and access to medical treatment, encompassed within the purview of Article 21 of the Constitution. The Indian Judiciary has played a crucial role in safeguarding an individual's right to health and access to medical treatment in diverse circumstances, as evidenced by several notable judgments<sup>42</sup>.

*Following are some famous decided cases:*

**Case: In *State of Punjab Vs. Ram Lubhaya Bagga (Right to a healthy life)*:** The Supreme Court has recognized that, under Article 21, the right to life encompasses the State's duty to ensure the health of its citizens, as reinforced by Article 47. It is imperative for the State to establish easily accessible government hospitals and health centers of good quality that cater to all sections of society. Adequate funding should be allocated for this purpose. While an employee may have the option to choose treatment at a private hospital, the reimbursement amount could be limited, determined by an expert committee. However, the Court emphasized that the provision of medical facilities to citizens cannot be unlimited and must take into account financial resources. The establishment of rates and scales for such facilities is considered justifiable and does not violate Articles 21 or 47 of the Constitution<sup>43</sup>.

**Case: In *Paschim Banga Khet Mazdoor Samiti and others Vs. State of West Bengal and another: (Right to Life Includes Right to Health)*.** The Supreme Court had an opportunity to investigate the sluggish approach of the Government in providing essential medical services. The Court emphasized that in a welfare State, it is the Government's responsibility to ensure sufficient healthcare facilities. This duty is carried out through the operation of hospitals and healthcare centers that cater to the medical needs of individuals. According to Article 21, the State is obligated to safeguard the right to life of every person, highlighting the utmost significance of preserving human life. Government-run hospitals have the obligation to offer timely medical assistance in order to save lives. If a government hospital fails to provide prompt medical treatment to an individual in need, it is considered a violation of their right to life under Article 21<sup>44</sup>.

**Case: In *Paramanand Katara vs. Union of India and others – (Guaranteeing Availability of Emergency Treatment)*:** In an order, the Supreme Court directed medical institutions to offer immediate treatment promptly, irrespective of procedural formalities. The Court stressed the paramount significance of preserving human life and affirmed the responsibility of healthcare professionals to safeguard the right to life. Regardless of whether the patient is an innocent person or someone facing legal consequences, the State has a duty under Article 21 to ensure the preservation of life. As a result, doctors working in government hospitals, who are entrusted with fulfilling the State's obligation, are required to provide medical assistance with the objective of saving lives.

**Case: In *Bandhua Mukti Morcha Vs. Union of India- (Worker's right: Clean environment, healthcare facilities)*:** In the Francis Mullin's case, the Supreme Court

<sup>42</sup> Choudhary, Saroj, Judicial Approach in Realising Health Rights: Indian Perspective (July 17, 2014). Available at SSRN: <https://ssrn.com/abstract=2467601> or <http://dx.doi.org/10.2139/ssrn.2467601> [accessed 10 July 2020]-visited.

<sup>43</sup> State Of Punjab & Ors vs Ram Lubhaya Bagga Etc. Etc on 26 February, 1998; (Indian Kanoon.org) see also, Grover A, Misra M, Rangarajan L. Right to Health: Addressing Inequities through Litigation in India. In: Flood CM, Gross A, eds. The Right to Health at the Public/Private Divide: A Global Comparative Study.

<sup>44</sup> Paschim Banga Khet Mazdoorsamity Of Ors vs State Of West Bengal & Anr on 6 May, 1996; (Indian Kanoon.org) see also, Nandimath OV. Consent and medical treatment: The legal paradigm in India. Indian J Urol. 2009 Jul;25(3):343-7. doi: 10.4103/0970-1591.56202. PMID: 19881130; PMCID: PMC2779959 [accessed 26 July 2023]-visited.

established that the right to live with dignity is a fundamental right for every person in the country under Article 21. This includes the protection of human health, preventing exploitation, and providing opportunities for children's healthy development, and ensuring access to education, maintaining just and humane working conditions, and offering maternity relief. Neither the Central Government nor any State government has the authority to take actions that would impede individuals from accessing essential necessities, according to the Supreme Court. In cases like *Vincent v Union of India* and *Kirloskar Brothers Limited v Employees State Insurance Corporation*, the Court emphasized the importance of Directive Principles of State Policy. These cases recognized that in a liberalized economy with increasing economic activity, both the State and private companies are responsible for ensuring the safety and well-being of workers. Such responsibilities are enshrined in relevant provisions of Part IV of the Constitution, which are integral to the right to equality (Article 14) and the right to life (Article 21)<sup>45</sup>.

**Case: In *Mr. A Vs. Hospital Z – (Privacy as an Essential Element in Healthcare)*:** The right to privacy is considered a fundamental aspect of the right to life under Article 21, as per the Court's decision. However, this right is not absolute and can be legally limited for the purposes of crime prevention, maintaining order, protecting health and morals, and safeguarding the rights and freedoms of others. In a specific case involving an appellant with HIV positive status, the Court ruled that disclosing this information to the appellant's prospective spouse, Ms. W, would not violate the norms of privacy or secrecy. This was because disclosing the information would potentially prevent her from contracting the illness had the marriage taken place. In response to an application seeking clarification, the Supreme Court affirmed that the appellant retained the right to disclose his HIV status to his fiancée's relatives without any restriction<sup>46</sup>.

**Case: In “*Rakesh Chandra Narayan Vs. State of Bihar; (Ensuring Access to Mental Healthcare)*”:** In a case regarding complaints about the functioning of Ranchi Mansik Arogyashala, the Supreme Court emphasized that operating a mental hospital is a responsibility of the state towards its citizens. The State Government is obligated to fulfill this duty by ensuring that the hospital meets high standards and provides appropriate care to the patients. The Court directed the improvement of hospital quality and advocated for patients to receive the benefits of modern scientific treatment, considering the dynamic nature of mental illness therapies. Recognizing that hospitals are not meant for individuals who have been cured, it was deemed necessary to establish rehabilitation centers for those who, despite being cured, are unable to reintegrate into their families or find employment<sup>47</sup>.

**Case: In *Vincent Vs. Union of India - (Safeguarding against Harmful Substances)*:** The proliferation of new and resistant diseases presents significant challenges to human health. Ongoing research on novel drugs aims to address these unexpected issues. However, under

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<sup>45</sup> *Bandhua Mukti Morcha vs Union Of India & Others* on 16 December, 1983 ; (Indian Kanoon.org) see also, Abhimanyu Bhargava & Karthik Sivadas, Case Comment: *Bandhua Mukti Morcha V. Union of India* (1984), Volume 9 Issue 2, JOURNAL OF LEGAL STUDIES & RESEARCH, 316-320, Published on 08/05/2023, doi.org/10.55662/JLSR.2023.9205 Available at <https://jlsr.thelawbrigade.com/article/case-comment-bandhua-mukti-morcha-v-union-of-india-1984/>[accessed 26 September 2023]-visited.

<sup>46</sup> *Mr. 'X' vs Hospital 'Z'* on 21 September, 1998 ; (Indian Kanoon.org) see also, Institute of Medicine (US) Committee on Regional Health Data Networks; Donaldson MS, Lohr KN, editors. *Health Data in the Information Age: Use, Disclosure, and Privacy*. Washington (DC): National Academies Press (US); 1994. 4, Confidentiality and Privacy of Personal Data. Available from: <https://www.ncbi.nlm.nih.gov/books/NBK236546/>[accessed 26 June 2023]-visited.

<sup>47</sup> *Rakesh Chandra Narayan vs State Of Bihar* on 27 September, 1988 “AIR1995SC208, 1995(1)BLJR62, JT1994(6)SC30, 1994(3)SCALE1034, 1994SUPP(3)SCC478, AIR 1995 SUPREME COURT 208, 1994 AIR SCW 4270, 1994 SCC (SUPP) 3 478, 1994 (2) UJ (SC) 623, 1995 (1) BLJR 62, (1994) 6 JT 30 (SC), 1994 (3) SCC(SUPP) 489”.

Section 26A of the Drugs and Cosmetics Act of 1940, the Central Government has the authority to prohibit the production, sale, or distribution of any drug that may pose a risk to humans or animals or lacks the claimed therapeutic value in the public interest. In a petition challenging the government's drug policy, the Supreme Court was called upon to issue orders prohibiting the import, manufacturing, sale, and distribution of drugs recommended for prohibition by the Drugs Consultative Committee, as well as cancel licenses permitting the use of such drugs<sup>48</sup>.

**Case:** In *Dr. L.B. Joshi Vs. Dr. T.B. Godbole – (Negligence in Medical Practice)*: The Supreme Court ruled in *Dr. L.B. Joshi v. Dr. T.B. Godbole* that a medical practitioner owes a duty of care to the patient when offering advice and treatment. If negligence occurs, patients have the right to take legal action. The Indian Medical Council Act does not provide comfort for patients who have suffered due to negligence. Services offered by medical professionals are considered services under the Consumer Protection Act, 1986<sup>49</sup>.

### **RIGHT TO HEALTH: CONTRADICTIONS AND CRITIQUE:**

The right to health in India is viewed as a governance matter rather than an individually enforceable right. The judiciary enforces directive principles alongside fundamental rights and facilitates public interest litigation. However, with liberalization and market economy, the state's role in healthcare has diminished. In 1997, India's Supreme Court declared the right to health a fundamental right, and the focus has shifted to healthcare rights<sup>50</sup>.

### **THE EMPHASIS ON THE RIGHT TO HEALTHCARE**

**Key Aspects of Healthcare Provision:** Adequate infrastructure, including primary health centers equipped with basic facilities; Availability of skilled medical professionals and other healthcare and paramedical staff to deliver a comprehensive range of services; Provision of essential medicines and supplies; Access to emergency medical care; Implementation of patient information systems and a mechanism for addressing grievances; Ongoing monitoring and professional accountability to ensure high-quality healthcare delivery.

**THE INCLUSIVE DIMENSIONS OF HEALTH AND GOVERNMENTAL ACCOUNTABILITY:** The understanding of health as a human right extends beyond the absence of disease and encompasses physical, mental, and social well-being. This holistic approach implies that health is not merely the domain of medical practitioners but requires a comprehensive effort from various sectors including education, sanitation, housing, and nutrition. The state bears the primary responsibility for ensuring that the citizens have access to necessary health services, irrespective of socio-economic status<sup>51</sup>.

**ADVANCING THE RIGHT TO HEALTHCARE: A PRESCRIBED PATH FOR PROGRESS:** The goal is to make healthcare services accessible and affordable, focusing on actionable measures, implementing judicial orders, promoting community support, and engaging in political processes to highlight healthcare's importance. Legislative recognition of this right should be pursued through judicial intervention or political prioritization<sup>52</sup>.

<sup>48</sup> Vincent Panikurlangara vs Union of India & Ors on 3 March, 1987; (Indian Kanoon.org).

<sup>49</sup> Laxman Balkrishna Joshi vs Trimbak Babu Godbole And Anr on 2 May, 1968; (Indian Kanoon.org).

<sup>50</sup> Weill, Rivka. (2011). Hybrid Constitutionalism: The Israeli Case for Judicial Review and Why We Should Care.

<sup>51</sup> Tulchinsky TH, Varavikova EA. Expanding the Concept of Public Health. *The New Public Health*. 2014;43–90. doi: 10.1016/B978-0-12-415766-8.00002-1. Epub 2014 Oct 10. PMID: PMC7170196.

<sup>52</sup> Rifkin SB. Alma Ata after 40 years: Primary Health Care and Health for All—from consensus to complexity. *BMJ Glob Health*. 2018 Dec 20;3(Suppl 3):e001188. doi: 10.1136/bmjgh-2018-001188. PMID: 30622747; PMID: PMC6307566.

**CONCLUSION:**

The study highlights the importance of health as a fundamental human right and the state's role in ensuring equitable access to quality healthcare. It analyzes landmark judicial cases and calls for inclusive governance, comprehensive reforms, and robust international cooperation to advance healthcare rights. The findings aim to inform policy-makers, legal practitioners, and scholars, fostering a more equitable and just healthcare system.

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