

Law and Human Rights

¹Dr. Mita Malkhandi

²Akash Chatterjee

Abstract

The overarching ambit of law today encompasses not only the custodian of protecting the fundamental rights of individuals but also the right to live with dignity. This dignity comes not only from ascribed rights that an individual is entitled to, but also with a right to fair survival. The current pandemic has shown not only how a microscopic virus can drive people out of employment and how environment is a supremely important factor to our survival. While health is both a duty and a right so is the Environment. Social Justice is not simply an aim of the legal system, but also a framework and fabric on which civilization is sustained. In this sense, human rights, or rather fundamental rights include more than the rights at the personal level, to even extend to those that come with a greater application. Chiefly this resides with the environment where a person is expected to live- not simply a place but a habitable safe and secure place, and with it comes the obligation to keep it protected and preserve it too. Hence the growing environmental and health concerns are equally significant domains covered under human rights. Researchers have attempted to bring a nexus between the rights and the situations that monitor rights through this paper.

Key Words: Fundamental right, essential, health, environment

Corresponding Author: ¹Dr. Mita Malkhandi, Assistant Professor, S.S.L.N.T.College, Dhanbad, Email: malkhandimita@gmail.com .

²Scholar, Amity Law School, Amity University, akashkatha99@gmail.com

Introduction

Human Rights are an umbrella term that subsumes in itself various other rights that dignify our existence as citizens of some political system, make the civilization and society organized with an interdependence mechanism of rights and duties, governing and governed, welfare and action, a political regime and the power source of the regime, but the definition and scope of rights or more precisely Human Rights has to be enlarged to include the most basic rights first – The Right to breathe and live in a clean environment and at the same time exist with a sound health that comes naturally from a proper ambience. The Right to health is not an extended

jurisprudential derivation that has to be interpreted carefully by a court of law and then applied to determine standards of health and availability of medical services in the country. It is an intrinsic part of existence as without it, the bare existence or survival is a question. The Corona virus pandemic has itself been an eye-opening experience for us all in showing how justified was the moral education litany – “Health is Wealth” that is almost ingrained in our minds, is the only biggest reality in our present world. With grotesque visuals of people dying on streets and hospitals gasping for Oxygen support, the pandemic has rudely exposed the biggest violation of our fundamental right to Health. The debate over Environment, pollution, Global Warming has been myriad and extended over decades now and even though positive efforts by way of treaties and laws are coming into force, perhaps the more important picture is getting ignominiously ignored here. It is definitely about a sustainable approach – but a balance in the area of social justice too. With the current environmental problems and associated health hazards, there is a grave imbalance that needs immediate attention and correction. It is about who gets, rather which section of population gets exposed to these disasters or are at a greater risk and suffer perpetually at a disproportionately worse extent. All of this cumulatively affects the survival status of a person – although entitled with all the rights but in effect in a dilapidated state.

The second angle comes to the fore with how and what way this aspect of human rights is incorporated into the understanding old legal rights or how they are a part of our basic rights. With respect to India, the judicial interpretation of Constitution to keep up with dynamism in the society has rendered our Constitution as a living and organic being fueled with a spirit of transformative Constitutionalism. With a wider and liberal construction of the meaning and scope of Article 21 – Right to life has been reasonably expanded to include health and environment too. But this is not the conclusive solution of the situation. The vesting of a right does not automatically grant its protection rather serves only as an entitlement. The focus of policy making, especially after the pandemic should be entirely modelled upon guaranteeing the standards of health to everyone – an equitable support system and at the same time the preparedness, strategically planning to minimize damages from calamities, reducing over exposure to environmental change induced problems, heat and cold waves, smog, acid rains, global warming related storms and cyclones. Lastly, the protection of one’s habitat – it is where a community thrives, and is always important as a part of his life. Every individual has this right to preserve one’s habitat- it is the residence that associates culture and heritage and even identity in tribal societies. When climate change forces them to abandon and leave their habitats it is about losing the very ground on which a family, a community, a culture

survives and sustains its legacy. This is just another imbalance and attracts attention of social justice and equality in an egalitarian society.

Objective of the Research

1. To find out Judicial Directives on Health as a Human Right.
2. To correlate climate change with Social Justice.

Rationale of the Research

Topic carries immense relevance given the current situation of the country due to Covid 19 Pandemic. In times of pandemic crisis, national governments are taking exceptional measures to slow down the spread of virus. In such a situation State Security and Public Safety can only be effectively guaranteed in a democracy like India with proper role of law and their implementations. Even in genuine cases of emergency situations, the role of law must prevail. Human Rights and dignity of life become main agenda during this pandemic.

Literature Review

A suitable range of secondary data was collected and analyzed – some books, eBooks, articles and video lectures mainly were referred to in details.

Newspaper websites have been referred like those of Indian Express and Times of India, so that daily press reports could be obtained that helped us enhance the quality of our research. The researchers have mentioned some of the important literatures and websites which provided them fruitful insight related to their topic.

- Mathiharan,K (2003), [1] The fundamental right to health care. The paper explores in depth how the health care system promotes the basic right to health which every citizen in India is entitled to.
- Sirohi Nishant (2020), [2] Declaring the right to health a fundamental right. This article elaborates on the importance of health care systems that has been ever more flagrantly evident in the crisis times of a pandemic in India.
- Deepu P (2013), [3] Right to Health as a Constitutional Mandate in India. A comprehensive analysis of the various Supreme Court Judgments' that have shaped the way for interpreting health as a basic human right too.

After reviewing above mentioned articles and various newspaper reports researchers find the key research questions.

Research Questions

1. How far is health a Fundamental Right?
2. How far is environment and habitat an essential right too?

To answer the research questions the researchers have used Historical Method of study.

Legal Pathway

According to World Health Organization, Health is a state of complete physical, mental and social wellbeing and not merely the absence of disease.

The Constitution of India has envisaged it in the following articles –

The Directive Principles of State Policy (DPSP) in Part IV of the Indian Constitution provide a basis for the right to health. Article 39 (E) directs the State to secure health of workers,

Article 42 directs the State to just and humane conditions of work and maternity relief,

Article 47 casts a duty on the State to raise the nutrition levels and standard of living of people and to improve public health.

Moreover, the Constitution does not only oblige the State to enhance public health, it also endows the Panchayats and Municipalities to strengthen public health under Article 243G (read with 11th Schedule, Entry 23).

Part IV of the Indian Constitution which is DPSP imposed duty on states. If we only see those provisions then we find that some provisions of them has directly or indirectly related with public health. It directs the state to take measures to improve the condition of health care of the people. Articles 38 impose liability on state that state secure a social order for the promotion of welfare of the people but without public health we can't achieve it. Article 39(e) related with workers to protect their health. Article 41 imposed duty on state to public assistance basically for those who are sick & disable. Article 42 it's a primary responsibility of the state to protect the health of infant & mother by maternity benefit. Article 47 spell out the duty of the state to raise the level of nutrition & the standard of living of its people as primary responsibility. Some other provisions relating to health fall in DPSP. The state shall in particular, direct its policy towards securing health of workers. State organized village panchayats & give such powers & authority for to function as units of self-government [3].

At present, the subject of “public health and sanitation; hospitals and dispensaries” falls under the State List of the 7th Schedule of the Constitution of India – which means that state governments enjoy constitutional directives to adopt, enact and enforce public health regulations.

This simply emphasizes the Constitutional Vision that health is an important attribute to the existence of human beings and hence also an important human right that has to be safeguarded by the State. The Federal scheme should divide the responsibility and shoulder it so as to protect the citizens from being deprived from it .Every region in India is dotted with a different kind of diversity, and hence the access to medical facilities, their reliability, interaction with people, resistance, if any, due to poor education and lack of awareness has to be tackled with while expanding medical benefits. One glaring recent example would be the vaccine hesitancy among many areas in India – largely rural, which has to be overcome in order to substantiate the vision of equitable medical access and right to health for all.

The pandemic has exposed the deep vulnerabilities of India’s healthcare system. Much of this is blamed on India’s low expenditure on public health –1.29% of the GDP (in 2019-20), lower than most other countries. Another critical reason for the weak public health in India is the absence of a statutory framework that guarantees a fundamental right to health There is a need to make the right to health a fundamental right – and implement it within the framework of legal devices and human rights principles of solidarity, proportionality, and transparency which will help India address the challenges posed by COVID19. Implementing the right to health within India’s framework of co-operative federalism will build capacities where they are most needed – at the grassroots [2].

The Judicial Way

Paschim Bangal Khet Mazdoor Samity & Others V State of West Bengal & Others Held that [4]

In a welfare state, primary duty of the government is to secure the welfare of the people and more over it is the obligation of the government to provide adequate medical facilities for its people. The government discharges this obligation by providing medical care to the persons seeking to avail those facilities. Article 21 impose an obligation on the state to safeguard the right to life of every person preservation of human life is thus of paramount importance. The government

hospitals run by the state are duty bound to extend medical assistance for preserving human life. Failure on the part of a government hospital to provide timely medical treatment to a person in need of such treatment, results in violation of his right to life guaranteed under Article 21. The court made certain additional direction in respect of serious medical cases:

- Adequate facilities are provided at the public health centers where the patient can be given basic treatment and his condition stabilized.
- Hospitals at the district and subdivision level should be upgraded so that serious cases are treated there.
- Facilities for given specialist treatment should be increased and having regard to the growing needs, it must be made available at the district and sub divisional level hospitals.

Next, in the case of –

PramandKatara V Union of India & others [5]

It was held that whether at a government hospital or otherwise has the professional obligation to extend his services with due expertise for protection life. No law or state action can intervene to avoid or delay the discharge of the paramount obligation cast upon members of the medical profession. The obligation being total, absolute, and paramount, laws or procedure whether in statutes or otherwise which would interfere with the discharge of this obligation cannot be sustained.

Further, in the case of –

In CESE Ltd V Subhash Chandra Bose[6]

The court held that, the health and strength of worker is an integral facet of the right to life. The aim of fundamental rights is to create an egalitarian society to free all citizens from coercion or restriction by society and to make liberty available for all.

Another important decision came with the case of Rakesh Chandra Narayan vs State Of Bihar [7] on 27 September, 1988 -

Right to health as in providing medical facilities for all so that they survive. It was hailed as the most important decision even resorted to by the Courts to this day in

order to emphasis on the equitable distribution of medical resources, and as a duty of the State to discharge it in spirit and essence.

The Supreme Court of India in *Bandhua Mukti Morcha v Union of India & Ors* interpreted the right to health under Article 21 which guarantees the right to life.

In *State of Punjab & Ors v Mohinder Singh Chawla* the apex court reaffirmed that the right to health is fundamental to the right to life and should be put on record that the government had a constitutional obligation to provide health services.

In *State of Punjab & Ors v Ram Lubhaya Bagga*, the court went on to endorse the State's responsibility to maintain health services.

International Perspective

The Committee on Economic, Social and Cultural Rights has underlined that States should, at a minimum, adopt a national strategy to ensure to all the enjoyment of the right to health, based on human rights principles which define the objectives of that strategy. Setting indicators and benchmarks will be decisive in the formulation and implementation of such a strategy. Indeed, the right to health being subject to progressive realization, what is expected of a State will vary over time. So, a State needs a device to monitor and measure these variable dimensions of the right to health. Indicators, especially when disaggregated, provide useful information on how the right to health is realized in a particular country. The Committee on Economic, Social and Cultural Rights has also stressed that States have a core minimum obligation to ensure the satisfaction of minimum essential levels of each of the rights under the Covenant. While these essential levels are, to some extent, resource-dependent, they should be given priority by the State in its efforts to realize the rights under the Covenant. With respect to the right to health, the Committee has underlined that States must ensure:

- The right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups;
- Access to the minimum essential food which is nutritionally adequate and safe;
- Access to shelter, housing and sanitation and an adequate supply of safe drinking water;
- The provision of essential drugs;
- Equitable distribution of all health facilities, goods and services [8]

Environment and Habitat – The other Social Justice

The less spoken and often less discussed aspect of fundamental right is the right of one's habitat – the right to live and sustain oneself in one's place of residence. The current year and last year have indeed showed how climate change rings disasters in the form of cyclones, with tremendous damage being caused along with that. The havoc is often on some limited areas, for example the coastal belts in case of tropical cyclones like Amphan 2020, Tuktae 2021, Yash 2021, and as a result communities thriving on such habitats suffer disproportionately more than others.

We also highlight the need to enhance communication across disciplines and policy spheres in order to more effectively incorporate multiple types of data and information. This requires that community-based knowledge and stakeholder perspectives be included in the planning and response processes so that we can more effectively anticipate where compound disasters and complex emergencies may emerge, and quickly divert resources to mitigate the compounding effect of concurrent hazards. Importantly, and perhaps most crucially, we call for race- and gender- focused social justice to be built into the entire cycle of early warning, response and resilience planning, stating, “We believe we are at a critical juncture, faced with a need and responsibility to redesign institutions to be proactive, agile, and socially just when confronted with increasingly likely compound risks” [9].

In a recent article[10] , climate activist has contended how heat waves expose some communities to greater risk and how they are often low income groups, marginal in society that bear the brunt for the climate change which is caused universally by the whole society in general.

Conclusion

In conclusion, a perfect summary would be mapped as under –

- Human rights are beyond theory, more in practice
- Health is an essential human right.
- The right to medical facilities is an equitable approach.
- Climate change has to start discussions on social justice.
- Loss of habitat due to climate change affects people disproportionately

Hence a truly egalitarian society has to substantiate the existence of Human Rights not just simply codify and entitle them [11, 12, 13].

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