

# RIGHT TO HEALTHCARE: THE PURSUIT OF HAPPINESS

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## Abstract

*Healthcare is in general considered as responsibility of State. The reason of inclusion of healthcare under constitutional provisions of directive principles of justice is based upon the notion of limited fiscal capacity of state and thus not been given the status of fundamental right. In this paper, the specific provisions of Indian Constitution relating with healthcare have been discussed. The basic notion of right of healthcare has been defined. The kinds of pressures regarding right to healthcare, the state has been facing and its response to them, have been analysed. The proposed model of right to healthcare and its effect has been summarized.*

**Key words:** Healthcare, Right to life, Directive principles, State.

## Introduction:

“Health is a state of complete physical, mental and social wellbeing 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, political belief, economic or social condition.”

The Indian Constitutional framework provides for a welfare and socialist pattern of development. On one hand civil and political rights are enshrined as Fundamental Rights that are justifiable, while social and economic rights like health, education, livelihoods etc. are provided for as Directive Principles for the State and hence not justifiable. The latter comes under planned development, which the State puts through the Five Year Plans and other development policy initiatives.

## The Indian Constitution and Right to Healthcare:

The Constitution has made provisions for health care services as a responsibility of State governments but has left enough room for improvement for the Centre since a large number of services are enlisted as items under the concurrent list. The Centre is expanding its sphere of control over the health sector. In this way, the central government can play a far more significant role in the health sector than originally provided by the Constitution of India. The National Health Policy and its planning framework have always been in the bucket list of the central government.

When the right to health and healthcare has been looked in the legal and constitutional framework, it is clearly visible that it has yet not been given the status of right. However, in various judgments of High Courts and the Apex Court, in the veil of right to life under Article 21 of the Constitution, or various Directive Principles has been used to demand access to healthcare, as a part of international obligation pertaining to specific International Covenants. Despite the fact, a specific Act of Parliament to guarantee the right to healthcare is still far from reality.

## The concurrent development model for Healthcare:

The Indian Constitution under Article 21 forms the basis of Right to access to Healthcare. The Apex court has tilted from its earlier approach of interpreting ‘life’ from right to exist and not to be killed to Life with dignity. Over the years it has come to be accepted that life does not only mean animal existence but the life of a dignified human being with all its concomitant attributes. This would include a healthy environment and effective health care facilities. Today, therefore, the Fundamental Right to Life is seen in a broad context.

Fundamental Rights are enforceable by and large only against the State. The Chapter of Fundamental Rights prescribes the duty and the obligations of the State vis-a-vis the citizens.

The 'Right to Health' forms inalienable part of 'Right to Life'. India as a welfare state pertains the corresponding duty to the right to health and medical facility with the concerned authorities. Part III of Indian Constitution provides for the Fundamental Rights of the citizens. These are justifiable rights and can be enforced against the State in a Court of law. Part IV of Indian Constitution lists the Directive Principles of State Policy which should be the guiding principles followed by the States while making policies for the welfare state but are non justifiable and cannot enforced against the state in the court of law. While interpreting the fundamental rights the courts often take reference of directive principles of state policy as these were included as watch tower to prevent the state from deviations and follow the described path of welfare state as originally intended. The relevant provisions of the Directive Principles which cast a duty on State to ensure good health for its citizens are:

1. State to secure a social order for the promotion of welfare of people- State shall strive to promote the welfare of people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.
2. Certain principles of policy to be followed by State- The State shall, in particular, direct its policy towards securing that health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.
3. Duty of State to raise the level of nutrition and the standard of living and to improve public health - The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medical purposes of intoxicating drinks and of drugs which are injurious to health.

In the above purview the Fundamental right to healthcare should be recognized by the Apex Court. But, there are number of hurdles coming the way like, fundamental rights are available only against the State and not against private individuals or organizations. On the other hand, the State has to enforce this fundamental right subject to financial availability. But, this would in turn improve the State medical healthcare facilities.

Even though, there are many unanswered queries. For instance, can a poor person approach the Court and demand that he should be provided with free medical facilities at government hospital and what would be the financial limit of such demand and would it inclusive of expensive drugs and surgeries. As the right to health care is considered as a fundamental right the answers to these queries should be affirmative. The Courts are considering them as fundamental in nature subject to the financial capacity of the State.

### RECOMMENDATIONS OF COMMITTEES ON HEALTH CARE SYSTEM IN INDIA

#### 1. BHORE COMMITTEE'S REPORT

Bhore committee submitted its report during the post war period. The committee recommended, inter alia, for the:

- (a) establishment of a statutory central board of health;
- (b) The creation of district health board;
- (c) Empowerment of the center to intervene, without delay and effectively, in provincial health administration;
- (d) Control of infectious diseases by taking effective measures;
- (e) Enactment of public health Acts at the central and state levels with an objective to:
  - (i) Codification of health laws with an aim to bring together existing legal provisions relating to health, which are scattered over various enactments;
  - (ii) Make amendments to the various provisions of law to facilitate promotion of efficient administration and implementation of health programs;
  - (iii) Incorporate new provisions under the legislations to meet the needs and expectations of the society;
  - (iv) Legalized self regulatory medical councils and;
  - (v) Formulation of health care plans including integration of curative and preventive health care.

## 2. COL SAOKHEY COMMITTEE REPORT

Popularly known as the “National Planning Committee Report on National Health”, stressed the need of better public health facilities.

## 3. MUDALIAR COMMITTEE

The Mudaliar committee was constituted after a decade of coming into force of the . Constitution and it has contributed in bringing out the detailed report on the status of health care in the country. One of the main tasks assigned to the Mudaliar Committee was to follow up the recommendations of the Bhore Committee and make detailed recommendations for further progress. The Mudaliar Committee, like the Bhore Committee has laid more emphasis on the formulation of a comprehensive Public Health Act in the country. In this context, the Mudaliar Committee has also formulated a draft Model Public Health Act. Though the government has taken into consideration many of its recommendations in formulating various health policies, a major portion of its suggestions still need to be implemented.

## 4. AJIT PRASAD JAIN COMMITTEE

Ajit Prasad Jain Committee undertook an in depth study on the hospital conditions in the public sector but it was silent about the setting of standards for the hospitals functioning in the private sector as well as innumerable number of nursing homes, clinics, dispensaries etc.

## 5. ICMMR/ICSSR COMMITTEE

ICMMR/ICSSR Committee is a self-constituted Committee set up independently of the government by the Indian Institute of Education, Pune. It has made an attempt to review the health care in India and made recommendations for improvement.

## 6. VARADAPPAN COMMITTEE

Varadappan Committee mainly dealt with the issues related to the nursing profession. The Committee, inter alia, highlighted the ineffectiveness of the Nursing Council in streamlining the profession and stressed on the need to streamline the concerned legislations. One of the major lacunae in the Act pointed out by the committee was that, it does not contain provisions either to stop unqualified non-registered nurses in the private nursing homes from practicing or to deregister nurses who violate its code of guidelines.

## 7. COMMITTEE ON SUBORDINATE LEGISLATION

Committee on Subordinate Legislation and other bodies are also worth a mention. The Committee on Subordinate legislation in its various reports has emphasized the need of strengthening the Medical Council Acts for streamlining medical professionals and also making the health services accessible to the public. The Committee recommended, inter alia for the following: (a) the law should be amended to provide for publishing details about the physician (qualification, years of practice, availability and types of services rendered, etc and the fee charged for each service by them; (b) there should know in advance the fee for various components of services;(c) the Council should make it compulsory for all the doctors in private practice to notify their fees to the Medical Council.

## **Conclusion:**

A fundamental right as negative in nature puts an obligation on the State not to deprive a citizen of fundamental right. While a positive fundamental right would make the State to take proactive step to perform its duty. The Courts have to recognize that the right to healthcare is not pertaining to the financial limitations of State.

One another aspect comes when civil societies and communities fight against privatization and commercialization of healthcare facilities. While the studies shows that commercialization and privatization brings transparency with already deteriorated prevailing healthcare system. The need is to use both these strategies to force the state to provide healthcare to all citizens and also to stop the state from bringing unregulated commercialization and privatization of healthcare.

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