



**HUMANISM AND
CONSTITUTIONALISM: A STUDY OF
HEALTH CARE IN INDIA**

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ABSTRACT

The concept of Human development is incomplete without the basic ingredient which is the social and economic development. The social and economic aspects of a developed nation include the Right to healthcare. Right to live a healthy life is considered to be a basic human right. It forms an essential component of Constitutionalism of a state. The first part of the paper discusses about the concept of the term 'Humanism', its origin and evolution into what we call today as Human rights. The idea of humanism revolves mostly around the development and promotion of individual human beings and is mainly concerned about the relationship between the humans and world at large. Over the years, the possibility of neglecting healthcare sector and rights associated with it has become inevitable for the nations. The right to health is considered to be an inclusive right, which extends not only to the timely access to appropriate health care facilities but also to underlying determinants of healthy and dignified lives such as easy access to safe, clean and potable drinking water and adequate sanitary facilities including right to maintain hygiene, healthy working conditions and protection from occupational hazards, right to a clean environment, access to health related education including sexual awareness and reproductive health. Several International

Conventions and Treaties have time to time emphasized the need of building the Health facilities so as to not deprive persons of the basic Human Right. This paper will discuss the State's Constitutionalism and its relationship with the Right to Health.

Key Words: Constitutionalism, Humanism, Health, Human Rights.

INTRODUCTION

MEANING

Humanism as the term may suggest is a philosophical stance that embraces the value and change of human beings, both at an individual and collective level. The meaning of "Humanism" has underwent a lot of fluctuations as a result of various intellectual movements which were based on it. In a general sense, it refers to the common notion of human freedom and progressive ways. The idea of humanism revolves mostly around the development and promotion of individual human beings and is mainly concerned about the relationship between the humans and world at large. Human virtue, in all its forms has to be developed to realize its potential to the fullest extent. The term implies not only possession of theoretical characteristics associated with the modern definition of humanity such as compassion, humility, kindness, benevolence, mercy but also of insistent qualities which includes a sense of responsibility, judgement, wisdom, eloquence, fortitude and even duty and love. It was presumed that the ideas of human rights are not to be exercised in isolation, rather it should have an active approach. There should be a perfect balance of action and contemplation borne out not of necessity or compromise but of complementarity.



HISTORY

Derived from a Latin concept 'Humanitas', the history of the term "Humanism" is quite complex but nonetheless very enlightening. The earliest evidence of its existence is traced back to the 19th century where it was propounded by the German scholars as Humanismus. While we can say that the beliefs surrounding the sanctity and dignity of human life can be derived as precedents from many religions, the foundation of modernistic approach towards human rights have definitely been established by the era of Renaissance. The pre-modern era of Renaissance Humanism focused on the comprehensive reformation of the culture so as to push the passive and ignorant society from the dark ages into a new system reflecting and encouraging the fulfilment of the human potentialities. The modern aspect of humanism deals with the growth and development of rights of individuals which are considered to be the virtue of one's humanity. These rights gained prominence in the modern times after going through a series of several events which acted as the catalyst in their propulsion in the global stage and also in the increment of global conscience.

As we have already discussed that the concept of human rights is traced back to antiquity, the institutionalisation of the same in the form of national and international documents have made their way in the global context at the end of the eighteenth century. It is generally a presumption among the western scholars that the International law is a product of European ideologies but in reality, the roots of international law have been projected from the ancient Indian civilisations. In ancient India, there were special and elaborate schemes for the social

services such as education for all, public health and hygiene, employment opportunities, the protection of widows, elimination of poverty. These services have been incorporated as fundamental rights in constitutions of many nations.

The right to health care being a basic tenet of human rights have been recognized internationally. The origin of right to health is credited to the United States of America. Franklin Delano Roosevelt(FDR) drafted the second bill of rights in which health care was also provided a spot. But because of his untimely death, the second bill of rights could not be implemented. Later, the United Nations drafted the Universal Declaration of Human Rights (UDHR). The committee codified the needed human rights which included the Right to Health under Article 25. All the member nations of the United Nations adopted these international standards and provisions.

HEALTH CARE AS A HUMAN RIGHT

There are some rights to which human beings are entitled just as the consequence of virtue of humanity. Such rights are independent of the culture, race, religion, nationality or economic status. These rights are known as human rights. A human being, to live a dignified life needs to have a free exercise of these rights. Among all these rights, the right to healthcare is considered be very crucial and intersectional. Human lives are frail in nature, there are diseases both discovered and undiscovered which make it vulnerable for humans to survive, thus this right of health care must be protected with all reasons of public good. When we talk about dignity of life, it is not only restricted to people who can afford it but includes the most marginalized



sections of society as well. It is the universal duty to provide dignified life with an ability to access proper health care system to every stratum of the society.

The right to health is considered to be an inclusive right, which extends not only to the timely access to appropriate health care facilities but also to underlying determinants of healthy and dignified lives such as easy access to safe, clean and potable drinking water and adequate sanitary facilities including right to maintain hygiene, healthy working conditions and protection from occupational hazards, right to a clean environment, access to health related education including sexual awareness and reproductive health. An effective health care machinery in a state is considered to be crucial institution within a society and it carries the same significant impact which a justice delivering democratic political system has on the population.

While, we can assume that the decisions regarding the usage of public resources influence to a greater extent the consideration of right to health and highest possible standards of health care, the fundamental and human right to life is an integral aspect within the legal doctrines formulated by nations and the judicial practice followed in this regard helps in the assessment of liability for damage. The health and medical law, as an interdisciplinary field focussing on a doctrine which is defined as: "*Certain regulations are compiled and issued for the sole purpose of securing, enhancing and protecting human health*".¹ With the increasing knowledge of

the obstacles suffered by the existing health care services, there have been emergence of alternative ideas and methods to provide the requisite efficient health care and these ideas are being implemented on a large scale. The human rights while seeking the fulfilment of the right to health should not become a mere faceless object within a system governed and administered by the state and other concerned authorities. Despite the advancement in the medical science today, the mortality rate and life expectancy of developed nations have not shown a considerable change.

Health for all as a basic human right is an internationally accepted goal. There are certain international treaties and conventions which have been ratified by nations for the protection, improvement and promotion of health care for all. Some of the international treaties are discussed hereby:

- Alma Ata Declaration

The declaration of Alma Ata was adopted at the international conference on Primary Health Care (PHC), Almaty(Kazakhstan) in September,1978.² The conference was held to reaffirm the need for urgent actions by the governments and the world community at large for the development and promotion of health for all. It was the first international conference focussing on the needs of developing the primary health care system. It urged the international bodies and organizations to extend their support to national and international commitment to the primary health care and also to channelize increased technical and financial support

¹ RIEDEL E. The Human Right to Health: Conceptual Foundations. In: CLAPHAM, A. et al. *Realizing the Right to Health*. Rufferandrub 2009. p. 21. ISBN:978-3907625453.

² <https://www.who.int/teams/social-determinants-of-health/declaration-of-alma-ata> accessed on May10, 202.



especially to the developing nations. Though the recommendations were non-binding in nature, it urged its signatories to incorporate the essential components of primary health in their health systems and also to use the world's resources in a cost-effective manner for the ultimate goal of "Health for All".

- International Conference on Population and Development (ICDP) Cairo, 1994

The international conference on Population and Development was convened under the guidance of the United Nations.³ This conference is considered to be a milestone in the history of women's right to health and the population control policies. The programme of action in ICDP was signed by 179 countries. A consensus was reached among the participants as to make 'women's rights and empowerment' a global priority. Women empowerment cannot be complete without including the aspects of right to health, particularly the ability to access the reproductive health. This convention proved to be a boon for India's health care facilities as there was a formulation of a first of its kind comprehensive population policy in the year 2000.

- WHO Framework for Tobacco Control – WHO Geneva, Convention 2003

The WHO Framework Convention on Tobacco Control was developed in response to the globalization of tobacco epidemic.⁴ Government of India also adopted the framework and based on the lines of the

resolutions, passed the Cigarettes & Other Tobacco Products (Prohibition & Advertisement) Act 2003. It was enacted with a view to achieve improvement in the health standards in public and also to impose a prohibition on the advertisement and to regulate the trade, commerce, production and supply of cigarettes and other tobacco products in the country. Following this act, there has been a ban on smoking in public places. The Supreme Court in *Murli S Deora v. Union of India*⁵, held that right to health is a fundamental right under Article 21 and smoking in public places not only hampers the health of smokers but also of non-smokers.

STATE'S CONSTITUTIONALISM AND RIGHT TO HEALTH

Fundamental rights are the charter of rights contained in the part III of the Constitution of India. These rights are considered as the basic human freedom which every individual is entitled to live a dignified life. The fundamental rights guarantee the civil liberties that all Indians can live in peace and harmony. Some of the rights which are common to almost all the liberal democracies of the world are equality before law, freedom of speech and expression, right to life and livelihood, right to constitutional remedies for the protection of civil liberties.

The Constitution of India has been drafted with utmost care and responsibility. Every provision of the Constitution has been carefully weighed before including it in the

³ <https://www.unfpa.org/events/international-conference-population-and-development-icpd> accessed on May 12, 2021.

⁴ https://www.who.int/fctc/text_download/en/ accessed on May 18, 2021.

⁵ *MURLI S DEORA VERSUS UNION OF INDIA AND OTHERS* LNIND 2001 SC 2489 accessed on May 18, 2021.



main body. Article 21 under the part III provides for the right to life and personal liberty to the citizens of India. It imposes a sense of responsibility on the centre as well as the state governments to establish a welfare state. It expects the government to secure and protect the rights of the individuals and promote their well-being. Part Four of the Constitution deals with the Directive Principles of State Policies, which though not enforceable, should be implemented by the state to achieve the goals of welfare state. The provisions of Article 21 of the Constitution of India regard improvement of public health as one of the primary duties as the goal of Constitution is to follow the welfare and socialist pattern of development. It is an obligation on the state to provide adequate medical care and facilities to the people of India by establishing hospitals and health care centres. The courts are the custodian and protector of the fundamental rights enshrined in the Constitution, but with changing times the dimensions of relief are also changing. Now the courts are also providing compensatory relief to the people whose fundamental rights are violated either by the public or state.

Certain provisions related to human health are provided in the DPSP which helps the state to formulate policies ensuring the fulfilment of the principles which would help us to become a welfare state. Certain affirmative policies to be followed by State are:

- No exploitation at work place ⁶
 - (a) That the citizens, men and women equally, have the right to an adequate means

of livelihood.
 (e) That the health and strength of workers, men and women and the tender age of children are not abused, and the citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.
 (f) That the children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity, and that children and youth are protected against exploitation and against moral and material abandonment.

- Right to work and public assistance⁷

The State shall, within its limits of economic capability, make effective provisions for securing right to work, education and public assistance in cases of unemployment, old age, sickness and disablement. Thus, it deals with the social service aspect and confers a right to have public assistance in case of any sickness and disablement.

- Just and human conditions at work place⁸

It requires, that the State, within the limits of its economic capacity and development, to make effective provisions, for securing just and human conditions at work and also make provisions for maternity relief.

- Duties of the State to raise the level of nutrition and standard of living⁹

It lays down, the duty of the State, to regard, as among its primary duties -the raising of the level of nutrition and the standard of living of its people and the improvement of Public Health. The State has to endeavour to bring

⁶ See Article 39 of The Constitution of India

⁷ See Article 41 of The Constitution of India

⁸ See Article 42 of The Constitution of India

⁹ See Article 47 of The Constitution of India



about prohibition of the consumption (except for the medicinal purposes) of intoxicating drinks and drugs which are injurious to health.

- Protection and improvement of the environment in view of the Public Health

Article 48 A introduced by the Forty second amendment in 1976. It obligates the state to endeavour to protect and improve the environment in view of the Public Health. The State must take necessary steps for protection and improvement of health environment- essential, for preserving and maintaining good public health.

JUDICIAL APPROACH

Right to health under the Indian Constitution includes different aspects of leading a healthy life. It is not restricted to getting treatment for the illnesses but covers a wide range of other parameters too. Here, we will study certain Judicial pronouncements which have widened the ambit of the Right to Health under Article 21 of the Constitution.

- Right to health and pollution free environment

1. Municipal Council, Ratlam v. Vardhichand¹⁰

In this case, Vardhichand a resident of Ratlam filed a complaint there was a failure on the part of municipality in preventing the discharge of toxic fluids from the nearby alcohol plant, which started coming on the streets and because of the absence of sanitary facilities on the road, it became difficult to even walk. The Supreme Court while

¹⁰ (1980)4 SCC 162

¹¹ (1987)4 SCC 463

stressing on the importance of Article 47, directed the municipality to remove the effluents and provide hygienic conditions to the citizens. The court, further stressing on the statutory duty of the government stated that it will not sit idle and allow the municipal council to make a mockery of the Constitution and legislations. If the laws are defied or wrongfully denied, then the offender will have to face the penalty of laws.

2. M.C. Mehta v. Union of India (Popularly known as Ganga Pollution Case)¹¹

The Ganga Pollution case is related to the infringement of Article 21 as it hampers the right to health by violating the right to have pollution free environment and availability of clean water. The Supreme Court in this case ordered the closure of various industries which were built across the river Ganga and were subsequently polluting it by letting the harmful effluents from the industries flow into the river even without proper filtration. There was a hue and cry that this decision might bring a wave of unemployment and would also cause a loss of revenue to the state. But the court gave more importance to the life, health and ecology than all other factors.

3. M.C Mehta v. Union of India (Oleum gas leak case)¹²

In this case, the Supreme Court applied the doctrine of Absolute Liability for the first time. The fundamental right to health under Article 21 was infringed as there was a leakage of oleum gas on the 4th of December, 1985 from Shri Ram Food and Fertilizer Corporation, New Delhi in which several

¹² AIR1987SC96



persons fell ill and some died because of inhaling the toxic gas. A PIL was filed under article 32 as there was an infringement of fundamental right. The PIL sought to close and relocate the plant which was located in a densely-populated area of New Delhi. The Apex court ordered the enterprises engaged to pay compensation to the victims of the harm caused by such activities. The court allowed the factories to restart with new regulations on safety parameters.

- Right to get adequate treatment

1. Parmanand Katara v. Union of India¹³

This case deals with the protection of right to health under Article 21 and right to get treatment under sickness and disablement under Article 41 and 42. Parmanand Katara, a human right activist, filed a PIL on the basis of a newspaper report. It was alleged that a man who was travelling by a two-wheeler was knocked down by a speeding car. The man suffered a severe head injury and was bleeding profusely. A good Samaritan picked him on the road and took him to hospital but the doctors refused to start the treatment as there was a non-availability of operative facilities for head injury and there was also no neuro surgeon present in the hospital. While he was being taken to a different hospital, he succumbed to his injuries.

The Supreme Court has underlined the fact that there cannot be any doubt that the preservation of human life is a subject of paramount importance. Every medical practitioner, whether working in government hospital or in a private capacity has a profound obligation to extend his expert

services for the protection of life. Many times, the doctors are not vigilant enough in attending a case fearing it to be a medico legal case. A doctor should respond immediately to the cries of a patient in emergency situations. The Supreme Court further clarified that it is the fundamental duty of a medical practitioner to provide primary aid to the patient in case he feels that the treatment meted by him will not be sufficient to save the life of that person. No doctor would refuse treatment to any patient on the ground that it is a medico legal case and would not wait for police intervention.

2. State of Punjab v. Mohinder Singh¹⁴

An employee of the Punjab State government, Mr. Mohinder Singh had a heart ailment. Due to lack of specialized facilities in the state, he was permitted by the Director of Health Services and the Medical board of Punjab to have his treatment outside Punjab i.e. at All India Institute of Medical Sciences, New Delhi. In the hospital, the employee was required to pay the charges of the room as per the rates. He claimed for the reimbursement of the amount. The State government, citing the rules that room rent is not insured, refused to reimburse the amount. The employee filed a writ petition in the court, as his fundamental right under Article 21 was infringed. The court stated that the government has a constitutional obligation to provide health care facilities to its citizens. It is the duty of the state government to reimburse the expenditure incurred by the employees of the government.

3. Paschim Bengal Khod Majdoor Samiti and others v Government of West Bengal¹⁵

¹³AIR 1989SC 2039

¹⁴AIR 1997 SC 1225

¹⁵(1996)4 SCC 3



The case focusses on the right to health under Article 21 and Articles 41 and 42 under the DPSP. One of the member of the Paschim Bengal Majdoor Samiti in an accidental fall from the train had a severe head injury for which a neuro surgeon was required. Due to the lack of operative facilities and non-availability of neuro surgeons, 7-8 state run hospitals turned down the patient. After a loss of few hours he was admitted and operated in a private hospital. Later, he sued the government for inadequate facilities in the state-run hospitals. The apex court held that it is the duty and responsibility of the state government to make adequate arrangements for the facilities of treatment in state funded hospitals. This inability is a gross violation of Articles 41 and 42 read with the Article 21 of the Constitution. The court also penalized the state government with a fine of Rs. 25,000. The court observed that Life without health is no life at all.

The court also issued necessary directives to the Central and State governments to make sure that proper medical facilities are available 24*7 to deal with the emergency cases. The court strictly reprimanded the state government that it cannot abdicate its constitutional obligation of providing proper health care services by citing financial constraints.

- Right to Reproductive health

1. Suchita Srivastava v. Chandigarh Administration¹⁶

An orphaned woman, who was also mentally challenged was living in a government shelter without any familial support. She was

¹⁶ (2009) 14 SCR 989

found to be nine weeks pregnant as a result of sexual assault by the institution staff. The Chandigarh government filed a criminal case and a medical board was constituted to make an evaluation of the mental status of the woman. The board declared that the woman was intellectually disabled. The government then filed a petition in the Punjab and Haryana High Court requesting the grant of permission to terminate the pregnancy. The High Court constituted an expert body which recommended that the termination of pregnancy is unwarranted as the woman wants to keep the child. Not relying upon the suggestions, the High Court granted the permission to abort the child. The woman/appellant appealed in the Supreme Court.

The main question in law was the section 3 of MTP Act, 1971 which allows abortion up to 20 weeks under certain conditions in which physical and mental health of the mother is also included. The Apex court held that a woman has full rights over her body. The court disagreed with the application of the law *Parens Patriae* by the High Court and held that the High Court's decision to allow the termination of pregnancy was not in the bests of interests of the victim. Termination could have caused mental agony and physical injury to the victim. The court held that consent of woman is an essential requirement under the MTP Act, 1971 and its non-fulfilment could not be permitted as it would cause arbitrary and unreasonable restrictions on the reproductive rights of the woman.

2. Devika Biswas v. Union of India & Ors¹⁷

In the year 2012, several women underwent a sterilization procedure in Bihar. This whole set up was managed by an NGO which had an accreditation by the District Health

¹⁷ AIR 2016 SC 4405, 2016



Society, without any transparent and formal process. The women were unaware of the after effects of the post-operative potential dangers and consequences of the sterilization procedure as they were not provided proper counselling. The operation was conducted in an unsanitary manner without following standard protocols. Many women found a sensational pain and discomfort after undergoing the operation. A case was filed before the Apex court claiming the infringement of the fundamental right of health under Article 21. The petitioner also sought court's help in strict implementation of sterilization procedure manuals as there were similar camps running across the country where procedures are conducted in an unhygienic manner and mostly by misleading women. The court ruled that the article 21 of the Constitution has been violated as the right to health and reproductive choices were infringed. The court further observed that the freedom to exercise reproductive rights consists of freedom to choose based on informed decisions. Also, the right to health includes consent and not coercion for significant surgeries.

- Right to Health and COVID-19

1. In Re: The Proper treatment of COVID-19 patients and dignified handling of dead bodies in the hospitals etc., Suo moto writ petition (Civil) No. 7 of 2020.

The Supreme Court took suo moto cognizance of an incident which happened in the Rajkot district of Gujarat, which resulted in the death of Covid patients in the Covid hospital. The Apex court stressed upon the

Right to health being a part of fundamental right under Article 21 of the Constitution. The court stated that this includes right to have an access to affordable treatment. The court emphasised on the fact that more provisions should be made in this regard by the governments which would put a cap on the fees charged by the private hospitals in lieu of providing treatment for Covid-19. These powers have been provided to the state by the Disaster Management Act. The court observed:

“It cannot be disputed that for whatever reasons the treatment has become costlier and costlier and it is not affordable to the common people at all. Even if one survives from COVID-19, many times financially and economically he is finished.”¹⁸

CONCLUSION

The idea of human rights is a consequence of the dissent against the state's dictatorship and is used as a tool of struggle against the totalitarian powers of the state. Human rights basically constitute the natural rights to which every human being is entitled. These are considered to be moral and ethical principles which act as a standard for human conduct and behaviour. Human rights have become considerably significant as they are now legally protected by constitutions of various nations. Human rights are inalienable fundamental rights in the sense that no human being can be deprived of these basic rights and they are considered to be inherent in the very existence of a human being. There can be no discrimination on the basis of nation, race, religion, language, gender or any other factor. It means all human beings are equally entitled to enjoy the human rights imparted to them.

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<https://www.scconline.com/blog/post/tag/coronavirus>
/ accessed on May 20, 2021



Human rights are universal in nature considering the fact that they are applied everywhere uniformly. Constitutionalism of a nation's constitution embodies the principles of rule of law. Besides the equality of law for everyone, rule of law also embodies an obligation on citizens for the equal respect to be given to human rights of other persons. The human rights cannot be suspended except as a result of due process of law.

Maintaining of human rights standards is a dynamic process and not a static one. The conditions and objectives of humanity which the human rights seek to protect and promotes are concepts which are ever evolving in nature. Oppression and powerlessness can never be fully eradicated and emerges in a new form thus posing new challenges for the community. For example, the rights of the people from the LGBTQ community are started being recognized by several nations including India. Earlier it was almost unthinkable to bring movements and campaigns like these. Similarly, the war on terrorism has made every nation to reconsider the established norms to counter it. Recently, the killing of a school teacher in Paris due to alleged blasphemy by an Islamic follower, has made the governments think to make stricter laws for emigrants. A normative response is required to deal with all these issues.

The issues for human rights development require consistent re-evaluation, vigilance, re-structuring and re-definition. The norms which do not fit the society should be rejected and removed and they should be replaced by norms which actually fit in the concept of development of human society.

The fundamental right to life is the heart and soul of our Indian Constitution. The right to life includes in itself plethora of other rights which are impliedly protected as they are the basic human rights enjoyed by human beings. Right to lead a healthy life from womb to tomb is a basic tenet of right to life. It can be exercised only when the surroundings are healthy. The right to healthy environment includes right to access to clean drinking water, right to pollution free environment and a good shelter to live in.

Every living creature, be it animals or humans, have the sense of security and protection towards their health. Good health is the priority of everyone. Health includes all the three aspects i.e., physical, mental and social well-being. These standards prescribed by the Constitution must be conformed to by measures of legislative and administrative nature.

The main idea is to increase the magnitude of the work done in the health sector and to accomplish the goals which have been conceived in the past years. The governments need to critically examine the gap which persists between the global standards and what has been already implemented in the nation. High standards are set up by the global bodies but the ground realities seem to be different especially in developing and underdeveloped countries.

Health sector has received comparatively lesser fraction of attention than other governmental activities. States have surely been able to establish a health care system which brings remedial and preventive health services to the persons but India is not limited to urban areas only, there is a vast section of



rural population which still struggle to enjoy the benefits of the modern health care system. The morbidity and mortality levels are still very high in India. The health indices paint the true picture as they indicate the restrictive success of the public health care system. The government should recognize the need of improving the public health infrastructure while framing new policies and laws as the existing one is not up to the mark. The facilities should be made adequate so that people would not have to resort to foreign countries to get proper health care. The present scenario of COVID-19 which reflects a sort of crisis in the health sector is the appropriate time to focus on the goal of universal access to proper health care and also to build a consensus among the society that these agendas of right to health care should be placed on the top of priority list. More attention is required towards the fulfilment of declared legal and constitutional rights of people which have been yet not totally achieved by the state.

