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AGEING WITH DIGNITY: LEGAL DIMENSIONS OF ACCESS TO HEALTHCARE UNDER ARTICLE 21

By Sampada Bais

Assistant Professor, Bharti Vishwavidyala, Durg

By Anirudh Pachkawade

From Bharti Vishwavidyala, Durg

Abstract

We only care about something when there is a dire need of it. Same thing is applicable to the need of medical care for population who are growing old because attention is being drawn to the issue. Accessibility and affordability are a major concern for the geriatric medical care, as there is lack in infrastructure, lack of trained medical experts and high medical cost. These issues raise serious concern as there is a gap between the actual needs of the ageing population and the availability of the medical care for elderly.

The constitutional mandate given under article 21 of constitution, which recognizes right to health through various judicial precedent gives them the right of life with dignity. This article focuses on various legal dimension of the of access of healthcare, the affordability of healthcare and also on the obligation of states in relation to geriatric healthcare. It also lays emphasis on the aspect of dignity that how it is related with right to life, particularly in context of informed consent and to decision on life ending.

This article also focuses on the efforts of UN for the healthcare access of elderly and to achieve it by World Health Organization. This article pleads that though there is a constitutional provision which prescribes for recognition and implementation of right to health as fundamental right but still there is gap in theory and in practicality because of its implementation and policy design. It emphasizes that article 21 and the laws

relating to geriatric healthcare should be more inclusive to include other things.

KEYWORDS: Geriatric Healthcare , Article 21 , Life With Dignity , Indian Constitution

1. Introduction-

In India there is demographic transition with a rapidly growing elderly population, which raises concerns for their healthcare, dependency and social security. Ageing is a physical process which has to happen, but as one grows old there are a lot of problems with him because of the physical and mental health, one depends on some other person for his survival in terms of finance or for any other reason. In short, the ageing process increases vulnerability of individual in every aspect of his life. He feels that he is been neglected by his family and by society. In these circumstances the main question which raises concerns is that whether a personal will be allowed to live a dignified life even at the old age as he was enjoying when he was young ?¹

Dignified ageing can be better understood with access to adequate and affordable health care. However, in reality, many elderly individuals face barriers as they are not been able to access the high treatment costs, lack of geriatric-specific services and limited medical infrastructure. These challenges highlight a very crucial gap between the actual needs of the ageing population and the existing healthcare framework which they are being given.

For addressing these concerns article 21 of Indian constitution provides provision, which talks about “Right to Life and Personal Liberty”. From time-to-time judiciary’s efforts can be seen to expand the meaning of Article 21 so as to includes many aspects of life, like right to life now includes right to health, right to live with dignity, thereby placing a positive

¹ HelpAge India, *State of Elderly in India Report* (2022).



duty on the State to ensure accessible healthcare for all, including the elderly people.

The article here seeks to examine the legal dimensions of healthcare for aged, focusing on the issue of accessibility, affordability, and the extent of state's duty to ensure the promise of dignity included under article 21 of the constitution of India.

2. Constitutional Framework

If we talk about the right to healthcare, that how and by which law the Indian citizens has been conferred the right to healthcare or whether right to healthcare has been even conferred or not?² This question has been answered by Article 21 of Indian Constitution. Article 21 of the Constitution States that "No one shall be deprived of his life and personal liberty except according to procedure established by law".³ Earlier Article 21 was interpreted in a narrow way, but with time judiciary has made Article 21 wider with its interpretation with case laws. Our Indian Judiciary has transformed Right to life with not only mere physical survival of individual with comprehensive right which include, dignity, well-being and quality of life.

The Supreme Court has over time consistently held that "Right to Life" not only includes mere animal existence, but it also includes "Right to live with dignity". In the expanded version of article 21 Right to life has included the right to medical healthcare of the individual as essential part of right to life. This evolution of right to life means that right to life is not only an illusory right but a comprehensive right as without right to life without medical healthcare included in this, will be of no meaning specially for elderly people.

2.1 Acknowledgement of Right to Health by Judiciary-

There are cases through which judiciary has tried to include other aspects of life which are so inherent under Right to Life. These efforts of judiciary have actually brought a new meaning to Article 21 of Indian Constitution.

PARMANAND KATRA VS. UNION OF INDIA:

In this case Supreme has made it clear that all the doctors whether government or of private hospital are bound to give medical assistance to the victim , and not to wait for legal formalities. Court held that Medical Assistance to the accident victim are of paramount importance and it should not be comprised with legal formalities.

This case emphasized that Right to medical care is not optional but it is constitutionally guaranteed, specially for elderly who are facing medical emergency.⁴

PASCHIM BANGA KHET MAZDOOR SAMITY V. STATE OF WEST BENGAL:

This case highlights that States are bound and are under obligation to provide accessibility of essential health care services and make them available to every person. The main object behind giving this judgement was to ensure that any patient should not be deprived of medical service and because of that should not be deprived of his health or life.

In this case the patient had suffered severe injuries , but was not given proper medical treatment by several government hospital because they were not having proper facilities. The Court held the hospitals

² World Health Organization, *Ageing and Health*.

³ INDIA CONST. art. 21.

⁴ Parmanand Katara v. Union of India (1989) 4 SCC 286



accountable for not giving medical care an violating Article 21 of Indian Constitution.⁵

CONSUMER EDUCATION AND RESEARCH CENTRE V. UNION OF INDIA:

In this case the court recognized that right to medical care is a part of right to life with dignity and that it is fundamental to right to life. State has to ensure proper conditions that support good health of every person. With this case Court made it clear that right to health is not only a policy choice, but it a constitutional mandate to ensure healthcare access , particularly for vulnerable senior citizens.⁶

COMMON CAUSE V. UNION OF INDIA:

This case was a landmark turn for article 21 as this case held that right to life no doubt includes with itself “Right to Die”, but a person who for long time is only alive because of life support system, has a right to end his life with dignity. This case emphasize death can be given to a person but with dignity. It also recognizes “Living Wills” and “advance directives”, to persons with suffering to make decisions about their medical treatment in advance.

This case is also very much relevant to our present topic as old – aged people some time are very vulnerable as they inspite of being ailing with their disease cannot end their life. This case made their death somehow little better, as now they can die with dignity.

All these judicial pronouncements have collectively established that Right to medical health care is not only a directive for the state, but it is a fundamental right which can be enforced in case of it being violated. This right imposes not only negative duty on the state but also positive obligation. Elderly people

who are being denied of financial support, social support and physical vulnerabilities can now take constitutional protection.⁷

3. Geriatric Healthcare Challenges

Geriatric Healthcare is a specialized branch that deals with medical care and well-being of elderly individuals, especially people above 60 years of age. Unlike general healthcare, Geriatric healthcare refers to the unique physical, physiological and social challenges associated with the aged people, which includes diagnosis of disease, treatment, long term care and its prevention. With increased life expectancy, the demand for such medical assistance has more pronounced.

Elderly individuals require more attention because of chronic illness such as hypertension, cardiovascular diseases, diabetes, arthritis, which not only needs treatment but also requires long term medical care. Along with physical ailments, there are a lot of mental ailments such as anxiety, depression and dementia which are rapidly increasing among elderly, the reason behind this is loneliness, social isolation and loss of familial support.

As per World Health Organization and United Nation’s report⁸, the number of elderly people is growing in unprecedented rate, particularly in developing countries like India. This unprecedented transition requires a robust medical framework to the needs of ageing population.

Geriatric healthcare is not only a welfare measure but it is a recognized essential component of right to life with dignity under article 21 of Indian Constitution.

⁵ Paschim Banga Khet Mazdoor Samity v. State of West Bengal (1996) 4 SCC 37; AIR 1996 SC 2426

⁶ Consumer Education & Research Centre v. Union of India (1995) 3 SCC 42

⁷ Common Cause v. Union of India (2018) 5 SCC 1

⁸ United Nations, *World Population Ageing 2020: Highlights* (Dep’t of Econ. & Soc. Affs. 2020).



4. Accessibility & Legal Gaps

If we get right to health under article 21, it would be of no use because there should be accessibility of Right to health available to all the person as it is much important component of Article 21 of the Constitution. However, the reality is for elderly, access to right to health is not easy thing, as it often remains uneven and inadequate which in a way undermines the constitutional promise of dignified life. While a lot of policies are available and existence of constitutional promise is also available to all, but in practice it is hard to get healthcare deliverable.

The most common challenges to get the healthcare is the division of urban and rural areas. The urban population gets the Medicare at any time is because they are having the infrastructure, specialized medical service, and advanced medical services, whereas the rural people suffer and are not been able to get the medical care as they lack in infrastructure, trained medical professional, and essential services. As the large number of elderly lives in rural areas, there is disparity in the availability of medical care to them.

Another reason being there is lack of geriatric expert in our country. In India we don't pay much attention to the need of geriatric expert, we only care when there is dire need of the doctors who are specialized in the field of ageing people. Because there is shortage of expert in the field, there is delay in the diagnosis, treatment, and cure of the senior citizens, and as a result they sometimes suffer.

Also, poor healthcare infrastructure is one of the biggest reasons, for neglect of Geriatric medical care. Our hospitals are overburdened, underfunded, and lacked essential equipment's for treatment of elderly people. This problem even gets worse because of long-waiting time in hospital for treatment, which can

become distressing and life threatening to senior citizens who needs quick medical care.

For dealing with these problems, Government of India has introduced policies such as NATIONAL HEALTH POLICY, 2017⁹ to deal with universal health coverage and prioritize vulnerable groups including elderly. Also, AYUSHMAN BHARAT tries to give financial protection and accessible health care coverage through insurance and health care wellness centre.¹⁰

However, there still is a gap in the policies made for them and their actual implementation. Many beneficiaries of these schemes are still not been aware of these policies, especially those who live in rural areas. Even they even if knowing about these schemes are not been able to access them because of digital illiteracy and infrastructural limitations. Also, the targeted Geriatric expert in healthcare framework further limits the effectiveness to properly address the needs of elderly.

Thus, the policy landscapes reflect the commitment of the government to deal with the issues, still the persistent challenges in implementation of the policies raises an issue for the elderly. Filling this gap is essential to achieve the constitutional mandate of fundamental right, so that it should not be only in theories and not in practical application.

5. Affordability & Insurance

Imagine a situation that there is a thing in front of us which we wanted very urgently as we are in need of the thing, we cannot have it in our possession because it is costly. Is the thing have any worth. Similarly, if by any chance the elderly get the access of Medicare but they are not able to afford it because of the cost as it is expensive. Till now it is clear that right to health is integral part of right to life under article 21 of Indian

⁹ Ministry of Health & Family Welfare, *National Health Policy, 2017* (Gov't of India 2017).

¹⁰ Ministry of Health & Family Welfare, *Ayushman Bharat – Pradhan Mantri Jan Arogya Yojana (PM-JAY)* (Gov't of India).



Constitution but its realization is not effective because of high cost of treatment involved. Also, if there is inadequate financial protection given, which restrains the exercise of right to health then it will be violation of the constitutional mandate.

In India, a high number of patients borne their medical treatment of his own, as public healthcare infrastructure remains insufficient to meet the growing needs of the patient. For elderly people it becomes more problematic as they don't have any source of income to bear the expenses of their treatment. This situation even gets worse in private health care sector as they charge in every stage of treatment starting from consultation to the curing stage.

A person does any insurance, is expected to get some help obviously financial help, when he is in dire need of it. But here the situation is different, insurance policy comes with high premium rate for older individuals making it unaffordable for them. Many insurance policies come with some condition or limitation of not to cover existing disease, waiting periods and limited coverage, making it more difficult for the elderly to actually deal with the devastating situation. As a result, many senior citizens are not insured or inadequately covered.

The Regulatory Framework governed by the Insurance Regulatory and Development Authority of India is making efforts to resolve this situation by analysing the problem and by taking steps, such as standardizing insurance product. However, practical application of these steps still remains a challenge because of a gap between regulatory intent and the actual accessibility of the insurance coverage.

With all these facts, it is clear that financial accessibility of Medicare is a fundamental aspect for right to health. Without these issues being

unaddressed, the recognition of healthcare, being a fundamental right will only being abstract. So, it can be debated that without healthcare not being economically addressed, we will not be able to fulfil the constitutions promise of right to health being part of right to life.

6. State Responsibility

No doubt there is a fundamental right given under article 21 of Indian Constitution for access of healthcare to all the person including senior citizens .And the responsibility of protecting and ensuring health care of individual including the senior citizen is not only the obligation of families and individuals but it is also the duty of the state as per the directive principle of state policy under article 38¹¹ of the Constitution, which prescribes duty to the state for protecting the social welfare of citizen.

Not only this, the states are bound to secure the public assistance in case of old-age, sickness and disablement as per article 41¹². While Article 47 of Constitution states are under obligation to ensure the improvement of public health.¹³ Although all these duties of state are not justifiable but these duties are very much important in governance of the country.

As per the directions of this article an act has been passed to fulfil the obligation of the state. Legislature enacted "Maintenance and Welfare of Parents and Senior Citizens Act, 2007" for welfare of elderly. The main objective of this act to ensure that senior citizens are not left alone with nothing with them, and also, they can claim maintenance from their children or relatives. This act also emphasizes the establishment of old age homes and for the welfare measures for elderly.¹⁴

As we all know that a thing has two sides, similarly this act also has some lacuna. This act only focuses on

¹¹ INDIA CONST. art. 38.

¹² INDIA CONST. art. 41.

¹³ INDIA CONST. art. 47.

¹⁴ Maintenance and Welfare of Parents and Senior Citizens Act, 2007, No. 56 of 2007, INDIA CODE (2007).



the measure of maintenance and financial support totally ignoring the healthcare access to the senior citizens. A critical analysis of this act reveals that this act is very limited in its scope especially related to healthcare services. So, as per the functional aspect of this act is concerned, it is inconsistent with the issues like, procedural delays, lack of awareness, and infrastructural gaps. All these issues raise very important concern in relation to its effective implementation.

In addition to the legislative measures, constitution has given everyone right to healthcare or access to healthcare as has been stated in some cases above. But the question here is whether really this fundamental right given under article 21 is fulfilling the said right? As this right is not only abstract, but this also includes strengthening infrastructural facilities, ensuring the presence of trained medical professionals, and also creating some strong measures for the healthcare of elderly.

Despite this positive obligation imposed on the state, the actual reality is that there are lot of lack in the effective implementation of the obligation on part of the state. Public healthcare sector in India remains underscored and healthcare access to the elderly are still inadequate. This issue raises concern that the constitutional obligation of state is really fulfilling or not.

So, in conclusion it can be said that though there are a lot of policies are existing in favour of the senior citizens but its effective implementation of the act solely depends upon the robust implementation and a transition towards a more right-based approach rather than welfare based, in relation to geriatric healthcare.

7. Dignity & Autonomy

The concept of dignity is the core of Article 21 of the Indian Constitution, as article 21 not gives right to life and liberty but also covers right to live with dignity. In “Maneka Gandhi vs. Union of India” supreme court gave a new dimension to article 21, here court gave the verdict that right to life means “Right to live with Dignity.”¹⁵ Elaborating the same view, Court In Francis Coralie v. Union Territory of Delhi observed-“The right to live includes the right to live with human dignity and all that goes along with it, viz., the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading writing and expressing oneself in diverse forms, freely moving about and mixing and mingling with fellow human beings and must include the right to basic necessities of life and also the right to carry on functions and activities as constitute the bare minimum expression of human self.”¹⁶ So, as per all these cases it can be seen that right to life not only includes simple mere animal existence but to live with dignity. And Dignity also includes to live with autonomy, self-respect and self-worth in the later years of life of an individual. If we can’t guarantee this then what is the point of dignity even has? The idea of “AGEING WITH DIGNITY” is to ensure that elder persons should not be treated only as passive recipient, but also the right to take decisions relating to his own body and medical treatment.

Autonomy by dictionary means, right to make a decision. And autonomy in healthcare sector means that a person should be independent to make their own decision for medical treatment, knowing that what treatment is being given to them, and later choosing what is best suited to their body. This is important for the elderly people as, they at old age and during sickness, they should live with dignity.

¹⁵ Maneka Gandhi v. Union of India AIR 1978 SC 597; (1978) 1 SCC 248; 1978 SCR (2) 621

¹⁶ Francis Coralie Mullin v. Administrator, Union Territory of Delhi (1981) 1 SCC 608; AIR 1981 SC 746



It says that, if someone is forced to take medical treatment, this is violation of their personal liberty given under article 21 of Indian Constitution.

The said principle is being reiterated in the case of Common Cause vs. Union of India, in this the court held that Right to life includes right to die with dignity. Court in this case allowed passive euthanasia under strict guidelines under recognized living will, which allow the individuals to end their life with their own will.

Even in the case of Harish Rana vs., Union of India, which is a recent case, in which court held that the process of living will was made clear, also the process was made simplified and taken the medical approval was also made easy, with the remarks that a person who is being already in suffering should not be bothered further.

Thus, dignity here not only means accessibility and affordability but also the right to make choice, control and respect for individual will, which are essential to live a life at an old age.

8. Comparative perception

A comparative analysis of world stance on geriatric healthcare is different as in India. There are a lot of differences in the Indian law in the said field. In United Kingdom, the healthcare is given by structured public system like national health service, which provides access to healthcare universally, including elder people.¹⁷ In United States also, there is provision for healthcare insurance specially for senior citizens at low premium rates or with some benefits.¹⁸ Japan which has highest number of ageing population has introduced long – comprehensive insurance plan, which not only takes care of their medical needs but

also focuses on their social needs. But India's position is different, we are lacking because of implementation procedural, infrastructure deficiency and medical experts for elderly. The report released by WHO, Office of the High Commissioner for Human Rights (OHCHR), United Nations Department of Economic and Social Affairs (UN DESA) and United Nations Population Fund (UNFPA), calls for urgent action to combat ageism and better measurement and reporting to expose ageism for what it is – an insidious scourge on society.¹⁹

9. Critical Analysis

Despite all these initiatives and enactments in favour of the senior citizens, still the ground reality is different. There are a lot of lacunas which is making the constitutional mandate nothing but a phrase. The legal framework enacted though are robust framework still their lack in their implementation, especially in context of geriatric healthcare.

One of the important and major shortcomings is that, there is no specific legislation in relation to geriatric healthcare, there are various laws which are made for the or which focuses on the well-being of senior citizens, still there is still a lacuna in the healthcare mechanism for senior-citizens, the financial support for their medical treatment is lacking. The infrastructural lacuna in the geriatric sector cannot be ignored. All this shows that we are not being able to fulfil the constitutional mandate.

Also, as we have already discussed above, the accessibility of healthcare to senior citizen in urban and rural area is not same. In rural area there is no availability of medical professional, infrastructural shortcoming, and limited availability of limited and specified service.²⁰

¹⁷ National Health Service Act 2006, c. 41 (U.K.).

¹⁸ Social Security Act, 42 U.S.C. § 1395 (Medicare) (U.S.).

¹⁹ World Health Organization et al., *Global Report on Ageism* (WHO, OHCHR, UN DESA & UNFPA 2021).

²⁰ Ministry of Statistics & Programme Implementation, *Elderly in India 2021* (Gov't of India 2021).



Another issue is the weak implementation of laws and legal policies made for the elderly. Initiatives have been made for the implementation but, they didn't prove of any use because of lack of awareness and poor monitoring mechanism.²¹ As there is increase in the digital world, the healthcare access is also becoming digitalized. This will also become a major concern for elderly as they lack digital literacy, be it online access consultancy, insurance service or even government schemes.

Social factors is also one of the major concerns. As today's family doesn't live in joint family. In present age everyone prefers to live in a nuclear family, which means that the elderly will not be having anyone by their side in the time of emergency.

All these issues show that, although there are a lot of efforts made in the field of geriatric sectors in theories, still this is only in paper and not in practices. Its practical application still remains a challenge.

10. Suggestions

In order to fill the gap coming in this area, there should be a multi-dimensional approach be adopted.

Firstly, there should be a specific comprehensive legislation in the field of geriatric healthcare sector, which will properly be addressing the social, financial and psychological needs of the elderly. As discussed above, as right now there is welfare-based approach, it should be shifted towards right-based approach.

Secondly, it will not be sufficient only if we make a specific legislation in the field of geriatric healthcare, its implementation still a challenge. We have propagated about these legislations, policies, plans which is being made for the elderly. If it is not being

known to the people, they will always be suffering because of that.

Thirdly, the insurance schemes available for senior citizens are not sufficient as they are not inclusive, so insurance schemes which are inclusive in nature, like reducing premiums, eliminating discriminatory exclusions, and covering for chronic illness.

Fourthly, geriatric health care units should be established, strengthening public healthcare infrastructure, especially in rural areas. Also specialised training healthcare professionals for elderly.²²

Lastly, mechanisms for monitoring and accountability should be more stringent to protect and preserve the rights of senior citizens, so that they are not being ignored.

11. Conclusion

The recognition of right to health under article 21 of the Indian Constitution, is a significant step for fulfilling the promise of constitutional jurisprudence. However, the realization of this right still is a challenge for elderly, because of the lack of effective implementation mechanism.

Government has made a lot of efforts in this area, such as legislative framework, different policies and a lot of roadmaps for protection of rights of elderly in respect of healthcare. Some of them are stated below- The National Programme for the Health Care for the Elderly (NPHCE)²³ is an articulation of the International and national commitments of the Government as envisaged under the UN Convention on the Rights of Persons with Disabilities (UNCRPD), National Policy on Older Persons (NPOP) adopted by the Government of India in 1999²⁴ & Section 20 of

²¹ World Health Organization, *World Report on Ageing and Health* (2015).

²² Ministry of Health & Family Welfare, *National Health Policy, 2017* (Gov't of India 2017).

²³ Ministry of Health & Family Welfare, *National Programme for Health Care of the Elderly (NPHCE)* (Gov't of India).

²⁴ National Policy on Older Persons, 1999 (Gov't of India).



“The Maintenance and Welfare of Parents and Senior Citizens Act, 2007” dealing with provisions for medical care of Senior Citizen.²⁵

The National Health Policy, 2017 envisages- "the attainment of the highest possible level of health and wellbeing for all at all ages, through a preventive and promotive health care orientation in all developmental policies, and universal access to good quality health care services without anyone having to face financial hardship as a consequence". The aim of NHM is to look at the progress towards the goals and targets which is set in the National Health Policy, 2017 for ensuring "universal access to equitable, affordable and quality health care services, accountable and responsive to people's needs".²⁶

Even the UN's efforts cannot be ignored in this area. The United Nations (UN) General Assembly declared 2021–2030 the UN Decade of Healthy Ageing and asked WHO to lead the implementation. The UN Decade of Healthy Ageing is a global collaboration bringing together governments, civil society, international agencies, professionals, academia, the media and the private sector for 10 years of concerted, catalytic and collaborative action to foster longer and healthier lives.

The Decade builds on the WHO Global Strategy and Action Plan and the United Nations Madrid International Plan of Action on Ageing and supports Sustainable Development and the Sustainable Development Goals which is United Nation's Agenda.

The UN Decade of Healthy Ageing (2021–2030) willing to reduce health injustice and improve the lives of older people, their families and communities through major and collective action in four areas: changing how we think, feel and act towards age and ageism; developing communities in ways that foster

the abilities of older people; delivering person-centred integrated care and primary health services responsive to older people; and providing older people who need it with access to quality long-term care.²⁷

All these programs and policies if carefully monitored, then for sure all these programs will surely protect the rights of senior citizens and will prevent it from being abused. A society which fails to take care of individual undermines the constitutional values. And the society which ensures the dignity of individual upholds the spirit of humanity and justice.

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²⁷ www.who.int



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