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The right to health: Foundations, responsibilities, and legal perspectives

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Abstract

The research paper explores the fundamental concept of the right to health as an integral component of human rights, drawing on international declarations and treaties. Beginning with a quote from Benjamin Disraeli, the paper emphasizes the importance of a healthy population for the well-being and potential of a state. The introduction establishes that public health is a crucial responsibility of the state, intertwined with the controversial and complex human right to health. The paper delves into international documents such as the Universal Declaration of Human Rights and the International Covenant on Economic, Social, and Cultural Rights to trace the recognition of the right to health as a fundamental human right. The concept of the right to health is then dissected, incorporating both individual rights to obtain a certain standard of health and the state's obligation to ensure public health. The World Health Organization's definition of health as complete physical, mental, and social well-being is explored, encompassing various elements such as safe drinking water, adequate nutrition, and gender equality. The paper discusses the freedoms and entitlements embedded in the right to health, including freedom from non-consensual medical treatment and entitlements like access to healthcare facilities and essential medicines. It also touches on the importance of non-discrimination and emphasizes the need for health services, goods, and facilities to be provided without discrimination. Further, the paper introduces the conceptual framework of the right to health, emphasizing the interconnectedness with other human rights. It traces the historical evolution of the perception of health, from a focus on disease absence to a comprehensive approach that includes physical, mental, and social well-being. The legal dimensions of the right to health are explored, highlighting its inclusion in the Indian Constitution under Article 21 and the associated elements of progressive realization and non-retrogression. The research also addresses challenges in public health spending and the need for a shift in societal discourse. Specific sectors, such as prisoners, disabled persons, victims of violence, and mental health, are examined concerning the right to health. The paper also outlines the essentials of the right to health, including availability, accessibility, quality, acceptability, and affordability of healthcare services. The international human rights perspective is reinforced by examining relevant articles in the International Covenant on Economic, Social, and Cultural Rights. The research concludes by affirming the right to health as a human right enshrined in international human rights law and emphasizes the importance of an inclusive and quality healthcare system for all. "The Health of people is the foundation upon which all their happiness and all their powers as a state depend"

Benjamin Disraeli, British PM.

Keywords: Health, human rights, economic, social, and cultural rights

Introduction

Generally, it's aforesaid that a healthy brain resides in healthy body thus healthy is very important in the establishment of a welfare state. It is the responsibility of the state to ensure public health. It has been conjointly aforesaid a more controversial or nebulous human right than the right to health. Consistent with Article 25 (1) of the universal bed nation of human rights.

As human beings, the health and the healthy life is care about matter of daily concern. Regardless of the age, gender, socio-economic or ethnic background, It consider health to be most basic and essential asset.

In other words, health is the most important essential human requirement after food and water. No country want to ill. If India has to gain and hard work for the benefits of its demographic dividend, the health of its citizens is fundamental.

The right to health is a fundamental part of our human rights and of our understanding of a life in dignity. The right to the enjoyment of the highest attainable standard of physical and mental health, to give it its full name, is not new. Internationally, it was first articulated in the 1946 Constitution of the World Health Organization (World Health Organization), whose preamble defines health as a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity. The preamble further states that the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition.”

The 1948 Universal Declaration of Human Rights also mentioned health as part of the right to an adequate standard of living Article 25). The right to health was again recognized as a human right in the 1966 International Covenant on Economic, Social and Cultural Rights.

In the other general view, the International human rights treaties have recognized or referred to health or elements of it, such as the right to medical care. The right to health is relevant to all states. Every state has ratified at least one International human right treaty recognizing the right to health. Moreover, states have committed themselves to protecting this right through international declarations, domestic legislation and policies, and at international conferences.

In recent years, increasing attention has been paid to the right to the highest attainable standard of health, for instance by human rights treaty monitoring bodies, by World Health Organization and by the Commission on Human Rights. These initiatives have helped clarify the nature of the right to health and how it can be achieved.

What is the Right to Health?

Everyone has the right to health. It relates to both the right of individuals to obtain a certain standard of health and health care, and the State obligation to ensure a certain standard of public health with the community generally.

The World Health Organization defines the right to health as a complete state of physical, mental and social well being, and not merely the absence of disease or infirmity. States should ensure both freedoms and entitlements. The former include the right to control one’s health and body, including sexual and reproductive freedom, and the freedom from interference such as torture, non- consensual medical treatment and experimentation.

Entitlements include access to adequate health care facilities and services, as well as appropriate State measures in relation to the social economic determinants of health, such as food, water and sanitation, safe and health working conditions, housing, and poverty.

The right to health is closely interconnected with numerous other human rights, including the rights to food, water, housing, work, access to information, the prohibition against torture, among others.

Key aspects of the right to Health

The right to health is an inclusive right. It frequently associate the right to health with access to health care and the building of hospitals. This is correct, but the right to health extends further. It includes a wide range of factors that can help us lead a healthy life. The Committee on Economic, Social and Cultural Rights, the body responsible

for monitoring the International Covenant on Economic, Social and Cultural Rights to determinants of health and includes.

- Safe drinking water and adequate sanitation
- Safe food
- Adequate nutrition and housing
- Healthy working and environmental conditions
- Health-related education and information
- Gender equality.

The right to health contains freedoms

These freedoms include the right to be free from non-consensual medical treatment, such as medical experiments and research or forced sterilization, and to be free from torture and other cruel, inhuman or degrading treatment or punishment.

The right to health contains entitlements

These entitlements include, the right to a system of health protection providing equality of opportunity for everyone to enjoy the highest attainable level of health. The right to prevention, treatment and control of diseases; and access to essential medicines.

For the maternal, child and reproductive health under health care plan.

The Participation of the population in health-related decision making at the national and community levels.

Health services, goods and facilities must be provided to all without any discrimination

Non-discrimination is a key principle in human rights and is crucial to the enjoyment of the right to the highest attainable standard of health.

The right to health is an inclusive right: It frequently associate the right to health with access to health care and the building of hospitals. This is the correct concept, but the right to health extends further. It includes a large range of factors that. It can help to lead a healthy life. The Committee on Economic, Social and Cultural Rights, the body responsible for monitoring the International Covenant on Economic, Social and Cultural Rights, calls these the underlying determinants of health.

The right to Health: Conceptual Framework

The right to the highest attainable standard of health means that every person should have access to health services that are available, of high quality and acceptable to the population. It also means that every person should enjoy living countries. That enable her or him to realize optimal health though fulfillment of essential needs such as access to nutritional food, clean water and sanitation, and housing, as well as protection from risk to health, fulfillment of the right to health is closely dependent on the realization other human right, as integral components of the right to health. These include the right to food, adequate housing, work, education, human dignity, life, non-discrimination, equality, privacy, and access to information, as well as prohibition against torture and freedoms of association, assembly and movement.

Traditionally health was seen as falling within the private, rather Than Public, and care Health was also understood as the “absence of disease” The first tows containing health-related provisions go back to the era of industrialization.

The reflected laws as, the moral apprentices Act (1802) and Public Health Act (1848) were adopted in the United Kingdom as a means of containing social pressure arising from poor labor conditions.

The evolution towards defining health as a social issue led to the founding of the world health Organization (World Health Organization) in 1946. The conception of health changed. Who developed and promulgated the understanding of health as, it defined an integrated approach linking together all the factor related to human wellbeing, including physical and social surrounding conducive to good health.

In the other context, the World Health Organization constitution affirms that the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition ^[11].

Legal Definition of Right to Health

The preamble of the constitution defines health as “a state of complete physical, mental and social well being and no merely the absence of disease or infirmity”. The universal declaration of human rights, 1948, mentioned health as part of the right to an adequate standard of living Article 25.

The enforcement of right to health as a part of right of life that comes under Article 21 of the Indian Constitution.

Element of a Right to Health

1. Progressive realization using maximum available resources- No matter what level of resources they have at their disposal, progressive realisation requires that governments take immediate steps within their means towards the fulfillment of these rights. Regardless of resource capacity, the elimination of discrimination and improvements in the legal and juridical systems must be acted upon with immediate effect.
2. Non-retrogression-States should not allow the existing protection of economic, social, and cultural rights to

Deteriorate unless there are strong justifications for a retrogressive measure in health prospective ^[12].

However, despite so much debate and discussion, public health spending in India remains substantially low. Moreover, it has never been accorded a high priority by the Union government as it falls under the state list. Besides, insurance is being project as a magic staff. Such discourse is misleading as most insurance policies cover only non communicable diseases. But health insurance can provide only cure, not prevention. As a society, we must learn from it hand must demand the.

Right to health in specific Sector

Right to health in general, consideration of the right to health of women needs to take into account at least two additional dimensions. Women’s right to health must be considered from a gender perspective. In addition, the prohibition against discrimination must be kept in mind both dimension are considered in article 12 (1) of The Convention on the Elimination of all forms of discrimination against women, 1979 relating to guarantees of access to health services without discrimination.

In Other Sector

The following are some specific issues and provision related to the right to health of specific sectors.

Prisoners: The Prisoners refer to health services in prison gives minimum health entitlement of prisoners and the general duties of doctors assigned to penitentiary establishment.

Disable Person: The United Nation declaration on the rights of disabled person address their rights to health care and rehabilitation services.

Victims of Violence: The United Nation declaration of Basic principles of justice form victims of crimes and abuse of power lay down the health and social services provisions that should be available for victims of violence including psychological assistance.

Mental Health: The United Nation principles for the protection of persons with mental illness and improvement of mental health care establish a series of standards to safeguards the human rights of mentally ill person, to this also reflected to the sector which is cover under right to health.

Essentials of right to health

The System of a healthcare system is made up of public health and healthcare facilities. The healthcare services is goods as well as healthcare Programmes. As per the General discussion, The Committee on Economic, Social and Cultural Rights, the right to health contains the following essential elements which as include.

Availability

According to this element, The state must make provision for a functioning and adequate healthcare system for the public and individuals throughout its territories. The precise nature of the healthcare system may vary. Still, it must necessarily include safe water, sanitation facilities, medical infrastructure, trained medical professionals, and essential drugs.

Accessibility

Accessibility describes its four kinds.

1. **Non discrimination:** In this tool there must be no discrimination in access to healthcare. reflected the history of right to health It must be accessible to all, especially vulnerable and marginalised communities.
2. **Physical accessibility:** The area of access to healthcare must be in a safe and physically reachable place. The area must be safe and physically reachable even for women, children, vulnerable and marginalised communities, adolescents, older persons, persons with disabilities, and rural area residents.
3. **Affordability:** Healthcare should be affordable for all. It must follow the principle of equity. The principle of equity dictates that healthcare expenses of medical ethics and culturally proportionate.
4. **Information accessibility:** Information and ideas concerning health. Information about health must be accessible to it, a person has the right to Look, Receive Quality and convey the professionals, relating health care, in the rights to health, for the purpose of historical

back ground, reflected to the situation the healthcare must be of good quality. It must be appropriate as per the scientific and medical stands. For example, trained medical professionals, safe and potable water, scientifically approved hospital equipment etc, so this the another essential which define the history and medical are and also expressed to Right to health.

Acceptability

According to it, healthcare must be respectful of medical ethic and culturally appropriate it should have respect for the culture and be sensitive to gender and life cycle requirements under historical background of rights to health. An other Background of Rights to Health- The world medical Association is committed to protecting and promoting the right to health in an inclusive manner. This includes essential aspects such as the availability of quality and affordable health services, safe environment and working conditions, adequate housing and nutritious food.

The Right to Health

A Human Right Enshrined in International Human Rights Law The right to health was first articulated in the World Health Organization Constitution (1946) which states that: "the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being. The preamble of the Constitution defines health as, a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.

The 1948 Universal Declaration of Human Rights mentioned health as part of the right to an adequate standard of living under article 25. It was again recognised as a human right in 1966 in the International Covenant on Economic, Social and Cultural Right Article 12.

Article 12 The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, which is relate to rights to health also.

In general provision of International covenant on economic, social and culture rights (ICESCR), the provision expressed that, the improvement of all aspects of environmental and industrial hygiene relating to health care.

The prevention, treatment and control of epidemic, endemic, occupational and other diseases

The Committee on Economic, Social and Cultural Rights, a body composed of independent experts a body in charge of monitoring the implementation of the Covenant, provided a broad interpretation of article 12 of the Covenant for the purpose of ensure the right to health.

The right to health is an inclusive right, extending not only to timely and appropriate health care, but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health care also.

There are other United Nation Special Procedures that have a direct or indirect link to health. The rights covered include the right to education, the right to water and sanitation, the right to food or the right to adequate housing. Similarly, for populations particularly exposed to human rights abuses, a special rapporteur is appointed. This is the case for women, children, migrants, persons with disabilities and LGBT

people for required to health environment to relate the right to health.

So all the legal context, maintaining place and ferity and leas there for considered to be of significant instrumental value. Connecting the history of the right to health with the history of public health and International law. It was intimately linked more than other socioeconomic rights also.

Evolution of the Right to Health in Historical Perspective

From time immemorial, man has been interested in trying to control deadly diseases, Chinese medicine claims to be the world first organized body of medical knowledge dating buck to 2700 BC. Similarly, Egyptians had one of the oldest civilizations, about 2000 B.C where in the public health, and the concept of heath in their culture. India has also one of the most ancient civilizations in recorded history.

The Manu Samhita prescribed rules and regulations for personal health dietetics and hygienic ritual at the time of birth & death, and also emphasized the unity of physical, mental and spiritual aspects of life "Sarve Jana Sukhino Bhavatu" (May all men be free from disease and may all be healthy) was an ancient saying of the Indian Sages.

This concept of happiness has its roots in the ancient Indian philosophy of life, which conceived the oneness and unity of all people wherever they lived. The religious teaching of Buddhism and Jainism dominated the post-Vedic period. Medical education was introduced in the ancient Universities of Taxila and Nalanda, leading to the titles of Pranacharya and Pranavishara. A women Hospital System was developed for men, women and animals and the system was continued and expanded by King Ashoka.

The next phase in Indian History witnessed the rise and fall of the Mughal Empire. The Muslim rulers introduced in India around the Arabic system of medicine popularly known as the Unani system, the origin of which is traced to Greek medicine.

The Unani system since then became, part of Indian medicine. With changes in the political conditions in India, the Universities and hospitals disappeared.

After this by the middle of the 18 century, the British had established their rule in India which lasted till 1947. With the passage of time and development in the field of science and technology, the study of health was neglected. But, however, during the past few decades, there has been a reawakening that health is a fundamental human right and a worldwide social goal; that it is essential to the satisfaction of basic human needs and to an improved quality of life; and that it is to be attained by all people.

Conclusion

In conclusion, the right to health stands as a fundamental pillar upon which the well-being, happiness, and potential of individuals and communities are built. As highlighted by the words of Benjamin Disraeli, the former British Prime Minister, a healthy population is the cornerstone of a prosperous and self-reliant state. This research has delved into the international recognition of the right to health, emphasizing its significance in various legal frameworks, including the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the World Health Organization's Constitution. The right to health encompasses not only access to medical care but also the broader determinants of health, such as safe

drinking water, sanitation, adequate nutrition, housing, and a healthy environment. It is a multi-faceted right that incorporates both freedoms, such as freedom from non-consensual medical treatment and torture, and entitlements, including access to essential healthcare services without discrimination. The conceptual framework of the right to health emphasizes the interconnectedness of various human rights, recognizing that factors like gender equality, non-discrimination, and information accessibility are integral components of ensuring the highest attainable standard of health for all. Furthermore, the right to health imposes obligations on states to progressively realize this right, utilizing maximum available resources and avoiding retrogressive measures.

Essentials of the right to health, as discussed in this research, include the availability, accessibility, quality, acceptability, and non-discrimination of healthcare services

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