
CRITICAL ANALYSIS OF THE VARIOUS FACETS OF RIGHT TO HEALTH UNDER ARTICLE 21 OF THE CONSTITUTION

Abhinav Viswanath, School of Law CHRIST (Deemed to be University)

ABSTRACT

The right to health is an essential component of the right to life and personal liberty under Article 21 of the Constitution of India. The scope of this right includes the right to access to healthcare facilities, essential medicines, standard quality of food and nutrition, clean air and water, a healthy environment, occupational health at workplaces, physical health, reproductive health, maternity and menstrual benefits, mental and emotional health among others. The right to health is not only a fundamental right but also a constitutional obligation of the State to provide adequate healthcare facilities to its citizens. The State's obligation to provide healthcare facilities is not limited to the provision of medical services but also includes the promotion of healthy living standards, prevention of disease, and control of epidemics. In addition to the State's obligation to provide healthcare facilities, the right to health also imposes duties on individuals to maintain their own health and contribute to the promotion of a healthy environment. The right to health is not absolute and can be restricted by the State in certain circumstances such as during an emergency. However, the right to health cannot be abrogated in any arbitrary manner, and ought to stand the test of a just and fair due process of law in consonance with the tests of reasonability and proportionality laid down by the Supreme Court. While the right to health is an inherent right that a person acquires simply by being human, the right in India is predominantly available only in theory and reason. The ground reality of the nation to the contrary is a stark difference with respect to the protection of health and availability of medical resources. Thus, it is essential to address the shortcomings of the implementation of the law by critically analysing the various facets of the right to health.

Keywords: Article 21, Right to health, Mental health, Reproductive health, Environmental health

1. INTRODUCTION

The Right to Life and Personal Liberty recognised under Art. 21 provides for a substantive as well as procedural due process of law that ought to be followed. The Right to Health has been recognised as an important facet of Art. 21. The scope of this right has been expanded to include not only the physical health, but also the mental health of the person. The health of a person can be affected either due to the result of a direct, or indirect consequence of a State action/inaction. The different facets of the right to health although well documented, are not being enforced in an adequate manner to protect the interests of the people. The implementation of laws and policies are substandard despite the abundance of judicial precedents that recognise the various facets of right to health.

The right to health is a fundamental human right that is recognized by various international human rights treaties and national constitutions. It is a right that guarantees access to the highest attainable standard of physical and mental health, as well as the right to access to health care services, including preventive, curative, and rehabilitative services. The right to health is an essential component of human dignity, and it is closely linked to other human rights, such as the right to life, non-discrimination, and equality. The recognition and realization of the right to health is critical to the development of a just and equitable society that upholds the dignity and well-being of all its members. In India, Art. 21 of the Constitution recognizes the right to life, which has been interpreted by the courts to include the right to health. The right to health under Art. 21 encompasses various facets, including access to health care, clean environment, healthy working conditions, right to food and nutrition, reproductive health, maternity and menstrual benefits, emotional and mental health among others. Each facet of the right to health ought to be recognised and protected by the State to ensure nutritious development of the nation.

2. ACCESS TO HEALTHCARE

One of the critical facets of the right to health is access to health care. The Supreme Court of India has held that the right to health includes the right to access essential health care services, including primary health care, maternal health services, and emergency medical treatment. The Supreme Court held that the right to health includes the right to access medical facilities and services, and it is the duty of the state to ensure that such facilities are available to all citizens,

especially the poor and marginalized.¹ The case recognized the right to health as a fundamental right and an integral part of the right to life by expanding the scope of Art. 21 beyond mere survival and recognized the importance of a healthy life. Secondly, the judgment emphasized the State's obligation to ensure that adequate medical facilities are available to all its citizens, particularly those who are economically disadvantaged.²

This has led to various healthcare initiatives and schemes by the government to provide medical facilities to the rural and economically backward areas. However, the implementation of these schemes has been suboptimal, and there are still significant disparities in healthcare access across different sections of society. The National Health Policy 2017 acknowledges that the benefits of the health system do not reach the poorest and most vulnerable sections of society.³ There is a need for the government to take more proactive steps to ensure that all citizens have access to adequate healthcare, particularly those who are economically disadvantaged. The reality in India is that access to health care services is limited, especially for vulnerable populations such as women, children, and the poor. The lack of infrastructure and facilities in rural areas, inadequate funding of public health care systems, and inadequate provision of health care services by the private sector are some of the key challenges that hinder access to health care in India.

3. AVAILABILITY OF ESSENTIAL MEDICINES

The availability of essential medicines is another critical component of the right to health. The Supreme Court held that access to essential medicines is an integral part of the right to health. The Court also observed that the State has an obligation to ensure that essential medicines are available to all its citizens, particularly those who are economically disadvantaged.⁴

However, despite this judgment, the availability of essential medicines remains a challenge in India. The National Health Policy 2017 acknowledges that the availability and accessibility of medicines remain a major challenge in the country, particularly in rural and remote areas.⁵

4. ENVIRONMENTAL HEALTH

A facet of the right to health under Art. 21 is environmental health. The Supreme Court of India

¹ *Paschim Banga Khet Mazdoor Samity v. State of West Bengal*, (1996) 4 SCC 37.

² *Id.*

³ National Health Policy, 2017.

⁴ *State of Punjab v. Mohinder Singh Chawla*, (1997) 2 SCC 83.

⁵ *Supra* Note 3.

has held that the right to health includes the right to live in a clean and healthy environment in a plethora of judgments. It is the duty of the state to protect the environment and ensure that the citizens are not exposed to hazardous substances.⁶ The court also emphasized the importance of the precautionary principle in environmental health, which means that the state must take preventive measures to avoid potential harm to human health.⁷ The Supreme Court has further held that the right to life under Art. 21 includes the right to a healthy environment. The Court emphasized that a healthy environment is essential for human life and dignity.⁸

However, despite this judgment, and despite the various environmental laws and regulations in India, environmental pollution continues to be a significant problem, leading to adverse health effects for the population, particularly in urban areas. The air and water quality in many cities are below the prescribed standards, leading to numerous health problems.

5. RIGHT TO FOOD AND NUTRITION

Art. 47 of the Constitution of India places a duty on the State to improve the standard of living and raise the level of nutrition and public health. The State must take steps to ensure that its citizens have access to healthcare facilities, safe drinking water, and other basic necessities.⁹

The Supreme Court emphasized the importance of providing access to healthcare facilities to all citizens, particularly those living in rural areas and those belonging to marginalized communities.¹⁰ The right to health is a fundamental right and that it is the duty of the State to ensure that its citizens have access to basic healthcare facilities wherein the Court emphasized the importance of ensuring that workers have access to healthcare facilities and that they are not subjected to hazardous working conditions.¹¹ The right to food and nutrition is also an integral component of the right to health. The Court observed that the State has an obligation to ensure that every person has access to adequate food and nutrition.¹²

Despite these rulings, there are still significant challenges in ensuring that all citizens have access to basic healthcare facilities and a safe living environment. The COVID-19 pandemic has highlighted the gaps in India's healthcare infrastructure and the need for urgent reforms to

⁶ Vellore Citizens Welfare Forum v. Union of India, AIR 1996 SC 2715.

⁷ Principle 15, United Nations Conference on Environment and Development, Rio Declaration 1992.

⁸ Subhash Kumar v. State of Bihar, AIR 1991 SC 420.

⁹ INDIA CONST. art. 47.

¹⁰ Paschim Banga Khet Mazdoor Samity v. State of West Bengal, (1996) 4 SCC 37.

¹¹ Bandhua Mukti Morcha v. Union of India, (1991) 4 SCC 177.

¹² PUCL v. Union of India, (2011) 15 SCC 357

improve the standard of living and raise the level of public health. According to the Global Hunger Index 2020, India ranks 94 out of 107 countries in terms of hunger.¹³

Art. 47 r/w Art. 21 is an essential aspect of the fundamental rights guaranteed by the Constitution of India. The State has a duty to improve the standard of living, raise the level of nutrition and public health, and ensure that its citizens have access to basic healthcare facilities. The Supreme Court of India has emphasized the importance of the right to health and the duty of the State to provide access to healthcare facilities to all citizens. However, there are still significant challenges in implementing these rights, and more needs to be done to ensure that all citizens have access to basic healthcare facilities and a safe living environment. The implementation of this right remains a challenge, given the various structural and systemic issues in the health care system and the wider society. The government must take proactive measures to address these challenges and ensure that all citizens can enjoy their right to health.

6. OCCUPATIONAL HEALTH

The right to health in hazardous industries is an essential aspect of the fundamental right to life under Art. 21 of the Constitution of India. The right to health in hazardous industries is crucial because the work in these industries can lead to serious health hazards and occupational diseases. The Constitution of India guarantees the right to life and personal liberty under Art. 21.¹⁴ The right to life includes the right to a healthy and safe environment. This right has been interpreted to include the right to health in hazardous industries. Occupational health is another facet of the right to health under Art. 21.

The Supreme Court of India has held that the right to health includes the right to work in safe and healthy conditions. It is the duty of the state to ensure that workers are not exposed to hazardous substances in the workplace.¹⁵ However, despite the various labour laws and regulations in India, many workers are still exposed to hazardous substances and work in unsafe conditions, leading to various health problems.

Several industries in India, such as mining, construction, and manufacturing, are hazardous and pose significant risks to the health of workers. These industries often involve exposure to toxic chemicals, hazardous substances, and other dangerous working conditions. Workers in these

¹³ Global Hunger Index 2020.

¹⁴ INDIA CONST. art. 21.

¹⁵ Consumer Education and Research Centre v. Union of India, (1995) 3 SCC 42.

industries are vulnerable to serious health risks such as lung diseases, skin disorders, and other occupational diseases.

The Supreme Court emphasized the importance of the right to health in hazardous industries. The Court held that workers in hazardous industries have the right to compensation for occupational diseases, and employers must take measures to ensure the safety and health of workers.¹⁶

Despite these rulings, the implementation of the right to health in hazardous industries remains a challenge in India. Many workers in hazardous industries do not have access to adequate medical facilities or compensation for occupational diseases. There is also a lack of awareness about the risks associated with working in hazardous industries, and workers often do not receive adequate training or protective gear.

The right has been recognised in several cases and the duty of employers to provide a safe working environment and prevent occupational diseases is well documented. However, there are still significant challenges in implementing the right to health in hazardous industries in India, and more needs to be done to ensure that workers in these industries have access to adequate medical facilities and compensation for occupational diseases.

7. REPRODUCTIVE HEALTH

Reproductive health is a fundamental aspect of human life, and it is essential for individuals to have access to adequate and affordable reproductive health care services. In India, the Constitution recognizes the right to life under Art. 21, which has been interpreted by the courts to include the right to reproductive health. The right to reproductive health care is a critical facet of reproductive health.¹⁷ The court also emphasized that access to reproductive health care services must be available to all, irrespective of their socio-economic status, and it is the duty of the state to ensure that such services are accessible and affordable to all citizens.¹⁸ Another facet of reproductive health is reproductive rights. Reproductive rights include the right to make informed decisions about one's reproductive health, the right to access contraception and safe abortion services, and the right to have control over one's own body. In the same case, the Supreme Court held that women have the right to make their own decisions about their reproductive health, including the decision to terminate a pregnancy. The court also

¹⁶ Indian Council for Enviro- Legal Action v. Union of India, AIR 1996 SC 1446.

¹⁷ Suchita Srivastava v. Chandigarh Administration, (2009) 9 SCC 1.

¹⁸ *Id.*

emphasized the importance of ensuring that women have access to safe and affordable abortion services. The court also held that women have the right to access contraception and other reproductive health care services and that the state must take proactive measures to ensure that these services are accessible and affordable to all.¹⁹

Reproductive health is also closely linked to gender equality. The Supreme Court of India has held that gender equality is a fundamental right under the Constitution, and reproductive health care services must be provided in a manner that promotes gender equality. Women have the right to make informed decisions about their reproductive health, and the state must take proactive measures to ensure that women have access to reproductive health care services in a manner that respects their dignity and autonomy.²⁰ The court also emphasized the need to eliminate gender discrimination and stereotypes in the provision of reproductive health care services and to ensure that women have access to a full range of reproductive health care services.²¹

The courts have thus played a critical role in interpreting and enforcing this right through various landmark judgments. However, the implementation of this right remains a challenge, given the various structural and systemic issues in the health care system and the wider society. The government must take proactive measures to address these challenges and ensure that all citizens can enjoy their right to reproductive health.

8. MATERNITY AND MENSTRUAL BENEFITS

Maternity leave is an important aspect of the right to health under Art. 21 of the Constitution of India. It is essential for protecting the health and well-being of pregnant women and their newborns. Art. 21 of the Constitution of India guarantees the right to life and personal liberty.²² The right to health includes not only the right to medical care but also the right to a safe and healthy working environment. Maternity leave is an essential facet of the right to health under Art. 21 of the Constitution.²³

The Maternity Benefit Act, 1961, provides for maternity leave and other benefits for women employees. The Act applies to all factories, mines, plantations, and establishments employing

¹⁹ Suchita Srivastava v. Chandigarh Administration, (2009) 9 SCC 1.

²⁰ Voluntary Health Association of Punjab v. Union of India, (2016) 10 SCC 265.

²¹ *Id.*

²² INDIA CONST. art. 21.

²³ Municipal Corporation of Delhi v. Female Workers (Muster Roll), (2000) 3 SCC 224.

ten or more persons. The Act mandates that women employees are entitled to twelve weeks of maternity leave. The Act also provides for other benefits such as medical bonus and nursing breaks.²⁴

However, there are several challenges with the implementation of maternity leave in India. The Maternity Benefit (Amendment) Act, 2017, increased the duration of maternity leave from twelve weeks to twenty-six weeks.²⁵ While this is a positive step, many women in the informal sector do not have access to these benefits. There is also a lack of awareness among women about their entitlements.

Another challenge is the stigma associated with pregnancy in the workplace. Many women face discrimination and bias when they announce their pregnancy, and this can lead to unfair treatment, including job loss or demotion.

Menstrual leave is a policy that provides women with paid leave during their menstrual cycle. Menstrual leave is recognized in several countries, including Japan, Indonesia, South Korea, and Taiwan. However, menstrual leave has not been widely implemented in India, and many women continue to face significant challenges in accessing menstrual health care.

The State ought to make provisions for a just and humane conditions for work.²⁶ Menstruation is a biological process that every woman has to go through and the State ought to thus ensure policies that benefit the women that go through the tremendous pain during their menstrual cycle. The right to dignity²⁷ and privacy²⁸ are both facets of Art. 21. Due to the biological changes and the mental stress that women go through during a menstrual cycle, it can be considered as an important facet of the health of the women, and thereby under Art. 21.

However, there are also criticisms of menstrual leave as a policy. It may reinforce gender stereotypes and lead to discrimination against women in the workplace, and it may lead to a loss of productivity and increase the gender pay gap. There are several challenges with the implementation of maternity leave in India, particularly for women in the informal sector. There is a need for more awareness about maternity benefits, and the government needs to take steps to ensure that all women have access to maternity leave and other benefits. The

²⁴ Maternity Benefit Act, 1961, No. 53.

²⁵ Maternity Benefit (Amendment) Act, 2017, No. 6.

²⁶ INDIA CONST. art. 42.

²⁷ Maneka Gandhi v. Union of India, AIR 1978 SC 597.

²⁸ K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.

government also needs to address the stigma associated with pregnancy in the workplace to ensure that women can exercise their right to maternity leave without fear of discrimination or bias. Menstrual health care is critical to women's reproductive health, and denying women menstrual leave amounts to a violation of their right to health. While there are criticisms of menstrual leave as a policy, there is a need to recognize menstrual leave as a right and to ensure that women have access to adequate menstrual health care. The implementation of menstrual leave policy should be done with care and should not lead to discrimination against women in the workplace.

9. MENTAL HEALTH

Mental health is a crucial aspect of an individual's well-being, and it is essential to have access to adequate and affordable mental health care services. The right to access mental health care and health care facilities are a critical facet of mental health. The government has a duty to provide adequate and affordable mental health care services to all citizens, especially to those who cannot afford it.²⁹

Mental health is closely linked to an individual's dignity and autonomy. Mental illness does not diminish an individual's dignity and autonomy, and it is the duty of the state to respect and protect the dignity and autonomy of persons with mental illness. The rights of transgender persons and the need to protect their dignity and autonomy is an important facet of the right to mental health. Transgender persons have the right to access mental health care services that respect their dignity and autonomy.³⁰

Mental health is also closely linked to non-discrimination and equality. Discrimination on the grounds of mental illness is a violation of the right to equality. Persons with mental illness have the same right to dignity and autonomy as other persons, and they must be treated with respect and equality. The court also held that the state must take proactive measures to eliminate discrimination and stigma associated with mental illness and ensure that persons with mental illness have access to adequate and affordable mental health care services.³¹

Mental health is an essential aspect of an individual's well-being, and the Constitution recognizes the right to mental health care under Art. 21. The courts have played a crucial role in interpreting and enforcing this right through various landmark judgments. However, the

²⁹ Parmanand Katara v. Union of India, AIR 1989 SC 2039.

³⁰ National Legal Services Authority v. Union of India (2014) 5 SCC 438.

³¹ Paschim Banga Khet Mazdoor Samity v. State of West Bengal, (1996) 4 SCC 37.

implementation of this right remains a challenge, given the various structural and systemic issues in the health care system and the wider society. The government must take proactive measures to address these challenges and ensure that all citizens can enjoy their right to mental health.

10. CONCLUSION & SUGGESTIONS

To summarise everything that has been dealt with, the right to health under Art. 21 of the Constitution encompasses a broad range of aspects related to physical, mental, emotional, and environmental health. It is not only a fundamental right but also a constitutional obligation of the State to provide adequate healthcare facilities to its citizens.³² The right to health also imposes duties on individuals to maintain their own health and contribute to a healthy environment.³³ The right to health under Art. 21 has been interpreted expansively to include the right to medical care, the right to a healthy environment, the right to information related to one's health, the right to be free from medical negligence among others. The importance of the obligation of the State to promote mental well-being and provide adequate facilities for the treatment of mental illness is also an important facet of the right.

The right to health has been recognized as an essential component of the Universal Declaration of Human Rights, and India has ratified various international conventions and treaties that recognize the right to health as a human right. However, despite the constitutional and international recognition of the right to health, the ground reality in India is far from ideal. There is a huge disparity in access to healthcare facilities, particularly in rural and remote areas, and the quality of healthcare services in many parts of the country is inadequate.

To ensure that the right to health is upheld in practice, the government needs to increase its expenditure on healthcare and focus on improving the quality of healthcare services. It also needs to adopt a comprehensive approach to healthcare that addresses not only the provision of medical services but also the promotion of healthy living standards, prevention of disease, and control of epidemics. The government also can undertake measures such as increasing healthcare spending, enhancing primary healthcare infrastructure, implement universal health coverage, increase health workforce, improve quality of healthcare services, strengthen public healthcare system, and promote preventive healthcare.

³² INDIA CONST. art. 47.

³³ INDIA CONST. art. 51A(g).