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FROM DECLARATION TO REALITY: THE HISTORICAL EVOLUTION OFTHE RIGHT TO HEALTH IN CONSTITUTIONAL LAW AND ITS IMPACTON PUBLIC HEALTH POLICIES

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Abstract

This research paper delves into the historical evolution of the Right to health within the realmof constitutional law and its profound implications on shaping public health policies. Tracing its origins from international declarations to its incorporation into national constitution, the study examines the transformative journey of the Right to health as a fundamental human right. Through a comprehensive analysis of five-year plans in India, legal frameworks, and judicial interpretations, the paper explores how the Right to health has evolved, emphasizing the pivotal role of constitutional interpretations.

The research critically evaluates the impact of constitutional recognition of the Right to health on developing and implementing public health policies in various jurisdictions. It investigates how constitutional guarantees influence healthcare accessibility, affordability,and quality, thereby shaping the overall health landscape of nations.

Drawing upon historical contexts, legal analyses, and real-world examples, this research contributes valuable insights into the ongoing discourse surrounding the Right to health. By understanding the historical evolution and the contemporary challenges, policymakers, legal scholars, and healthcare practitioners can gain a nuanced perspective to inform future legislative reforms and policy initiatives. This paper ultimately advocates for a comprehensive approach, where legal frameworks, public health policies, and societal efforts harmoniously converge to realize the fundamental human right to health for all.

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Key Words

1. Right to Health
2. History
3. Constitutional recognition
4. Policy implementation

Introduction

In India, the concept of health has been highly valued throughout its historical development. In ancient times, emphasis was placed on cleanliness and a healthy environment, recognized as vital components of good health. Additionally, the period saw the flourishing of Ayurveda, with renowned physicians like Charaka and Susruta contributing significantly to healthcare. During the Mughal Rule, Unani and Siddha medicine gained prominence, and later, under British Rule, modern medical science emerged.

After Independence, health was initially categorized as a non-justiciable right under the Directive Principles of State Policy, subject to state discretion for implementation. However, recognizing its crucial importance, the Supreme Court of India elevated health to the status of a Fundamental Right, incorporating it within the broader scope of the 'Right to Life' under Article 21 through landmark decisions. Despite its significance, the lack of explicit mention in the Constitution has led to insufficient awareness, violating this vital Right.

To enhance public awareness and safeguard this fundamental right effectively, there is a pressing need to explicitly include the 'Right to Health' under Article 21 through a constitutional amendment, similar to the incorporation of the Right to Education underArticle 21A.

The Right to health, a fundamental aspect of human dignity and societal well-being, has profoundly evolved within the intricate framework of constitutional law. Emerging from international declarations and finding its resonance in national constitutions, this Right has played a pivotal role in shaping public health policies across diverse jurisdictions. Its historical trajectory, marked by legal battles, social movements, and transformative policy shifts, illuminates the complex interplay between legal mandates and practical healthcare provisions.

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Meaning of Health

Health is a fundamental human right of every individual. We usually mean the Right to healthas the availability or accessibility of primary healthcare facilities without discrimination against everyone. However, it is something beyond that in which pure drinking water, sanitation, clean environment, etc, are all included. Some freedoms, such as freedom from non-consensual medical treatment or medical research, forced sterilization, and freedom fromcruel, inhuman, or degrading treatment or punishment, are also included.

Health is a state of complete emotional, mental, and physical well-being. Healthcare exists to help people stay well in these key areas of Life.[1]

Historical Background of Right to Health

The historical background of the Right to health is intricate and spans several centuries. The concept of the Right to health as a fundamental human right has evolved, influenced by social, economic, political, and medical developments. Here is a brief overview of the historical background of the Right to health:

1. Early Philosophical Foundations:

The idea of health as a fundamental human right has roots in ancient civilizations. Early philosophical writings, including those from ancient Greece and Rome, emphasized the importance of health for individual well-being and societal prosperity. However, these notions needed to be codified into legal or constitutional frameworks.

2. Post-World War II Declarations:

The aftermath of World War II and establishing the United Nations (UN) ushered in a newera for human rights. The UDHR, 1948 declared the right to a sufficient standard of living forhealth and well-being, encompassing medical care. This declaration set a foundational precedent for internationally recognizing health as a human right.

3. International Covenant on Economic, Social, and Cultural Rights (ICESCR):

The ICESCR, adopted in 1966, provided a more detailed framework for economic, social, and

[1] Defined by WHO in 1948

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cultural rights, including the Right to health. Article 12 of the ICESCR recognizes "Everyone has the right to enjoy the best possible physical and mental health." It obligates states to take steps to prevent, treat, and control diseases.

4. Alma-Ata Declaration (1978):

The Alma-Ata Declaration emerged from an international conference on primary health care which is organized by the World Health Organization (WHO) and UNICEF. It emphasized the significance of primary healthcare as the essential means to attain the objective of "Healthfor All."This declaration highlighted the significance of health as a fundamental right and stressed the need for accessible and affordable healthcare services.

5. Evolution in Constitutional Law:

Many countries started incorporating the Right to health into their constitutions or legal frameworks during the latter half of the 20th century and into the 21st century. These constitutional provisions recognized the Right to health as a fundamental human right, often leading to legal obligations to provide healthcare services.

6. Millennium Development Goals (MDGs) and Sustainable Development Goals (SDGs):

The international community's commitment to health as a human right was further reinforced through the MDGs and, later, the SDGs. Goal 3 of the SDGs aims to ensure healthy lives and promote well-being for all irresepctive thier age, emphasizing the universal Right to health and healthcare access.

7. Recent Developments:

Ongoing global health crises, such as the HIV/AIDS pandemic, Ebola outbreaks, and the COVID-19 pandemic, have highlighted the importance of the Right to health. These crises have spurred discussions on equitable access to healthcare services, the role of governments, and international cooperation in upholding the Right to health. In summary, the historical background of the Right to health reflects a continuous progression from philosophical ideals to international declarations, legal frameworks, and global development goals. This evolutionunderscores the recognition of health as a fundamental human right and the ongoing efforts toensure that this Right is realized for everyone, regardless of their socioeconomic status or geographic location.

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Five-Year Plans And Health

India's journey in the healthcare sector, from the First Five-Year Plan (1951-1956) to the present, has witnessed significant contributions and transformations. Here is an overview of India's progress in the healthcare sector across various Five-Year Plans and beyond

The first to Fourth Five-Year Plans (1951-1966) focused on basic healthcare structures and control of communicable diseases. Initiatives were introduced to improve maternal and child healthcare to reduce maternal and child mortality rates. In the Fifth to Eighth Five-Year Plans (1966-1997), the healthcare network expanded further by establishing medical colleges, nursing schools, and specialized healthcare institutions. Alma-Ata Act of 1978 emphasized primary health care services. Various national health programs were launched, including the Expanded Program on Immunization (EPI) and the National Rural Health Mission (NRHM) and population control through family planning. Ninth to Eleventh Five-Year Plans (1997- 2012) focused on the advancement of medical technology, Collaborations between the public and private sectors in healthcare service delivery increased, Focus on disease control continued with initiatives against HIV/AIDS, malaria, and other significant diseases, Health insurance schemes, including the Rashtriya Swasthya Bima Yojana (RSBY), was introduced to provide financial protection for healthcare expenses, NRHM aimed at strengthening rural healthcare services, focusing on maternal and child health, immunization, and disease control which was established in 2005. Twelfth to Fifteenth Five-Year Plans (2012-2022) wereplaced very prominent in which the goal of achieving Universal Health Coverage (UHC) gained prominence. Initiatives like Ayushman Bharat - Pradhan Mantri Jan Arogya Yojana (PMJAY) aimed to provide health insurance coverage for vulnerable populations. Efforts increased to address non-communicable diseases like diabetes, cardiovascular diseases, and cancer. The Ayushman Bharat scheme included the establishment of Health and Wellness Centers, focusing on preventive and primary healthcare. The healthcare sector played a central role during the COVID-19 pandemic, with the Government implementing various measures to control the spread of the virus and provide healthcare support.

In recent years, India's healthcare sector has seen significant advancements in digital health, telemedicine, research and development, and public-private partnerships, contributing to a more comprehensive and accessible healthcare ecosystem. While challenges remain, the country continues to make strides in improving healthcare services for its citizens.

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Role of Committees and implementation of health polices

The various committees have contributed to health planning to improve the healthcare sectors. One of the most prominent committees is the Bhore Committee, constituted before Independence i.e., in 1943. It is also known as the Health Survey and Development Committee, headed by Chairperson Mr. Joseph Bhore. The committee recommended developing the primary health sector in two stages: short-term measures and long-term measures and publicly financed assistance. The present Ayushman Bharath scheme is following the recommendations of the Bhore committee. After Independence, there two prominent committees significantly contributed to health care. Firstly, the Mudaliar committee in 1962. It is also called the "Health Survey and Planning Committee". This committee addressed the all the lacunas which were there in the first two five-year plans. The main recommendations of this committee are to Consolidate the progress made in the first two 5-year plans, to upgrade the existing primary heath care centres, and to enhance the capabilities of district hospitals by deploying specialists, enabling them to function as effective referral centers and provide better services as a central base of regional services, to establish a regional administrative tier positioned between the state headquarters and district levels, led by Regional Deputy or Assistant Directors. Each of these officials will oversee the work of 2 or 3 district medical and health officers.

Secondly, the Chadha committee in 1963 recommended the integration of health and family planning services and there should be vigilance operations under NMES, and the Basic health workers were seen as 'multipurpose workers.'

To review the U.N advisory mission the Government of India commissioned the special committee called Mukherjee Committee. After a fourth year plan, which was badly criticized for its overweight of social, economic and political turmoil, and Fifth year plan has been implemented, In 1973 the Karthar Singh committee which recommended to remove uni- purpose working system as it was leading to loss of public money and shift to to multi- purpose working system,

The Srinivasan Committee in 1975 mainly focused on the Medical Education and addressed the shortage of man power in health care centres in rural areas, and recommended to have a more trained manpower and to improve in the medical education. All the recommendations were at stay due to declaration of emergency in mid of fifth year plan due to which The family planning measures were got disturbed which had one of the authoritarian tone in the overall policies.

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Sixth year plan was completely focused on the Community based health system and it occupied the centre stage of health policy which primarily influenced the Alma-Ata declaration,1978 and ICSSR and ICMR report 1980. The plan advocated the community- based health care system with underlying object of introducing the inclusive health care system. The health policies in India had experienced a paradigm shift in the form of first National Health Policy in 1983.

National Health Policy 1983[2]

It was the first National Health Policy India which was time bound programme with a object to set up a well dispersed network of primary health care centres and an integrated network ofevenly spread speciality and super specialty services, by the year 2000.

To achieve above objects, policy recommended for de-professionalism and decentralized system of health care system. Unfortunately due to poor socio-economic condition in the country and biased policies, the 1983 policy have failed.

National Health Policy 2002[3]

In the year 2002, the Government of India revised the policy and they bought the unmet goalsto achieve better health care services. The main objectives of this policy are, including primary health care approach and decentralised health care system it aimed for enhanced contribution of private and NGOs in health care systems and strengthening and extending the public health services.

National Health Policy 2017[4]

Although the 1983 and 2002 policies guided to serve the recommendations of five year plans but as the priorities towards health are changing, the new health policy 2017 is implemented to serve these changing priorities and betterment in the health care sector. The main objectiveof this new policy is to expand preventive, promotive, curative, palliative and rehabilitative services with focus on quality. And to talk about specific goals of this policy is to increase life expectancy from 67.5 to 70 by 2025, Reduction of TFR to 2.1 at national and sub- national level by 2025. It aimed to reduce the incidence of increase in TB and to completely eliminate by 2025 and cure

[2] See National Health Policy 1983
[3] See National Health Policy 2022
[4] See National Health Policy 2017

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more than 85% of TB patients. It also aimed to reduce the prevalence blindness and 25% of premature mortality from cardiovascular diseases, cancer, diabetes and etc., by 2025.

Recognition of the Right to Health by the Judiciary

The provisions of Directive principles of State policy obligateThe state aims to elevatenutrition levels, enhance living standards, and better public health conditions. However, as these provisions are not enforceable in courts of law, it felt inadequate to mandate health care services. Therefore, the Judiciary, the guardian of the Constitution, had often interpreted constitutional provisions, such as the Right to Life and personal liberty, expansively to include the Right to health. In India, Article 21 of the Constitution has been interpreted to encompass the Right to health and medical care. For mandating healthcare services, Courts can issue directives to ensure the provision of healthcare services.

The first case in which the Right to health was challenged was in 1981. The Indian Supreme Court declared that the Right to health and medical care is a part of Article 21 of the Indian Constitution.[5] After three years, in 1984, the Supreme Court again held that the Right to health is an integral part of Article 21, which itself derived from the Directive principles of state policy.[6] Right to Life encompasses workers' health; the provision mandates all the stakeholders, be it State/industry, be it private or public, to ensure health and leisure to workers in employment, which should be ensured even after employment.[7] It is the primary duty of both Public health centers and Private health centers to provide immediate medicalaid to accidental cases without waiting to complete the formalities of the police in order to preserve human Life.[8] The Supreme Court issued the guidelines for the functioning of the blood bank, and blood banks should ensure the availability of blood that is healthy and free from any infections.[9]

Thus, it is evident that the Judiciary played a significant role in Recognizing the Right to health as a Fundamental Right. However, there is still a long way to bring all healthcare facilities to the public.

[5] Francis Coralie Mullin v. Union Territory of Delhi 1981
[6] Bndhua Mukti Morcha v. Union of India, 1984
[7] Consumer Education and Resource Centre v. Union of India, 1995)
[8] Parmananda Katara v. Union of India, 1989
[9] Union of India v. Common Cause, 1996

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Critical analysis of Right to health

As we have seen from the history, how much struggle it was to access to the health care services. Several committees recommended for the different approaches to the betterment of the health status in the nation, Five years plans have been implemented in responsive of manycommittee recommendations which have again failed to fulfilled the expected status of healthdue to various reasons but one common reason for failure of all the policies are Socio- economic conditions. In the current scenario, although 2017 policy is one of the best policies and bought many positive changes and Judiciary recognised it as Fundamental Right under Article 21, Do you all think still the expected results are achieved ? The Covid-19 is the best example which demonstrated the survival of richest. Where is the equal treatment under Article 14? Doctor used to treat only people who are close to them or family friends, Whereis the Fundamental Right under Article 21?

Conclusion

The Right to Health is undoubtedly a basic Human Right that must be available to everyone without discrimination. In every development phase, International Covenants, Health committees, and the Judiciary contributed significantly. Courts have recognized this Right as Fundamental through various leading judgments. In recent times, after COVID-19, the Right to health is considered of paramount importance. Even after all the efforts made by the Judiciary to recognize the Right and the Five-year plans helped to implement sound policies throughout, the Right still needs to reach the public as there is a lack of proper treatment in public hospitals and more corruption in private health sectors. In rural areas, people need more awareness about the Right to health and the remedies available against its violation. To overcome this, the Government must take the initiative to host awareness programs, and the legislature must consider inserting it as an expressed Fundamental Right.

References

1. Banerji, D. (1975). Social and Cultural Foundations of the Health Services Systems of India. Inquiry, 12(2), 70–85. http://www.jstor.org/stable/29770932
2. Deodhar, N. S. (1982). Primary Health Care in India. Journal of Public Health Policy,3(1), 76–99. https://doi.org/10.2307/3342068
3. Downie, R., & Garba, D. (2017). Accelerating Health Innovation in India. InAccelerating

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Health Innovation in India (pp. 1–27). Center for Strategic and International Studies (CSIS). http://www.jstor.org/stable/resrep23955.5

4. Duran, A., Gulati, K., Gunasekar, A., Gupta, S. K., Kumar, P., Lahariya, C., & Singh,

A. R. (2015). Public hospital governance in India. In D. Huntington & K. Hort (Eds.),Public Hospital Governance in Asia and the Pacific (pp. 222–255). World Health Organization. http://www.jstor.org/stable/resrep28456.9

5. Gautam Kumar Jha (2020) Evolution of Health care and Rights , Advances in Economics, Business and Management Research, volume 140, Jawaharlal Nehru Uniersity, New Dehli.
6. Ma, S., & Sood, N. (2008). A Brief History of the Health Systems in China and India.In A Comparison of the Health Systems in China and India (1st ed., pp. 5–12). RAND Corporation. http://www.jstor.org/stable/10.7249/op212capp.9
7. Meier, B. M., & Fox, A. M. (2008). Development as Health: Employing the Collective Right to Development to Achieve the Goals of the Individual Right toHealth. Human Rights Quarterly, 30(2), 259–355. http://www.jstor.org/stable/20072846
8. Katz, Alexandra. "India emerges as new destination for Russian medical tourists". Retrieved Jan 14, 2020.