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CONSTITUTIONAL PROVISIONS RELATING TO THE RIGHT TO HEALTH AND COVID-19

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Introduction

The SARS CoV2 virus epidemic, also known as the COVID19 pandemic, has had an influence on individuals' social, economic, political, and cultural life all around the world. The pandemic's unexpected emergence has revealed countries' legal preparation, or lack thereof, to mitigate and contain the disease's devastating effects. In every epidemic or pandemic emergency, strong legislative actions are critical. In light of this, the Indian government has urged that all state governments use the Epidemic Disease Act (EDA) of 1897 to deal with the COVID19 crisis. The powers granted by the Disaster Management Act (DMA) of 2005 have also been employed by the central government.

As the country faces its first significant health emergency since independence, existing legal mechanisms to cope with a COVID19-like situation are insufficient and will require modifications in the future. This study seeks to uncover grey areas in the statutory requirements by presenting India's existing constitutional and legislative response to health emergencies. Based on the findings, this report proposes many amendments to present legislation as well as the adoption of a comprehensive public health law.

Health is a condition of complete physical, mental, and social well-being, not just the absence of sickness. The right to the best possible health is one of every human being's fundamental rights around the world. As the world's leader in public health, the World Health Organization is responsible for ensuring worldwide public health. Every United Nations member state has established its own healthcare infrastructure and medical services to ensure the health of its citizens. The catastrophic health crisis sparked by the Covid-19 outbreak has demonstrated that India's healthcare infrastructure and medical services are lacking.

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The Covid-19 pandemic confined half of the world's inhabitants to their homes. To control and prevent the spread of Coronavirus, the Indian government implemented a countrywide lockdown and confined citizens to their homes. People in India experienced a number of socio-economic issues during the national lockdown. During the lockdown, basic rights like as the freedom to learn, earn, and travel freely, which are crucial to the right to life, are confiscated. Several medical experts who were on the front lines of the fight against Coronavirus became sick and died. The goal of this study was to show how the Covid-19 epidemic has affected India's right to health and medical treatment.

The right to health and medical treatment is one of the fundamental right. In Vincent Panikurlangara vs. Union of India(1), the Supreme Court of India stated that maintaining and improving public health must be prioritised because they are essential to the community's physical survival, and their improvement is dependent on the creation of the society that the constitution-makers envisioned. As a result, the court believes that public health is a high priority—perhaps the highest of all (2). All member nations have taken efforts to ensure public health under the auspices of the United Nations. To fulfil the health demands of their inhabitants, the countries have created their healthcare infrastructure.

The World Health Organization's unprecedented declaration of a public health emergency of international significance has raised various concerns about current healthcare infrastructure and medical services throughout the world. Since December 2019, when China reported the first case of Covid-19 to the WHO, nearly 15 million instances of Corona positive have been documented globally, with a mortality toll of 615,000 individuals (3). This number is rapidly increasing every day. After the United States and Brazil, India is the world's third most afflicted country. More than 11.5 million Covid-19 instances have been documented till July 20, 2020, according to the Ministry of Health and Family Welfare.

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study was to show how the Covid-19 epidemic has affected India's right to health and medical treatment.

Health Related Constitutional Provisions

Right to Health as understood under Directive Principles of State Policies-

Part IV of the Indian Constitution deals with the "Directive Principles of State Policy," which are a set of principles that govern government policy. Despite the fact that the Directive Principles are said to be vital to the country's government, they are not legally enforceable. As stated in the Preamble, they are rules for establishing a social order marked by social, economic, and political justice, liberty, equality, and brotherhood. These principles are vital to the country's governance, and the state has a responsibility to apply them while enacting laws. The following guidelines are important from the standpoint of the Right to Health.

1. Article 39: Certain principles of policy to be followed by the State: This article protects the employees' health and strength, including men and women. It also requires that children be provided with the opportunity and resources they need to develop in a healthy, free, and dignified way, and that childhood and youth be safeguarded from exploitation and moral and material abandonment. It is true that Article 39 (e) and (f) of the Constitution shows that the framers were concerned about protecting and safeguarding the interests and welfare of employees and children. It declares that the working class is vital to the nation's development, and that the state government must preserve their health. While delivering the court's opinion in Lakshami Kant Pandey v. Union of India3, BHAGAWATI, J. stated, "It is obvious that in a civilised society, the importance of child welfare cannot be overemphasised because the welfare of the entire community, its growth and development, is dependent on the health and well-being of its children." Children are a vital national asset, and the nation's future well-being is dependent on how its children grow and develop."

Furthermore, the Supreme Court decided in Sheela Barse v. Union of India4 that "a kid is a national asset, and it is the State's obligation to take for the child with a view to guaranteeing complete development of its personality." The Constitution 42nd Amendment Act of 1976 changed clause (f) to emphasise the government's positive role in the lives of children.

2. Article 42: Provision for just and humane conditions of work and maternity relief - This Article requires the state to provide provisions for reasonable and humane working conditions as well as maternity leave. 6 The Supreme Court concluded in U.P.S.C. Board v. Harishankar7 that Article 42 is the foundation of India's greater framework of labour legislation. The Supreme Court further emphasised that the Constitution displays a significant concern for the welfare of employees, citing Articles 42 and 43. The Directive Principles may not be enforced as such, but the Court must interpret the legislation in a way that advances rather than hinders the Directive Principles' aim.

The essence of Article 42 is that it serves as the foundation for the body of labour legislation and worker welfare. The Court must interpret the law in order to meet the DPSP's objectives.

3. Article 47: Duty of the State to raise the level of nutrition and the standard of living and to improve public health - The State shall regard raising the level of nutrition and the standard of living of its people, as well as improving public health, as one of its primary duties, and in particular, the State shall endeavour to prohibit the consumption of intoxicating drinks and drugs that are harmful to health, except for medical purposes.10

When reading Article 47, the Supreme Court correctly ruled that public health must be preserved for the benefit of society. Furthermore, it has been argued that in this welfare age, the state's major responsibilities are to enhance people's nutrition and standard of living.

Right To Health in reference to Fundamental Duties:

The Indian Constitution's PART IV-A addresses citizens' basic responsibilities. Article 51 -A. Fundamental responsibilities: Every citizen of India shall have the responsibility to (g) maintain and develop the natural environment, including forests, lakes, rivers, and wild life, as well as to have compassion for all living beings. It demonstrates that every person has a basic responsibility to conserve and develop the natural environment, which is linked to public health.

Right to Health under Fundamental Rights:

Fundamental rights are addressed in Part III of the Indian Constitution. Fundamental rights are not unrestricted; they are subject to reasonable limits. The Supreme Court's primary job is to interpret the law. The Indian Constitution does not include a right to health, i.e. under a particular clause, you have the right to the best bodily and mental health you can get. However, under Article 21 of the Constitution, the Indian court treats the right to health as an inherent aspect of the right to life, which is guaranteed to all human beings.

Article 21: Protection of Life and Personal Liberty:

The multi-dimensional interpretation of Article 21 is a significant advance in Indian constitutional law. Under its broad reading of Article 21, the Supreme Court has come to put affirmative responsibilities on the state to take actions to ensure the individual's greater enjoyment of life and dignity. The right to health, as defined by Article 21, is concerned with the preservation and enhancement of public health, as well as environmental betterment.

The Supreme Court of India in Bandhua Mukti Morcha v Union of India & Ors construed the right to health under Article 21, which ensures the right to life, because there is no specific mention of the right to health or healthcare in the Constitution and the Supreme Court also ruled that, while the DPSP are not legally obligatory and simply have persuasive value but they should be honored by the state in public policies . Furthermore, the Court determined that under Article 21, dignity and health are included in the definition of life and liberty.

The Supreme Court stated in State of Punjab & Ors v Mohinder Singh Chawla held that the right to health is basic to the right to life and that the government has a constitutional responsibility to provide health care. The court went on to support the state's obligation to sustain health services in State of Punjab &Ors v Ram LubhayaBagga.

The right to health and medical help to safeguard a worker's health and vigour, both while in service and after retirement, was ruled to be a basic right under Article 21 in the following case of Consumer Education and Research Centre V. Union of India AIR 1995 SC 922.

Because the right to health is inextricably linked to the right to life, it is a basic right guaranteed to every Indian citizen under Article 21 of the Indian Constitution. We owe the acknowledgment of

this right to the Supreme Court of India, which logically expanded its understanding of the right to life to encompass the right to health through a series of legal decisions.

In September 2019, the 15th Finance Commission's High-Level Group on the Health Sector urged that the right to health be deemed a basic right. It also proposed that the issue of health be moved from the State List to the Concurrent List. If enacted, the suggestion to make the right to health a basic right will improve people's access to healthcare. The later suggestion to move health to the Concurrent List, on the other hand, will raise a constitutional question about whether centralising public health will be beneficial in the context of Indian cooperative federalism.

As a result, it is the State's responsibility to protect the public's health, and the Central Government and several State governments have taken appropriate and proactive steps to prevent the introduction and spread of the COVID-19 pandemic.

Impact

Due to a lack of or limited access to healthcare and other basic requirements, India's marginalised populations have been disproportionately affected by the current pandemic, further exacerbated glaring inequities. The statement of solidarity necessitates that the government and institutions treat everyone equally and preserve their rights without regard to sex, caste, class, religion, or language. Domestic solidarity at the national level would compel state governments and institutions to seek standard answers to common difficulties in the benefit of all citizens.

COVID-19's territorial implications:

The COVID-19 problem has a strong geographical dimension, as not all regions have been equally affected, and the medium- and long-term consequences will differ.

The health crisis:In terms of stated cases and accompanying deaths, the health crisis has had drastically diverse consequences among areas and municipalities within nations. Regional differences in mortality rates are considerable in certain countries, reflecting variations in health-care access, illness susceptibility (e.g., demographic factors, comorbidity rates, etc.) and socio-economic situations. In the early stages of the pandemic, heavily populated metropolitan areas were the worst impacted, although COVID-19 expanded to less densely inhabited areas in certain nations

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in the second half of 2020 and 2021. In many nations, there is mounting evidence that locations at the bottom of the economic scale and impoverished neighbourhoods have higher death rates.

The economic crisis:The COVID-19 dilemma has a different economic impact in different parts of the world. The effect of the crisis has been magnified by regional economic specialisation in industries directly or indirectly affected by the crisis, as well as involvement in global value chains, particularly in regions with a significant proportion of SMEs (OECD, 2021[2]). Regions are also affected differently based on their capacity to "telework," which is exacerbated by digital divides. Even when these digital inequalities are ignored, cities have a 13-percentage point greater share of occupations that can be done from home than rural places. Unemployment rose sharply in numerous OECD countries in the second half of 2020 compared to the same time in 2019, with significant regional variances in Chile, the Czech Republic, Greece, Mexico, and Spain, for example.

Subnational Finance: The health and economic crises have had a detrimental influence on subnational government expenditure and revenue, according to data for 2020. However, in certain countries, such as Finland, France, Germany, Japan, and Spain, the influence is smaller than what earlier polls suggested. This can be ascribed, at least in part, to considerable central/federal government steps to help local financing, as well as expenditure cuts and investment project deferrals or cancellations. However, there is still a lot of uncertainty in the long run. A multitude of elements are at play here.

Firstly, there are concerns about the health situation and vaccination implementation. Secondly, many important expenses that were postponed in 2020 are no longer possible to postpone forever. Thirdly, tax income in 2020 in many nations reflected actions in 2019, not 2020 and fourth, the impact on subnational financing in 2021 and 2022 will be determined by the degree and continuance of higher-level government support.

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Conclusion

The outbreak has revealed India's healthcare system's serious flaws. Much of this can be attributed to India's low public health spending with – 1.29 percent of GDP (in 2019-20), which is lower than most other nations. Another important reason for India's poor public health is the lack of a legal framework that exclusively guarantees a fundamental right to health and implements it within the framework of legal devices and human rights principles of solidarity, proportionality, and transparency, which will aid India in addressing COVID19's challenges. The right to health will be implemented within India's co-operative federalism framework, which will strengthen capacities where they are most needed — at the grassroots.

The COVID-19 epidemic has pushed governments to use all of their regional development and governance policy instruments as soon as possible. It also emphasised the necessity of strong leadership and the need for a place-based approach to crisis management and rehabilitation. It demonstrates the necessity of government and non-government entities working together in coordination, consultation, and collaboration. This disaster has also highlighted the critical role that public trust plays in crisis management and health outcomes, as well as the need of good communication with stakeholders and individuals.

The epidemic has raised concerns in India about a variety of issues, including the quality of health treatment, government and institutional responses, and law and order concerns. These issues should be addressed via the constitutional and legislative framework. While the Indian government effectively implemented the lockdown and decreased the number of cases, several MPs and legal experts questioned the lockdown's constitutional legitimacy and the government's response. Despite the fact that the EDA and DMA have been adopted by the central government, they are insufficient to properly address the health emergency due to the disease's dynamic character.These disasters will provide enough opportunity to remedy legislative gaps, allowing future generations to be better prepared for any form of health emergency.

There will be many challenges with respect to laws related to healthcare to be adequate and efficient. Currently, there are numerous legislations which are contradictory to each other creating hindrance in serving justice by the hon’ble courts.