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# **TAX LEVIED ON PHARMACEUTICAL PRODUCTS AND THE RIGHT TO LIFE IN INDIA- A CRITICAL ANALYSIS**

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## **Abstract**

The right to life, guaranteed under Article 21 of the Constitution of India, has been extensively interpreted by the judiciary to include the right to health, medical care and access to essential medicines. Pharmaceuticals, which are essential for survival and human dignity, have occupied a unique place in the constitutional and economic debate. Taxation of pharmaceuticals – particularly under the Goods and Services Tax (GST) regime – raises serious constitutional, ethical and socio-economic concerns. This paper examines the constitutional validity of taxation of pharmaceuticals, its impact on the affordability and accessibility of medicines and the extent to which such taxation is compatible with the right to life. By analysing constitutional provisions, judicial precedents, directive principles of state policy and the public health obligations of the state, this paper argues that taxation, while a sovereign power, should be exercised in a manner that does not undermine the fundamental right to life and health.

**Keywords:** *Article 21, Right to Life, Pharmaceuticals, Taxation, GST, Public Health, Constitutional Law*

## **Introduction**

The protection of human life is a primary duty of any constitutional democracy. In India, this duty finds its strongest expression in Article 21 of the Constitution, which ensures that no person shall be deprived of life or personal liberty except in accordance with procedure established by law. Over the decades, judicial interpretation has extended the scope of Article 21 beyond mere animal existence to include dignity, health and access to medical care. Medicines are not luxury items or discretionary consumer goods; they are essential for survival. Access to affordable medicines directly determines life expectancy, quality of life and

public health outcomes. However, taxation on medicines has led to a continuous rise in drug prices, making healthcare unaffordable for a large section of society. The central question that this research paper attempts to address is whether taxation of medicines – even if legally permissible – conflicts with the constitutional duty of the state to protect the right to life. This research paper critically analyzes the balance between the state's power to tax and its obligation to ensure access to life-saving medicines.

### **Background of study**

The protection of human life and health is one of the most fundamental objectives of any constitutional democracy. In India, this objective is enshrined in Article 21 of the Constitution, which guarantees the right to life and personal liberty. Over the years, the judiciary has interpreted this provision extensively to include the right to life with dignity, the right to health and the right to access to medical care. These interpretations have transformed Article 21 from a narrow procedural safeguard to a core set of socio-economic rights essential for human survival.

Affordable medicines occupy a central place within the framework of public health and healthcare delivery. Medicines are not discretionary consumer goods; rather, they are essential commodities required for the prevention, treatment and management of diseases. Access to affordable medicines directly determines health outcomes, life expectancy and quality of life, especially in a developing country like India, where a large segment of the population relies on out-of-pocket health expenditure. Any policy or legal action that affects the affordability or availability of medicines inevitably affects the right to life.

At the same time, taxation is a core sovereign function of the state. Under Article 265 of the Constitution, no tax can be levied or collected except by authority of law. With the introduction of the Goods and Services Tax (GST) regime, pharmaceuticals have been brought under a uniform indirect tax structure. While GST was designed to simplify taxation and improve efficiency, its application to pharmaceuticals has raised significant concerns about increased prices, classification disputes and burden on the end consumer. Even minimum taxation on essential medicines, when coupled with production, distribution and retail costs, can lead to significant price hikes.

The intersection of taxation on pharmaceuticals and the right to life presents a complex

constitutional issue. On the one hand, the state requires revenue to meet its administrative and welfare responsibilities. On the other hand, excessive or unjustified taxation on essential medicines can restrict access to healthcare, especially for the economically weaker sections, thereby indirectly violating the right to life under Article 21. This tension is more pronounced in the light of judicial decisions that recognize health and medical care as integral components of the right to life.

Furthermore, the guiding principles of state policy, particularly Article 47, impose a duty on the state to promote public health and ensure a high standard of living. Although not justifiable, these principles serve as guiding values for legislative and executive action. Tax policies that make medicines unaffordable appear to be inconsistent with the constitutional vision of a welfare state committed to social justice and human dignity.

Against this backdrop, the present study seeks to examine the constitutional validity and implications of taxing pharmaceuticals in India. It aims to analyse whether such taxation is consistent with the state's duty to protect the right to life and whether current fiscal policies strike a fair balance between revenue generation and public health needs. By examining constitutional provisions, judicial interpretations, and public health considerations, this study attempts to contribute to the broader debate on health care access, financing policy, and fundamental rights.

## **Research Problems and Objectives**

### **Research Problem**

The main issue addressed in this study arises from the growing tension between the state's power to tax pharmaceuticals and its constitutional obligation to protect the right to life under Article 21 of the Indian Constitution. While taxation is an essential function of the state to generate revenue, taxation of medicines – especially essential and life-saving medicines – has led to increased healthcare costs and reduced access for a significant segment of the population.

In a country where individuals pay a large proportion of healthcare expenditure directly, even a small increase in drug prices can have serious consequences, including delayed treatment, incomplete medication and avoidable loss of life. The Goods and Services Tax (GST) regime, which aims to simplify the tax structure, has brought pharmaceuticals under different tax brackets, raising concerns about affordability and classification inconsistencies.

Despite the recognition by the judiciary that the right to life includes the right to health and medical care, there is still a lack of clarity on the constitutional limits on taxation of essential medicines. The lack of a consistent policy to exempt or reduce taxes on life-saving medicines highlights the gap between fiscal policy and constitutional mandates. This study seeks to address whether current taxation practices adequately balance revenue considerations with the fundamental right to life and health.

### **Objectives of the Study**

The specific objectives of this research are as follows:

- ❖ To examine the scope and interpretation of the right to life under Article 21, with particular emphasis on the inclusion of the right to health and access to medical care.
- ❖ To analyse the nature and importance of pharmaceuticals as essential commodities required for the protection of life and public health.
- ❖ To examine the constitutional framework governing taxation in India, including the scope and limitations of the taxing power of the State under Article 265.
- ❖ To assess the impact of taxation, particularly GST, on the affordability and accessibility of pharmaceuticals in India.
- ❖ To assess whether taxation of essential and life-saving medicines indirectly violates the right to life under Article 21.
- ❖ To examine the judicial approaches and precedents relating to health, taxation and fundamental rights.
- ❖ To analyze the role of the guiding principles of state policy in shaping public health-oriented tax policies, in particular Article 47.
- ❖ To recommend policy reforms and recommendations aimed at harmonizing fiscal objectives with constitutional obligations to protect life and health.

### **Scope of the study**

The purpose of this paper is to provide an analytical study on the constitutional and legal implications of taxation of pharmaceuticals in India, with particular reference to the right to life under Article 21 of the Constitution of India. The paper focuses on examining whether the imposition of taxes on pharmaceuticals – especially essential and life-saving drugs – is consistent with the constitutional mandate to protect life and health.

The paper primarily covers the Indian constitutional framework, including relevant provisions such as Articles 21, 14, 47 and 265, and the judicial interpretation of these provisions by the Supreme Court of India. It analyses the evolution of the right to life and its extension to include the right to health and medical care, thereby establishing the constitutional relevance of access to affordable medicines.

The paper further examines the taxation regime applicable to pharmaceuticals, with particular emphasis on indirect taxation under the Goods and Services Tax (GST) regime. It assesses the impact of GST on drug pricing, affordability and access, particularly for the economically weaker sections of society. However, this study does not undertake a detailed economic or statistical analysis of tax revenue or pricing data; instead, it adopts a theoretical and qualitative legal approach.

In addition, the scope extends to a discussion of judicial precedents and policy considerations related to public health and taxation, as well as the relevance of the Directive Principles of State Policy, particularly Article 47. A brief reference to international human rights standards on access to medicines is included to provide a comparative perspective, but this study does not engage in a comprehensive comparative study of foreign legal systems.

This research is limited to legal and constitutional analysis only and does not examine pharmaceutical manufacturing practices, business strategies or technical medical aspects. The aim is to assess the constitutional balance between fiscal policy and the protection of the right to life and to propose legal and policy recommendations within this limited framework.

The present research adopts a theoretical and analytical approach to examine the constitutional, legal and policy implications of taxation on pharmaceuticals in relation to the right to life under Article 21 of the Constitution of India. The study relies primarily on secondary sources of data and analysis as it focuses on legal interpretation, policy assessment and evaluation of judicial precedents rather than empirical experimentation.

## **Research Methodology**

### **1. Research Design**

This research is designed as a qualitative and theoretical study, which includes:

A systematic review of constitutional provisions and legal texts.

A critical analysis of judicial decisions interpreting Article 21 and other relevant provisions.

An assessment of statutory provisions relating to taxation, including the Goods and Services Tax (GST) framework.

A review of policy documents and government reports relating to public health and access to medicines.

The study uses a research and analytical framework that aims to establish the relationship between taxation policies and their indirect impact on the right to life, with a particular focus on access to essential medicines.

## Sources of data

### Primary sources

Constitution of India, especially Articles 21, 14, 47, and 265. Taxation-related laws and notifications, including the Central Goods and Services Tax Act, 2017 and relevant state-level rules.

Judicial judgments of the Supreme Court and High Courts on the right to life, health, and taxation.

### Secondary sources

Academic books and commentaries on constitutional law, taxation law, and public health law. Law journals, research articles from online legal databases (e.g., SCC Online, Manupatra). World Health Organization (WHO) and Government of India reports on public health, healthcare access, and drug pricing. Relevant newspaper articles, policy briefs, and government circulars on current developments.

## Concept of Right to Life under Article 21

### Evolution of Article 21

Initially, Article 21 was interpreted narrowly. In *A.K. Gopalan v. Madras High Court*, the Supreme Court held that “procedure established by law” meant any procedure enacted by the legislature. However, this approach changed dramatically after *Maneka Gandhi v. Union of India*, where the Court held that the procedure must be fair, just and equitable. This judgment transformed Article 21 into a repository of a large number of rights essential for a dignified

human existenc.<sup>1</sup>

### **Right to Health as a Component of Right to Life**

The Supreme Court has consistently recognized that the right to life includes the right to health. In the case of Consumer Education and Research Centre v. Union of India, the Court held that health and medical care are fundamental rights under Article 21. Similarly, the Court emphasized the duty of the State to provide adequate medical facilities. Therefore, access to health and medicines is not just a matter of policy but a constitutional mandate.<sup>2</sup>

### **Medicines as Essential Goods**

Medicines are fundamentally different from other taxable goods. Their consumption is not optional; it is dictated by illness, injury, and medical necessity.

The role of medicines in preventive and curative healthcare

### **Pharmaceuticals contribute to public health in many ways**

Preventive role: Vaccines and prophylactic medicines prevent outbreaks of infectious diseases, reduce the burden on health infrastructure and reduce premature deaths. Curative role: Life-saving medicines, such as antibiotics, insulin and anti-cancer drugs, treat diseases and save lives. Without timely access, diseases can worsen, resulting in avoidable deaths. Management of chronic conditions: Medicines for chronic diseases such as diabetes, high blood pressure and cardiovascular disorders help in long-term management, improving life expectancy and productivity.

### **Socio-economic impact of high drug prices in India**

Pharmaceuticals are essential for saving human lives, managing diseases and maintaining public health. In India, where a significant portion of the population relies on out-of-pocket health expenditure, drug pricing has a direct socio-economic impact. Whether due to production costs, supply chain inefficiencies or taxation, high drug prices, especially among economically vulnerable populations, affect affordability, access and overall well-being.

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<sup>1</sup> Constitution of India, 1950, art. 21.

<sup>2</sup> Banka Khet Mazdoor Samiti v. State of West Bengal,

### **Access and affordability issues**

India has one of the highest rates of out-of-pocket health expenditure in the world, with approximately 60–70% of total health expenditure borne by individuals. For low-income households, even a small increase in the price of essential medicines: Forcing individuals to avoid or delay treatment Reducing adherence to prescribed treatment, resulting in partial or ineffective treatment. Increasing the risk of disease progression and complications, ultimately leading to higher morbidity and mortality. High drug prices, therefore, place a burden not only on individual patients but also on the healthcare system, as untreated or inadequately treated conditions often result in higher hospital costs in the long term.

### **Constitutional Provisions Governing Taxation**

The Constitution of India delineates the framework for the imposition, collection, and regulation of taxes, providing a clear division of taxing powers between the Union and the States:

“No tax shall be levied or collected except by authority of law.” This means that taxation can only be implemented through a law enacted by the legislature, ensuring legality and transparency. Any tax imposed without legislative authority is unconstitutional.<sup>3</sup>

Power of Union and State Legislatures:

Along with the Seventh Schedule, they specify the division of powers between the Union and the state governments in respect of taxes. The Union has the power to levy customs, excise and central GST, while the states can levy sales tax (now subsumed under state GST) and certain local taxes.

### **Goods and Services Tax (GST)**

GST refers to a harmonised indirect tax regime that combines central and state taxes. The Constitution (One Hundred and First Amendment) Act, 2016, introduced GST, ensuring a uniform taxation structure for goods, including pharmaceuticals. While GST aims to be efficient, it raises questions about its impact on essential goods and accessibility for vulnerable populations. Goods and Services Tax (GST) on Pharmaceuticals The introduction of GST aimed to simplify the indirect tax structure. However, its impact on pharmaceuticals has been mixed.<sup>4</sup>

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<sup>3</sup> Article 265 of the Indian Constitution

<sup>4</sup> Sections 269 and 279A of the Indian Constitution

## **GST Structure for Pharmaceuticals**

The introduction of Goods and Services Tax (GST) in India on July 1, 2017 marked a significant reform in the indirect taxation system, integrating multiple taxes under a single framework. While GST was intended to simplify tax administration, its implementation has had a direct impact on pharmaceuticals, affecting their pricing, affordability and accessibility. Understanding the GST structure for pharmaceuticals is crucial for assessing its implications on public health and the right to life under Article 21. These factors collectively affect affordability and accessibility.

### **Taxation and the Right to Life:**

#### **Constitutional Conflict**

##### **Indirect Violation of Article 21**

Taxation on medicines does not directly deny life, but it indirectly affects access to healthcare. When essential medicines become unaffordable, individuals effectively deprive themselves of medical treatment, leading to deterioration in health or death. Such indirect loss raises serious constitutional concerns under Article 21.

#### **Fundamental Rights Under Threat**

Even under the GST regime, taxation on medicines raises significant constitutional concerns, particularly in relation to the right to life and personal liberty (Article 21), the right to equality (Article 14) and other related fundamental rights. While taxation is a legitimate exercise of sovereign power by the State, it becomes constitutionally problematic when it indirectly prevents access to essential medicines, which disproportionately affects vulnerable populations.

#### **Right to Life (Article 21)**

The Supreme Court of India has repeatedly affirmed that the right to life under Article 21 is broad and inclusive, extending beyond mere survival to health, medical care and living with dignity. Landmark judgments such as *Maneka Gandhi v. Union of India* and *Centre for Consumer Education and Research v. Union of India* have made it clear that access to medicines at affordable prices is an essential component of this right. Excessive taxation on life-saving medicines may increase prices, making them inaccessible to the economically weaker sections. Indirectly, this violates the state's duty to protect life, because high costs

prevent timely and adequate treatment.<sup>5</sup>

For example, small increases in the cost of insulin, anti-cancer drugs, or anti-tuberculosis drugs can lead to untreated diseases, chronic complications, or death, especially among low-income patients.

### **Right to Equality**

Article 14 guarantees equality before the law and equal protection of the laws. Tax policies that treat similar essential medicines differently or impose higher rates on generic medicines as opposed to branded medicines can create arbitrary discrimination: uniform tax brackets for similar medical products create inequalities in access. Higher taxes on certain medicines disproportionately affect rural populations and economically weaker sections, while urban or affluent consumers are less affected. Such differential impact can be challenged as a violation of Article 14, as it undermines the principle of equity in the provision of essential healthcare<sup>6</sup>

### **Judicial Observations**

Indian courts have emphasized that fair and proportionate taxation is essential to avoid indirect infringement of fundamental rights: In the case of *Paschim Banga Khet Mazdoor Samiti v. Government of West Bengal*, the court observed that state action should not render access to basic necessities impractical or burdensome. Tax policies that fail to take into account affordability, especially for essential commodities like medicines, are subject to judicial scrutiny under Articles 14 and 21.<sup>7</sup>

#### **Harmonious Construction**

Fundamental rights and the Directive Principles must be read together. A tax regime that undermines public health fails to achieve constitutional harmony.

### **International Perspective on Access to Medicines**

International human rights instruments recognize access to medicines as a human right. The Universal Declaration of Human Rights and the International Covenant on Economic, Social

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<sup>5</sup> *Paschim Banga Khet Mazdoor Samity v. State of West Bengal*, (1996) 4 SCC 37.

<sup>6</sup> Article 14 of the Indian Constitution

<sup>7</sup> R. Kannan, *Pharmaceutical Policy and Access to Medicines in India*, Oxford University Press, 2019, pp. 45–60.

and Cultural Rights emphasize the right to health.<sup>8</sup>

India, as a signatory, has an obligation to ensure access to essential medicines, including through appropriate fiscal policies.<sup>9</sup>

### Balancing Revenue Generation and Social Welfare

Government requires revenue to function. However, revenue generation should not come at the cost of human life.

### Welfare State Concept

India is a welfare state. In a welfare state:

Human life takes precedence over profit, economic policies should serve social justice, vulnerable populations receive special protection, tax exemptions or reduced rates for essential medicines reflect welfare-oriented governance. Such reforms will strengthen the right to life and public health infrastructure.

## Conclusion

Taxation of pharmaceuticals presents a complex intersection between fiscal policy and constitutional rights. While the state has the unquestionable power to levy taxes, this power must be exercised responsibly and humanely. The right to life under Article 21 includes the right to health, medical care and access to essential medicines. Tax policies that increase the cost of medicines risk undermining this fundamental right. A constitutional democracy cannot allow fiscal considerations to overshadow the value of human life. Therefore, taxation of pharmaceuticals must be fair, low and guided by the state's duty to protect public health. Ensuring affordable access to medicines is not just an economic issue – it is a constitutional imperative.

## Suggestion

- ❖ There is an urgent need to:
- ❖ Fully exempt life-saving drugs from GST
- ❖ Reduce tax on essential medicines

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<sup>8</sup> Universal Declaration of Human Rights, 1948, art. 25.

<sup>9</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966, art. 12.

- ❖ Rationalize classification of pharmaceutical products
- ❖ Ensure transparency in pricing

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## Review of Literature

Review the intersection of taxation, drug pricing, and constitutional rights has attracted increasing attention in academic and policy circles in India and internationally. This section reviews the relevant literature to situate the current research within the broader scholarly discourse.

### 1. Right to Life and Access to Medicines

The right to life under Article 21 has been broadly interpreted by the Indian judiciary to include the right to health and medical care. Legal scholars such as Chandrasekaran (2021) have emphasized that access to essential medicines is not just a policy or welfare

concern but a constitutional mandate. Studies have highlighted that judicial decisions, including *Centre for Consumer Education and Research v. Union of India* and *Passim Banka Kheed Mazdoor Samiti v. State of West Bengal*, have consistently affirmed the state's obligation to ensure access to health services and affordable medicines.

Furthermore, international human rights instruments, such as the Universal Declaration of Human Rights (1948) and the International Covenant on Economic, Social and Cultural Rights (1966), recognize access to health and medicine as a fundamental human right. Sundar (2019) notes that these instruments provide a normative framework that strengthens the case for integrating public health concerns into fiscal and taxation policies.

## 2. Pharmaceuticals as essential commodities

(2019) and Berman (2018) emphasize the important socio-economic role of medicines in preventing, treating and managing diseases. Medicines, unlike other commodities, are non-discretionary, and their affordability directly impacts morbidity, mortality and overall public health outcomes. Scholars highlight that chronic conditions such as diabetes, cardiovascular diseases and infectious diseases such as tuberculosis require continuous medication, which becomes a financial burden when prices are high.

Narain (2020) highlights that the economic burden of high drug prices falls on low-income households, especially in India, where more than 60-70% of healthcare costs are borne out of pocket. This creates a direct link between fiscal policy, drug pricing, and the realization of the right to life under Article 21.

## 3. Taxation and its impact on healthcare access

Gupta (2020) and other tax law scholars argue that while taxation is a legitimate function of the state, its imposition on essential commodities such as medicines should be fair and equitable. Excessive taxation, even in the form of indirect taxes such as GST, cannot make life-saving medicines affordable, and indirectly violates Article 21. Studies examining the GST structure reveal that medicines are subject to multiple tax brackets depending on their classification, creating inconsistencies and unexpected price hikes. The Ministry of Finance (2017–2025) acknowledges these challenges, emphasizing the need for rational tax rates and exemptions for essential medicines.

Academic research by Narain (2020) and Chandrasekaran (2021) further highlights the constitutional tension between revenue generation and the state's duty to ensure public

health. Tax policies, if not aligned with welfare objectives, can disproportionately affect marginalized populations, leading to inequality in access to healthcare and violating Article 14 (Right to Equality).

#### 4. Global and Comparative Perspectives

International studies underscore that many countries adopt differential taxation or complete exemptions for essential medicines to ensure public health and equity. The WHO emphasizes the link between affordable medicine pricing and universal health coverage. These global experiences provide normative guidance for India, suggesting that reasonable taxation aligned with public health objectives is both feasible and constitutionally desirable.

#### 5. Gaps in Existing Literature

While the legal, economic, and public health dimensions of medicine pricing have been explored separately, there is limited comprehensive research analyzing the constitutional validity of taxing pharmaceutical products in India. Most studies focus on:

Judicial interpretations of Article 21

GST classification and tax rates

Socio-economic impact of drug pricing

However, few studies integrate constitutional law, taxation, and public health outcomes into a single analytical framework. This gap highlights the significance of the present research in evaluating whether taxation policies harm the Right to Life and access to essential medicines.