

# Human Rights Approach of Right to Healthiness and Human Dignity

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## Abstract

Dignity is described in a historical perspective, and different meanings of dignity are clarified. Since health and dignity relate to one other, we have clarified the concept of health employing the texts of the Finnish theoretician Katie Eriksson. In order to illuminate the perspective of health promotion, Health and dignity relate to each other. In traditional health and medical care the focus has been related more to illness than to health. In a health-promoting perspective, the focus is moving toward person's health resources.

**Keywords:** Human Rights, Right To Healthiness, Human Dignity And Wellbeing Of The Person

## Introduction

The right to health is a claim to a set of institutional arrangements and environmental conditions that are needed for the realization of the highest attainable standard of health," and equitable dissemination of medical knowledge and its benefits; and government-provided social measures to ensure adequate health. The right to health is one of a set of internationally agreed human rights standards and is inseparable or 'indivisible' from these other rights. The right is an inclusive right which means achieving the right to health is both central to, and dependent upon, the realisation of other human rights, to food, housing, work, education, information, and participation. Nutrition, health and education are the supplements for the development of a country. Health is the most important factor for the development of a country as human development will lead to socio-economic development. Right to health is a vital right without which none can exercise one's basic human rights. Health is "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity."<sup>1</sup>

The right to health, as with other rights, includes both freedoms and entitlements:

- Freedoms include the right to control one's health and body (for example, sexual and reproductive rights) and to be free from interference (for example, free from torture and non-consensual medical treatment and experimentation).
- Entitlements include the right to a system of health protection that gives everyone an equal opportunity to enjoy the highest attainable level of health.

The human right to health care means that hospitals, clinics, medicines, and doctors' services must be accessible, available, acceptable, and of good quality for everyone, on an equitable basis, where and when needed. The design of a health care system must be guided by the following key human rights standards:

1. Universal Access: Access to health care must be universal, guaranteed for all on an equitable basis.

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<sup>1</sup> The preamble of the 1946 World Health Organization (WHO) Constitution.

2. Availability: Adequate health care infrastructure (e.g. hospitals, community health facilities, trained health care professionals), goods (e.g. drugs, equipment), and services (e.g. primary care, mental health) must be available in all geographical areas and to all communities.
3. Acceptability and Dignity: Health care institutions and providers must respect dignity, provide culturally appropriate care, be responsive to needs based on gender, age, culture, language, and different ways of life and abilities.
4. Quality: All health care must be medically appropriate and of good quality, guided by quality standards and control mechanisms, and provided in a timely, safe, and patient-centered manner.
5. Non-Discrimination: Health care must be accessible and provided without discrimination.
6. Transparency: Health information must be easily accessible for everyone.
7. Participation: Individuals and communities must be able to take an active role in decisions that affect their health.
8. Accountability: Private companies and public agencies must be held accountable for protecting the right to health care.

The Government is under obligation to protect the health of the people because there is close nexus between Health and the quality of life of a person.

### **International provisions relating to Right to health.**

#### ***Universal Declaration of Human Rights (1948)***

The Universal Declaration of Human Rights is noted as the first international declaration of fundamental human rights, both freedoms and entitlements alike. Universal Declaration of Human Rights "enshrines a vision that requires taking all human rights—civil, political, economic, social, or cultural—as an indivisible and organic whole, inseparable and interdependent.

Article 25 of the United Nations' 1948 Universal Declaration of Human Rights states that "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services." The Universal Declaration makes additional accommodations for security in case of physical debilitation or disability, and makes special mention of care given to those in motherhood or childhood.

#### ***International Covenant on Economic, Social and Cultural Rights (1966)***

The United Nations further defines the right to health in Article 12 of the 1966 International Covenant on Economic, Social and Cultural Rights, which states:

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

1. The reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
2. The improvement of all aspects of environmental and industrial hygiene;
3. The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
4. The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

#### ***Convention on the Rights of the Child (1989).***

Health is mentioned on several instances in the Convention on the Rights of the Child Article 3 calls upon parties to ensure that institutions and facilities for the care of children adhere to health standards. Article 17 recognizes the child's right to access information that is pertinent to his/her physical and mental health

and well-being. Article 23 makes specific reference to the rights of disabled children, in which it includes health services, rehabilitation and preventive care. Article 24 outlines child health in detail, and states, "Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States shall strive to ensure that no child is deprived of his or her right of access to such health care services." Towards implementation of this provision, the Convention enumerates the following measures:

- a. To diminish infant and child mortality;
- b. To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
- c. To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
- d. To ensure appropriate pre-natal and post-natal health care for mothers;
- e. To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;
- f. To develop preventive health care, guidance for parents and family planning education and services.

#### ***Convention on the Elimination of All Forms of Discrimination against Women (1979)***

Article 12 of the 1979 United Nations Convention on the Elimination of All Forms of Discrimination against Women outlines women's protection from gender discrimination when receiving health services and women's entitlement to specific gender-related healthcare provisions. The full text of Article 12 states: Article 12:

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.
2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

#### ***International Convention on the Elimination of All Forms of Racial Discrimination (1965)***

Health is briefly addressed in the United Nations' International Convention on the Elimination of All Forms of Racial Discrimination, which was adopted in 1965 and entered into effect in 1969. The Convention calls upon States to "Prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law," and references under this provision "The right to public health, medical care, social security and social services."

#### ***Convention on the Rights of Persons with Disabilities (2006)***

Article 25 of the Convention on the Rights of Persons with Disabilities (2006) specifies that "persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability." The sub-clauses of Article 25 state that States shall give the disabled the same "range, quality, and standard" of health care as it provides to other persons, as well as those services specifically required for prevention, identification, and management of disability. Further provisions specify that health care for the disabled should be made available in local communities and that

care should be geographically equitable, with additional statements against the denial or unequal provision of health services (including "food and fluids" and "life insurance") on the basis of disability.

### **Constitutional provisions relating to Right to health.**

As a member of the United Nations, it has ratified various International Conventions promising to secure health care rights of individuals in society. In this regard a number of committees have been set up by the government at different times to look into the aspect of public health, and several recommendations have been made by these committees to improve the health care system in India for the welfare of the public at large. So far as the Indian Constitution is concerned, nowhere the term 'health' or 'right to health' has been defined in it. Through Judicial interpretations it has been observed that 'right to life' also includes 'right to health' and thus it is a fundamental right. This article is a humble attempt to focus on the constitutional provisions regarding 'right to health' and to analyse various judicial decisions relating to health care. There are various provisions under the Constitution of India which deal with the Health of the Public at large. The founding fathers of the Indian Constitution rightly inserted Directive principles of State Policy (DPSP) with a view to protect the health of the public at large.

#### ***Provisions under Part-III of The Constitution Of India***

Article 21 of the Indian Constitution clearly says that "no person shall be deprived of his life or personal liberty except according to the procedure established by law." Right to life is one of the basic human rights and not even the State has the authority to violate that right.<sup>2</sup> Right to health and proper health care is also a part of basic human right without health care there will be no living with dignity and the life will be just mere existence. Though the provisions enshrined under this part have no direct link with the healthcare, however from various judicial interpretations it has been established that the intention of the legislature were there to cover the health as a right of the citizens. Article 21 of the Indian Constitution ensures protection of life and personal liberty of the individual, where no person shall be deprived of his life or personal liberty except according to procedure established by law.

#### ***Provisions under Part-IV of The Constitution Of India***

The Constitution of India provides for the following directive principles to be followed by the state regarding health care of the citizens.

Article 38 in this regard provides that, "the State shall strive to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice- social, economic and political, shall inform all the institution of the national life". Thus this is an imposition of liability on state that the State will secure a social order for the promotion of welfare of the people including public health because without public health welfare of people is practically meaningless.

Art 39. Certain principles of policy to be followed by the State (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength; (f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Art. 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 the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall

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<sup>2</sup> Siddharam Satlingappa Mhetre v.State of Maharashtra, A.I.R. 2011 1 S.C.C. 694.

endeavour to bring about prohibition of the consumption except for medicinal purpose of intoxicating drinks and of drugs which are injurious to health.

### ***Health Programmes and Schemes of Karnataka Government***

The State Government of Karnataka offers various schemes to provide health benefits to residents of the state.

Health is a valuable asset of every community and hence, it renders below services as part of its 'Common Minimum Needs Programme'. A few popular schemes include

1. Vajpayee Arogya Shree which was designed with an intent to augment access to quality tertiary health care for Below Poverty Level (BPL) families including hospitalisation, therapy, and surgery.
2. Rajiv Arogya Bhagya Scheme which provides Health insurance scheme for Above Poverty Line (APL) families for providing tertiary treatment accessible and affordable.
3. Jyothi Sanjeevini Scheme Scheme which provides for employees of the state government started with an objective of providing tertiary medical treatment to the employees and their dependents.
4. Janani Suraksha Yojana introduced in 2005 with a goal of reducing maternal and infant mortality rates among economically-challenged women by encouraging institutional deliveries.
5. Indradhanush Launched with a mission to immunise kids against 7 diseases that can be prevented by vaccination - polio, diphtheria, whooping cough, tuberculosis, measles, tetanus, and hepatitis B.
6. Rashtriya Bala Swasthya Karyakrama introduced with an objective of detecting and managing the 4 Ds - Defects of birth, deficiency conditions, diseases in children, and developmental delays including disabilities.
7. Arogya Karnataka Programme: Apart from the schemes mentioned above, the government of Karnataka has launched a universal health insurance scheme for all its residents, in March 2018. The scheme is called as Arogya Karnataka and with this, Karnataka has become the first state in India to implement a scheme that offers universal health coverage (UHC).

### ***Health Programmes and Schemes of Central Government***

Ayushman Bharat Yojana or Pradhan Mantri Jan Arogya Yojana (PMJAY) or National Health Protection Scheme is a centrally sponsored scheme launched in 2018, under the Ayushman Bharat Mission of Ministry of Health and Family Welfare in India. The scheme aims at making interventions in primary, secondary and tertiary care systems, covering both preventive and promotive health, to address healthcare holistically. It is an umbrella of two major health initiatives namely, Health and Wellness centres and National Health Protection Scheme.

## **ROLE OF JUDICIARY**

The initiation of the period of progressive jurisprudence following recognition of fundamental right was lately during the litigation pertaining to human rights in Keshvanand Bharati case. And around the same time also, the standing rules were relaxed pertaining to the promoting of Public Interest Limited, and access to justice. There further led to a steep rise in the health related litigation. Subsequently, there were further developments including establishment of the consumer courts and secondly, the recognition of health care as fundamental right. This is because, the Supreme Court allowed individuals to approach directly for the protection of human rights. Right to life under Article 21 of the Constitution has been liberally interpreted to mean something more than merely human existence and includes the right to live with dignity and decency.

Several human rights instruments, throughout the globe, have recognized ‘right to health’ as a basic human right. In India, though ‘right to health’ is not recognized as a fundamental right expressly, the judiciary by its expounded role has recognized it as a fundamental right under Article 21 of the Constitution as an adjunct to the ‘right to life’. The responsibility to respect, protect and fulfill the ‘right to health’ lies not only with the medical profession but also with public functionaries such as administrators and judges.

Some of the important pronouncements on this issue are given hereunder.

The Supreme Court, while interpreting Article 21 of the Constitution ruled that the expression ‘life’ does not connote mere animal existence or continued drudgery through life but includes, *inter alia*, the opportunities to eliminate sickness and physical disability.

In *Francis Coralie Mullin v. Union Territory of Delhi*,<sup>3</sup> it was held that, right to life guaranteed in Article 21 of the Constitution in its true meaning includes the basic right to food, clothing and shelter.

The Apex Court, in *Paschim Banga Khet Mazdoor Samity v. State of West Bengal*,<sup>4</sup> while widening the scope of Article 21 and the government’s responsibility to provide medical aid to every person in the country, held that in a welfare state, the primary duty of the government is to secure the welfare of the people. Providing adequate medical facilities for the people is an obligation undertaken by the government in a welfare state. The government discharges this obligation by providing medical care to the persons seeking to avail of those facilities.

In *Unnikrishnan, J.P. v. State of Andhra Pradesh*,<sup>5</sup> it was held that the maintenance and improvement of public health is the duty of the State to fulfill its constitutional obligations cast on it under Article 21 of the Constitution.

In *Consumer Education and Research Centre v. Union of India*,<sup>6</sup> the Supreme Court explicitly held that the right to health and medical care is a fundamental right under Article 21 of the Constitution and this right to health and medical care, to protect health and vigour are some of the integral factors of a meaningful right to life.

In *Bandhua Mukti Morcha v. Union of India*<sup>7</sup> the Apex Court addressed the types of conditions necessary for enjoyment of health and said that right to live with human dignity also involves right to ‘protection of health’. No State, neither the central government nor any state government, has the right to take any action which will deprive a person the enjoyment of this basic essential.

In *Virender Gaur v. State of Haryana*,<sup>8</sup> the Supreme Court held that environmental, ecological, air and water pollution, etc., should be regarded as amounting to violation of right to health guaranteed by Article 21 of the Constitution.

In *Vincent v. Union of India*,<sup>9</sup> it was held that a healthy body is the very foundation for all human activities. In a welfare state, therefore, it is the obligation of the state to ensure the creation and the sustaining of conditions congenial to good health.

The Apex Court, in its landmark judgment in *Parmanand Katara v. Union of India*,<sup>10</sup> ruled that every doctor whether at a government hospital or otherwise has the professional obligation to extend his service

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<sup>3</sup> 1981(1) SCC 608.

<sup>4</sup> (1996) 4 SCC 37.

<sup>5</sup> AIR 1993 SC 2178, (1993) 1 SCC 645.

<sup>6</sup> AIR 1995 SC 636; (1995) 3 SCC 42.

<sup>7</sup> AIR 1984 SC 802.

<sup>8</sup> 1995 (2) SCC 577.

<sup>9</sup> AIR 1987 SC 994.

<sup>10</sup> AIR 1989 SC 2039.

with due expertise for protecting life, whether the patient be an innocent person or be a criminal liable to punishment under the law. No law or state action can intervene to avoid/delay, the discharge of the paramount obligation cast upon members of the medical profession.

In *CESC Ltd. v. Subash Chandra Bose*,<sup>11</sup> the Supreme Court relied on international instruments and concluded that right to health is a fundamental right. It went further and observed that health is not merely absence of sickness: “The term health implies more than an absence of sickness. Medical care and health facilities not only protect against sickness but also ensure stable manpower for economic development. Facilities of health and medical care generate devotion and dedication to give the workers’ best, physically as well as mentally, in productivity. It enables the worker to enjoy the fruit of his labour, to keep him physically fit and mentally alert for leading a successful economic, social and cultural life. The medical facilities are, therefore, part of social security and like gilt edged security, it would yield immediate return in the increased production or at any rate reduce absenteeism on grounds of sickness, etc. Health is thus a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.”

In *Mahendra Pratap Singh v. State of Orissa*,<sup>12</sup> the Court had held “in a country like ours, it may not be possible to have sophisticated hospitals but definitely villagers within their limitations can aspire to have a Primary Health Centre. The government is required to assist people, get treatment and lead a healthy life. Thereby, there is an implication that the enforcing of the right to life is a duty of the state and that this duty covers the providing of right to primary health care.”

For Protection of health of workers and humane conditions of work the Supreme Court in *Occupational Health and Safety Association v. Union of India and others*,<sup>13</sup> held that when workers are engaged in hazardous and risky jobs/ occupations, the responsibility and duty on the state becomes double fold.

In *Ram Lubhaya* case,<sup>14</sup> while examining the revolving around the issue of right to health under Article 21, 41 and 47 of the Constitution of India, the court observed that right of one correlates with the duty of another. Hence, the right entrusted under Article 21 imposes a parallel duty on the state which is further reinforced as under Article 47. Even though several schools and hospitals are set up by the government but the duty is not fulfilled until they can be in reach of the general public. It is pertinent to note that the Hon’ble Court in this case regarded health to be a sacrosanct, sacred and valuable right.

In the famous case of *Ratlam Municipal Corporation*,<sup>15</sup> the court held that it is the primary duty of the state under Article 47 of the Constitution to ensure the living conditions of the people are healthy and enforce this duty against any governmental body or authority who defaults in doing so irrespective of the financial resources it has.

## CONCLUSION

From the foregoing discussion, it is evident that right to life also includes right to health and therefore the state and its instruments, are duty bound to provide health care facilities and services to all its citizens without any discrimination. The Constitution also stipulates certain duties for the citizens towards contributing to the promotion of health in the country. But till date it has not been given due recognition for which public interest litigations have been filed frequently on health issues involving fundamental

<sup>11</sup> AIR 1992 SC 573,585 : (1992) 1 SCC 461.

<sup>12</sup> AIR 1997 Ori 37.

<sup>13</sup> AIR 2014 SC 1469.

<sup>14</sup> (1998) 4 SCC 117

<sup>15</sup> *Ratlam Municipal Council v. Vardichand*, Air 1980 SC 1622

right to health, rights of workers to occupational health and safety, right to clean environment, right to adequate drugs, medical negligence, right against medical malpractice, right to emergency health care, public health care etc.

Health has been regarded as fundamental human right by the World Health Organisation (hereinafter referred to as WHO). The member nations have, consensually, considered that the enjoyment of highest and most attainable standard of health is the basic and fundamental right of every human being, irrespective of religion, race, caste, sex, creed, and political belief, social or economic condition. Meaning thereby, health is the fundamental right of all people and everyone must have access to the required services as and when the need arises.

In India, judiciary has played a major role in recognizing the right to health as a part of Article 21 of Chapter III which deals with the fundamental rights guaranteed under the Constitution of India. State has been directed to provide the highest attainable health standards to its citizens towards the fulfilment of International standards.

There are not only a few but ample of cases wherein the judiciary had actively decided upon the cases pertaining to the right to health and ensuring that the state fulfills its duty in ensuring that the right so entrusted is duly assured to its public. Time and again, the Supreme Court as well as the High Court's has utilized their power under Article 32 and 226 respectively by reading right to health in Article 21 of the Constitution. Even though such powers may be in the nature of judicial over reach, yet such decisions are most welcomed. The presence of Directive Principles of state Policy further strengthens the need and the duty on the state to do so.

For achieving the Constitutional obligation and also objectives of Health care for all there is a need on the part of the government to mobilize nongovernmental organization and the general public towards their participation for monitoring and implementation of health care facilities.

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