



RIGHT TO HEALTH AND HEALTH CARE: A TRANSITIONAL APPROACH WITH SPECIAL REFERENCE TO PANDEMIC PERIOD IN INDIA

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“Health care is not a privilege. It’s a right. It’s a right as fundamental as civil rights” –
Rod Balgojevich.

Abstract-- In an unprecedented situation, the world at large met with a pandemic which led the globe to call for a national wide lockdown to control the spread of the savage illness namely Novel Coronavirus otherwise called COVID-19. Almost all the States and the Union Territories (UTs) in India are influenced by this Novel Coronavirus. Due to this, India also called for a national wide shutdown from 21st March 2020 onwards. Practically all the activities including the running of the hospitals, in India are being under halt. Human movements are confined. The police workforce, doctors and the conservancy staffs are by and large effectively engaged in their respective roles in controlling the spread of the infection. Especially, the doctors are involved in offering treatment to the patients who are affected by this novel Coronavirus and the conservancy staffs associated with the cleaning cycle by showering the disinfectant by knapsack sprayer tank in all places including offices, streets, malls, plaza, parks, etc. Trucks and drone were also used to splash the disinfectant. Countless directions and recommendation were given by the World Health Organisation just as by the Central and States Governments including UTs to the people to wash their hands frequently and sterilize regularly contacted surfaces in their homes. Since the disease is being easily spread by sneeze and cough, governments admonished the people to wear the mask, gloves and also instructed the people to abstain from touching nose, eyes, mouth and to maintain social distancing to escape from the disease.

Despite all these measures and instructions, the number of people affected by this novel Coronavirus is being constantly increasing and the governments are attempting to design the immunization for the infection. In this situation, the authors intend to analyse how the pandemic affects the people in physical and psychological shrewd? How people get access to health and health care during the pandemic period, including for non-pandemic cases, since a large number of hospitals are ordered to be closed considering the flare-up of the Novel Coronavirus? Taking the advantages of non-inoculation, a portion of the private hospitals, which are later permitted to diagnose the diseases are vigorously charging for the therapies. Thus, the authors further try to investigate concerning how these mentalities of the hospitals influence the citizen’s entitlement to health and health care framework, particularly whenever 80% of the populace is not covered by any of the protection plans in India. In conclusion, the authors wish to suggest a transitional approach (remedial measures) to ensure the privileges of the citizens in getting medication for the pandemic (physical) and non-pandemic cases (*psychological cases*) to protect his wellbeing and medical services during the pandemic frame.

Keywords: Access to medicine, COVID-19, Health Care, Non-Vaccination, Pandemic period, Right to Health, Transitional Approach.



INTRODUCTION

Meaning of Right to health

Health is basic human rights which are inseparable for the exercise of other human rights. Every human being is entitled to the enjoyment of the highest attainable standard of physical and mental health conducive to living a life in dignity¹. The right to health as mentioned in Article 12 of the International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR, 1966) is not only confined to the right to health but also includes a wide range of socio and economic features that promote conditions in which people can lead a healthy life including a healthy environment². According to the Preamble to the Constitution of the World Health Organisation (CWHO), health is the state of complete physical, mental and social well-being and not merely the absence of disease or infirmity. The CWHO further defines the right to health as “the enjoyment of highest attainable standard of health of every human being without the discrimination of race, religion and political belief, economic or social condition”. The achievement of any state in the promotion and protection of health is value of all³. The extension to all peoples of the benefits of medical, psychological and related knowledge is essential to the fullest attainment of health⁴.

RIGHT TO HEALTH UNDER THE INTERNATIONAL CONVENTIONS

Under Article 25 of the Universal Declaration of Human Rights (UDHR) “*Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family including....medical care and necessary social services, and the right to security in the event of ...Sickness, disability in circumstances beyond his control*”. The International Convention on the Elimination of All Forms of Racial Discrimination guarantees everyone *inter alia* the right to public health, medical care etc⁵. The ICESCR, 1966 vide Article 12 states that “*the State parties to the present covenant, to ensure the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, has to take steps for the prevention, treatment, and control of epidemic, endemic, occupational and other diseases and also it states that the creation of conditions which would assure to all medical service and medical attention in the event of sickness*”⁶.

RIGHT TO HEALTH UNDER THE INDIAN CONSTITUTION

The Constitution of India is the supreme law of the land which guarantees the right to health and healthcare as a fundamental right under Article 21. Article 21 of the Indian Constitution states that “*No person shall be deprived of his life or personal liberty except according to the procedure established by law*”. The expression ‘life in this article means a life with human dignity and not mere survival or animal existence. It has a much wider meaning which includes right to livelihood, better standard of life, hygienic condition in workplace and leisure. Though right to health and healthcare

¹ General Comment No: 14 (200), The Right to the highest attainable standard of health:-11.08.2000, Economic and Social Council, United Nations.

² Human Rights Education Project / comparative analysis of selected case-law ACHPR, IACHR, ECHR HRC / The right to health / What is the right to health? Available at: <https://www.humanrights.is/en/human-rights-education-project/comparative-analysis-of-selected-case-law-achpr-iachr-echr-hrc/the-right-to-health/what-is-the-right-to-health>.

³ Preamble to the Constitution of World Health Organisation.

⁴ Preamble to the Constitution of World Health Organisation. The objective of the World Health Organisation shall be the attainment by all the peoples of the highest possible level of health. See Article 1 of the CWHO.

⁵ *Id.* Article 5 (e) (iv).

⁶ Article 12 (2) (c) and (d), ICESCR, 1966.



is not an express right guaranteed under Article 21 of the Indian Constitution, the judiciary through their various verdicts has immensely reiterated that the right to health and healthcare is derived from right to life under Article 21. The Constitution cast the obligation on the state to preserve the life of an individual⁷. Article 21 should be read with Articles 38, 42, 43, & 47 to understand the nature of the obligation of the state in order to ensure the effective realization of this right. Especially during this pandemic, the responsibility of the state is much higher than before.

It is now settled law that right to health is an integral to right to life. Government has constitutional obligations to provide the health facilities⁸. The Supreme Court in *Vincent Parikurlangara vs Union of India*⁹, held that the right to maintenance and improvement of public health is included in the right to live with human dignity enshrined under Article 21. A healthy body is the very foundation of all human activities. In a welfare state, this is the obligation of the state to ensure the creation and sustaining of conditions congenial to good health¹⁰. In *Society for Cancer in Oral Cavity Vs Union of India*¹¹, The Andhra High Court Ruled that “Maintenance of health and environment falls within the purview of Article 21 of the Constitution”. In *Consumer Education and Research Centre Vs Union of India*¹², it has been held that “the right to health and medical care is a fundamental right under Article 21 read with Articles 39(c), 41 and 43 of the Constitution”. In a case¹³ when people are refusing to obey the lock-down restrictions, the Court requested the police authorities to take the services of the State Reserve Police (SRP) or the Home Guards in such a situation to ensure that the lock-down restrictions are implemented since these localities would turn out to be super-spreaders of the virus, completely ignoring that the virus is our enemy and protecting ourselves from the virus is our priority and shopping in the shopping areas cannot be given precedence over a pandemic situation. Further, the Court while appreciating the COVID-19 warriors including the private medical practitioners and the private hospitals, it expected that the state and the administration to deal with willful and intentional acts of negligence, callousness and work shirking, with a strict hand and initiate appropriate action against such errant employees/officers¹⁴.

RIGHT TO HEALTH AND HEALTH CARE DURING PANDEMIC PERIOD IN INDIA

As we already stated in our abstract, during the pandemic period all the activities have come to a standstill. Thereby, particularly the human movements are considerably restricted. In other words, human movements are monitored by the police force. Unnecessary movements are attracted penalty and First Information Report (FIR) were also registered under Section 188, 269, 270 and 271 of the Indian Penal Code read with Section 3 of the Epidemic Disease Act, 1897. The object of the restriction is only to control the outbreak of the novel Coronavirus (COVID-19). Time and again, the Central and Concerned State Governments are incessantly issuing guidelines. Under the Disaster Management Act, 2005, the Union Government appealed to the people to come under the national

⁷ Article 21 of the Indian Constitution

⁸ State of Punjab Vs Mohinder Singh Chawla. (1996)

⁹ (1987) 2 SCC 165

¹⁰ Vincent Panikurlangara Vs Union of India, 1987 AIR 990.

¹¹ 2002 (3) ALD 525.

¹² 1995 AIR 922.

¹³ See: Registrar (Judicial), High Court of Judicature of Bombay, Bench at Aurangabad and others v Union of India and Ors, Criminal Suo Moto Public Interest Litigation No. 2 of 2021 with Criminal Application No. 1060 of 2021 with Criminal Application No. 1246 of 2021.

¹⁴ See: Registrar (Judicial), High Court of Judicature of Bombay, Bench at Aurangabad and others v Union of India and Ors, Criminal Suo Moto Public Interest Litigation No. 1 of 2020, Date of Order 18.08.2020.



wide lockdown and if any people come outside for meeting their necessary household articles, directions were issued to maintain the social distancing. Any deviations of the directions were viewed seriously¹⁵. Obeying this direction, people were confined themselves in the four walls in their home. Yet, due to the ignorance of people, 2,93,59,155 people were, as on 12th July 2021 affected by the deadly Coronavirus. 3,67,097 people were died due to this pandemic situation¹⁶. Taking this situation, some of the private hospitals in India levied heavy charges for the treatment of COVID-19 patients. For example, some of the private corporate hospitals in the State of Telangana were found for violating the price ceiling set by the Government for treating the COVID-19 patients and these hospitals were charging ranging from 3 lakhs to 20 lakhs per patients. The Telangana government had permitted some of the private corporate hospitals only to help/facilitate immediate access to health care for the public¹⁷.

In one incident, Gujarat High Court vehemently expressed its concern and directed that the private hospital should charge affordable and reasonable fees and direction was to the state government to take up this issue. Failing which, the court warned that if the private hospitals do not budge and are determined to demand exorbitant amount, the court would take appropriate legal action including the cancellation of licenses to the hospitals¹⁸. The court, further, observed that “these are difficult times and not the time to do business and earn profit the medical services are most essential services the private hospitals cannot demand lakhs of rupees from the patients¹⁹”. Interestingly, the Supreme Court of India asked the private hospitals (not all hospitals) as to whether they are ready to provide treatment to COVID-19 infected patients at the charges prescribed under the Government’s Ayushman Bharat Scheme²⁰. This humanitarian question was asked while hearing a plea seeking a direction for regulating the cost of treatment of COVID-19 at private hospitals across the country²¹. Notably, in the State of Kerala, of the 1286 private hospitals, only 108 are willing to provide treatment under the Karunya Arogya Suraksha Padhati (KASP)²².

¹⁵ Rajasathya K.R, N. Prabhavathi & A. Nirmal Singh Heera, (2020), Coronavirus Vis-a-Vis the Restriction of Human Movement In India – Excessive Force Of Police: Is Justified? A Critical Analysis, Journal of Xidian University, Vol.14, Issue. 4, Pgs.1017-1027.

¹⁶ Source: <https://www.worldometers.info/coronavirus/country/india/>. India Coronavirus Cases, Last assessed on 12.07.2021. 2,79,11,384 people were recovered from the COVID-19.

¹⁷ A. Raju, Hyderabad, (5th August 2020), TS Govt warns of strict action against corporate hospitals for violations of govt’s price regulations in COVID-19 treatments, Pharmabiz.com, available at <http://www.pharmabiz.com/NewsDetails.aspx?aid=130140&sid=1>, last assessed on 10.12.2020.

¹⁸ Nikunj Soni, AhmedabadMirror, (Dec.10, 2020), Covid-19: Gujarat High Court warns private hospitals against high fees, available at <https://ahmedabadmirror.indiatimes.com/ahmedabad/others/covid-19-hc-warns-private-hospitals-against-high-fees/articleshow/75747823.cms>. Last Assessed on 10.12.2020.

¹⁹ *Ibid.*

²⁰ Ayushman Bharat Scheme was launched to achieve the vision of Universal Health Coverage. For more details visit: <https://pmjay.gov.in/about/pmjay>.

²¹ PTI, Supreme Court asks private hospitals if they are ready to charge Covid-19 patients at Ayushman Bharat rate, ET Health world.com, available at <https://health.economictimes.indiatimes.com/news/hospitals/supreme-court-asks-private-hospitals-if-they-are-ready-to-charge-covid-19-patients-at-ayushman-bharat-rate/76215864>. Last assessed on 10.12.2020.

²² KASP is a health care scheme of the state government in Kerala under which approximately 19 lakhs additional families get the benefits of Pradhan Mantri Jan Arogya Yojana (PM-JAY) along with the existing 21.8 lakhs family. For more details, See: TNN, Health News, Kerala: Private hospital resist teaming up with government, Healthworld.com, available at: <https://health.economictimes.indiatimes.com/news/hospitals/kerala-private-hospitals-resist-teaming-up-with-government/79457162>. Last assessed on 10.12.2020.



It is a settled principle by way of a catena of decisions, 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 essential part of the obligations undertaken by the Government in a welfare state. The Government discharges this obligation by running hospitals and health centers that provide medical care to the person seeking to avail of those facilities²³”. During the pandemic frameset, not only the state governments are taking the steps but also the Central government played a pivotal role in controlling the spread of the COVID-19 pandemic outspread. Likewise, Every doctor whether at a Government hospital or otherwise has the professional obligation to extend his services with due expertise for protecting life. No law or State action can intervene to avoid/delay the discharge of the paramount obligation cast upon members of the medical profession²⁴. Being the dictum and law like this during the pandemic situation, the attitude of some of the doctors (private hospitals) is really condemnable and to be ridiculed. Apart from the above, during the pandemic time, the people not only suffered from the novel Coronavirus but also from mental trauma and agony. Sitting in one place for more than 9 months is not an easy task (*work from home*). Physically and mentally the people (*non-pandemic*) are severely affected. Considering this pandemic period, we the author would like to record that transition occurs in a society first which later brings the greatest transformation in the aspect of health and healthcare.

CONCLUSION AND SUGGESTIONS

Therefore, to attain the task of social transformation and to save the precious life the human being particularly during the pandemic period, we the authors suggest the following:

- The government should create awareness, during the pandemic time, to the public regarding nutritious food, balanced diet which is very much essential to increase the immune system of human beings to live without any disease. Also, spiritual wellbeing should be given equal importance in India.
- The extra-curricular activities such as sports and yoga for physical fitness, music and dance for emotional as well as physical fitness in schools and colleges should be given more importance.
- Health care responsibility of the state – The state should provide a balanced diet, Quality education to provide knowledge, Skill development such as music, dance, sports etc (*extracurricular activities*) to the citizens since it is the responsibilities of the state to protect the health care of its citizens.
- Government should make effective supervision of the healthcare facilities till the human being is restored from the disease.
- Grievances can be redressed through a separate form may be established like Consumer Forum for speedy disposal of cases concerning the pandemic outbreak.
- In India, the hospital needs to be reeducated and due surveillance to be done to ensure as per the proper guidelines about the quality of treatment for ensuring patient dignity and well-being.

²³ See: Paschim Banga Khet Mazdoorsamity Vs State of West Bengal, 1996 SCC (4) 37 available at: <https://indiankanoon.org/doc/1743022/>

²⁴ Pt. Parmanand Katara Vs Union of India, 1987 AIR 2039, available at <https://indiankanoon.org/doc/498126/>



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- A single healthcare system as being discussed by the Government mandatorily may be brought into force to access the essential medicines that are essential at an affordable price.
- Artificial Intelligence may be introduced in the healthcare system particularly during the pandemic period, like COVID-19, etc.
