

Right to Health in India and the United States of America - A Comparative Analysis

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Abstract: One of the interesting facets of human rights law is that while the State is obligated to shelter the same, individuals enjoy the liberty whether to culminate a particular right or not. This is precisely why, rights related to abortion and even euthanasia exist globally in numerous jurisdictions, indicating that personal autonomy supersedes aspects of societal pressure and public morality, unless, the same does not threaten the very existence of the State. However, in the United States of America, which is often regarded as the guardian of human rights and democracy all individuals were required to take healthcare insurance on a mandatory basis, paying little heed to the personal choices of citizens in this regard. While it assures excellent infrastructure and quality care for the sick, it is certainly expensive and yet, not regarded as the best. On the other hand, India does not *per se*, in its Constitution recognize either the right to health or that of healthcare, but the Judiciary has been benevolent in interpreting this document in a fashion, compelling the State to uphold the same at all times. This intervention by the Judiciary in numerous instances has enabled the establishment of a robust jurisprudence with regards to this right, though, the practical work at the ground level, be it in terms of employing quality medical practitioners, assuring better instruments and tools for treating patient's needs a lot of improvement. This research paper, besides aiming to assess the facets of law and policy concerning the implementation of the right to health in India and the United States of America, the Author, through the medium of this paper, seeks to showcase the areas where these democracies need to work on for improving the situation of the healthcare system prevailing therein. In a nutshell, the Author, after discussing the established jurisprudence with regards to the right to health in these countries, shall also shed light on how the disparity between the Constitutional mandate and the bureaucratic lethargy in coping with the same can affect the very basic rights of the citizens therein.

Keywords: Health Law, Affordable Healthcare, Constitutionalism, Human Rights, Democracy

I. Introduction

For centuries, scholars and jurists have been debating about the origin of rights. The respective schools of thought believed that either only the State can “guarantee” them or “recognize” them. In the contemporary era, however, it is the opinion of many that such rights are always vested with the person, in a human form. While a State is a social construct, undoubtedly, the Constitution is a social contract whereby the people vest their interests within the governing body for ensuring their fulfilment of rights. That is to say, the masses bestow the State with the responsibility of undertaking sufficient measures for upholding their “Life” – a concept, which has only evolved with time. In the Early *Medieval Era*, the very notion of “living” was unanimous with the term “surviving” in India, wherein most people died due to *famines* and *scrupulous warfare*, due to *lack of hygiene* and *poverty* all over the world.¹ The State essentially is expected to do everything within its power to ensure minimum basic provisions for maintaining the simple standards of health and even the *Universal Declaration of Human Rights* (UDHR), under its *Article 25* recognizes the same. *Article 12* of the *International Covenant on Economic, Social and Cultural Rights* (ICESR) requires every signatory nation to take measures for ensuring the highest standard of physical and mental health for all. The right to the public health sector has also been recognized in the *International Convention on the Elimination of All Forms of Racial Discrimination* (CERD). Importantly, the *World Health Organization* (WHO), vide its Constitution asserts health as being more than safeguarding the masses from disease and healthcare, deeming it as the means of attaining peace and security and directing Governments to take adequate measures for protecting and promoting good health. India, which is a signatory to the conventions is, as per the prevailing jurisprudence in the state, is under an obligation to implement its promises so made in the international realm within its jurisdiction².

As of today, the ‘concept of life’ has evolved severely and is largely guided by the ‘*principles of individualism*’. Undoubtedly, the notion of life is deemed to be inclusive of all those freedoms, which make an individual, a human. *The Constitution* be it written or unwritten, in roughly all the modern-day democracies are expected to guarantee and not dictate human rights. But, the abject situation of governance therein reveals that the State treats the people as its mere ‘*subject*’ since it is convinced that humans are entirely at its mercy. This is precisely why, even developed countries, housing *egalitarian societies* often ignore their responsibilities towards the masses, for they are vested in strengthening the State, often ignoring the aspects of investing in human resource development. Such a lackadaisical attitude was the reason why several individuals lost their lives due to the outbreak of COVID-19, further leading to the collapse of numerous economies, making several people poor and desolate. This is indicative of the sorry state of medical facilities throughout the world and how even the so-called advanced democracies have failed to shelter even the

¹ K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.

² Vishaka v. State of Rajasthan, (1997) 6 SCC 241.

basic *right to life* of the masses. Above all, it is suggestive of the much-required progress that is still required to be made in the healthcare sector globally, both infrastructural-wise and constitutionally.

II. Right To Health In India

The Constitutional approach of the Indian judiciary, witnessed by the world in several instances has led to the development of two major rights, namely, the '*right to health*' and the '*right to healthcare*'. In simple words, the former mandates the State to not take such actions which would disturb the physical or the mental well-being of the people, whereas the latter is a positive obligation which requires it to take such actions for promoting the health of its individuals. The Indian Courts, for instance, have deemed 'health' to be fundamental to all the other activities undertaken by human beings in their vicinity, mandating State to not to carry out any activity which would lead to its degradation³. To shelter the health of the individuals was deemed as an *inseparable facet* of their '*right to live their life with dignity*' and the administrative and judicial bodies are henceforth, required to protect the same at all times⁴. The said right certainly has a vast ambit and rightly includes the *right to sleep peacefully*⁵, the *right to live in a pollution-free environment*⁶, the *right to access to clean drinking water*⁷, the *right to abortion*⁸, the *right against rape*⁹, the *right to appropriate medical examination*¹⁰ and is so valuable, that it can even be exercised against private agencies¹¹.

*Right to Sanitation*¹² can also be construed as an integral facet of the right to health as human waste if not managed appropriately by the authorities is hazardous¹³. What could also be harmful is to treat the patients as per those traditional practices which are not recognized by the Government and therefore, cannot be construed as a fundamental right¹⁴. Such a measure is justified for sheltering the health of the citizens on the part of the Judiciary, as any failure to regulate the same would go against the duty of the State to preserve the health of all its citizens as enshrined in *Article 39(e)*, *Article 39(f)*, *Article 41* and even *Article 47* of the Constitution of India¹⁵.

The *right to maintaining a certain standard of healthcare* in India finds its place in Part IV of the Constitution and a plethora of verdicts have suggested reading them with Fundamental Rights for promoting the best interests of the individuals¹⁶ and to assure the finest facilities for treating the needy and the sick. The need for assuring the right to health and the healthcare emerges from the '*principle of establishing a Social Welfare State*' and therefore, "protection of life" as envisaged in Article 21 of the Constitution needs to be construed as to its "preservation" and building hospitals and ensuring the proliferation of quality medicines is indicative of responsible governance to that effect. Thus, *Medical Assistance* has been recognized as a fundamental right and at all times, the State is bound to uphold the same¹⁷. The State is required to *protect public health*¹⁸ as the right to health is the essence of the right to dignity after all¹⁹.

Safeguarding health has been defined as one of the most important constitutional goals to be achieved by the State²⁰ and the medical fraternity is required to take necessary measures for saving the lives of those being treated by them²¹. The State would be acting in violation of Article 21, when it permits "unqualified doctors" to work in government hospitals for treating those in distress, allows the circulation of "substandard food" for human consumption in the market²² and even ensures appropriate facilities for rehabilitating the patients in times of distress²³. The failure of the hospital authorities of the State to maintain the necessary standard of care for treating its patients has been recognized as a constitutional sin²⁴. The failure of the Government not to assure humane working conditions for its workers, such that it can affect their health negatively, is construed as a violation of the right of the people to live with dignity²⁵. Despite the same, individuals in India are bound to be punished for consuming or marketing harmful drugs²⁶. In a way, the State is expected to take such measures by enacting laws and regulations for extending excellent healthcare facilities for all the individuals and prohibiting them from acting in a way that would endanger the health and life of the citizenry.

³ Vincent v. Union of India, AIR 1987 SC 990.

⁴ Municipal Corporation of Delhi v. Suraj Ram, 1965 CriLJ 571.

⁵ Ramlila Maidan Incident v. Home Secretary, Union of India, (2012) 5 SCC 1.

⁶ M C Mehta v. Kamal Nath, (1997) 1 SCC 388.

⁷ Vellore Citizen Welfare Forum v. Union Of India, 1996 5 SCR 241.

⁸ Dr Nikhil D Datar v. Union of India, SLP (C) 5334 of 2009.

⁹ State of Punjab v. Ramdev Singh, AIR 2004 SC 1290.

¹⁰ State of Punjab v. Gurmeet Singh, (1996) 2 SCC 384.

¹¹ Kirloskar Brothers Ltd. v. Employees State Insurance Corp., AIR 1996 SC 3261.

¹² Ratlam Municipality v. Vardichand, 1981 SCR (1) 97.

¹³ Vimal Choudhary v. Nagar Nigam, Jaipur, Civil Writ Petition No. 5486 of 2009.

¹⁴ Kumar Srivastava v. A.P. Verma, AIR 2005 All 175.

¹⁵ Bandhua Mukti Morcha v. Union of India And Ors., (1997) 10 SCC 549.

¹⁶ Javed v. State of Haryana, AIR 2003 SC 3057.

¹⁷ Paschim Banga Khet Mazdoor Smity v. State of West Bengal, AIR 1996 SC 2426.

¹⁸ M. Vijaya v. The Chairman and Managing Director Singareni Collieries, AIR 2001AP 502.

¹⁹ Sanjana Kulkarni & Shirang Ashtaputre, *Right to Health in India: An Appraisal*, 1 ILS Abhivyakti Law Journal 57 (2017).

²⁰ Consumer Education and Research Centre v. Union of India, AIR1995 SC 922.

²¹ Parmanand Katara v. Union of India, AIR 1989 SC 2039.

²² Shaibya Shukla v. State of U.P., AIR 1993 Allahabad 171.

²³ Kranti v. Union of India and Others, (2007) 6 SCC 744.

²⁴ *Supra* note 20.

²⁵ MC Mehta v. State of Tamil Nadu And Others, AIR 1997 SC 699.

²⁶ *Supra* 12

Interestingly, the *right to privacy* was officially recognized within the purview of the right to healthcare way earlier, and aspects of maintaining the confidentiality of patients including the liberty of the individuals to donate their organs or body after death for the welfare of the community and the development of science are accepted and regulated adequately in India. Likewise, the State taking adequate efforts for ensuring the *distribution of medicine at a cheaper rate* for ensuring that people of all socioeconomic backgrounds could avail of them, could also be construed as an integral facet of the right to healthcare. Thus, it appears that India certainly has a robust jurisprudence for sheltering the rights of the masses, but, significant improvement is necessary when it comes to building a strong healthcare sector herein.

III. Right To Health in the United States of America (USA)

The USA is largely responsible for bringing about the much-required systemization and advancement in nearly every sector one can imagine. Through its European ancestors, it inherited the idea of institutionalization, but by experimenting with it repeatedly, it introduced the concept of responsible governance. In a nutshell, it strived to make the governing more people-centric rather than ruler-oriented, as it was, in Europe. The discourse from monarchy to the democracy also birthed an independent judiciary, which was introduced with the very idea of preventing the legislature to turn despotic and give learned members of the society sufficient knowledge in the field of law. The healthcare sector grew in the USA, in the 20th century, when the idea of '*National Health Insurance*' (NHI) was introduced and *National Healthcare Program* was rolled out along with the enforcement of *Health Security Act*²⁷.

While the entire world recognized the need of curbing diseases, the USA was always a step ahead and sought to take measures for preventing such outbreaks in the first place by playing an active role by mitigating the standard of living and placing greater reliance on civic hygiene. To that effect, the Supreme Court of the USA upheld the mandate of requiring individuals to purchase health insurance under *Obamacare*²⁸. It seems that the Courts have attempted at harmonizing the right to health with the freedom of religion by placing the autonomy of the individuals as the guiding factor²⁹. Nevertheless, what is evident is that in the United States, is that, there is no particular right to healthcare, though the same has been brought into force, through the medium of several legislations by Congress. Unlike India, accepting the constitutional freedom of its citizens to deny unwanted medical treatment that permits a medically-ill person from seeking physician-assisted death³⁰ was quite early accepted in USA. Similarly, compelling miners to work beyond 8 hours is deemed to be violative of their right to health³¹ and compelling children to work is also declared to be hazardous to their well-being³². Such an approach was also accepted by the Supreme Court of India in 2021³³.

However, the USA authorities continue to have a restrictive approach with regards to the '*freedom of exercising abortion*' and a few states therein, continue to ban this procedure even today. To that effect, the US Courts have recognized the '*refusal of the Medicaid program*' which assures payment for medically required abortions for women³⁴. While acknowledging the right to maintain bodily integrity³⁵ within the USA, the Constitution has been interpreted in a manner that the authorities therein are not required to pay for the medical expenses of the poor³⁶.

In a country which is often regarded as the harbinger of human rights, by law, medical practitioners can refuse medical treatment³⁷ in certain situations but never in cases of an emergency. Nevertheless, it is stern about the duty of the hospitals and allied agencies to shelter the privacy of their patients including the prescribed medication they are undertaking as a part of the treatment³⁸. Both the United States and India are bound by Law for ensuring *quality treatment for those in jail, rehabilitation centres or even asylum*³⁹ as a matter of their constitutional duties and are expected to take a cautious approach while dealing with specially-abled people, specifically in a manner that would make the surroundings more inclusive for them⁴⁰. A brief perusal of the aforesaid reveals that although the authorities herein have been keen on ensuring the best quality medical aid for all, the unregulated corporatization of this sector has led to a rather slower development of a more citizen centric-healthcare sector herein.

IV. Conclusion & Suggestions

In India, the budget for healthcare was increased by 137% only after the outbreak of COVID-19, indicating the prior ignorance of the authorities towards such an important facet of the rights of the citizens previously. The lack of sufficiently trained and skilled manpower is coupled with poor infrastructure for assuring appropriate and timely treatment to patients is quite visible, thus indicating the relatively poor and unorganized healthcare sector in India. On the other hand, in the USA, \$1.3 trillion dollar in

²⁷ "History of Health Reforms in the U.S.," Kaiser Family Foundation (2011), <https://www.kff.org/wp-content/uploads/2011/03/5-02-13-history-of-health-reform.pdf>.

²⁸ National Federation of Independent Business v. Sebelius, 567 U.S. 519.

²⁹ Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania, 591 U.S. (2020).

³⁰ Washington v. Glucksberg, 521 US 702 (1997).

³¹ Holden v. Hardy, 169 US 366 (1898)

³² Nestle USA, Inc. v. Doe, 593 U. S. (2021).

³³ *Supra* note 24.

³⁴ Harris v. McRae, 448 U.S. 297 (1980).

³⁵ Washington v. Harper, 494 U.S. 210, 221-22 (1990).

³⁶ Lindsey v. Normet, 405 U.S. 56, 74 (1972), Jefferson v. Hackney, 406 U.S. 535, 546-48 (1972).

³⁷ Sandeep Jauhar, *Long island Jewish Medical Centre Can doctors refuse to treat a patient?*, Long Island Jewish Medical Centre, May 15, 2019, <https://lij.northwell.edu/news/insights/can-doctors-refuse-to-treat-a-patient>.

³⁸ Whalen v. Roe, 429 U.S. 589 (1977).

³⁹ Kansas v. Hendricks, 521 U.S. 346 (1997).

⁴⁰ Olmstead v. L.C., 527 U.S. 581 (1999), Rajive Raturi v. Union of India, (2018) 2 SCC 413.

mandatory funding was to be introduced for the *U.S. Department of Health and Human Services*, though, it is a fact that the healthcare system therein is considerably expensive. The fact that the prices of the medicines are controlled by the market forces, the extensive bureaucratic and administrative setups involved therein and the increased focus of practitioners on avoiding lawsuits and maintaining infrastructure are the primary factors for a rather “unaffordable healthcare system” for the citizens of USA. The lesser involvement of the Government and putting a cap on the excessive prices of treatments such as MRIs, organ transplants etc., are certain initiatives taken in the last decade, which the other nations have strived to achieve to a certain extent.

Nevertheless, the healthcare system of USA has been ranked 11th, contrary to India, which, as per the *Global Health Security Index*, stands 66th worldwide. Among the highly developed countries, the US stands last, while among the developing ones, India is merely midway, indicating the need for the introduction of several measures to that effect. A country like India should at least, begin to ensure the establishment of healthcare facilities in every important city and increase institutions which impart such crucial knowledge therein. On the other hand, the U.S. Government should consider involving itself in the process of regulating the prices of the healthcare facilities to a certain extent, for preventing unjust enrichment and arbitrary discrimination concerning accessing healthcare facilities.

It is the USA which rightfully introduced the idea of true equality and equity to the world, though it seems that India has been considerate enough to accommodate the same to the optimum, as per its capacity. Though, the proportion to which India is catering the populace is less, i.e., there is a need for producing more doctors for truly resolving public health issues. Guided by the principles of socialism, India has always strived for improving greater access to healthcare and it has achieved success considerably, though, the lack of modern and advanced infrastructure is felt and so is, the lack of appropriate mechanisms and investments in the field of research and development in this sector. Where India is heading towards the corporatization of the healthcare sector, it should also strive for not just introducing advanced tools but personally taking measures, preferably through government aid for making them accessible to all at a lesser rate. Aiming to resolve these issues at the earliest is the truest way whereby the right to healthcare can be preserved further permitting the State and agencies invested in this sector can work towards protecting the health of the masses herein.

