

**HEALTH AND LAW: RIGHT TO PUBLIC HEALTH**- Mrinal Kumar<sup>1</sup>**ABSTRACT**

In order to minimize COVID -19's dissemination, governments around the world implement emergency policies restricting the freedom of individuals, civil and economic rights and global unity. These compliance mechanisms include shutdown of classrooms, offices and transportation services, cancellation of public meetings, compulsory home containment and extensive electro-monitors. Here, while they are greatly affected by the pandemic reaction, human rights commitments are hardly discussed. The human rights norms and values should direct government responses to COVID19, improving the response to COVID-19 on public health.

**INTRODUCTION**

By considering today's scenarios right to public health is one of the major debatable issue around the world as well as in India. As we all know India is just fighting with the COVID-19 second wave which is really deadly to the Indians, this looks like nightmare to Indians and those who lose their family, relatives and friends due to lack of proper or poor quality of health infrastructure, only they knows what is the condition of Indian health Infrastructure. In India we spend less than 1% of our GDP in our health infrastructure which is very low considering the population and size of our country. Let us talk about human rights, human rights offer a basis for promoting global wellbeing through justice and translating moral imperatives into legal rights in core COVID-19 areas. They should be recognized as essential to responding to health issues that use the logic, proportionality and responsibility of the public, to create public confidence through openness and involvement, and to ensure security of the poor and marginalized people, not just as imposing unjustifiable limits on public health initiatives.

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This review explores the fundamental role of human rights in three intertwined COVID-19 realms.

1. limitation of the individual's public health protection rights.
2. the realization in relation to health sector reactions and physical distancing steps of the right to health and its fundamental factors, such as social care, food, water, accommodation, and education.
3. compliance with mutual co-operation and assistance commitments

As regards international human rights law, we are evaluating state reactions to COVID-19 by human rights and exploring ways of further supporting COVID-19 policy responses. We believe that COVID-19 illustrates social and economic inequality as a central argument for international human rights legislation – that all human rights are fundamental, indivisible, and inter-dependent<sup>1</sup>. Based on these intertwined rights, we argue that human rights must be an orientation for governments to protect those most exposed to the pandemic against discrimination and harm by the state—focusing on individual rights restrictions; managing the impacts of COVID-19 on health, public health, and social and economic rights; and building global solidarity by international collaboration.

### **CONSTITUTION AND THE RIGHT TO HEALTH**

The Indian Constitution does not specifically grant a basic right to health. However, the Constitution contains many references to public health and the State's position in providing public health services. But this is clear that under Article 21 of our constitution life or personal liberty of any individual also include right to public health and good quality of health infrastructure. The DPSP in Part IV of the Constitution of India provides a foundation for the right to health. The State is guided by Article 39(E) to secure health of workers. According to Article 42, the State ought to increase the nutrition and the quality of life of residents, and to improve general health, in order to ensure just and human conditions and maternal assistance, Article 47. In addition, the Constitution not only requires the State of public health to improve it, but also enables the Panchayats and municipalities under Article 243G to improve public health (read with 11th Schedule, Entry 23).

#### ***The right to life and health services under the Constitution is not explicitly recognized***

The Supreme Court of India interpreted the rights to health as laid down in Article 21 in *Bandhua Mukti Morcha v Union of India & Ors*<sup>4</sup>, which guarantees the right to life. The

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supreme Court reaffirmed that the right to health is central to the right to life in Punjab & Ors v. Mohinder Singh Chawla<sup>5</sup>, and that the state's duty to health care was a statutory responsibility. The court also upheld the duty of the state to sustain health facilities in Punjab & Ors against Ram Lubhaya Bagga<sup>6</sup>. The scope of Article 21 was further broadened in the case of Paschim Banga Khet Mazoor Samity v. West Bengal State<sup>7</sup> because the Court found that the Government's duty is to offer proper physician care to everyone and to aim to ensure the well-being of the population at large.

Furthermore, the Supreme court ruled that any doctor in the government hospital or elsewhere has a professional duty to expand its services with adequate competence in safeguarding the patient's lives in the matter of Parmanand Katara v Union of India<sup>8</sup>. As a result, the right to health and medical assistance to protect the health and vigor of a worker, both while serving and after retirement, was considered to be a constitutional right in accordance with Article 21 of the Center V. Union of India<sup>9</sup>. In this case, it was stated that Furthermore, Article 19(1)(g) of the Indian Constitution provides that all people are subject to limitations laid down by Article 19 in the general public on the constitutional freedom of all citizens to exercise or carry on all occupations, commerce or enterprise (6). The Supreme Court of Hon'ble ruled that Article 19(1) (g) does not grant independence which is at the expense of the Community's security, health and harmony, and Burrabazar Fire Works Proprietors Association, and Others vs. Commissioner of the Police, Calcutta AIR 1998 Cal. 121.

After this, In September 2019, under the 15th Finance Commission, a High-Level Group on the healthcare sector had proposed the right to health as a human right. It also recommended that the health issue be transferred from the State List to the Competitive List. If it is applied, it would increase the people's entitlement to the right to health as an essential right. The later decision to move health to the Competitive List would, however, create a constitutional confusion as to whether public health centralization would assist with Indian federalism in its cooperative form. Currently, the topic "public health and sanitation; hospitals and dispensaries" is covered by the State List in the Seventh Schedule of the Indian Constitution – thereby enabling states to pass, implement and follow statutory guidelines on public sanitation.

The NITI Aayog study illustrated the lack of public health services in India. The main reason for this disparity was limited technological know-how and fiscal restrictions. Although

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financial reliance on the center remains a major obstacle, moving the topic of health to the Concurrent List could lead to needless paperwork, bureaucracy, and administrative restrictions. While states' policy decision will appear to be subjective to the federal executive's political orientation, it would tear states from their constitutional rights. In addition, a standardized approach would not give countries around India special consideration.<sup>10</sup> On such a sensitive matter of health there must be some relation between state and centre.

## CONCLUSION

Right to health is a basic right of every resident of India in accordance with Article 21 of the Indian Constitution, and hence the rights to health are fundamental rights. We owe this privilege to the fact that the Supreme Court of India logically expanded its view of the right to life to include the right to health through several judicial precedents. Therefore, it is the State's responsibility to ensure the public's wellbeing, as well as to make a legitimate and constructive decision by the Central Government and numerous State Governments, to prevent and to disclose the COVID-19 pandemic. India has been called a constitutional right to wellbeing. Strong health legislation will further increase social resistance to future pandemics and crises in public health. The cost of neglecting human rights commitments cannot be attributed to emergency responses. The implementation of the right to health, using the concepts of openness, proportionality, and unity, is therefore essential. The experience of COVID19 has also shown how important a decentralized / polycentric response is, therefore, to reinforce India's cooperative federalism.

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