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**A CRITICAL ANALYSIS ON THE LAWS GOVERNING THE  
PATIENTS' RIGHTS IN INDIA**- Sureshababu Pulletikurthi<sup>1</sup>**Abstract:**

This abstract provides a critical analysis of the laws pertaining to patients' rights in India. It examines the legal framework designed to protect patients' rights and highlights areas of strength and weakness in its implementation. The discussion delves into the challenges faced by patients in asserting their rights, including lack of awareness and deficiencies in the complaint redressal mechanism. Furthermore, it explores the implications of these shortcomings on the overall healthcare system and offers insights into potential avenues for improvement. Through a comprehensive review, this article aims to provide insights into the current state of patient rights legislation in India and suggest potential avenues for improvement to ensure better protection and empowerment of patients within the healthcare landscape.

**1. Introduction**

India has a population exceeding 1.428 billion according to data from the United Nations Population Fund<sup>2</sup>. A significant portion of India's population faces a multitude of communicable and non-communicable diseases, arguably the highest globally. This can be attributed to factors such as the sheer size of the population, disparities between rural and urban areas in healthcare access and infrastructure, limited advancements in medical technology, unhealthy dietary practices, and inadequate physical activity among many individuals. Despite efforts by both the central and state governments to improve medical services

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<sup>2</sup> United Nations Population Fund, India's population data in 2023 is 1,428.6 million available at: <https://www.unfpa.org/data/world-population/IN> (last visited on March 23, 2024).

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through various initiatives, the available healthcare remains insufficient to adequately address the health needs of the population.

Every nation, regardless of its level of development, must ensure that its citizens have access to fundamental healthcare services. However, many countries have fallen short in providing such access. The rights of individuals encompass the right to healthcare and a respectable standard of living, free from concerns about medical treatment and protection, which are typically considered within the realm of state responsibilities. Developed nations often fulfil this through universal healthcare systems or mandatory medical insurance for all citizens.

While health falls under the jurisdiction of the States as per List II-Entry 6, the Central Government along with the States allocate a significant portion of the Central budget and State budget respectively, annually to support healthcare initiatives. Despite these efforts, disparities persist among States in terms of healthcare and medical facilities.

India has numerous laws and regulatory agencies overseeing everything from pharmaceuticals to medical education and practice. However, their effectiveness and ability to fulfil their intended purposes are often questioned, as they may not be deemed adequate or successful in achieving their legislative or institutional goals.

India, the fifth-largest economy globally, is projected to ascend to the third position by 2030. However, its ranking of 45th in the World Health Care Index as of mid-2023 highlights a significant disparity between its economic status and healthcare provision. The prosperity of any economy heavily relies on the health and well-being of its populace, underscoring the crucial role of governments in guaranteeing healthcare access for all.

In India, there is no statutory definition of the term "**patient**." However, it generally refers to an individual receiving medical treatment from a doctor or healthcare professional, whether at home, in a clinic, or at a hospital.

Numerous laws in India safeguard the rights of patients, including the Constitution of India, 1950, the Indian Penal Code, 1860 (No. 45 of 1860), the Code of Criminal Procedure, 1973 (No. 2 of 1974), the Consumer Protection Act, 2019 (No. 35 Of 2019), the Indian Medical Council (Professional Conduct,

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Etiquette, and Ethics) Regulations 2002, the Drugs and Cosmetic Act 1940 (No. 23 of 1940), the Right to Information Act, 2005 (No. 22 of 2005), the Clinical Establishments (Registration and Regulation) Act, 2010 (No. 23 of 2010), the Charter of Patients' Rights for adoption by NHRC, 2019, and the Charter of Patients' Rights and Responsibilities, 2021, the Patients' Rights and Responsibilities Charter by NHA among others.

Although there are strong laws in place to safeguard patients' rights, there seems to be a deficiency in their effective enforcement. This could be due to shortcomings in the execution of these laws or patients not asserting their rights. It's crucial for authorities to ensure that every individual, especially patients, is well-informed on their rights. Just as ignorance of the law is not accepted in court, neglecting to properly communicate patients' rights cannot be justified.

In the Indian medical system, there is a deficiency in a comprehensive mechanism for addressing complaints. Patients often lack awareness of their rights, and even if they are aware, there is often no guidance on how to assert these rights if violated. This results in a gap within the system where individuals are unsure whom to approach to seek justice for any infringements. The NHRC (National Human Rights Commission) has come up in 2019 with a redressal mechanism in the hospitals of the patients' rights violation, which are recommendatory but not mandatory in nature, means no proper redressal mechanism in the hospitals at last.

Treatment costs for different illnesses and diseases vary widely, and with numerous hospitals in operation, it's crucial to establish standardized pricing guidelines. For instance, a uniform pricing chart could be implemented for super specialty hospitals nationwide, with distinctions made for rural, urban, semi urban and metro locations. This approach, similar to the government's actions during the pandemic, ensures transparency and consistency in healthcare pricing across the country.

In the context of in-hospital treatment, certain medical practitioners exhibit inhumane behaviour towards patients, particularly in cases where patients are in a coma or in an unconscious state. This issue is notably observed in some government hospitals, where professionals may not regard serving the needy as

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akin to serving a higher purpose but rather view their duties as a free and voluntary endeavour.

Patients' perspectives need to shift, empowering them to assert their rights. Medical professionals must adhere to the commitments they made upon entering the profession. While not expecting saintly behaviour from all, they should treat patients as fellow human beings, providing equal care and respect regardless of class, gender, caste, race, religion, or birthplace.

This Article does not oppose any laws, authorities, or governments; rather, it focuses on the extent to which these entities ensure patients' rights and access to optimal treatment. It examines the procedures available for individuals to address violations of their rights during medical treatment.

Similarly, this endeavour does not aim to criticize doctors, medical professionals, or hospitals. Instead, it strives to foster a more open and transparent medical practice, encouraging individuals in the profession to recognize their humanity and fallibility rather than adopting an attitude of superiority and infallibility.

## **2. Laws Governing the Patients' Rights in India**

The laws governing patients' rights in India include various legal instruments such as the Constitution of India, 1950, which highlights the importance of health and human well-being through Articles 21, 39(e), 41, 42, 43, 47, and 243G, along with landmark judicial decisions on patient rights and health. Additionally, statutes like the Indian Penal Code, 1860, the Code of Criminal Procedure, 1973, the Consumer Protection Act, 2019, the Indian Medical Council Regulations of 2002, the Drugs and Cosmetics Act, 1940, the Right to Information Act, 2005, the Clinical Establishments (Registration and Regulation) Act, 2010, and various charters such as the Charter of Patients' Rights for adoption by NHRC (2019) and the Patients' Rights and Responsibilities Charter by NHA (2021) contribute to safeguarding patients' rights and responsibilities.

The laws mentioned above are explained in brief below with focus on health, healthcare sector and the rights of the patients:

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While the Constitution of India does not explicitly address health issues within its fundamental rights, it does make references to public health and the responsibility of states to provide healthcare access to citizens. These references are found in Part III (Fundamental Rights), Part IV (Directive Principles of State Policy), and Part IX (The Panchayats). Under Part III, Article 21 guarantees the fundamental right to life and personal liberty, which the Supreme Court has interpreted to include the right to health, essential for a life with dignity. In Part IV, Directive Principles of State Policy, Articles 38, 39(e), 41, 42, 43, and 47 impose obligations on states to ensure effective realization of the right to health. Furthermore, Part IX and IXA, concerning The Panchayats and the Municipalities, respectively, specify in Article 243G and 243W the obligation of Panchayats and Municipalities to strengthen public health services.

The other statutes like the Indian Penal Code, 1860, which deals with the punishments to the wrong doers, the procedure laid down in the Code of Criminal Procedure, 1973, the Consumer Protection Act, 2019, deals with the rights of the consumer, service definition which also covers healthcare service as per the Supreme Court Verdict in the case *Indian Medical Association v V P Shantha*<sup>3</sup>, various forums etc., the Indian Medical Council Regulations of 2002, deals with the professional ethics and conduct, duties, responsibilities of the medical professionals, the Drugs and Cosmetics Act, 1940, deals with all forms of medicine and punishment for adulteration of drugs, the Right to Information Act, 2005, covers the rights of the patients or his/her caregivers to seek related information, the hospitals the Clinical Establishments (Registration and Regulation) Act, 2010, covers the establishment related matters, and various charters such as the Charter of Patients' Rights for adoption by NHRC (2019) and the Patients' Rights and Responsibilities Charter by NHA (2021) contribute to safeguarding patients' rights and responsibilities.

### 3. Critical Analysis on Laws Governing the Patients' Rights

There is a need as various legal issues must be clarified for the current healthcare system to operate smoothly. Despite existing laws and penalties for

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<sup>3</sup> 1996 AIR 550, 1995 SCC (6) 651

fraud and negligence, loopholes in legislation and mishandling by individuals, authorities, and organizations persist. It's essential to cultivate respect for the nation and its laws before advocating for our rights.

However, many exploit these laws to their advantage, leaving victims uncertain about where and when to seek redress. Article 21 of the Indian Constitution recognizes the right to life, encompassing the right to health. Yet, why don't people demand their right to health as a fundamental right? Can they demand better medical care from the government, or can the less fortunate receive free treatment in private hospitals? These questions remain unanswered.

A nationwide, **rapid redressal mechanism**, along with **specific patient rights legislation**, **professional bodies**, and **uniform legal provisions**, is imperative. Otherwise, even if the government charges for treatment in a nationalized healthcare system, society would benefit, unlike in corporate hospitals. The right to health is an integral aspect of the right to life under Article 21 of the Indian Constitution.

The Supreme Court has reiterated this principle in several cases *Paschim Banga Khet Mazdoor Samity & Ors v State of West Bengal & Anr.*<sup>4</sup> and *Bandhua Mukti Morcha v. Union of India*<sup>5</sup>.

Patients, armed with evidence, must approach the courts in case of violations or negligence. Passivity is not an option when claiming rights; individuals must take responsibility for asserting them. Existing legislation such as the Indian Penal Code 1860 and the Code of Criminal Procedure, 1973, only come into play after medical negligence occurs. Patients in India also have the right to information under the Right to Information Act, 2005, ensuring access to treatment details, costs, and medical documentation.

While charters exist to safeguard patients' rights, they fall short of comprehensive protection. The National Human Rights Commission (NHRC) has the power to address human rights violations but lacks sufficient mechanisms for patient complaints as outlined in its Charter of Patients' Rights. Health being a

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<sup>4</sup> AIR SC 2426/ (1996) 4 SCC 37

<sup>5</sup> AIR 1984 SC 812

State Subject in India, the Centre can recommend charters, but implementation falls under the discretion of states/union territories.

The need for guidelines and punishment mechanisms for violations is apparent, with hospitals urged to adopt charters earnestly. Numerous laws govern patients' rights in India, including the Pharmacy Act, 1948, and the Mental Health Act, 1987, among others. However, these laws require updates to reflect current healthcare realities. A comprehensive law encompassing patients' and caregivers' rights, medical professionals' responsibilities, and a robust redressal mechanism is necessary.

The Ministry must conduct performance audits to gauge patient satisfaction and ensure the effective implementation of laws regarding patients' rights and treatment quality in hospitals.

The Charters play a vital role in protecting patients' rights within hospitals, with the **Patient's Rights and Responsibilities Charter** of the **National Health Authority (NHA)** being particularly noteworthy for its effective implementation. I've personally witnessed a high level of respect for the rights outlined in this Charter, along with the presence of dedicated redressal mechanisms in hospitals participating in the **AB PM-JAY Scheme**. I urge the relevant authorities and governments to adopt this Charter universally across India.

#### 4. Conclusion

I tried to gather feedback from patients through interviews or surveys regarding their treatment experience and the extent to which their rights were upheld during the process. Ensuring patients' rights are respected is crucial for providing them with proper care, and conversely, neglecting these rights can lead to inadequate treatment.

Patients are often unaware of their rights or the laws governing them as there are no initiatives or programs in place to inform them. Even if laws exist, their implementation is not rigorously enforced. Unfortunately, the negligence of a small number of medical professionals and healthcare facilities has resulted in the tragic loss of innocent lives.

The establishment of a government-regulated body dedicated to safeguarding patients and their rights could lead to improvements in healthcare

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services. Proper oversight by this authority would hold hospitals accountable for their actions. There shall be a separate charter which will outline the costs of various treatments provided by hospitals. Each hospital will be required to have a complaint and redressal system on its premises, independent of hospital influence.

Strict enforcement of laws ensures the protection of patients' rights. The introduction of new, targeted legislation and the establishment of a regulatory body would directly benefit patients and their health.

Litigation in courts is limited as the regulatory body possesses the authority to address issues promptly, thereby alleviating the burden on the judiciary.

The deteriorating health conditions of individuals in India, coupled with the rise in lifestyle-related and chronic diseases, are becoming increasingly life-threatening. This trend not only affects people's mental well-being but also places significant financial strain on them. The rights aimed at protecting patients from further deterioration of their lives are outlined in the charter and other relevant statutes.

Under pressure from mounting concerns about escalating healthcare expenses and the discrepancy in treatment costs between public and private hospitals, the **Supreme Court of India** recently responded to a public interest litigation (PIL) brought forth by the NGO "**Veterans Forum for Transparency in Public Life**". Adopting its characteristic PIL approach, the court instructed the Union government to devise a method to establish price ranges for all medical procedures and treatments offered by hospitals nationwide, with a deadline of six weeks for reporting back. As an interim measure, the court also warned of potentially imposing the medical fees charged by the Central Government Health System (CGHS) on all hospitals if a solution is not reached.

In September 2019, a High-Level Group commissioned by the **15th Finance Commission** proposed to **recognize the right to health as a fundamental right** and suggested shifting the jurisdiction of health matters from the State List to the Concurrent List.

**Article 25 of the Universal Declaration of Human Rights (UDHR), 1948**, states that everyone has the right to a satisfactory standard of living for

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themselves and their families, which encompasses access to basic needs like food, clothing, housing, healthcare, and essential social services. Furthermore, individuals are entitled to security during times of unemployment, illness, disability, widowhood, old age, or other situations beyond their control.

### 5. Suggestions

Here are the suggestions I propose for governments, hospitals, medical professionals, patients, and the general public:

➤ The **Right to Health**, inherent in the **Right to Life**, guarantees healthcare as a fundamental right for every Indian citizen under Article 21 of the Constitution of India. To address widespread violations of patients' rights by medical entities across the country, the State should enact special legislation to establish a regulatory body with authority.

➤ The recognition of this right, which includes the inherent rights of patients, arises from the progressive interpretation by the Supreme Court of India, which logically extends the **right to life to encompass the right to health through a series of legal precedents**. Consequently, it is the responsibility of the State to protect the health of the population, a duty that both the Central Government and various State governments have conscientiously fulfilled by implementing various measures to mitigate the spread of the COVID-19 pandemic.

➤ There should be a **standardized and consistent pricing structure applicable to all hospitals**. While this is a complex endeavor, it is feasible, considering various factors such as hospital location, class, bed capacity, technological advancements, treatment methods, urban or rural setting, administrative costs, etc.

➤ All permissible areas within hospital premises should be **equipped with CCTV cameras**. This issue has been contentious, with some hospitals installing cameras extensively while others citing restrictions. Governments, through relevant ministries, should devise a uniform approach to address this issue, promoting accountability and transparency.

➤ Medical professionals must exercise caution in their practice, as they may face legal repercussions under Sections 269, 270, 304-A, and 338 of the law, which deal with causing bodily harm or death due to negligence. It's crucial to **avoid**

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**unjust legal actions against doctors**, as baseless accusations can undermine their morale and ultimately harm society.

➤ **Patients in a coma have the right to receive dignified treatment until their recovery**, with their relatives or caregivers closely monitoring their care through regular visits. The Supreme Court of India, as discussed earlier, has affirmed that the right to health, inherent in Article 21 of the Constitution of India, extends to coma patients, who should be treated with dignity until they regain consciousness.

➤ Current laws are **inadequate** to **address** patient issues **comprehensively**. There is a pressing need for specific legislation dedicated exclusively to patients' rights, outlining the responsibilities of medical professionals and hospitals, establishing an independent complaint redressal authority, and setting treatment prices for various diseases across different types of hospitals.

➤ In India, **education and healthcare sectors are ideally non-profit endeavors**, but they have increasingly become profit-driven businesses. This commercialization, including in the healthcare sector, is concerning and should be avoided.

➤ The government must take proactive measures to **eliminate disparities**, particularly in the **medical field**, where every individual's life is equally valuable. The rights of vulnerable groups such as women, the elderly, the sick, children, and individuals with disabilities should be prioritized in accessing treatment.

➤ As stated in charters, **hospitals are morally and legally obligated to release the deceased patient's body to their relatives**, even if **outstanding bills remain unpaid. Humanity should always prevail over financial considerations.**

➤ These issues can be swiftly addressed through collective efforts aimed at fostering a healthier nation. We must collectively commit to **creating a disease-free society by adopting healthier lifestyles and dietary habits, rejecting junk food, and encouraging future generations to do the same.**

*“It is health that is real wealth and not pieces of gold and silver”.*

**-Mahatma Gandhiji**