

Right to Public Health: Socio-Legal Analysis

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Abstract

The right to public health stimulate the protection of people from various diseases. It includes several rights, freedoms, entitlements, and the principle of non-discrimination. The right to public health supersedes the right of an individual in case of a public emergency. The prevention of public good is always important than the protection of an individual.

Initially, the judiciary has made efforts to inculcate the right to public health under Article 21 (right to life and personal liberty) of the Constitution. The Parliament has enacted various laws to protect public health and punish the violators who infringe on the right. The Ministry of Health and Family Welfare, in collaboration with other ministries, formulate various policies. These rights can be achieved only when the community participates in the promotion of rights. NGOs and civil societies also play a significant role in the enforcement of these rights, the introduction of technologies aided in securing, analyzing, and monitoring public health. Several apps have been developing to check, evaluate, and scrutinize the health report of the public.

This paper analyses the socio-legal structure of public health in India. Firstly, social factors are taken into account and are analyzed with recent statistics. After such analysis, several suggestions have been laid down to strengthen the public health system. Thereafter, several constitutional provisions, legislation, and policies have been analyzed.

The paper asserts that besides the proficiency of the three pillars of democracy, there is a need to upgrade the health facilities, promote awareness campaigns, and wheedle population control. India can secure the right to public health to all its citizens only with the balanced blend of contributions by all shareholders of the Democratic-Republic.

Key Words: *Health policies, Legislations, Public health, Rights, Society.*

Introduction

Health signifies the State of being well and sans illness, mentally and physically. The most common understanding of health is the bio-medical concept- as the absence of disease or infirmity. The modern abstraction of health widens its scope and connotes health as a state of total physical, mental, and social well-being. Health concerning a human being is characterized as structural, physiologic, and psychological solidarity; the ability to perform the role for family, work, and community; potential to deal with physical, biological, psychological, and social stress. It includes both sound bodily and mental condition.¹

Public health is a science to secure and improve the health of the people and the community. Acheson(1988) defined, in, public health as “*the art and science of preventing disease, prolonging life, and promoting health through the organized efforts of society.*” Public health relates to protecting the health of the population. The population can be as small as a locality and can be as big as a nation or the whole world. The overall vision is to promote health and social well-being sustainably by ensuring an integrated public health system and reduce inequalities. Achievement of this vision demands collaborative work by various sectors upon determinants of health with health professionals. Primary health care professionals can play a vital role in achieving the targets of the Alma Ata declaration.

The former US Surgeon General C. Everett Koop in times past said: “*Health care is vital to all of us some of the time, but public health is vital to all of us all of the time.*” Public health aims to fulfill society’s interest by guaranteeing conditions in which people can live healthily. The three functions of Public Health are:

- a) The assessment of the health of communities and the identification of the risk of health problems and priorities.
- b) The formulation of public policies to curb these health problems and priorities.
- c) To ensure that people have access to appropriate and cost-effective health-care, including health promotion, disease preventive services, and evaluation of its effectiveness (Shiel Jr.).

Public health is a multidisciplinary field of study that includes epidemiology, social sciences, environmental health, public policy, sexual and reproductive health, and administration of these services. Public health aims to ameliorate the quality of life through the prevention and treatment of diseases. Surveillance and the promotion of healthy behaviours make it practicable.

¹ The Indian medical system, Ayurveda, has an extensive understanding of health. In Sanskrit, it is swasthya, which means to be inveterate in one-self. According to this system, health is an equilibrium between the senses, body fiber, mind, environment.

Evolution of Public Health in India

The Bhore Committee in 1946 reviewed the existing health situation and had made recommendations to pre-empt and constrain diseases, including communicable, non-communicable, and emerging diseases. Implementation of these recommendations developed prodigious infrastructure in the country. At present, India has three tiers of health care systems: Primary, Secondary, and Tertiary. Several national disease programs to eradicate diseases have been setting up until now. In India, many initiatives are taking place for the growth and development of the health care system. In medical colleges and public health institutions, various public health courses have been started, for example, MPH in NCDC, Delhi, and NIE in Chennai. Department of Health Research is currently working on the aegis of the Ministry of Health and Family Welfare. The executive is focusing on the development and promotion of primary health care services to strengthen health care infrastructure and endeavouring to render health care services up to the village level (Chouhan, 2011).

Research Methodology

This paper, initially, analyzes the social aspects of public health. It takes various facets of society on which the health of the community is dependent. After examination, it will profess suggestions for improving health.

Moreover, it will scrutiny the legal backing of the right to public health. It checks implementation is necessary to give life to dead words of the law. In closing, it will set forth the reality of the health care system and suggest possible breakthroughs to recover the same.

Right to Public Health

Health is a predominant factor in the development of any nation. Every human has the right to health. The right to health is a vital right without which a person cannot enjoy any other chief human rights. It is the right of every individual to attain basic standards of health and to have access to health care facilities and simultaneously an obligation of every State to ensure that its subject has easy access to these facilities and protect the interest of the public at large.

The *World Health Organization* defines the right to health as “*a complete state of physical, mental, and social well-being not merely the absence of disease or infirmity.*” The States are under obligation to ensure freedoms and entitlements. The former includes the right to have charge over one’s body, mind, health, freedom from interference such as torture, while the latter contains access to health-care services and appropriate measures taken by the State to about socio-economic determinants of health, such as food, water, poverty.

Essentials of Right to health

The United Nations Committee on Economic, Social and Cultural Rights (CESCR), in its General Comment 14, has provided guidelines for the States to respect, protect, and fulfill the right to health. The Committee has also laid down the following essentials of the right to health:

- **Availability:** The State must ensure the proper public health and individual health-care facilities throughout its territory, including trained professionals, sanitation facilities, and essential medicines.
- **Accessibility:** Access to health involves four elements: non-discrimination, physical accessibility, economic accessibility, and informational accessibility. Everyone should have access to health-care facilities, especially the most vulnerable group, without discrimination on any prohibited grounds.
- **Acceptability:** Health-care facilities should be as per medical ethics and the culture of communities.
- **Quality:** Health facilities must be scientifically and medically expedient and must maintain virtuous quality standards (General Comment, the UN Committee on CESCR, 2000).

Aspects of the right to public health

The following are the aspects of the right to health:

- **Inclusive Right:** Right to health does not have a restricted scope up to easy access and building hospitals, rather it has a wider scope and envisages various factors that can help an individual to lead a healthy life.

They include:

- Safe and pure water to drink and proper sanitation
 - Healthy food
 - Adequate nutrition and shelter
 - Healthy working environment
 - Health-related information and primary education
 - Gender equality
- **Inclusion of freedom:** It includes freedom from non-consensual medical treatment, such as forced experiments and sterilization, freedom from torture, cruelty degrading punishments, and inhuman treatments.
 - **Entitlements:** The entitlements include:
 - The right to a system ensuring equality of opportunity for everyone to enjoy the highest attainable standards of health.
 - The right to prevent, control spread, and cure diseases.
 - Access to essentials medicines and vaccines.
 - Protection of maternal, reproductive, and child health.

- Equality in timely access to facilities.
- Participation of citizens in health-related health issues.
- **Non-discrimination:** It is a basic principle of human rights and one of the crucial elements to enjoy the highest attainable level of health.

Understanding the relation of the above aspects of the right to public health with the current health crisis of COVID-19

The Government of India is playing a vital role in curbing the catastrophic effects of the novel Coronavirus. Let us understand the fulfillment of aspects of the right to health in this situation.

- 1) *Inclusive rights:* With the imposition of the nation-wide lock down the government is ensuring an adequate supply of essentials, including food, water, medicines. The government is dispensing relevant information to limit the spread of COVID-19. The government is also making efforts to educate people so that they are not misguided by fake news.

The people who are in quarantine also have these freedoms; therefore, the government is under a duty to look after the essential requirements of them, including healthy food and sanitation.

- 2) *Inclusion of freedom:* No person can be forced into experimentations. Every citizen has a right against cruelty and torture and can enforce his right through High Courts or the Supreme Court under Article 226 or Article 32. The right to public health might be infringed by individual civil rights, such as the right to privacy, freedom of movement. Therefore, the government has restricted movement to prevent the risk of spreading disease in the community.

- 3) *Entitlements:* The medical institutions and government provide the best possible treatments to patients and ensure the availability of testing centres.

The government has initiated the **COVID-19 Solution Challenge** that allows citizens to take part in curbing the spread of pandemic disease. By this government involves the community in the fight against the disease.

- 4) *Non-discrimination:* Every infected person is entitled to treatment without any discrimination. Everybody has equal access to information and essentials given by the government to prevent the spread and to curb it as soon as possible.

Social Analysis: Right to Public Health

In India, the practice of public health is always dynamic. Social development and scientific advancement have led to a decrease in mortality rates and birth rates. The present-day plan for public health in India includes demographical transition, environmental changes, epidemiological transition, and social determinants of health. The social determinants of health include living conditions, nutrition, safe drinking water, sanitation, education, social security measures (Lakshminarayanan, 2011). In India, the health sector has made substantial progress over the past decades. According to the National Health Profile report 2019, the life expectancy rate is now 68.7 yrs. Numerous diseases like polio, tetanus, guinea worm disease, yaws have been eradicating. Despite this progress, the country is still in danger of communicable diseases. Besides, endemic diseases such as HIV/AIDS, malaria, tropical diseases, the outbreak of transmissible diseases challenge the public health system (Narain, 2016).

Positive Trends over the Last Decades

In the past ten years, India has entered into an advanced era for public health, but continuous progress is required because India ranks 154 out of 195 countries regarding quality and accessibility to health care services. The following are the achievements of India in the past decades:

- 1) **A downtrend in communicable diseases:** Since 2014, India is a polio-free nation. India is also triumphant in eliminating tetanus in 2015. India has also set targets for the elimination of malaria and tuberculosis. Prime Minister Narendra Modi, on Oct. 2, 2019, declared rural India is open defecation free. The downtrend in communicable diseases elucidates the progress in enforcement of the right to public health.
- 2) **Prevention of non-communicable diseases:** A new challenge has emerged in the form of non-communicable diseases such as hypertension, diabetes, cancer, strokes. The central government and state governments have established many health and wellness centres. The governments are now focusing on universal health coverage. The GOI has initiated the National Health Mission in 2013 that is a merger between the Urban Health Mission and Rural Health Mission (Jain, 2018).
- 3) **Reduction in neonatal mortality rates:** Neonatal mortality rates have shown improvement. The deaths per 1000 live birth have dropped from 57 to 37. India has saved the lives of infants by increasing institutional birthing, better sanitation, and immunization coverage.
- 4) **Anti-microbial resistance:** The selling of antibiotics without any prescription is the common practice of chemists. To counter this practice, in 2017, the government has brought the National Action Plan on Antimicrobial Resistance that requires a red line on antibiotics that cannot be sell out without a prescription. But these efforts need legal sanctions for assuring noteworthy implementation. The excessive use of

antibiotics has caused resistance in microbes, and often the medicine does not work on disease. Therefore, for securing public health action plans are prepared to combat the same.

- 5) **Digital Health and Artificial Intelligence:** The government has administered a digital health program named *eVIN* to track immunization. Another public health tool is *ANMOL* that renders better health care services to pregnant women, mothers, and infants. India is using artificial intelligence to make a significant social impact. Artificial Intelligence is used for the diagnosis and treatment of several diseases.
- 6) **Improvement in nutrition level:** India has shown extraordinary improvement in nutrition levels over the last few decades. The governments have subsidized the food for indigent persons; begin mid-day meal schemes at schools to provide nutritious food to children. For reducing anaemia and childhood stunting, India is also planning to introduce fortified food for two-third of the population under the National Food Security Act, 2013 (Jain,2018).

Challenges in the Enforcement of the Right

- 1) **Employment and financial protection:** The employment level in India is considerably low. People do not have sufficient funds for medical treatment. The right to health can be exercised when people are financially strong to avail of required services. The government has initiated several public policies and schemes to render medical-care facilities at nominal rates, but they are not effectively implemented at the ground level. The significant competent population is unemployed or disguisedly unemployed that triggers a reduction in the standard of living. The figure below illustrates the distribution of household income in medical care.

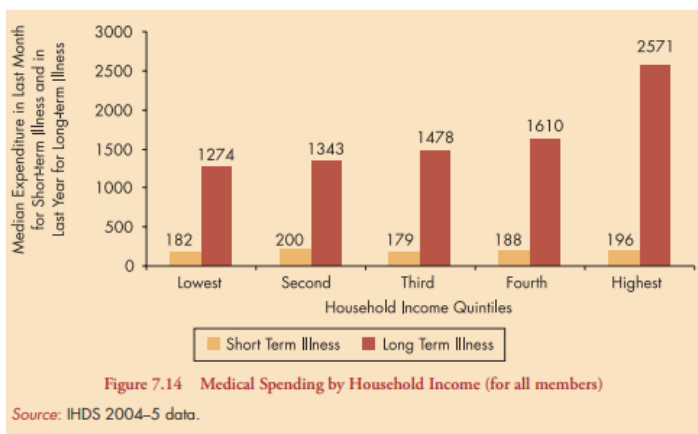


Fig. 01(Source: IHDS 2004-5 data)

2) **Access to health care:** Lack of sanitation, use of biomass fuels, poor environmental conditions are part of the livelihood of a marginal population group. Minor ailments such as diarrhoea, cough, and fever are highly prevalent in the Indian population especially, among poor and uneducated people and those belonging to scheduled tribes. As compared to the increasing rate of illness, the treatment rate is disappointing. According to research, merely 3% of severe diseases are untreated in metro cities, whereas 12% of the same remains untreated in rural areas (Desai et al. 2010). The research also revealed that there exist regional inequalities. There is a drastic variation in access to health-care facilities in different states of India. The rural areas face the problem of transportation. Another drawback is the health-care system is urban-oriented, causing a lack of accessibility in rural areas. The figure below illustrates the source of treatment to cure several illnesses.

Table 7.1: Illness Types and Source of Treatment

	Prevalence			Treatment			Medical Expenses If Sick (Rs)
	Morbidity per 1000	Days Unable To Do Usual Activity (if sick)*	Days Lost Per Year Entire Population+	In Hospital (Per cent)	Treated in Government Centre (Per cent)	Treated Outside Local Area (Per cent)	
Any Short-term illness	124	4.7	7.0	3	17	42	120
Fever	107	4.9	6.2	3	18	44	130
Cough	86	4.6	4.8	3	17	43	120
Diarrhoea	41	5.3	2.6	5	13	46	150
Any Long-term illness	64	58.8	3.8	25	23	62	1,900
Cataract	6	58.5	0.4	35	29	61	1,000
Tuberculosis	4	72.8	0.3	24	26	69	2,450
High BP	14	50.1	0.7	14	24	51	1,500
Heart Diseases	5	56.2	0.3	35	24	65	3,100
Diabetes	8	48.4	0.4	21	27	54	2,400
Leprosy	1	80.2	0.1	17	20	73	1,250
Cancer	1	93.9	0.1	36	27	79	3,800
Asthma	7	68.5	0.5	21	26	65	2,000
Polio	1	77.8	0.1	18	13	44	500
Paralysis	2	148.0	0.3	38	20	61	3,600
Epilepsy	1	84.2	0.1	27	17	71	1,800
Mental illness	2	101.1	0.2	22	20	62	2,000
STD/AIDS	1	127.5	0.1	18	28	66	1,750
Others	23	54.6	1.3	32	20	69	2,200

Notes: *Reference period is one month for short-term illness, one year for long-term illness.
+ Calculated from prevalence and days sick. Henceforth, STD refers to Sexually Transmitted Diseases and AIDS is Acquired Immune Deficiency Syndrome.
Source: IHDS 2004-5 data.

Fig. 02(Source: IHDS 2004-5 data)

3) **Education and general health awareness:** There is a want for information among citizens regarding medical treatments and essential measures to keep them healthy and free from diseases. In remote areas, people do not know the availability of vaccines to curb short-term and common diseases. In various surveys, it is observed that a well-educated woman takes more precautions to protect her children from illness as compared to an uneducated woman. In India, people have learned about the treatment of diseases from experience than from education. Education concerning public health is a paramount requirement to reduce illness rates in the country. The figure below illustrates the health knowledge of married women.

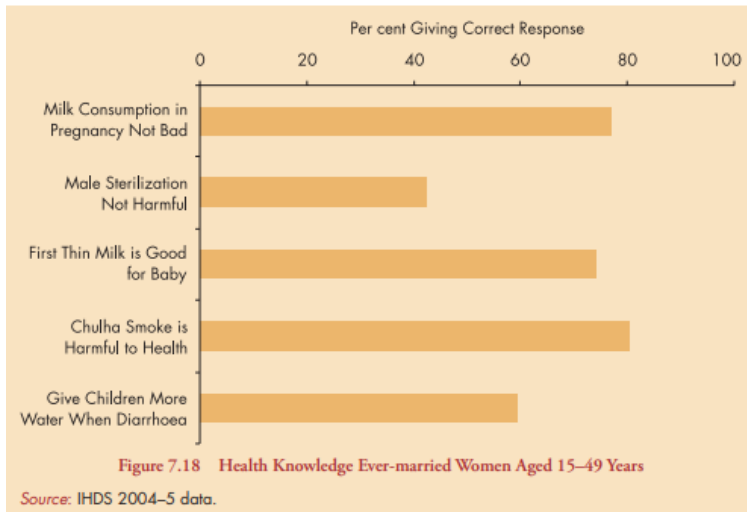


Fig. 03(Source: IHDS 2004-5 data)

- 4) **Political Participation:** In the current scenario, it is noted that political parties promise to frame policies, but are least concerned about their execution and evaluation. The public health field needs support from all, the legislature, executive, judiciary, and common people of the State. Political leaders are expected to support public health policies by coming out of the party lines and functioning for collective benefits. But at present, criticism is the philosophy of oppositions, and it hinders the effective implementation of public policies. An increase in the level of corruption in politics has also adversely affected improvement in public health. The general public is misguided by the so-called political activists, causing the inability to enforce the right.
- 5) **Environment:** The air quality index in urban areas is deteriorating day by day. The industries flow their solid and liquid waste into water bodies. Some of the factors that are impeding the plausible enforcement of the right to public health are - increase in the use of private vehicles, deforestation, development of infrastructural projects, increase in demand for coal and petrol, depletion of ground-level water.
- 6) **Population:** India ranks 2nd in population ranking, after China. In the UN study of the global population, it has been predicted that India is about to overtake China and become the World's most populous country by 2022 (UN, 2015). A blend of the continuous increase in population and inadequate health-care services acts as a hurdle in the significant implementation of the right to public health. The country has a lack of funds to ascertain and realize the current demand for health. In July 2019, the GOI informed the Parliament that there is only one doctor for every 1457 people, which shows the critical situation of the health system in

India. It illustrates the egregious condition of the health system in India. Corrective measures for population control and improvement of the public health system is the need of the hour.

Suggestions for Health Reform in the Twenty-first Century

There is a need for a paradigm shift for the social development of health to endow the right to public health to the citizens of India. The following are the suggestions for health reform in India:

- 1) **Health promotion:** The concerned authorities shall make efforts to encourage people to make healthy choices. For example: helping youths to recognize the dangers of tobacco, sponsoring physical activities. The authorities shall initiate community-wide education programs, establish health camps, promotion of measures to prevent diseases. They may take assistance from various educational institutions to promote awareness of the right to public health.
- 2) **Human Resource Development:** Health workers are the heart of the public health system. The government shall make the workforce a priority and draft a national plan to manage it. There should be regular recruitment of doctors, medical staff, periodic training programs to keep the workforce updated. There is also a need to increase paramedical workers. The government shall establish more educational institutions and introduce new courses in the field of public health and promote research works to combat the problems in the said field. There should be changes in the undergraduate curriculum to include mental health, geriatric care. The Public Health Foundation of Health is playing a vital role in imparting training to strengthen limited institutional capacity.
- 3) **Public Health Policy:** The government should increase expenditure on the health sector from 1.28% to at least 2.5% (Chandana, 2019). At least 80% of the total health budget should be allocated for disease prevention, health promotion, and increasing primary health-care services. Public health institutions must improve the process of health delivery to cope-up with the need of the community. The improvement can be done by following three steps: a) the assessment of the existing public health system; b) making improvements based on the findings; c) monitoring the performance and fixing accountability for any shortcomings (Narain, 2016).
- 4) **Public Health Informatics:** Public health institutions can apply modern technologies to improve efficiency. The institutions can take the assistance of telemedicine providers to develop and increase the utilization of telemedicine. The major telemedicine providers are ISRO, Ministry of Health and Family Welfare, All India Institute of Medical Sciences, Apollo Telemedicine Networking Foundation. The use of technology is cost-effective, helps to transform the behaviour of beneficiaries, and provides accountability. The scope of public health informatics is broad and extensive:

- ❖ Disaster management: preparedness and response
- ❖ Screening for diseases in remote areas
- ❖ Updated health statistics
- ❖ Epidemiological disease surveillance
- ❖ Development of disease support system (DSS)
- ❖ Public health research (Athavale, Zodpey).

- 5) **Population Stabilization:** All-around realization regarding population stabilization is necessary for ensuring the quality of life. In 2019, Prime Minister Narendra Modi said in his Independence Day speech, that those who have small-size families are observing a form of patriotism. He speculated on his government's push for population control. However, women empowerment, strengthening health services, infrastructural developments can play vital roles in population control.
- 6) **Community Participation:** Community participation can exhibit public support for policies and schemes formulated to promote public health. The Ministry of health needs to elucidate a straightforward policy on social participation and operational methods to facilitate community participation. For example, the *Swachh Bharat Mission* aims at the contribution of the public to keep the city clean, prevent the spread of diseases, and reduce environmental pollution. It can also help in lifestyle modification in chronic diseases by physical activity, balanced diet, and interactive sessions.
- 7) **Private sectors and civil society partnerships:** o develop programs for effective enforcement of the right to public health, the government may take the assistance of NGOs, cooperative societies. These organizations can help to create awareness about national policies and schemes among uneducated people. The government can bring PPP models to establish educational institutions, training programs, and develop medicines and vaccines to cure various diseases. The NGOs can provide free legal aid to enforce the right to public health.
- 8) **Environmental protection:** There should be a shift from non-renewable resources to renewable resources. The Ministry of Health, in coordination with other ministries, shall provide technical assistance for the implementation of disaster management and emergency preparedness. The executive shall authoritatively implement Disaster Management Act, 2005. There is a need for a national policy that curb the harmful effect of climate change and improve environmental conditions as the quality of the environment directly affects the quality of public health.

Legal Analysis: Right to Public Health

India is a party to the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, and International Covenant on Economic, Social, and Political Rights. These international instruments have received recognition in various laws, where the Parliament has acknowledged public health as an indispensable right. The Constitution of the State is the supreme law of the land. The Supreme Court has performed a Nobel role in the extensive interpretation of the Constitution. The government has to safeguard public health under the provisions of the Constitution and various laws. The judiciary plays a vital role in recognizing, protecting, and enforcing the rights of the citizens. It can compel the executive to do or to abstain from doing anything that violates this prerogative. The combined efforts of the legislature, executive, judiciary, and active participation of the citizen can make India a Welfare State.

Constitutional Perspective

The Constitution of India is the pivotal law of the country. It defines the relationship between the State and its subjects, the interrelationship between the legislature, executive, and judiciary, and the fundamental rights of the citizens. The preamble herewith upholds public security and welfare and secures social justice and equality to all the citizens. The right of public health is guaranteed in Article 21(Right to life and personal liberty) and Part IV (DPSP) of the Constitution. Schedule VII enshrines public health and sanitation; hospitals and dispensaries in Entry 6 of the State List. Public health is a state subject that makes it the primary responsibility of all States to provide initial health services to all people, including people in tribal and hilly areas, who are in their respective jurisdiction. Now, let us analyze specific provisions in the Supreme law.

Directive Principle of the State Policy

Part IV of the Constitution elaborates certain principles, rules, and guidelines for the Republic in making laws, although *Article 37* restricts the intercession of the judiciary and expressly provides that these principles are not enforceable by any court. It incorporates provisions that require the government to promote the health of every individual in general and vulnerable groups in particular. Articles 39, 42, 47, and 48A create an obligation on the State to ensure sustaining conditions congenial to good health. The provisions are as follows-

- **Article 39(e) and Article 39 (f)²: Certain principles of policy to be followed by the State**

In a civilized society, the welfare of the entire community is dependent on the health and welfare of its children.³ The Supreme Court has promulgated that '*a child is a national asset; therefore, the State must*

² Articles 39(e) and (f) direct the State to make policies to protect childhood and youth against exploitation, and moral and material abandonment.

look after the child by ensuring the full development of its personality' (Justice Bhagwati, 1986).⁴ In *M. C. Mehta v. State of Tamil Nadu*,⁵ The Supreme Court has promulgated that a child is a national asset; therefore, the State must look after the child by ensuring the full development of its personality (Pandey, 2015). The court has also issued directions to restrict the employment of children of tender age at any hazardous place.

- **Article 42: Provisions for just and humane conditions of work and maternity relief**

Article 42 is the foundation stone for the labour laws in India. The Supreme Court, while referring to Articles 42 and 43 emphasized that the Constitution has a deep concern for the welfare of the workers. In *Bandhua Mukti Morcha v. Union of India*,⁶ Justice Bhagwati observed that the right to live with dignity incorporated in Article 21 derives its life breath from Articles 39, 41, and 42. Since DPSPs are not enforceable by courts, it may be impossible to compel the State to enact laws for assuring life with human dignity (Errabbi, 1998). Therefore, the Supreme Court has exercised its power to inculcate the right to live with gravitas in Article 21. The court must interpret laws to achieve goals incorporated in DPSP.

- **Article 47: Duty of the State to raise the level of nutrition and the standard of living and to improve public health**

The State shall strive towards raising the level of nutrition, and standard of living of its people. It is the principal duty of the State to maintain the well-being of the people by improving the public health system. The State shall restrict the consumption of intoxicating drugs and drinks, except for medical purposes. Opium is a drug, which is injurious to health.⁷ The Supreme Court has interpreted Article 47 for the betterment of society. Article 47 aids the court in the infliction of stringent conditions on the liquor trade carried out under Article 19(1)(g). In *Nashirwar v. State of Madhya Pradesh*,⁸ the Supreme Court cited Article 47 and held that Article 19(1) (g) does not protect the liquor trade. The State can impose reasonable restrictions under Article 19(6).

- **Article 48A: Protection and improvement of environment and safeguarding of forests and wildlife**

Protection and improvement of the environment are one of the paramount duty of the State. In *M.C. Mehta (II) v. Union of India*⁹ the Supreme Court, relying on Article 48-A issued directions to Central and

³ Lakshmi Kant Pandey v. Union of India, AIR 1984 SC 469

⁴ Sheela Barse v. Union of India, AIR 1986 SC 1773: (1986) 3 SCC 596

⁵ AIR 1997 SC 699

⁶ AIR 1984 SC 802

⁷ Arjun Das v. State, AIR 1958 Punj 400

⁸ AIR 1975 SC 360

⁹ (1988) 1 SCC 471

State governments, local bodies, and boards under various statutes to compute appropriate steps for the prevention and control of pollution.

In *Association for Environmental Protection v. State of Kerala*,¹⁰ the Aluva Municipality reclaimed part of the Periyar river and the District Tourism Promotion Council, Ernakulam decided to construct a restaurant for the convenience of the public. The State government sanctioned the project, contradicting the G.O. issued by it. The Supreme Court held that G.O. illustrated the State Governments commitments to Article 48-A. The Supreme Court mentioned the *Doctrine of Public Trust* developed by the ancient Roman Empire. The doctrine asserts that some common properties, such as air, sea, forests, water, have prodigious significance in the community. Ergo, they must be held by the government as a trustee for free and unrestricted use by the public, and it is unjustifiable to make these properties a subject of private ownership. This doctrine enjoins the government to preserve resources for the enjoyment of the general public (Pandey, 2015).

Fundamental Rights

Part III of the Constitution embodies the fundamental rights, available to all the citizens of India and enforceable against the State. These rights are not absolute and are subject to certain reasonable restrictions. The Supreme Court, under Article 32 and the High Courts, under Article 226, may enforce these rights. The rights protect dignity and create conditions in which every individual can develop his personality to the fullest extent. The Constitution of India does not expressly include the right to health as a fundamental right. The courts using their authoritative powers have redefined the right to health by using different techniques of interpretation. It held that the right to health is an integral part of the right to life under Article 21. Thus, the government has to provide adequate health facilities to the people. Articles 19, 21, 25, and 26 enshrine the right to public health. They are as follows-

- **Article 19(1)(g): Right to practice any profession, or to carry on any occupation, trade, or business**

Article 19(1)(g) guarantees freedom to practice any profession or to carry on any occupation, trade, or business to all the citizens. But this freedom is subject to Article 19(6).

According to Article 19(6), nothing in Article 19 (1) (g) shall prevent the State from framing any law in the interest of the general public, including protection and improvement of public health, yet the law should not infringe the basic structure of the Constitution. There is no fundamental right to carry on trade or business in noxious and dangerous goods, adulterated food. In *Burrabazar Fire Works Dealers*

¹⁰ AIR 2013 SC 2500

Association and others v. Commissioner of Police, Calcutta,¹¹ the court held that Article 19 does not guarantee a fundamental right to carry on a business that creates pollution and dangerous to public safety, health, and peace. The manufacturing or selling of fireworks that cause the sound without permissible is a violation of the right to health.

- **Article 21: Protection of life and personal liberty**

Before Maneka Gandhi's case, Article 21 protected life and personal liberty from the arbitrary action of the executive. But from this case, the Supreme Court widened the scope of Article 21 and inculcated several rights, and provided various protections to the people that were not expressly provided in the Constitution. Public Interest Litigations have been filed on outspread arrays of health issues involving the right to provide special treatment to children in jails, right against health hazards caused by pollution, right against health hazards from harmful drugs, right against starvation deaths, right against inhuman conditions in after-care homes, right to food, right to clean environment, right against medical negligence (Jain).

Initially, the right to public health got recognition in Francis Coralie Mullin v. Union Territory of Delhi,¹² where the Supreme Court held that the right to life includes the right to food, clothing, and shelter. Justice R.K. Abichandani said, "*without a guarantee of health and well-being most of these freedoms cannot be exercised fully. To make other rights meaningful and effective the right to a healthy life is the basic underlying the constitutional guarantees.*"

In Parmanand Katra v. Union of India,¹³ the Supreme Court held that every medical practitioner is obligated to do treatment in emergency cases and cannot refuse to offer treatment in such cases. Further, government hospitals cannot deny any sort of treatment unless it requires technical expertise. No law or State action can intervene to delay the discharge of this paramount duty of medical professionals.

In Paschim Banga Khet Mazdoor Samiti v. State of West Bengal,¹⁴ the court held that Article 21 requires from State every possible step to preserve and save lives. It is the primary duty of a welfare state to ensure adequate medical facilities, their availability, and in case of any violation; it shall award compensation to the sufferer. The court also acknowledged the requirement of substantial funds to ensure availability, but it cannot take the plea of financial constraints.

¹¹ AIR 1998 Cal. 121

¹² 1981(1) SCC 608

¹³ AIR 1989 SC 2039

¹⁴ (1996) 4 SCC 37

In a renowned judgment of *Consumer Education and Research Centre v. Union of India*,¹⁵ the Supreme Court held that the expression 'life' includes the right to livelihood, better standard of living, hygienic conditions at the workplace, and leisure. The court further held, the State shall not only create necessary conditions for good health but also provide emergency medical services.

The Supreme Court has banned smoking at public places, in the landmark judgment of *Murli S. Deora v. Union of India*.¹⁶ The Supreme Court prohibited it because smoking is injurious to the health of passive smokers. The court has also issued guidelines for Central and State governments for taking steps to restrict the same.

In *Shriram Food and Fertilizer case*,¹⁷ the Supreme Court directed the company to manufacture hazardous and lethal chemicals and gases dangerous to the health and life of workers and people living in its neighbourhood, to take all necessary safety measures before reopening the plant. In *M.C. Mehta v. Union of India*,¹⁸ the petitioner filed PIL against Ganga water pollution. He claimed that despite various anti-pollution laws by legislators, no effective action is discernible. The Supreme Court directed Kanpur Nagar Mahapalika to submit proposals within six months to curb the same. The above directions apply mutatis mutandis to all other Mahapalikas and municipalities having jurisdiction in areas through which the river Ganga flows.

- **Article 25 and Article 26: Right to freedom of Religion**

India is a secular state. The Constitution respects every religion and likewise protects its freedom. Article 25 and 26 secures religious freedom, but it is subject to public order, morality, and health. In the *Church of God (Full Gospel) in India v. K.K.R. Majestic Colony Welfare Association*,¹⁹ the Supreme Court has analyzed the effect of noise pollution on health. Noise may cause interruption of sleep, affect communication, loss of efficient hearing, high blood pressure, gastrointestinal problems, depression, mental stress. The freedom of religion is subject to public order, morality, and health. No religion prescribes the use of voice amplifiers or beating drums for preaching and reciting prayers.

Fundamental Duties

Rights and duties are correlative. Fundamental duties serve as a constant reminder to all the citizens that while exercising certain fundamental rights, the citizens shall observe basic norms of democratic conduct. A man cannot enjoy a right by infringing on the rights of others. Rights to one person simultaneously impose duties on

¹⁵ (1995) 3 SCC 42

¹⁶ AIR 2002 SC 40

¹⁷ AIR 1987 SC 965

¹⁸ (1988) 1 SCC 471

¹⁹ (2000) 7 SCC 282

others. Part IV-A of the Constitution incorporates certain fundamental duties of citizens. According to Article 51A (g), “It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers, and wildlife, and to have compassion for living creatures.” The citizens of India shall preserve the natural resources and abstain from polluting them. The natural environment fulfills the basic needs of human beings, and therefore it is our responsibility to protect, nurture and sustainably use them.

Distribution of Legislative Powers

The Constitution of India is a quasi-federal constitution. The division of power is the basic structure of the Indian Constitution. The legislative powers are divided between the Union and States. The Seventh Schedule provides three lists that contain different subjects for which the union or states can make laws. The lists are as follows- the Union List, the State List, and the Concurrent List. On the subjects mentioned in the concurrent list, both the union and State can make laws. The subjects mentioned in the said lists are as follows-

1) List I: The Union List

- Entry 28 – Port quarantine, including hospitals connected therewith; seamen's and marine hospitals.
- Entry 47 – Insurance.

2) List II: The State List

- Entry 6 – Public health and sanitation; hospitals and dispensaries.
- Entry 9 – Relief of the disabled and unemployable.
- Entry 15 – Preservation, protection, and improvement of stock and prevention of animal diseases; veterinary training and practice.

3) List III: The Concurrent List

- Entry 16 – Lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental deficient.
- Entry 18 – Adulteration of foodstuffs and other goods.
- Entry 19 – Drugs and poisons, subject to the provisions of entry 59 of List I with respect to opium.
- Entry 20 A – Pollution control and family planning.
- Entry 25 – Education, including technical education, medical education, and universities, subject to the provisions of entries 63, 64, 65, and 66 of List I; vocational and technical training of labour.
- Entry 26 – Legal, medical, and other professions.
- Entry 30 – Vital statistics, including registration of births and deaths.

Responsibilities of Municipalities and Panchayats

Article 243-W of the Constitution states that the State Legislature may by law, endow the municipalities with powers and authorities to enable them to function as institutions of self-government. The municipalities may exercise their powers for the implementation of schemes entrusted to them by the state government. They also have powers on matters mentioned in the Twelfth Schedule, which includes public health, sanitation, conservancy, and solid waste management (item 6).

Similarly, under Article 243-G, the Panchayats have powers to function as institutions of self-government and to implement the schemes entrusted to them by the executive. Panchayats may also exercise their powers on the matters mentioned in Eleventh Schedule, which includes health, sanitation, hospitals, primary health centres, and dispensaries (item 23).

Legal Perspective

Law has important contributions to public health achievements and protection of the right to public health. The legislation is a means to reflect social and political decisions. Laws attempt to create and maintain conditions in which measures can be taken to promote health or to remove impediments to health or to regulate medical institutions and personnel or lay down principles to ensure proper discharge of duties. The Parliament has enacted several laws to ensure public health. The scope of public health is very extensive; hence the ambit of public health laws is also wide. *Gostin* defines public health laws as “such legal forces and duties of organized society, by which conditions for maintaining citizen’s health are ensured” (Mishra, 2015). The following are some of the public health laws that protect the right to public health:

Drugs and Cosmetics Act, 1940

The main objective of the Act is to prevent sub-standards in drugs, presumably for maintaining high standards of medical treatment (Katjus, 2006). The Act emphasizes licensing not only for drugs and cosmetics but also for storage to prevent drugs from deteriorating into substances harmful to society. In case of violation of any provision of the Act, it also provides punishment of imprisonment for not less than one year and fine.

Environmental Laws

In the recent past, the environmental laws in India have been growing in volumes because the right to public health is dependent upon the right to a clean environment. The following are some of the environmental laws that protect the right to health:

- Environment Protection Act, 1986: The Act was passed to fulfill the commitments of the Stockholm Declaration of 1972. The Act is a general measure to protect the environment. It confers extensive power on the government, including powers to make rules and issue directions (Shastri 2002).
- Air (Prevention and Control of Pollution) Act, 1981: The Act aims to prevent, control, and abate air pollution. To achieve the aforesaid purposes, the Act makes provisions for the establishment of Boards at central and state levels. The Act lays down several measures such as the declaration of air polluted areas, instructions for ensuring standards for emission from automobiles, power of Boards to restraint any person causing pollution.
- Water (Prevention and Control of Pollution) Act, 1974: The objective of the Act is to maintain or restore the wholesomeness of water and to prevent, control, and abate water pollution. The Act provides the establishment of Boards and also confers extensive power to these boards. The Act seeks to provide clean and healthy water to all the citizens as water is an essential requirement to maintain good health.

Criminal Laws

- Indian Penal Code, 1860: Chapter XIV (Sections 268 – 294A) of the Code deals with offences affecting public safety, convenience, decency, and morals. Sections 268 to 278 punishes certain acts likely to spread diseases; adulterate food, drinks, or drugs; create air or water pollution, etc. These sections are directly related to the protection of public health. It punishes unlawful or negligent or malignant acts known to be likely to spread the infection of diseases.
- Criminal Procedure Code, 1973: Chapter X (Section 133 – 148) of the Code deals with the maintenance of public order and tranquillity. Sections 133 – 143 contain provisions for the preservation of the environment and prevention of public nuisance.

Epidemic diseases Act, 1925

The Act of 1925 gives powers to the government to take certain measures to check the spread of epidemic diseases. The government can issue compulsory notification of such disease, inoculate, and, if necessary, segregate patients.

Code of Civil Procedure, 1908

A suit under Section 9 of the Code requires locus standi; section 91 envisages a procedure where two or more persons may, with the leave of the court, institute a suit for appropriate relief for public nuisance. “Public

Nuisance” includes an act, which causes, or must necessarily cause obstruction, injury, or annoyance to persons who are enjoying a public right.²⁰

Public Liability Insurance Act, 1991

The Act aims to provide immediate relief to persons affected by accidents occurring while handling any hazardous substance and for matters connected therewith or incidental thereto. The Act creates ‘no-fault liability’ for harm caused by accident and for such liability insurance is made compulsory.

Consumer Protection Act, 2019

The Act has repealed the previous Act of 1986. This Act is considered the most effective legislation to protect the interest of the consumers. The Act aims to protect the interests of the consumers and establishes authorities for timely and effective administration and settlement of consumers’ disputes. Medical services also come under the ambit of the Act. The law extends to all private hospitals, doctors, nurses, clinics, etc., when a full or partial payment is made.

Women Welfare Laws

- Maternity Benefits Act, 1961: The Act regulates the employment of women in certain institutions for certain periods before and after childbirth and provides maternity and other benefits. It also covers situations of miscarriage, death, and tubectomy. The employment of women for the period of six weeks preceding delivery is strictly prohibited. However, women are entitled to the usual wages. The right to maternity relief has been held to be an integral part of the right to life and personal liberty under Article 21.²¹
- Medical Termination of Pregnancy Act, 1971: The Act intends to safeguard the physical and mental health of the pregnant woman and the child in the womb. The Act provides circumstances under which pregnancy may be terminated, which must be determined by a registered medical practitioner. The conditions are the following:
 - i. Where the length of pregnancy does not exceed 12 weeks, i.e. three months; or
 - ii. Where the length of pregnancy exceeds 12 weeks but not 20 weeks.

The medical practitioner shall act in good faith while determining that the continuance of pregnancy involves a risk to the life or of grave injury to the mental or physical health of a pregnant woman or child.

²⁰ Pyarelal v. Santlal, AIR 1972 Raj 103

²¹ Bandhua Mukti Morcha v. Union of India, (1984) 3 SCC 161

Prevention of Food Adulteration Act, 1954

The Parliament has enacted the Prevention of Food Adulteration Act, 1954 with the intent to prevent adulteration of food. The Central government has the power to set standards for the quality of food. It provides an elaborate scheme to detect misbranding and adulteration of food articles. The Act requires the manufacturers and distributors to give a guarantee to retailers about the nature and quality of articles of food so sold. It Act also makes provisions of penalties for contravention of this Act or any rules thereunder.

Government Health Policies – Shaping Up Health-care Narrative

Health policy is the plans, decisions, and actions that are undertaken to achieve the health-care objective for society. Health policies may be categorized into the following - the insurance policy, vaccination policy, pharmaceutical policy, public health policy, mental health policy, etc. The recent health policies formulated by the Government of India are as follows –

National Health Policy, 2017

The Ministry of health and family welfare has published the National Health Policy, 2017 on March 9, 2018.

The government has set the following targets for the reduction of incidence and prevalence of certain diseases:

- HIV/AIDS – To achieve global targets of 2000; also termed as 90:90:90.
- Elimination of Leprosy by 2018, Kala-Azar by 2017, Lymphatic Filariasis by 2017.
- Elimination of tuberculosis by 2025.
- Reduce the prevalence of blindness to 0.25/1000 by 2025 and reduce the burden of disease by one-third from the current levels.
- Reduce premature mortality from cardiovascular diseases, cancer, chronic respiratory diseases, and diabetes by 25% by 2025.

National Automotive Policy, 2018

One of the objectives of the National Auto Policy is to promote clean, efficient, and sustainable mobility, with a focus on environmental protection and affordability. The GOI has demonstrated a clear intention to curb vehicular air pollution through crucial initiatives including the early introduction of Bharat Stage VI in 2020. In *M.C. Mehta v. Union of India and Ors*,²² the Supreme Court has said that no Bharat Stage IV vehicles shall be sold from April 1, 2020. However, due to slow down industrial sector and outbreak of coronavirus, the apex court has, on the plea of the Federation of Automobile Dealers Association (FADA) and the Society of

²² Writ Petition (CIVIL) no. 13029 of 1985

Automobile Manufacturers (SIAM), allowed the selling of BS4 vehicles till April 24 but restricted it up to 10% of the total stock.

Ayushman Bharat: National Health Protection Mission

Ayushman Bharat seeks a new India by 2022. It aims to make path-breaking interventions to address primary, secondary, and tertiary health care systems, covering both prevention and health promotion. National Health Protection Mission covers over ten crore poor and vulnerable families and provides coverage of Rs. 5 lakhs per family per year for secondary and tertiary care hospitalization. The government has also allocated Rs. 1200 crore for 1.5 lakhs health and wellness centres.

Pradhan Mantri Jan Arogya Yojana

This yojana runs under the flagship of Ayushman Bharat. It is the largest health assurance scheme. It provides cash-less access to health care services. It aims to help mitigate catastrophic expenditure on medical treatment. It covers three days pre-hospitalization and 15 days of post-hospitalization expenses. It has no restrictions on age, gender, or family size. The benefits of the scheme can be enjoyed by the beneficiary across the country.

Mission Indradhanush

The objective of the mission is to strengthen and re-energize the immunization program and achieve full coverage for all children up to 2 years of age and pregnant women at a rapid pace. The government has identified 201 districts in the country that have the highest number of partially immunized and unimmunized children. The government has launched the Intensified Mission Indradhanush 2.0 to boost the regular immunization coverage. India has an opportunity to reduce the death rates of children below the age of 5 years.

Rashtriya Swasthya Bima Yojana

The scheme was launched by the Ministry of Labor and Employment to provide health coverage to BPL families. It aims to protect BPL households from financial liabilities arising out of health issues involving hospitalization. The government has introduced the concept of 'Smart Cards'. The smart card is used to identify the beneficiary through photographs and fingerprints and the information of the patient. The smart card gives the facility of cashless transactions at empanelled hospitals and portability of benefits across the country.

Pradhan Mantri Swasthya Suraksha Yojana

The scheme envisions the creation of a tertiary health-care facility in medical education, research, and clinical care. It aims to correct regional imbalances and to ensure the availability of affordable health-care services, and ameliorate facilities for quality education. The scheme has mainly two components –

- Establishing new AIIMS institutions; and
- Upgradation of existing government medical colleges through the establishment of super speciality blocks or trauma care centres.

Prospects for the future

India has made praiseworthy efforts in formulating laws and policies to recognize and protect the right to public health. But the implementation of these laws and policies are not so effective. The executive needs to focus more on achieving the set targets. The government shall endeavour to improve the existing health-care system and may bring up the comprehensive right to public health law. The government shall decentralize its powers and functions to lower levels, especially to Municipalities and Panchayats, to ensure that only the beneficiaries get the benefits of the welfare legislation or policy. The principle of accountability lacks in the public welfare system. It is an urgent need to make authorities accountable for their faults. The grievance – redressal system shall be introduced for the disputes in public health. The judiciary is playing a pivotal role in the protection of the right to public health, but it shall introduce a mechanism for speedy disposal of cases. The laws framed by the legislature shall be effectively implemented by the executive, and the judiciary shall protect the rights of the people and ensure proper dispensation of justice. Ergo, all the interested party shall accomplish their part for the opulence of the right to public health.

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