



Right to Health and few Misconceptions

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Abstract: The right to health is an inclusive right. It is frequently associated to the right to health with access to health care and the building of hospitals. This is correct, but the right to health extends further. It includes a wide range of factors that can help us lead a healthy life. In this article authors describes few provisions given by Constitution of India regarding the right to health and then explains the basics of health care system in general. Further the author describes and explains the key aspects of the right to health and then talks about the entitlements of right to health. Finally authors talks about common misconceptions about the right to health.

Key words: Constitution, Economic, Cultural Rights, exploitation, Health services

Introduction:

The Constitution of India has provisions regarding the right to health. The obligation of the State to ensure the creation and the sustaining of conditions congenial to good health is cast by the Constitutional directives contained in Articles 38, 39 (e) (f), 42, 47 and 48 A in Part IV of the Constitution of India. The state has to direct its policy towards securing that health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength [Article 39 (e)] and that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and maternal abandonment [Article 39 (f)].

Health Care System, The Constitution has made health care services largely a responsibility of State governments but has left enough manoeuvrability for the Centre since a large number of items are listed in the concurrent list. The Centre has been able to expand its sphere of control over the health sector. Hence the central government has played a far more significant role in the health sector than demanded by the Constitution. The health policy and planning framework has been provided by the central government. In concrete terms, the central government has pushed various national programmes (vertical programmes for leprosy, tuberculosis, blindness, malaria, smallpox, diarrhoea, filaria, goitre and now HIV/AIDS) in which the States have had little say. The States have acquiesced due to the central government's accompanying funding. These programmes are implemented uniformly across the length and breadth of the country. Then there are the



Centre's own programmes of family planning and universal

Key aspects of the right to health:

The right to health is an inclusive right. It is frequently associated to the right to health with access to health care and the building of hospitals. This is correct, but the right to health extends further. It includes a wide range of factors that can help us lead a healthy life. The Committee on Economic, Social and Cultural Rights, the body responsible for monitoring the International Covenant on Economic, Social and Cultural Rights, calls these the "underlying determinants of health".

They include:

- Safe drinking water and adequate sanitation;
- Safe food and Adequate nutrition and housing;
- Healthy working and environmental conditions;
- Health-related education and information plus Gender equality.

The right to health contains freedoms. These freedoms include the right to be free from non-consensual medical treatment, such as medical experiments and research or forced sterilization, and to be free from torture and other cruel, inhuman or degrading treatment or punishment.

The right to health contains entitlements. These entitlements include:

- The right to a system of health protection providing equality of opportunity for everyone to enjoy the highest attainable level of health

- The right to prevention, treatment and control of diseases
- Access to essential medicines
- Maternal, child and reproductive health
- Equal and timely access to basic health services
- The provision of health-related education and information
- Participation of the population in health-related decision-making at the national and community levels.

Health services, goods and facilities must be provided to all without any discrimination. Non-discrimination is a key principle in human rights and is crucial to the enjoyment of the right to the highest attainable standard of health. All services, goods and facilities must be available, accessible, acceptable and of good quality.

- Functioning public health and health-care facilities, goods and services must be available in sufficient quantity within a State.
- They must be accessible physically (in safe reach for all sections of the population, including children, adolescents, older persons, persons with disabilities and other vulnerable groups) as well as financially and on the basis of non-discrimination. Accessibility also implies the right to seek, receive and impart health-related information in an accessible format (for all, including persons with disabilities), but does not impair the right to have personal health data treated confidentially.
- The facilities, goods and services should also respect medical ethics, and be gender-sensitive and culturally appropriate. In other words, they should be medically and culturally acceptable.



- Finally, they must be scientifically and medically appropriate and of good quality. This requires, in particular, trained health professionals, scientifically approved and unexpired drugs and hospital equipment, adequate sanitation and safe drinking water.

Common misconceptions about the right to health:

- The right to health is NOT the same as the right to be healthy. A common misconception is that government has to guarantee us good health. However, good health is influenced by several factors that are outside the direct control of States, such as an individual's biological make-up and socio-economic conditions. Rather, the right to health refers to the right to the enjoyment of a variety of goods, facilities, services and conditions necessary for its realization. This is why it is more accurate to describe it as the right to the highest attainable standard of physical and mental health, rather than an unconditional right to be healthy.
- The right to health is NOT only a programmatic goal to be attained in the long term. The fact that the right to health should be a tangible programmatic goal does not mean that no immediate obligations on government to arise from it. In fact, government must make every possible effort, within available resources, to realize the right to health and to take steps in that direction without delay. Notwithstanding resource constraints, some obligations have an immediate effect, such as the undertaking to guarantee the right to health in a non-discriminatory manner, to develop specific legislation and plans

of action, or other similar steps towards the full realization of this right, as is the case with any other human right. Government also has to ensure a minimum level of access to the essential material components of the right to health, such as the provision of essential drugs and maternal and child health services.

- A country's difficult financial situation does NOT absolve it from having to take action to realize the right to health. It is often argued that Government that cannot afford it are not obliged to take steps to realize this right or may delay their obligations indefinitely. When considering the level of implementation of this right in a particular Government, the availability of resources at that time and the development context are taken into account. Nonetheless, no government can justify a failure to respect its obligations because of a lack of resources. Government must guarantee the right to health to the maximum of their available resources, even if these are tight.

Conclusion: Health services, goods and facilities must be provided to all without any discrimination. Non-discrimination is a key principle in human rights and is crucial to the enjoyment of the right to the highest attainable standard of health. All services, goods and facilities must be available, accessible, acceptable and of good quality. The facilities, goods and services should also respect medical ethics, and be gender-sensitive and culturally appropriate.

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