

## ACCESS TO HEALTHCARE IN INDIA

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### SUMMARY

Right to Healthcare is a fundamental right. If denied, it violates Article 21 of the Constitution of India. Everyday this right is taken away from those who have no access to healthcare. Yes, government hospitals do provide with free treatment for all, but there is a difference between healthcare and quality healthcare which currently only something that the affluent can afford. I believe that the government should focus on two aspects before anything else 1) education and 2) healthcare. Most people struggle daily as they cannot afford the required medicines or even basic healthcare. People fail to understand that money and time will always come and go but if you put your health at risk you'll never get it back. Due to lack of education and funds amongst the masses, many diseases and infections go untreated. A critical illness might be construed as a minor one and can even spread across the entire nation causing an epidemic. I firmly believe that every time a person is denied healthcare or refuses to get treatment or simply cannot afford it is like stealing a part of their life.

### ❖ INTRODUCTION

The Constitution of India guarantees everyone the right to the highest achievable standard of physical and mental healthcare. According to Article 21 of the Constitution, protection of life and personal liberty is guaranteed to every citizen of our country. Further, it has also been held that the right to health is integral to the right to life and the government has a constitutional obligation to provide health facilities.<sup>2</sup> Although, in our country access to healthcare is free or highly subsidized at government and municipal hospitals, there are several constraints in delivering quality care to the people. These issues include shortage of medical and paramedical

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<sup>2</sup> State of Punjab v. Mohinder Singh Chawla (1997) 2 SCC 83.

manpower, over-crowded OPD, due to lack of space, inadequate infrastructure, wastage of funds, and even illiteracy and ignorance amongst patients. If timely care or service is not provided during critical illness or accident, this infringes on his or her right to life.

Many Primary Health Centers (PHC) in villages and talukas have no trained doctor or even a qualified nurse to attend to the patients. In this abysmal scenario, gurads and untrained personnel attend to patients often causing more harm than good. Also, many doctors shun rural postings and jobs due to dilapidated living conditions and poor infrastructure in the local clinics and hospitals. The remuneration too is inadequate and this leaves the personnel vulnerable to generate alternate source of income by sometimes charging patients for their service and even for dispensing medicines.

In one case of *State of Punjab v. Ram Lubhaya Bagga*, 1998 the Supreme Court stated that “Article 21 guaranteed the right to life and the corresponding duty was with the state. The duty of the state was further re-enforced by Article 47 which established the primary duty of the state to secure health of its citizen by providing for not only adequate and appropriate medical facilities but also to bring them within the “reach of its people, as far as possible.”<sup>3</sup>

Even though this was a Supreme Court decision given in 1998 there remain many people who have no access to healthcare. Whether it is in villages or even in a city like Mumbai there are people struggling to get an appointment with a doctor or cannot afford the medicines and the bills of a hospital. There are people sleeping outside the footpaths for days outside government hospitals just so that they can get to meet a doctor. Public Interest petitions have been filed under Article 21 of the Constitution in response to the violation of the right to health and against inhuman conditions in the hospitals.<sup>4</sup>

The Right to healthcare clearly states that “each citizen the right to healthcare services, including free diagnostics, outpatient care, medicines and hospitalization through a network of public hospitals and enlisted private hospitals.” Although setting up of healthcare programs have been done, to execute them properly a lot of time, effort and manpower is required.

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<sup>3</sup> *State of Punjab v. Ram Lubhaya Bagga* (1998) 4 SCC 117.

<sup>4</sup> *People’s Union for Civil Liberties v. Union of India* (1997) 1 SCC 301.

### ❖ OBJECTIVES

The right to healthcare, though being a Fundamental Right is not accessible to everyone. The Supreme Court, in one case has stated that “The Court declared that the right to life enshrined in the Indian Constitution (Article 21) imposes an obligation on the State to safeguard the right to life of every person and that preservation of human life is of paramount importance. This obligation on the State stands irrespective of constraints in financial resources. The Court stated that denial of timely medical treatment necessary to preserve human life in government-owned hospitals is a violation of this right. It also directed the Government to formulate a blueprint for primary health care with particular reference to treatment of patients during an emergency.”<sup>5</sup>

Instead of securing access to comprehensive health-care services, the national programmes on tuberculosis, malaria, leprosy, immunisation, diarrheal diseases, blindness and family planning should be enforced in a correct manner. With no integration at the delivery level, these programmes are insensitive to local conditions, unresponsive to local needs, highly bureaucratized and inefficient. State capitals have had little or no scope for flexibility based on local conditions. Local populations were indifferent and in some cases hostile to such programmes, resulting in fair measure to the very poor utilisation of government health facilities in many areas.<sup>6</sup>

The primary aim for the betterment of the healthcare is not creating more laws but executing the ones that are already there in the right spirit. Based on previous rulings of the court, the laws in place are sufficient for everyone to get admission into a hospital without suffering through waiting in a long queue. If the laws in place are implemented, maybe with better funding, our healthcare system can take a turn. Of course, this is not something that can happen overnight but if hospitals are able to follow the rules and regulations in a correct manner then with the co-operation of the patients everyone can get access to an efficient system of healthcare.

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<sup>5</sup> Paschim Banga Khet Mazdoor Samity v. State of West Bengal (AIR 1996 SC 2426 at 2429 para 9).

<sup>6</sup> The Hindu- Continuing tale of state neglect

### ❖ RESEARCH QUESTIONS

#### 1. Are their laws against hazardous drugs (medicines) in India?

Yes, there are laws against hazardous drugs in India. Not only when it comes to consumption but also when it comes to acquiring them. By law, no pharmacist is allowed to give medicines to customers without a prescription. But these laws are not for the over-the counter drugs such as Crocin or Sinarest. These laws are for Schedule-H drugs. Though some drugs were expensive at a point of time, the Supreme Court rules that the State should make “useful drugs available at reasonable price so as to be within the common man's reach.”<sup>7</sup>

This does not come under the violation of Art. 21 as healthcare is being given, but at a cost. Some of these drugs if not used in the prescribed format or in the given dose can be toxic, even lethal. Most of the times, this is the case with painkillers. Once a painkiller is prescribed to a patient for the right reason it is seen that some patients become obsessed with the painkiller. They think that the pain killer can be consumed every time they have any minor pain. If consumed in the wrong dose or with alcohol or paracetamol, it can be fatal. The patient cannot then sue the hospital or the doctor if something goes wrong as the prescription would clearly state the dose and the amount of time the medicine had to be consumed. Such laws improve the standard and the maintenance of public health care system.

#### 2. Is awareness a factor in the poor healthcare system?

The awareness among Indian citizens when it comes to healthcare plays a big role on the system itself. Research states that knowledge regarding breastfeeding practice was found in only one-third of the antenatal mothers in two studies. Moving ahead in the lifecycle, a study in urban Haryana found that only 11.3% of the adolescent girls studied knew correctly about key reproductive health issues. A review article on geriatric morbidity found that only 20.3% of

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<sup>7</sup> Vincent v. Union of India (AIR 1987 SC 990)

participants were aware of common causes of prevalent illness and their prevention.<sup>8</sup> This is because of the educational status, poor functional literacy, low accent on education within the healthcare system, and low priority for health in the population, among others.

The only solution to this is educating the masses and creating awareness for them in every State. The only way this can be done is if the grassroot level of India is educated properly. Basic needs to women and men need to be provided which includes sex education. Basic paediatric care should be taught to parents or people who plan on becoming parents. I firmly believe that awareness regarding healthcare should be taught when you're a child itself. Every child of age thirteen and above should know about the basics of their own health. Regular vaccinations and health checkups of children and infants ensure less problems during their growing stages of life. A review on the effectiveness of interventions on adolescent reproductive health showed a considerable increase in the awareness levels of girls with regard to knowledge of health problems, environmental health, nutritional awareness, and reproductive and child health following intervention.<sup>9</sup>

Hence, it is critical that awareness is spread amongst people from all the classes of society.

### 3. What is the cost of healthcare in India?

Everyone knows that private sector dominates over the government sector in the healthcare industry. Most households pay from their own pockets or pay via insurance but, these are for the households that can afford to. Most people depend upon the public sector for their welfare. The public sector proposes healthcare at low or no cost but people believe it to be unreliable. No one accepts it to be their first choice but when money is tight they have no choice they have no choice but to resort to the government hospitals. A lot of emphasis has also been given to doorstep delivery of welfare and health services but there has been no execution yet. However, the scheme-wise expenditure on India's National Rural Health Mission (NRHM) during 11th Plan (2007–2012) on public health care expenditure reveals that a major share of the allocated

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<sup>8</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6166510/>

<sup>9</sup> Kotwal N, Khan N, Kaul S. A review of the effectiveness of the interventions on adolescent reproductive health in developing countries. *Int J Sci Res Publ.* 2014;4:1–4.

resource on health was spent on family welfare program (90%), leaving a small segment (7.7%) for disease control.<sup>10</sup>

A lot of investment in family welfare and healthcare is necessary and should not be ignored. Due to lack of resources there are families who cannot afford basic insurance. The government has started many schemes for family planning, women and child healthcare and vaccinations for infants. A lot of public health facilities have been established but due to factors like absence of quality doctors, poor facilities and unavailability of medical equipment people prefer going to private hospitals or avoid going to a hospital at all.

#### ❖ CURRENT SCENARIO

Health in India is a state subject. The Indian healthcare industry is all set to grow to over USD 280 billion by 2020, which is a growth of over ten times from 2005.<sup>11</sup> Even though the healthcare industry is a growing one there are still problems attached to it. If you've read the papers, recently a doctor in Assam was beaten to death by a mob as he was not available to attend to a patient. There were no arrests made. After this doctors protested, and there was a strike in the government and private sector. The fact that he was not in the hospital and that there was no one else to treat the patient sheds light on the current scenario of the access to healthcare in India. Access to healthcare facilities is currently only urban biased. Thus, people living in the rural areas find it difficult to reach through to a doctor or a facility. Hence, rural areas share a larger portion of the unhealthy population.

With respect to access to health care, the 12th plan document states that "Barriers to access would be recognized and overcome especially for the disadvantaged and those living far from facilities." This being stated in a legal document hold no value. Besides availability, affordability and acceptancy, adequacy is also a reason as to why people don't go to government sector hospitals. Those who cannot afford to go to private sectors should go the public sector hospitals

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<sup>10</sup> MoHFW. National Health Profile 2012, Central Bureau of Health Intelligence, Ministry of Health and Family Welfare, GoI (2012).

<sup>11</sup> <https://ehealth.eletsonline.com/2013/02/healthcare-scenario-in-india/>

but they refuse to believe that they can be treated at them. A negative attitude is shown when people are asked or recommended to go to a government hospital. The ones living in rural areas, however critical still cannot afford to come into the city and get themselves or family members treated. Those who do have to wait for days with no place to stay or money to eat food. With malnutrition, more issues occur in the ailing. Corruption is another situation when it comes to hospitals. There is always someone trying to bribe the hospital staff for them to be treated before someone else or for them to be given a better treatment or for a better room. As much as all these factors play a role, I believe education still plays a large one when it comes to healthcare.

Take for example the Sabrimala temple case.<sup>12</sup> There are people who still believe that women have “problems” and cannot enter temples after reaching puberty. Although this does not come under access to healthcare it does come under unawareness of health issues. I believe if men are still unaware or refuse to believe in such a sacred process of a woman’s body they will always be ignorant even towards primary healthcare.

The Indian Constitution has incorporated the responsibility of the state in ensuring basic nutrition, basic standard of living, public health, protection of workers, special provisions for disabled persons and other health standards, which were described under Articles 39, 41, 42 and 47 in the Directive Principles of state policy.

In accordance with the recognition of the fundamental right to health, the Indian Government adopted a national health policy targeted “health for all” in the year 2000. The legislature has also introduced acts like the Transplantation of Human Organs Act, Prenatal Diagnostic Techniques Act, Medical Termination of Pregnancy Act and others to improve healthcare. The media has also played an important role, by bringing the problems of the healthcare sector to the attention of Government authorities. Though the current scenario persists of many problems the government is trying to exhaust as many resources they can provide to the healthcare sector. Initiatives have been taken to improve the current scenario. Maybe, with rapid advancements the rising problem of deteriorating health can go down.

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<sup>12</sup> Sabrimala Case WP (C) 373/2006; RP (C) 3358/2018

Take for example, the current rising COVID situation in the country. The COVID-19 response has disrupted the health services in rural India. A scope of many pointers shows a stressing interruption in India's essential wellbeing administrations in March as nearby organizations concentrated on containing the spread of COVID-19. These incorporate shortened inoculation plans, limited inpatient, outpatient and crisis treatment for irresistible and non-transmittable infections, decreased research center examinations, and brought access down to psychological well-being treatment. People refuse to stay at home and doctors are being blamed for deaths. They believe that a cloth mask can protect them from the disease. But the situation shows the reboot India requires with their current healthcare situation. The cholera epidemic in mid-nineteenth century London and the Spanish flu in the early part of the twentieth century made people and governments all over the world realize the importance of public health.

If anything at all, I believe that this situation challenges India's public healthcare system. What the COVID-19 pandemic has done is to carry a need to keep moving to fix it. In the event that the infection can unleash ruin in created nations with far unrivaled social insurance, India is clearly sitting on a time bomb. Until recently, India had only 111 Covid-19 testing centers to handle a population of 1.35 billion people. The number of beds in government-run quarantine facilities across the country, meanwhile, is about 60,000. As a result, most patients have been relying on understaffed and underfunded state-run facilities. In most cases sick people refuse to come forward as they don't believe in the healthcare system.

#### ❖ CASE STUDIES

Access to healthcare in India arises in many forms. Some of the landmark cases and judicial decisions have transformed the legal side and the healthcare system in India. These cases are pertinent as some of them are in direct violation of Article 21 of the Constitution of India and the articles of the WHO.

- a) Refusal to pay the bill

In this case the plaintiff needed a heart ailment which was not available in the State of Punjab. After obtaining the requisite permission, he received the appropriate treatment from All India Institute of Medical Sciences (AIIMS), New Delhi, a state run hospital. On submitting the bills for reimbursement, bills for room rent paid to the hospital were rejected as inadmissible. The High Court's decision was that the government had a constitutional obligation to pay for medical bills incurred by its current and retired employees and as per the policy formulated by the state, it necessarily had to pay the bills.<sup>13</sup>

b) Pollution Hazards & their effect on health

In this landmark case<sup>14</sup>, the Supreme Court's decision stated that The Court ordered the tanneries to establish primary treatment plants if not Secondary treatment plants. That is the minimum which the tanneries should do in the circumstances of the case. The pollution was not only a health hazard but was also affecting people's health.

c) Immediate medical aid to injured persons

Parmanand Katara, a human rights activist, filed a writ petition in the Supreme Court. His basis was a newspaper report concerning the death of a scooterist after an accident with a speeding car. Doctors refused to attend to him<sup>15</sup>. They directed him to another hospital around 20 km. away that could handle medico-legal cases. Based on the petition, the Supreme Court stated that-

- 1) Preservation of human life is of paramount importance
- 2) Every doctor, at a government hospital or otherwise, has the professional obligation to extend his/her services to protect life
- 3) There should be no doubt that the effort to save the person should receive top priority. This applies not only to the legal profession, but also to the police and other citizens part of the matter

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<sup>13</sup> State of Punjab v. Mohinder Singh Chawla (1997) 2 SCC 83.

<sup>14</sup> Mehta v. Union of India (1987) 4 SCC 463; MC Mehta v. Union of India (regarding emission standards for vehicles) (1999) 6 SCC 12.

<sup>15</sup> Parmanand Kataria v. Union of India (1989) 4 SCC 286; AIR 1989 SC 2039.

## d) Violation of Article 21

The Court held that the provisions governing health and safety of workers in the Mines Act, 1952 and Mines Rules 1955 are applicable. Thus the Court directed the Respondent Government to immediately provide adequate medical facilities to the workers. Moreover, workers required to blast explosives were to be trained under the Mines Vocational Training Rules 1966 and be qualified in first aid. The Court held that families of workmen were entitled to medical aid and reimbursement of expenses in that regard. In case of injuries suffered at the workplace, the workmen and/or their families were to be hospitalized at the expense of the mine owners.<sup>16</sup>

## e) On the regulation of blood banks and availability of blood products

In this landmark case of 2018 the Supreme Court stated that under Article 21 of the Constitution include smoothening and dying process of a terminally ill person or who is in constant vegetative state without any hope of recovery.<sup>17</sup>

❖ CONCLUSION

Even after 50 years of independence, India still struggles with its healthcare system. Today, healthcare is a luxury on the rich can afford. Quality health services in the public sector can only improve if the government decides to fund it or private entities decide to become charitable and help those in the dire state. International developments in information technology need to be utilized for documentation. Better and faster equipment should be introduced to the Indian market. India needs to progress with the changing times. The number of health care systems in India has increased from the past years. Facilities have also improved. More primary health centers have been opened in the rural areas as well. Advanced technology and far superior equipment needs to be launched in this country. Medical aid should be accessible not only in the urban areas but also in the rural areas. People in villages need access to atleast basic healthcare

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<sup>16</sup> Bandhua Mukti Morcha v. Union of India (AIR 1984 SC 802).

<sup>17</sup> Common Cause v. Union of India and Others (AIR 1996 SC 929).

and vaccination. They also need to be taught about the mean standard of living. Women and children should require special care and attention when it comes to healthcare. Vaccinations, although free are not accessible to the rural areas, they should be given in each corner of the country. As much as I have stressed this point, education amongst the masses is necessary if we want to move forward. Even though there are a countless number of hospitals they are still not up to the required standard. Hence, it's time to make a change from quantity to quality.