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COVID-19 –NEED FOR ACCESS TO HEALTH CARE
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COVID-19 –NEED FOR ACCESS TO HEALTH CARE

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Abstract

SARS-CoV-2 is a new type of Corona virus causing a pandemic severe acute respiratory syndrome (SARS-2). Corona viruses are very diverting genetically and mutate so often periodically. To respond to Covid-19, many countries are using a combination of containment and mitigation activities with the intention of delaying major surges of patients and levelling the demand for hospital beds, while protecting the most vulnerable from infection, including elderly people and those with comorbidities. Activities to accomplish these goals vary and are based on national risk assessments that many times include estimated number of patients requiring hospitalization, availability of hospital beds and ventilation support. The Covid-19 pandemic has created the opportunity for corruption to flourish in health care sectors. Problems like misuse, mismanagement of resources and corruption which requires scrutiny and attention. Massive inaccessibility of health care is being reported in this situation. Access to quality health care is guaranteed in Indian Constitution as one of the prestigious rights. Accessibility of quality health care is also recognized under the various human rights documents. In this pandemic situation these rights are not protected adequately particularly the people belong to vulnerable and low-income groups. The major human rights violations are unnoticed by the Government due to the passiveness and lack of proper management and preparedness.

I. INTRODUCTION

WHO is gathering the world's scientists and health professionals together for the research and development process and to setup new standards and protocols to fight the Corona virus pandemic which has left a trail of deaths in its wake. The Covid 19 first case was identified in Wuhan, China in December 2019 since then 1, 414,873 deaths have been reported.[1] Being a droplet infection, it spreads via direct contact and contaminated surfaces, primarily through saliva (when the person

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[1] *Clinical management of COVID-19*, World Health Organization (Nov 11, 2020, 3:31 PM), https://www.who.int/publications/i/item/clinical-management-of-covid-19.

speaks, cough, sneeze or even breathe) and other bodily fluids. The patient presents with usually 2- 14 days from infection. It can cause severe Acute Respiratory distress, pneumonia, kidney failure, septic shock, cytokine storm, multi organ failure and ultimately even death. Common symptoms include cough, fever, breathing difficulties, fatigue, loss of smell and taste or sometimes no symptoms at all. It is confirmed by Real time PCR (RT-PCR) with a sensitivity of 80% or RAT (Rapid antigen test). The former costs around Rs.1200 Rs.4500 and the latter starts from Rs 500 to 750 in various states. In India, according to ICMR Covid testing strategy, states can choose to do RT-PCR or Rapid tests in containment zones, non- containment areas, screening points and hospital settings.[2] There is no specific treatment protocol or vaccine for this new virus. Management is generally done by supportive care, isolation and treating the symptoms.

India's Covid 19 caseload went past 92 lakh and the number of people recuperated from the disease surged to 86.42 lakh , pushing the national recovery rate to 93.72% while the death toll climbed to 1, 34,699 and the case fatality rate stands at 1.46%.[3] High level Central teams has been deputed in worst hit states to support the state government's efforts towards strengthening containment, surveillance, testing , control and prevention measures and also for efficient clinical management of positive cases. From the very starting of pandemic PCR was done extensively which has now reduced to less than 60% while Antigen tests has increased from a negligible number to over 40% of the total tests. This trend nowadays fudges the actual number of Covid cases. Tamil Nadu stands out when it come to number of PCR tests (over 1 crore) and reporting followed by Rajasthan and Punjab. Poor testing, under reporting of covid cases are seen in states like Bihar, Telgana, Gujarat, Delhi, Uttar Pradesh & Kerala. Massive number of covid cases is not being reported in many states topped by Maharashtra and Delhi. [4]The National Health Profile data- 2019 shows that there 7, 13,986 government hospitals across the country. This amounts to 0.55 beds per 1000 population (provided most of them are in cities)[5].The inequalities between urban and rural areas are further pronouncedly seen here. Many states like Bihar, Jharkhand, Gujarat, UP, AP,

[2] ICMR, (Nov 11, 2020, 3:31 PM), https://www.icmr.gov.in.
[3] *India's COVID-19 caseload crosses 92 lakh; recovery rate 93.72%,* Business Today, (Nov 25, 2020, 3:31 PM), https://www.businesstoday.in/current/economy-politics/india-covid-19-caseload-crosses-92-lakh-recovery-rate-9372/story/422923.html.
[4] *PCR test data of various states*, ICMR (Nov 11, 2020, 3:31 PM), www.icmr.gov.in.
[5] *National Health Profile (NHP) of India 2019,* Central Bureau of Health Intelligence (Nov 11, 2020, 3:31 PM), www.cbhidghs.nic.in.

Chhattisgarh, MP, Haryana, Odisha, Assam, & Manipur falls behind this cut off. The availability of government beds is abysmally low in India and a pandemic like this can easily complicate the crisis. 5- 10% of the total patients will require critical care and ventilator support especially elderly and those suffering serious medical conditions. The Union health ministry's data shows there are only 8,432 ventilators in the public sector and about 40, 000 in the private sector.[6] Therefore clearly, the growing demand for ventilators is going to exceed the limited supply soon. Corporate hospitals are expensive and inaccessible for common man as the cost goes up to Rs 1-1.5 lakh per day while in smaller tertiary hospitals it costs around Rs 20,000- Rs 25,000.[7]Lower and middle class patients are having a tougher time as the government hospitals do not have enough ventilator beds available plus they are not able to meet the standard quality. The National Institute of Virology at Pune is the main testing facility in India and the government has identified additional 1000 labs for testing Covid 19 samples.

India is facing shortage of estimated 600000 doctors and 2 million nurses according to study by scientists according to the report by the Centre for Disease Dynamics, Economics & Policy (CDDEP) in the US.[8] WHO recommends a ratio of 1:1000 but in India there is only 1 government doctor for every 10,189 people. IMA has provided a list of 515 doctors died after contracting Covid-19 while treating patients.[9]The number of ICU beds available is disproportionately low, both in public and private hospitals. Considering the shortage, only most critical patients are provide ICU care, that could contribute to high mortality in the wards.[10] Covid 19 has exposed numerous flaws in our healthcare system both public as well as private. It isn't a good time for health care workers and also for common man as the public sector is crowded and intact while the corporate hospitals stay out of reach. The Union Minister for health and family welfare however managed to do its best to combat the crisis when Covid-19 ran riot across the country, but not before the pandemic. Making temporary arrangements doesn't work as it can happen at any time in the future. This is a golden opportunity for the officials and lawmakers to design a well

[6] Data source- Ministry of Health and Family Welfare, (Nov 11, 2020, 3:31 PM), mohfw.gov.in.
[7] Mausami Singh, *How costly coronavirus treatment in a private hospital will be for common man*, India Today (Nov 11, 2020, 3:31 PM), https://www.indiatoday.in/india/story/how-costly-coronavirus-treatment-private-hospital-common-man-india-1663401-2020-04-04
[8] India facing shortage of 600000 doctors and 2 million nurses: CDDEP (Nov 11, 2020, 3:31 PM), www.cddep.org
[9] Data source, Indian Medical Association (Nov 11, 2020, 3:31 PM), www.ima.india.org.
[10] M E Yeolekar & S Mehta, *ICU Care in India- status and challenges*, 56 THE JOURNAL OF THE ASSOCIATION OF PHYSICIANS OF INDIA 221-222 (2018)

functioning health care system for the nation. The inefficiency of the present heath care system is denying the opportunities of the citizen's right to access to quality medical care. Right to quality medical care has ensured under Indian Constitution. The constitutional evolution of right to quality health care needed some explanation.

II. CONSTITUTIONAL EVOLUTION OF RIGHT TO QUALITY MEDICAL CARE

The Constitution of India not only provides health care to the people but also directs the State to take measures to improve the condition of health care system. The preamble to the Constitution of India ensure social and economic justice for all its citizens .The Constitution provides a framework for the achievement of the objective laid down in the preamble. The right to health has not been integrated directly into the Constitution of India. The only right that is related to right to health is the right to life guaranteed under the Constitution.[11] The Indian Supreme Court by its innovative judicial interpretation of the various provisions has given a new content and scope to the right to life, which has come to stay as a sanctuary for human values. The Supreme Court has interpreted the right to life as embracing the right to live with human dignity, which included the quality of life along with all the basic human needs such as food, clothing, shelter, safe drinking water, education and health care. [12]

In *State of Punjab* v. *Mohinder Singh Chawla*[13] it was declared that since the right to health was an integral part of the right to life the Govt has a constitutional obligation to provide health facilities. Similarly, in Mr: 'X' v. Hospital 'Z'[14] the Supreme Court held that the right to life includes the right to lead a healthy life so as to enjoy all facilities of human body in their prime condition. In a similar view, in *Chameli Singh* v. *State of U.P* [15] it was held that the right to life implies the right to food, water, decent environment, education, medical care and decision for the

[11] INDIA CONST. art 21.
[12] Francis Coralie Mullin v. The Administration Union Territory of Delhi AIR 1981 SC 746 at p.753
[13] (1997) 2 SCC 8371
[14] AIR 1999 SC 495
[15] AIR 1996 SC 1051

enforcement of the right of patient. The court again in *Vincent Panikulangara* v. *Union of India*[16] held that, 'a healthy body is the very foundation for all human activities. In welfare State, it is the obligation of the State shelter. These are basic human rights known to any civilized society. The civil, political; social and cultural rights enshrined in the Constitution cannot be exercised without these basic rights.

The Supreme Court, in *Paschim Banghakhet Mazdoor Samity and others* v. *State of West Bengal and another* [17], while widening the scope of Art: 21 and dealing with the government responsibility to provide medical aid to every person in the country, held that in a welfare State, the primary duty of the government is to secure the welfare of the people. Providing adequate medical facilities for the people is an obligation undertaken by the government in a welfare State. So it was contented that the petitioner should be suitably compensated for the breach of his right guaranteed under Art: 21 of the Constitution. After due regard to the facts and circumstance of the case, compensation was awarded. The Paschim Banga[18] reiterates the position that the right to medical services is part of the right to life and the State has a duty to provide it either through the State machinery or through the private sector. Later in *Paramand Kattara* v. *Union of India*[19]the court made only a declaration that legal or procedural technicalities cannot stand in the way of the doctor providing emergency medical care to accident victims. Even though this decision does not impose any positive obligation on doctors of private hospital to provide medical treatment to accident victims; it was an effective to ensure the creation and the sustenance of conditions congenial to health. Even though this is the recommendation of highest court in India, State and its health machinery system is unable to enforce any strategy for providing quality medical aid to those persons who needed the service.

The court further stated in a series of pronouncements during the recent years that right to health has been carried from the provision of part IV of the Constitution[20] and this cast a duty on the State to raise the level of nutrition and the standard of living and to improve public health. These directive principles are only directive to the State. These are non- justifiable. No person can make

[16] AIR 1987 SC994
[17] (1996) 4 SCC
[18] *Ibid*
[19] AIR 1989 SC. 2039
[20] INDIA CONST. art 47.

claim for non- fulfillment of these directives. But at the sometime if any of the fundamental rights is not fulfilled, then a person can claim those rights as a matter of right and State can be made liable for non-fulfillment of these rights. The effective enforcement of right to health through writ jurisdiction is not at all accessible to common man because of expensive cost of litigation. At the same time it could not be implemented through the court as merely a Directive Principle of State Policy.

The observation in *Paramand Kattara*[21] created a new right- the right to get medical aid and it has become an integral part of the right to life guaranteed under Art; 21 of the Constitution. The Supreme court in *Consumer Education and Research Centre* v. *Union of India*[22]has reiterated this stand. In this case the issue was regarding health problem and the right of labourers to get adequate medical aid. While answering this question, the court said "the facilities and opportunities that are enjoined in Art 38 should be provided to protect the health of the workmen. It was held that the right to health and medical aid is a fundamental right under Art: 21 read with Art. 39 (c),41 and 43 of Constitution. It was also necessary to make the life of the workmen meaningful with dignity.

Right to life, which includes protection health and quality medical aid, is a minimum requirement to enable a person to live with human dignity.[23]" Every citizen of this welfare State looks towards the State to perform this obligation effectively in a number of ways, including by way of allocation of sufficient funds. State should or intentional negligence from the part of hospital authorities, doctors and accessory staff. These evolve the necessary legal machinery for handling the issue relating to the matter of negligence in turn will not only secure the rights of its citizen to their satisfaction but will benefit the State in achieving its social, political and economic goals. In addition to the Constitutional developments the international conventions and other obligations have a direct impact on the Indian health conditions, in view of India's commitments to abide by and implement the Treaty obligations and the ratifications made by it under Article 51 of the Constitution. Apart from the constitutional evolution of right to quality health care this jurisprudence has also evolved through Human Rights documents.

[21] AIR 1989 SC. 2039
[22] (1995) 3 SCC 42
[23] *Ibid.*

III. EVOLUTION OF MEDICAL CARE LAW THROUGH HUMAN RIGHT JURISPRUDENCE

The right to medical care is an age-old phenomenon. Adoption of the Human Rights paradigm has the potential to revolutionize the health field. It is inconceivable to separate health and human right and they need to be integrated into all aspects of health care. Human Rights violation has a negative impact on health. Indian conceptualization of human right can best be exemplified in the *vedic* prayer "*Sarve Sukhinath sarve-santhi Niramayah*" may everybody in this universe be happy and healthy. [24] This principle highlights the global and multidimensional nature of our commitment to the protection and preservation of human rights. The most important right relating to the body of human person is the right to health and this found place in the realm of human rights even from earlier days. There are several international documents which discusses these principles- which we will look into in the next segment

A. International Efforts for Health care protection

The right to medical care, as an international human right, is founded on the edifice of the prescription of the United Nation Charter,[25] the International Bill of Rights, [26] the convention on

[24] V.R. KRISHNA IYER, THE DIALETICS AND DYANAMICS OF HUMAN RIGHTS IN INDIA YESTERDAY, TODAY AND TOMORROW 299 (1st ed. 1999).

[25] UNITED NATIONS CHARTER, art. 55:

"With a view to the creation of condition of stability and well being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self – determination of people, the United Nations shall promote.

(a) Higher standards of living, full employment, and condition for economic and social progress and development.

(b) Solution of International economic, social, health and related problems: and international cultural and educational co-operation; and Universal respect for and observance of human rights and fundamental freedom for all without distinction as to race, sex, language or religion."

[26] UNIVERSAL DECLARATION OF HUMAN RIGHTS, art. 25(1):

"Everyone has the right to a standard of living adequate for the health and well- being of himself and of his family, including food, clothing, and housing and medical care and necessary social services, and the right to security in the event of unemployment sickness, disability, widowhood, old age or other lack of livelihood in circumstance beyond his control. Article 12 International covenant on Economic social and cultural rights

1) The states parties to the present covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
(2) The step to be taken by the states parties to the present parties to present covenant to achieve the full realization of this right shall include those necessary for:
   (a) The provision for the reduction of the still birth- rate and of infant mortality and for the healthy development of the child:
   (b) The improvement of all aspects of environmental and industrial hygiene;
   (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

Elimination of All Forms of Discrimination against Women 1979, the United Nations Convention on the rights of Child,1989 etc. Therefore, the members of the international community are expected to build their health care strategies on this edifice.[27] These international documents provided ample recognition for right to medical care and quality treatment.

B. The Scheme of United Nations Charter

The Human Rights provision of the United Nation Charter does not explicitly deal with health as a Human Right. The charter declares that the promotion for respect of human right and fundamental freedom is the purpose behind the establishment of the United Nations Organization[28]. To achieve this purpose, the United Nation is charged with the responsibility to promote, interalia higher standard of living, full employment, condition of economic and social progress and development and solutions to International economic, social, health and related problems. [29]In a similar vein, the member states are obligated to act in co-operation with the United Nations organization for the achievements of the declared purpose.

C. The Scheme of International Bill of Rights

Pursuant to the call of the United Nation Charter for the promotion of "human rights and fundamental freedom", International community adopted on 10th December1948 the Universal Declaration of Human Rights, which came into force in 1976.[30]

(d) The creation of condition, which would assure to all medical service and medical attention in the event of sickness."

27 Dr. B. Errabi, *Right to Health care: Need for its conversion into a statutory Enforceable Human Need- An Indian perspective*, 2 DELHI. L. REVIEW 51 (1998).

28 See United Nations Charter, art 1:

1. To maintain international peace and security and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and to bring about by peaceful means, and in conformity with the principle of justice and international disputes, adjustment or settlement of international dispute or situations which might lead to breach of the peace.
2. To develop friendly relation among nations based on respect for the principle of equal rights and self-determination of people, and to take other appropriate measures to strengthen Universal peace:
3. To achieve international co-Operation in solving international problem of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedom for all without distinction as to race, sex, language, or religion and
4. To be a center for harmonizing the actions of nation in the attainment of these common ends.

[29]See also Article 55 and 56 of the Charter, "With a view to the creation of condition of stability and well being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self – determination of people, the United Nations shall promote.

30 UNIVERSAL DECLARATION OF HUMAN RIGHTS, 1948, Art. 1

D. The Universal Declaration of Human Rights

The adoption of the Universal Declaration of Human Rights by the United Nation General assembly brought Human Right revolution in the World. Declaration proclaims that all human beings are born free and equal in dignity and right and they are entitled to a social and international order in which the rights and freedom set forth in this Declaration can be fully realized. [31] The declaration expressly recognized the right to health.[32]

THE SCHEME OF INTERNATIONAL COVENANTS ON HUMAN RIGHTS

The International Covenant on Economic, Social and Cultural Right embodies the second-generation human rights, which are positive in scope and character, imposing positive and affirmative obligation on the State parties. It embodies the right to health comprehensively in Art12. [33] The International Convention on the Elimination of all Forms of Racial Discrimination 1965 confers on member state a more effective positive obligation with regard to medical care.[34] Similarly Convention on Elimination of all Form of Discrimination against Women 1979,in Art: 12 requires state parties, interalia to take all appropriate measures to eliminate discrimination against women in the field of medical care in order to ensure, on the basis of equality of men and women, access to medical care medical services, including those related to family planning.[35]The United Nations Convention on the Rights of the Child, 1989 requires that the State parties shall recognize the right of the child to the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. State parties shall strive to ensure that no child is deprived of his or her right of access to such medical care service. [36]

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[31] *Ibid,* art 25.
[32] R.R. GANDHI, BLACK STONE INTERNATIONAL HUMAN RIGHT DOCUMENTS 24 (2009).
[33] INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHT, 1996, arts. 10(3), 11 and Art: 12(1)
[34] CONVENTION ON ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN, 1979, art. 14.
[35] *Ibid,* art 12(1).
[36] CONVENTION ON THE RIGHTS OF THE CHILD. 1989, art. 15

The European Social Charter[37]and American Declaration of the Right and Duties of Man[38] also deal with right to preservation of health. The Constitution of the civil and socialist countries of the Hemisphere also includes a statement on the rights health including medical care and the duty of the state in regard to the health of the nation. [39] Right to medical care like all other human Rights, is an internationally recognized legal right, prompting domestic legal systems to provide for their automatic judicial enforcement[40]. A classic example of this is India where the Indian Supreme Court has accorded judicial recognition and importance to various human rights embodied in the International Instrument to which India is a party.[41] There has been other international effort for the realization of the right to health care. The World Health Organization has played a pioneering role for the last few years in guiding the health policy, development, and action at the national and global level. The main objective of the World Health Organization shall be the attainment by all people of the highest possible level of health.

IV. CONCLUSION

Keeping the interest of the citizens in mind, it is important to provide adequate health assistance for the people affected by Covid -19. Government should take care of their Constitutional obligation to provide basic treatment facilities for the affected persons. The first priority of the financial allocation of the Government should be setting up of effective health care facilities

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37 EUROPEAN SOCIAL CHARTER, 1961 Part I and Part II, art. 11
"PART-I: Everyone has the right to benefit from any measure enabling him to enjoy the highest possible standard of health
PART –II: Article-II: The right to protection of health with a view to ensuring the effective exercise of the right to protection of health, the contracting parties undertaken, either directly or in co-operation with public or private organization, to take appropriate measure designed inter alia: -
1. To remove as far as possible the causes of ill health
2. To provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health.
3. To prevent as far as possible epidemic, endemic and other diseases."

38 AMERICAN DECLARATION OF RIGHTS AND DUTIES OF MAN, 1948, art. II.
"Article: II: - Right to the preservation of health and to well-being. Every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources."

39 Predeepta Rajan Patnaik, *Human Rights Protection Perspective*, 28 Indian Bar Review (2001).

40 Apparel Export Promotion Council v A.K Chopra AIR 1999 SC 625

41 R.R. GANDHI, BLACK STONE INTER\NATIONAL HUMAN RIGHT DOCUMENTS 24 (1999).

especially for the rural community. The state should be equipped with all health care armories to face any emergency epidemic or pandemic condition like Covid 19.And also the state should enact effective legislation for ensuring quality health care facilities for citizens in any such situation. The health care policy should be updated accordingly with the advancement in the medical and technical field. Proper simulations are necessary in the Indian context of population proportion to control the spread of the pandemic. There must be robust vaccine developmental programmes and its distribution drive must be smooth, systematic and well supervised so that no person is denied treatment on the basis of social or economic backwardness. The government should scale up manufacturing, delivering system and awareness of the vaccination programme among the common people. The state governments and local self governmental authorities will have to work together with multiple NGO's and other philanthropic foundations. The resource pooling at the ministry and departmental level will take this efforts to next level. All this should not be considered as a hurdle but as an investment for the national account to safe guard the future of the Indian health care system.

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