

## **Right to Health in Covid-19**

*“Healthcare for ALL is a human right”*

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### **ABSTRACT**

In the present times of Covid 19 the health care systems all over the world are facing the challenge to cope up with the unprecedented increase in the patients. This situation has seriously created a difficult situation for the nations all over to ensure the right to health guaranteed under domestic laws of the nations. Due to the urgency, shortage of the medical equipments to treat the patients , the hospital authorities are continuously striving to meet the demands of people. The nations are confronted with issue of securing the right to health of its citizens. The governments of the world are struggling to cope up with the situation with the existing laws and it has also extended the scope of the delegated legislation,giving powers to the administrative authorities.

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### **Article**

Recent times have been extremely atrocious for the world population as the mankind has been facing worst times in form of a pandemic caused by a deadly virus called Covid-19. The right to health of general public of different nations suffered unrecoverable blow and it has shown major shortcomings in global health systems. This crisis has sickened 12 million people across the globe and more than half million people have died<sup>1</sup>.The major nations of the world are constantly striving to guarantee the health safety of people on one hand, although at the other end they are at severe economic crisis. Even governments of the so called “Super Powers” were not at all ready to deal with such unpredicted health crash. None of the nations were prepared with medical staff and hospitalization facility to deal with such a situation. The whole world has been tormented by the shortage of health equipment supplies, beds, medicines and excessive burden imposed on the meek health budgets of the economies. Even the affluent nations of the world were not prepared to overcome such a massive health exigency<sup>2</sup>.

For a big nation such as India it is a challenge to fulfill the constitutional mandate. Due to this sudden health emergency, a nation-wide lockdown is imposed which proved to be an unprecedented decision taken by any country to lock down such a humungous 1.2 billion population all at once by surprise. The governments at both the center and state level strived hard to ensure better health conditions amidst pandemic to people besides facing major financial losses due to economic slowdown<sup>3</sup>. The World Health Organisation (WHO) has said that India has a tremendous capacity to deal with the pandemic as it has experience of eradicating smallpox and polio<sup>4</sup>.

To understand the right to health it is imperative to shed light on the statutory framework for protection of health both at national and international level.

- **Fundamental Right under International Law**

Right to health has been recognized as the basic human rights in the United Nations Charter on Human Rights. India being the party to the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights has to abide by these international rules for preserving the

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<sup>1</sup>UNFPA NEWS, “Putting the Breaks on Covid -19:Safeguarding the health and rights of women and girls”,11 July 2020.

<sup>2</sup> Taken from {<https://www.universal-rights.org/by-invitation/realizing-the-right-to-health-must-be-the-foundation-of-covid-19>}, accessed on 29/8/2020.

<sup>3</sup> The Economic Times Online , “Lockdown stats: How India compares to other coronavirus hotbeds”, March 25,2020.Taken from ,accessed on 4/09/2020.

<sup>4</sup> PTI ,“India has Tremendous Capacity in Eradicating Coronavirus pandemic :WHO , Economic Times, March 24,2020.

health of her citizens. Also Article 25(2) of the Universal Declaration of Human Rights provides for right to health<sup>5</sup>. It lays down the obligation for the states to take steps for the “prevention, treatment and control of epidemic, occupational and other diseases” and also to create conditions to assure medical services and medical attention in case of sickness.”The UN Committee on Economic, Social and Cultural Rights(CESCR) has marked out the health services, goods and facilities should be available in adequate numbers and their accessibility should be made to everybody without any discrimination.<sup>6</sup>

- **Right to Health as a Constitutional Right**

The right to health is impliedly guaranteed as the fundamental right by the Indian Constitution. The different pronouncements from time to time by the Indian judiciary have recognized it as the fundamental right under Article 21 of the Indian Constitution<sup>7</sup>.

First and foremost, the Preamble of the Indian Constitution expressly declares it to a welfare state working on the socialistic pattern. The Constitution of India guarantees highest attainable health standards of physical and mental health. Article 21 of the Indian Constitution guarantees protection of life and personal liberty to every citizen. The interpretation given by the Supreme Court of India to this right makes it clear that Article 21 of the Indian Constitution derives its force from the directive principles of the state policy and includes the right to health. The Directive Principles of the State in Part IV has certain provisions imposing duty on the state for the protection of health. The states are also given the duty to maintain the health services. The Supreme Court has considered that the failure of the state to provide medical treatment will be considered as the violation of the patient’s right to life<sup>8</sup>.

In the light of Covid -19 in interpreting the right to health as the fundamental right, the Gujarat High Court has cleared its stance against the restrictive Covid-19 testing policy on the point whether a pathological test is a fundamental right. By virtue of Article 21 of the Constitution this right it is a fundamental right but is subject to reasonable restrictions. But the permission for testing is only to be given to symptomatic patients and in case of asymptomatic patients it can be done only with the prior approval of the government<sup>9</sup>.This decision of the hon’ble court directly pinpoints the shortage of effective laboratory services in the country.

- **State Responsibility to Safeguard Right to Health**

In these pandemic times, the states are vested with the responsibility of taking progressive steps towards preventing the public health threat of Covid-19. Various states like Tamil Nadu, Punjab, Maharashtra and Delhi has come forward by taking responsibility of assuring better health infrastructure . Many states have imposed reasonable restrictions on the individual freedoms like curtailing inter-state as well as intra state movements, closing of gymnasiums, swimming pools, clubs, theatres, stadiums and most importantly educational institutions. While emphasis of most of the states primarily has been on imposing the inter-state travel restrictions, they neglected the social distancing policies and mass diagnostic testing of the virus. The states were initially not able to take prescribed steps to prevent and mitigate the impact of disease as recommended by the World Health Organization. However, gradually they are trying to cope up with the situation.

In a country like India, a health emergency caused by such a contagious disease has been considered as a stigma in many parts of society. The trauma felt by the Covid-19 patient has been both physical and psychological. It is evident that the children below the age of 10 and people older than 50 years are more prone to be affected by the virus. The infection is so transmittable that if one member of the family is infected it results in infection in all. The patients have to deal with the social discrimination during and after the prescribed period of self isolation. Here, it becomes an obligation on the part of the state to introduce such measures so that these patients are properly readjusted in the society. Not only this, the long period of quarantine makes them mentally weak so the states concerned are also endowed with the responsibility take appropriate measures to readjust them to the normal routine by spreading awareness amongst public and making them know the disease and how to fight it rather than fighting the victim.

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<sup>5</sup> Rajesh Kumar, “Right to Health : Challenges and Opportunities”, Indian Journal of Community Medicine, Volume 40,3 Sept,2015,p.218-222.

<sup>6</sup> Bakshi P.M., “The Constitution of India”, Universal Law Publishing Co. Pvt .Ltd., New Delhi,2003,p.140.

<sup>7</sup> Taken from {<https://www.universal-rights.org/by-invitation/realizing-the-right-to-health-must-be-the-foundation-of-covid-19>},accessed on 29/8/2020.

<sup>8</sup> Bakshi P.M., “The Constitution of India”, Universal Law Publishing Co. Pvt. Ltd., New Delhi,2003,p.155.

<sup>9</sup>ET Online, “Is getting tested for Covid a fundamental Right”, June 19, 2020. Taken from h [ttps://health.economictimes.indiatimes.com/news/industry/is-getting-tested-for-covid-a-fundamental-right/76463432](https://health.economictimes.indiatimes.com/news/industry/is-getting-tested-for-covid-a-fundamental-right/76463432)> accessed on 9/10/2020.

The other problem faced by the government is the shortages of the supplies and equipment to treat the patients. The government initially was not able to provide PPE (Personal Protective Equipment) to all doctors and health care staffs fighting with the disease and getting exposed to it regularly. As a result health of many health care workers who are spending day and night in taking care of patients was compromised and risked. The shortage of protective equipment has caught governments off-guard. The shortage of work force for treatment of patients have resulted in death of many health care workers who collapsed due to suffocation in PPE kits because of extra long duty hours. This situation has adversely affected the low and middle income group nations. There is the need of international assistance to fulfill the fiscal and technical requirements<sup>10</sup>.

The health systems all over the world are challenged to deliver the routine health services owing to the increased demand. There are also issues with the laboratories. The laboratories and hospitals testing the Covid-19 patients became money minters as some instances came to light in which false positive reports of normal people resulted in harassment and extraction of huge sums of money with risking their life. The government suspended the license of many private labs because they violated the guidelines for testing. Moreover, the other difficulty faced is by the patients who have to wait for long before the labs give the reports thus delaying their admissions. Further only the symptomatic patients are given place in the hospitals. Those who were in moderate to severe conditions are only asked to report. Each authority had its own criteria of testing and admitting. There is no uniformity in judging and also the government has not framed any kind of specific rules for levying fees for hospitals. There is also black marketing of beds and hospitals charge inflated rates that the general public is not able to afford<sup>11</sup>.

Healthcare is a fundamental right and undertaking immediate and progressive steps to prevent the rising public health threat is must. The states are limiting freedom to address this emergency. The limitations are reasonable, proportionate and non-discriminatory and based on law<sup>12</sup>. All over the world the women are facing heightened risks due to novel corona virus. Large number of women health workers are more prone to have direct contact with patients. The spread of pandemic has also resulted in gender violence amongst those who are unwillingly staying at home. The UNFPA estimates that six months lockdown has lead to 31 million additional cases of violence. On the social media there is a lot of bullying directed at women in Covid-19. Also the women reproductive health is highly on risk due to non-availability of reproductive drugs such as contraceptives<sup>13</sup>. However the states need to take into consideration the following steps:

1. It is vital that special attention is required to be given to those who are under privileged and disadvantaged. The social determinants such are also important in understanding this health emergency.
2. The situation demands the global solidarity. The international cooperation is essential and central to Covid-19 response. The international obligations require all the states to share medical equipment supplies and best practices and coordinate for intellectual property in making the vaccine for curing this disease.
3. The states need to evolve the concept of right to health to ensure it as a human right at the times of pandemics.
4. The states should frame new laws to deal with health emergency in particular, to ensure their international and constitutional obligations for protection of health of their citizens.
5. The mental stress amongst the infected people should be reduced by the government by censoring the social media .The media is required to spread knowledge regarding the precautionary measures to be adopted rather than giving figures in regarding number of people infected.
6. The new policies should adhere to the international documents on protection of health and should be framed after giving consideration to the factors such as population, geography and economic conditions of the country. Infact , delegated the powers of legislating to the state governments can prove to be more fruitful.

In the end, it cannot be denied that Covid-19 has threatened the health and human rights of the vulnerable population like children, old people, people with other underlying health condition and people living in distant areas away from proper health infrastructure. The sad reality is that majority of the nations worldwide have failed in terms of showing solidarity. A major disaster management response mechanism needs to be set up

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<sup>10</sup>World Health Organisation ,“ Addressing Human Rights as Key to Covid -19 Response”, April 21 ,2020.Available at <https://www.universal-rights.org/by-invitation/realizing-the-right-to-health-must-be-the-foundation-of-covid-19-response>

<sup>11</sup> The Wire,“As Covid-19 Cases Spiked,What Ailed Delhi’s Health Delivery System?”Taken from <https://thewire.in/rights/delhi-covid-19-spike-health-delivery-system>,on 14/9/2020.

<sup>12</sup> Dainius Puras et al., “The right to health must guide responses to Covid -19”,The Lancet ,Volume 395,Issue10241,p.1888-1890,June20,2020.

<sup>13</sup> UNFPA NEWS, “Putting the Breaks on Covid -19:Safeguarding the health and rights of women and girls”,11 July 2020.Taken from ,accessed on 3/09/2020.

globally to overcome this pandemic and to come out of it<sup>14</sup>. The policies should be made by the government to sideline the allied issues such as gender violence being faced by those who are stuck in their homes due to the spread of this deadly disease. The governments of the world are required to build a comprehensive framework of rules to deal with complexities that are indirectly related to this. The world needs to multiply its efforts to come out of this pandemic with minimum loss. The concrete efforts will lay down more resilient, gender-equal societies and a healthier future.

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<sup>14</sup> Dainius Puras et al., "The right to health must guide responses to Covid -19", *The Lancet*, Volume 395, Issue 10241, P1888-1890, June 20, 2020.