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Right to Health Care during Covid-19, As Guaranteed By the Indian Constitution

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ABSTRACT

Legislators, the government, and public health professionals have faced a slew of policy challenges as a result of the COVID-19 outbreak. Seeing our people die while waiting in lines for oxygen is extremely painful. This crisis has been dubbed a "national emergency" by the Supreme Court. Whether an emergency should be declared in such a situation where people are dying as a result of a shortage of oxygen supply.

Keywords: Health, Right, Fundamental, Life.

“The very right to be human is denied every day to hundreds of millions of people as a result of poverty, the unavailability of basic necessities such as food, jobs, water and shelter, education, health care and a healthy environment.”

-Nelson Mandela

I. RIGHT TO HEALTH CARE

The World Health Organization (WHO) defines health as a state of total tangible, psychological, and social well-being, not just the absence of illness. The WHO goes on to say that this is the state's legal responsibility that provide all of its citizens with homogenous availability to "timely, acceptable, and affordable care of adequate concentration, as well as the underlying determinants of health, including such safe and potable water, sanitation, food, housing, wellbeing information and education, and equality of the sexes."

This right, which is a natural corollary of promoting health and wellness in India, is safeguarded in multiple ways under the Indian Constitution.

The Directive Principles of State Policy (DPSP), which are entrenched in India's Constitution's Chapter IV, require the government to, among other things,

- promoting the well-being of its citizens (Art.38);
- Defend their health and strength against harm (Art 39(e));

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- Providing public assistance in the event of sickness, disability, or "unjustified want" (Art 41);
- Ensure just and humane working conditions; and
- Raise nutritional status, raise living standards, and priorities public health enhancement as a top priority (Art 47)

In addition to the DPSP, the 11th and 12th Schedules contain some health-related provisions that fall under the jurisdiction of Panchayats and Municipalities, respectively. These include the responsibility to provide safe drinking water, adequate healthcare and sanitation (including hospitals, primary health care centers, and dispensaries), family welfare promotion, and women's and children welfare and promotion.

The Constitution of India does not explicitly distinguish Right to Health as a fundamental right under Part III of the Constitution (Fundamental Rights). However, this has been read into the fundamental right to life and personal liberty (Article 21) by judicial interpretation and is now considered an inseparable part of the Right to Life. Human trafficking and child labour are prohibited under Article 23 of the Indian Constitution, which indirectly contributes to the protection of the Right to Health.

The role of Indian Supreme Court in safeguarding the health of the general population at large is remarkable. The Supreme Court has repeatedly stated that the term "life" in Article 21 refers to a humane life, not just survival or animal existence.

In the case of "*Francis Coralie Mullin vs The Administrator, Union*"², The right to life encompasses a wide range of issues, including the right to a better standard of living, sanitary working conditions, and leisure. As a result, the right to health is an inherent and unavoidable part of living a dignified life. Article 21 should be read in conjunction with the above-mentioned directive principles of state policy in order to fully comprehend the essence of the state in this particular respect.

In the case of "*Bandhua Mukti Morcha vs Union of India & Others*"³, The Supreme Court ruled that, while the DPSP are not legally binding and only have persuasive value, they should be followed by the state. Furthermore, the Court determined that under Article 21, dignity and health are included in the definition of life and liberty.

In the case of "*Paschim Banga Khet Mazdoorsamity ... vs State of West Bengal & Anr*"⁴, The

² 1981 AIR 746, 1981 SCR (2) 516

³ 1984 AIR 802, 1984 SCR (2) 67

⁴ 1996 SCC (4) 37, JT 1996 (6) 43

scope of Article 21 was further widened, as the court held that it is the responsibility of the Government to provide adequate medical aid to every person and to strive for the welfare of the public at large.

Furthermore, the Supreme Court in the case of "*Parmanand Katara v Union of India*"⁵ held that each and every doctor, whether working in a government hospital or not, has a professional obligation to extend his or her facilities with due competence in order to protect a patient's life.

The right to healthcare and related aid to protect a worker's health and vigor, both while being in service and after retirement, was held to be a fundamental right under Article 21 in a case called, *Consumer Education & Research ... vs Union of India & Others*⁶

Furthermore, the fundamental right of all citizens to practise any career, carry on any profession, trade, or industry is subject to the same restrictions imposed in the interest of the public under Article 19 (1) (g) of the Indian Constitution. In "*Burrabazar Fire Works Dealers Association and Others v. Commissioner of Police, Calcutta*"⁷, the Hon'ble Supreme Court has held that Article 19 (1) (g) doesn't really assure any freedom at the expense of the community's safety, health, or peace.

Because the right to health is inextricably linked to the right to life, it is a fundamental right guaranteed to every Indian citizen under Article 21 of the Indian Constitution. We owe the recognition of this right to the Supreme Court of India, which logically extended its interpretation of the right to life to include the right to health through a series of judicial precedents.

II. RIGHT TO OXYGEN AS A FUNDAMENTAL RIGHT AS UNDER ARTICLE 21

This crisis has been dubbed a "national emergency" by the Supreme Court. Is it possible to declare an emergency in such a situation where people are dying as a result of a lack of oxygen?

The Constitution of India, 1950 provides for three types of emergencies:

- National Emergency
- Constitutional Emergency/President's Rule
- Financial Emergency

According to Article 352, a national emergency can be declared in the event of war, external aggression, or armed rebellion.

⁵ AIR 1989 S.C. 2039

⁶ 1995 AIR 922, 1995 SCC (3) 42

⁷ AIR 1998 Cal. 121

(A) President's Rule/Constitutional Emergency

Article 356 gives the President the authority to issue a proclamation if he believes that a situation has arisen in which the government of a state cannot be carried out in accordance with the constitution's provisions.

(B) Financial Emergency

Article 360 empowers the president to declare a Financial Emergency if he believes a situation has arisen that jeopardizes India's financial stability or credit in any part of the country.

The scarcity of oxygen and oxygen cylinders kept citizens on their toes in the current situation, whether it was the AAP-led government in Delhi or the NDA-led Central Government. The Delhi High Court has chastised the Aam Aadmi Party government for its handling of the coronavirus pandemic and distribution of medical oxygen. The Constitutional Courts also chastised the central government for failing to ensure a sufficient supply of oxygen across the country. Hundreds of patients died as a result of a lack of oxygen in several hospitals. This clearly demonstrates how the coronavirus pandemic was handled incorrectly.

The right to life, which is enshrined in Article 21, is at the heart of all the Fundamental Rights. Any Fundamental Right can only be put into action or have meaning if lives are saved. It should be accessible to all and exercisable by all at all times and in all places. It is regarded as an unavoidable aspect of human existence.

When it comes to the Supreme Court's broad interpretations of this right as enshrined in Article 21, it is clear that human life does not imply a bare animal existence, but rather a dignified human life. The right to a dignified life includes adequate nutrition, clothing, and a roof over one's head, as well as the ability to read, write, and express oneself, as held in a variety of cases such as *Maneka Gandhi v. Union of India*⁸, *Francis Coralie v. Union Territory of Delhi*⁹ and *Bandhua Mukti Morcha v. Union of India*¹⁰

Given that the right to health or healthcare is not explicitly recognised in the Constitution, the Supreme Court of India in "*Bandhua Mukti Morcha v Union of India & Ors*" interpreted the right to health under Article 21, which ensures the right to life.

The Supreme Court ruled in "*Mohini Jain v. State of Karnataka*"¹¹ that the inclusive education is a fundamental right derived from Article 21 of the Constitution's "Right to Life." Even the

⁸ AIR 1978 SC 597

⁹ AIR 1981 SC 746

¹⁰ AIR 1984 SC 802

¹¹ AIR 1992 SC 1858

right to reputation was considered part of the right to life.

III. CONCLUSION

When we get to the point where we can declare "Right to electricity" and "Right to pollution-free water" as part of Article 21, "Right to oxygen" should, in my opinion, be at the top of the list. The importance of Article 21's "Right to Life" can be seen in the fact that it cannot be taken away even in times of emergency or when India is at war.

Even when India's security is attacked, this right is unalienable.

Why haven't we been able to make ventilators, makeshift hospitals, and other medical equipment in the previous year? Without a doubt, we, as citizens, have failed to uphold this right alongside this "system." Criticizing each other at this delicate time will not solve the problems.
