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Public Health Crisis Amidst Covid – 19 Pandemic - A Socio Legal Study in Respect to Right to Health

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ABSTRACT

This article talks about how the lives of various communities all over the globe has been influenced by the deadly corona virus and the purpose is to explore the right to health which should be enjoyed by all human beings. Though there are a lot of prejudices found when the topic comes up as the majority don't get the benefit of good health. Lacs of people die every year due to poor sanitation, malnutrition, etc especially the kids who at times live in the shanties and debris in an unhygienic condition. This includes the recent pandemic of COVID-19 along with the study of right to health to initiate a thought among the people about our present health condition and how to eradicate the sickness and build a better health for the nation without curbing the basic rights conferred to every individual. The significance of the study relates to the underlying situation of health care around the world and how Covid-19 pandemic has affected the lives of human beings globally. The spread of Corona virus Disease 2019 (COVID-19), the respiratory illness from the latest known variant of Corona virus, has in just a few short months been relentless and its impacts exponential. The virus, which is believed to have initially infected people near live animal markets in Wuhan city in Hubei province in China, has today reached around the globe. Health systems are under severe strain, resulting in alarming numbers of deaths and serious illness

INTRODUCTION AND STATEMENT OF THE PROBLEM:-

Right to health is a fundamental right. Human rights and right to health have been intricately related during the COVID - 19 pandemic. This linkage has evolved between health and human

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rights for more than thirty years to provide for a foundation for the Covid-19 response.[1] Right to health provides a universal framework in order to advance in global health along with justice, also transforming moral imperatives into legality in the respective domains which are relevant towards Covid-19.

Human beings have been struggling for better quality of life for thousands of years. Humans started their journey from the dense and deep forests, where the rule was "survival of the fittest and elimination of the weakest", as expressed by Charles Darwin. But in the modern society, humans have progressed to such a state where "survival of the weakest" is the need of the hour now. The domination of the so called 'subjects', whose powers were curbed for years and those whose rights were usurped, could not continue for long. Couple of centuries have witnessed various social revolutions like Russian, American and French revolutions which have changed the social, political and economic structure and development of innumerable societies of the world and the right of every human being got recognition.[2]

The Article 25 of the Universal Declaration of Human Rights (1948) by United Nations, grants right to standard of living, which is adequate for the well being and health for humans that includes clothing, food, housing and medical facilities and the important social services, also the right to security in the event of sickness, unemployment, disability, old age, widowhood or other kinds of lack of livelihood which are beyond the circumstances of human control. Special entitlements of care and assistance have been made towards childhood and motherhood. The same social protection is enjoyed by all children, whether born in or out of wedlock[3]

International Covenants on Economic, Social and Cultural Rights (1966) has further stated under Article 12 that the States recognize the rights of every human for the enjoyment of the

[1] S. Sekalala, L. Forman, R. Habibi, et al., "Health and human rights are inextricably linked in the COVID19 response," *BMJ Global Health* 5/9 (2020), pp. 1–7.
[2] Office of the United Nations High Commissioner for Human Rights.
[3] Article 25: Right to an Adequate Standard of Living

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highest attainable standards of mental and physical health, and the steps to be taken in order to achieve the full realization of this right includes 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; and

(D) The creation of conditions which assure to all medical service and medical attention in the event of sickness.[4]

The detailed plan for health development had been presented in the 'Report of the Health Survey and Development Committee' to the Government of India under the chairmanship of Sir Joseph Bhore, in the year 1946, and in the year 1950, Indian Constitution proclaimed it as a 'sovereign, socialist, secular, democratic republic', which guarantees the "Right to Life and Liberty" under Article 21 and also includes among the duties of the State "to raise the level of nutrition and standard of living and to improve public health", cited under Article 47.[5]

The World Health Organization had also focused on Primary Health Care strategy in 1978 to achieve the Health - For - All by the year 2000. Thereafter, the Government of India had also formulated its first National Health Policy in the year 1983. The United Nations also presented a compact Millennium Development Goals (MDG's) in the year 2000, to be achieved by 2015 which included health goals also, and now, it is looking forward towards sustainable development.[6] Even after taking all these into account, there's a large amount of inequality

[4]International Covenant On Civil And Political Rights (Article 12)
[5] Report Of The Health Survey And Development Committee Volume IV
[6] Health for All and Primary Health Care, 1978–2018: A Historical Perspective on Policies and Programs Over 40 Years By Susan B Rifkin

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which exists between and also within the countries. Life expectancy varies from nearly 51 years in Chad to 84 years in Japan. In Indian states too, it varies, like; around 62 years in Assam to 74 years in Kerala.[7] A German physician, Max von Pettenkofer (1818 - 1901), had informed that environment and the host factors play an eminent role in causing disease, apart from the agent. Such a line of thinking was later denoted as 'Epidemiological Triad' and this idea of the Triad was found in the first text book.[8]

"Access to vaccines has been a major challenge in developing countries, yet it is a human right to enjoy the maximum standard of health which is attainable," said Sylvia Mthethwa, Pan African Parliamentarian in the Committee on Health, Labour and Social Affairs .In most of the cases, the services have become unavailable or redistributed to meet different health needs and requirements caused by the COVID-19 pandemic. As noted by Bernard Oundo, President of EALS, it has left majority of the poor people at a further disadvantage. "The pandemic has ravaged our economies, disabled healthcare systems and thrown marginalized and vulnerable communities into further disadvantage," he said. Healthcare service delivery in the region has also been impacted resulting into further inequalities particularly considering the majority poor who depend on the public health services."COVID-19 has widened the gap between the poor and rich, reduced the gains made in the fight against the gender gap between men and women, and increased mental health problems," said Vimbai Nyemba of the SADC Lawyers' Association.[9]

SOCIO - LEGAL AND ECONOMICAL ASPECT AFFECTED DUE TO COVID – 19 PANDEMIC

The socio-legal and economic impact of COVID-19 has been very considerable. According to the International Labour Organization (ILO), full or partial lockdown measures have affected almost 2.7 billion workers and even more worldwide till date (about 81% of the world's 3.3

[7] Report Of The Health Survey And Development Committee Volume 1
[8] Role Of Agent, Host And Environment For The Spread Of Communicable Diseases – Article By Abhijit Budhbhat
[9] IMPACT OF COVID-19 ON THE RIGHT TO HEALTH: ADDRESSING THE STRUCTURAL DETERMINANTS OF HEALTH AMONG VULNERABLE PEOPLE

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billion strong workforce). The ILO report identified some economic sectors—accommodation and food services, manufacturing, wholesale and retail trade, real estate business, and business activities—which are labour intensive and employ millions of often low-paid, low-skilled workers, as amongst the worst affected mass.

As a result, 1.25 billion workers worldwide (38% of the total) have been facing a drastic reduction in working hours, wage cuts and layoffs.[10] A high proportion of these informal workers have been without any access to healthcare and social protection, particularly in low or middle-income countries. India is no exception and due to this disruption in several economic sectors such as the construction industry, manufacturing units, industrial hubs and the hospitality industry, numerous workers, including unorganized workers, were directly affected. The well-being of workers in the informal sector, particularly those who have migrated from rural areas to work in urban cities, has emerged as a big concern for the government as well as civil society organizations. The state and central governments initiated direct bank transfers, and worked with civil society organizations in providing basic services, like food and nutrition to migrant workers. Many migrant workers were faced with uncertainty about their lives and livelihoods in cities and wanted to return to their places of origin. The Indian Railways made arrangements for their transport. The state governments established quarantine centers for returning migrant workers and arranged transport to their villages.[11]

VARIOUS LEGAL CHALLENGES FACED

The various technologies had been employed to keep a list of the affected patients. Smartphone apps were made to keep a track of patients suffering from symptoms of the virus. Many people considered it as a threat to their privacy getting infringed and refused to follow. Also due to the rise of covid patients, the hospitals showing the guidelines had refused to admit the non covid

[10] ILO Monitor: COVID-19 and the World of Work' (second edition), International Labour Organization, 7th April 2020
[11]National Disaster Management Authority (2020). COVID-19 Impacts and Responses: The Indian Experience, January – May 2020, NDMA, India

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patients. This became extremely troublesome for both the hospitals and the administrations as the rules were made in such a way that there were too many loopholes.

CONTINUOUS EVOLUTION OF INDIAN RESPONSE TILL TODAY

India recognized the threat that was posed by COVID-19 early and accordingly responded in a graded manner in reference with the progression of the pandemic. In the first week of January, the Ministry of Health and Family Welfare had started to develop a multi-dimensional strategy to prepare the country for dealing with the epidemic. From January onwards, the Cabinet Secretary, through regular meetings in different intervals with secretaries of concerned ministries/departments, experts and other stakeholders, had reviewed the evolving public health situation in China and worldwide and its possible implications on India. On 25th January, under the chairmanship of the Principal Secretary to the Prime Minister, an inter-ministerial meeting was held to take stock of the situation and to prepare all parts of the government— across various ministries and departments—to play a role in mitigating and managing the spread of COVID-19.

The Prime Minister's Office (PMO) reviewed the situation and made constructive interventions as and when the need arose. For example, at an early stage, an 'all-of-thegovernment approach' was introduced. In a meeting which was held on 4th March 2020 it was impressed upon the Ministries that the Disaster Management Act 2005 envisaged that all Ministries and agencies had a big role in response measures in a disaster situation. Another innovative approach was to form eleven Empowered Groups to take up speedy decisions and ensure effective implementation of various response measures, because it was recognized at an early stage that one or two ministries/agencies would not be able to cope with this unprecedented and uncertain situation affecting not only India but the entire world in its fight against the pandemic.[12]

[12] The idea of slowing a virus' spread so that fewer people need to seek treatment at any given time is known as "flattening the curve', Live Science, https:// www.livescience.com/coronavirus-flatten-the-curve.html

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India faced unique challenges: multiple land, sea and air entry ports including open land borders; large international and domestic tourist footfall; large population with high population density, particularly in urban areas; inadequate public health infrastructure; and socio-economic and cultural practices that required mass gatherings. The Indian response had to take the entirety of society along, with appropriate messaging for different socio-economic, occupational, and linguistic groups. The government began to monitor international travel towards the end of January, issued travel advisories, imposed restrictions and carried out evacuation of Indians stranded in various countries. In March, large gatherings were curtailed. At an early stage, steps were taken to induct eminent experts to analyze possible scenarios and also prepare a medical emergency plan, which helped with a systematic and effective response to the crisis. Given the large population, even if a small percentage of infected persons required hospitalization or critical care, it would overwhelm the country's already stretched healthcare system.[13] This meant that India needed to 'flatten the curve' so as to allow sufficient medical attention for those who contracted COVID-19.

Between January and May, the Indian response to COVID-19 could be roughly described in three overlapping phases: restricting international travel and controlling movement across borders to limit spread of infection (up to the beginning of March); containing the subsequent spread of disease by tracing, testing and isolating primary and secondary contacts of travelers, as well as preparing the country for lockdown measures (up to the third week of March); and, implementing a nationwide lockdown to control the spread of the virus and enable ramping up of health facilities including testing arrangements, availability of critical medical supplies, adequate hospital infrastructure etc[14]

[13] National Disaster Management Authority (2020). COVID-19 Impacts and Responses: The Indian Experience, January – May 2020, NDMA, India
[14] Role Of Agent, Host And Environment For The Spread Of Communicable Diseases – Article By Abhijit Budhbhat

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RIGHT TO HEALTH AND HEALTHCARE UNDER INDIAN PERSPECTIVE

The Supreme Court, in the leading case of Paschim Banga Khet mazdoor Samity & ors v. State of West Bengal & ors,[15] while widening the scope of art 21 and the government's 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. Article 21 imposes an obligation on the state to safeguard the right to life of every person. Preservation of human life is thus of paramount importance.[16] The government hospitals run by the state are duty bound to extend medical assistance for preserving human life.

Failure on the part of a government hospital to provide timely medical treatment to a person in need of such treatment, results in violation of his right to life guaranteed under Article 21. The Court made certain additional direction in respect of serious medical cases:

a. Adequate facilities to be provided at the public health centers where the patient can be given basic treatment and his condition could be stabilized.

b. Hospitals at the district and sub divisional level should be upgraded so that serious cases could be treated there.

c. Facilities for giving specialist treatment should be increased and having regard to the growing needs, it must be made available at the district and sub divisional level hospitals.

d. In order to ensure availability of bed in any emergency at State level hospitals, there should be a centralized communication system so that the patient can be sent immediately to the hospital where bed is available in respect of the treatment, which is required.

[15] (1996) 4 SCC 37.
[16] Shukla M N .Indian constitution, Central Law Agency Publication, 2013

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e. Proper arrangement of ambulance should be made for transport of a patient from the public health center to the State hospital.

f. Ambulance should be adequately provided with necessary equipments and medical personnel during emergencies.[17]

In Consumer Education and Research Center v. UOI[18], the Court explicitly held that the right to health was an integral factor of a meaningful right to life. The court held that the right to health and medical care is a fundamental right under Article 21. The Supreme Court, while examining the issue of the constitutional right to health care under arts 21, 41 and 47 of the Constitution of India in State of Punjab v Ram Lubhaya Bagga,[19] observed that the right of one person correlates to a duty upon another, individual, employer, government or authority.

VARIOUS RESPONSES DUE TO SECOND WAVE

The Indian government despite knowing the outcome of the first wave still held the elections and to propagate they also encouraged rallies which in turn led to the outbreak of the second wave with cases crossing lakhs and creating havoc among the mass which could have been avoided in the first instance. Had it been controlled then a lot more lives could have been saved. It was wrong planning of the government which led to so many deaths thus infringing right to health along with right to life of the citizens.

CONCLUSION AND SUGGESTION

The term Right to health is nowhere mentioned in the constitution yet the Supreme Court has interpreted it as a fundamental right under Right to life enshrined in Article 21. It is a significant view of the Supreme Court that first it interpreted Right to Health under part IV. i.e. Directive Principles Of State Policy. Till today no effective steps have been taken to implement the

[17]Ibid at-811
[18] AIR 1995 SC 636
[19] (1998) 4 SCC 177: AIR 1998 SC 1703.

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constitutional obligation upon the state to secure the health and strength of people. It has rightly been said that nutrition, health & education are the three inputs accepted as significant for the development of human resources. For achieving the Constitutional obligation and also objectives of Health care for all there is a need on the part of the government to mobilize non governmental organization and the general public towards their participation for monitoring and implementation of health care facilities.

Right to health and right to education are similar. Right to education was not fundamental right at the time of Constitution rafting. It was also inform of DPSP because for education there is a need of schools and it will made by States itself.[20] It is rightly said that a sound mind resides in a sound body and success of Indian democracy depends on the responsible behaviour of its citizens. Hence, Right to Health is the basis of all other rights. Constitution and Government can only guarantee rights as well as remedies for their violation but the real enjoyment of the right to health depends on the awareness and vigilance of the people. Moreover, Right to Health in India is a Fundamental Right by judicial interpretation and is not expressly mentioned in Part III of the Constitution of India. Due to this reason even the educated persons are unaware of this basic Fundamental Right. The Right to Health can be fruitfully enjoyed by the people if it is made a part of 'Right to Life' under Article 21 by Constitutional Amendment.[21] Thus to ensure Right to Health to all the people of the country it is necessary to create awareness among the people. It is not sufficient merely to introduce various health schemes and insurances but people should also be made aware of these Government Schemes. Without awareness the health care delivery system will never be able to fulfill its objective of providing quality health care facilities to all-even to the last person sitting in the remote village of the country.

[20] IMPACT OF COVID-19 ON THE RIGHT TO HEALTH: ADDRESSING THE STRUCTURAL DETERMINANTS OF HEALTH AMONG VULNERABLE PEOPLE
[21] Study of the Right to Health in India and its Awareness among the People

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