

RIGHT TO HEALTH- A STROKE TO COVID-19

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ABSTRACT

On a global level, affordable and efficient health-care system is required which would ensure easy accessibility, without biasness or discrimination, which includes testing, medications, providing beds in the hospitals and other necessary services in the field of health. This pandemic is the wakeup call for the people across the world to the importance of a strong healthcare sector and to provide easy accessibility to all with quality healthcare services. Therefore, the time requires to look into right to health making it the agenda of the hour.

INTRODUCTION

Corona virus or COVID-19 has inflicted cataclysmic suffering and will leave an unprecedented impact on the society at large. During these pandemic human rights were seen to be infringed on a large scale especially the growing concern of right to health. It is the need of the hour that right to health should be given greater importance so that the people enjoy the highest attainable standard of physical and mental health. Every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity. Everyone, regardless of their social or economic status, should have access to the health care they need.⁹⁵⁶ The health sector, due to underinvestment across the countries, does not have the ability to face this pandemic as well as provide with other essential health care facilities and maintain the well-being of the mankind. Countries with better healthcare facilities have an edge over those countries which are barely equipped to fight the unavoidable pandemic and respond to the crisis effectively. This has led to nearly collapsing of the non-privileged countries or state making the present situation even worse. On a global level, affordable and efficient health-care system is required which would ensure easy accessibility, without biasness or discrimination, which includes testing, medications, providing beds in the hospitals and other necessary services in the field of health. This pandemic is the wakeup call for the people across the world to the importance of a strong

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⁹⁵⁶ UN- COVID-19 and human rights, April 2020

healthcare sector and to provide easy accessibility to all with quality healthcare services. Therefore, the time requires looking into right to health making it the agenda of the hour.

CONCEPT OF THE RIGHT TO HEALTH

The right to health is an internationally acclaimed human right standard, and cannot be separated from other rights. This means achieving the right to health is both central to, and dependent upon, the realisation of other human rights such as food, housing, work, education, information, and participation.

The right to health, as with other rights, includes both freedoms and entitlements:

- Freedoms include the right to control one's health and body (for example, sexual and reproductive rights) and to be free from interference (for example, free from torture and non-consensual medical treatment and experimentation).
- Entitlements include the right to a system of health protection that gives everyone an equal opportunity to enjoy the highest attainable level of health.⁹⁵⁷

Components of right to health

The right to health (Article 12) was defined in General Comment 14 of the Committee on Economic, Social and Cultural Rights – a committee of Independent Experts, responsible for overseeing adherence to the Covenant.⁹⁵⁸ The right includes the following core components:

1. **Availability:** This refers to the presence or requirement of the various health facilities such as hospitals, medicines along with goods and services. Through the data related to age, sex, geography, etc. one can understand the requirement of health services and facilities in the country and making provisions for the availability of the same.
2. **Accessibility:** This means that the medical facilities should be accessible to every member of the society. Accessibility should be made possible by removing various barriers like discrimination, financial disability, physical disability and lack of information. Every person should be provided with good medical facilities and not according to their status. There should be dismissal of biasness among people. Also disabilities like that of finance and physical should not hamper the idea of providing

⁹⁵⁷ World Health Organisation- Human Rights and Health (<https://www.who.int/news-room/fact-sheets/detail/human-rights-and-health>)

⁹⁵⁸ CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12). CESCR (Committee on Economic, Social, and Cultural Rights). 2000). 11 August. Doc. E/C.12/2000/4.

medical facilities to all. Lastly, information should be broadcasted among the people about the various health facilities provided in the country and the new developments in the field of healthcare.

3. **Acceptability:** The health facilities, goods and services and programmes should be for the benefit of the society, deal with the needs of the diverse population and also should be within the norms of the international standards.
4. **Quality:** Quality is one of the most important components of Universal Health Coverage. All the facilities, services, goods and services should be medically and scientifically approved. Quality healthcare should provide safety to the patients, effectiveness of the facilities provided, should be equally imparted among the people, avoid unnecessary delays, and efficient services.

GUIDELINES TO BE FOLLOWED

United Nations, to build solidarity and cooperation to tackle the virus and to bring unified effect to halt the spread of unprecedented corona virus, framed some guidelines which the countries were expected to follow⁹⁵⁹. In order to protect the right to health of the society these guidelines were made essential on a large scale making it applicable to many countries under the forum of United Nations. Some of them include the following:

1. Emergency measures which restrict the human rights should be proportionate to the risks and applied in a non-prejudiced way. This clearly means that the focus of undertaking a particular strategy is that it should be less intrusive and which would largely ensure the well-being of the public at large.
2. Social distancing, isolation centres, and other emergency measures should be undertaken for people who rely on support systems for their survival.
3. The allocation of scarce resources like that of ventilators should not be based on biasness like people with high status and wealth.
4. Financial and social protection, to the disable people and their families, should be granted as they would not be able to afford some basic needs.
5. Medical decisions for treating an older person should be based on medical scientific assessments, judgements of doctor and not on the age of the patient.

⁹⁵⁹ https://www.ohchr.org/Documents/Events/COVID-19_Guidance.pdf

6. People who are deprived of liberty like the prisoners, rehabilitators, or any other place of detention; they should be provided with proper care and attention towards their health. They should also be made aware about the disease and the treatment for the same along with the equal impartment of healthcare services.
7. Everyone should be well aware and informed about the pandemic situation in languages which are easily understandable by the people. They should publish the information in regional and indigenous languages and it should reach people including visually and hearing impaired, or people with no ability to read or with no internet connection.
8. Orders of lockdown also led to damaging the physical and mental health of people. Support services for the same should be provided at each level of state.
9. Availability of personal protective equipment (PPE) should be made for healthcare workers and other frontline workers to prevent spreading of infection to them.

International law, on right to health, grants everyone to attain the highest standard of healthcare and makes it necessary for the government to take action for the same and provide with the much needed medical services.

INDIA FIGHTS BACK

The healthcare sector of India has not been funded properly from the starting itself which not only made India vulnerable to pandemic like corona virus (COVID-19) but also posed a great threat to the country itself. Right from the beginning when corona virus case was first detected in India in late 2019, till today we are unable to cope up with the challenges of medical advancements and facilities. But it cannot be denied that the government of India has taken many initiatives to build up the health infrastructure, thereby taking a step towards ensuring right to health to the citizens of the country. It would be early to state that India is successful because of its proactive measure, which has been praised by organisation like UN⁹⁶⁰, WHO⁹⁶¹, and scored 100/100 points in the survey done by Oxford University⁹⁶².

⁹⁶⁰ <https://news.un.org/en/story/2020/03/1060132>

⁹⁶¹ <https://economictimes.indiatimes.com/news/politics-and-nation/who-praises-pm-modis-initiatives-to-fight-covid-19-pandemic/videoshow/74945537.cms?from=mdr>

⁹⁶² <https://tennews.in/india-scores-100-100-in-oxford-universitys-tracker-measuring-governments-response-to-covid-19/>

PLIGHT OF PEOPLE

Comparing the previous conditions with the prevalent conditions, we shall study the developments made in the health infrastructure and ensuring that right to health is provided to the citizens of India.

In the early stages of corona virus spread in India, there was a severe hit on the existing medical facilities prevalent in India as there was a high probability that the spread could be devastating, severely affecting the mere existence of the country. Initially, the COVID cases in India documented 358 deaths and 10,440 active cases recorded till mid-April, 2020⁹⁶³. After that the cases kept on increasing and the situation became worse with about 16,95,988 total cases out of which 5,65,103 are active cases and 36,511 deaths caused till date⁹⁶⁴. The status of the medical facilities makes the situation even worse and also poses a great threat to the right to health of the population. The unsanitary and overcrowding of the quarantine centres and public hospitals has further added to the plight of the people.

Initially India had only 111 COVID-19 test centres to handle a population of 1.35 billion people⁹⁶⁵. With the provision of minimal quarantine facilities, India had 60,000 beds availability in the quarantine centres. Clearly, India was undergoing extensive problems like understaffing and underfunding which further add to the miserable condition of the country. We also had issues related to the protection gear for the doctors which are called the Personal Protective Equipment kit (PPE) that is essential to protect the frontline workers from the said pandemic.

Corona positive patients require the ventilators if they suffer from serious conditions as one of the symptoms of the patients is respiratory problems, thus making the issue of non-availability of ventilators a major concern and the need of the hour. Apart from that the beds in the hospitals and in the quarantine centres and the manpower were also minimal to serve the country. On the other hand, the availability of masks and hand sanitizers in the market was on the verge of extinction which further probe issues related to the safety of the citizens.

According to a research by the WHO, in India, there is one government doctor for every 10,189 people (the World Health Organization (WHO) recommends a ratio of 1:1,000), or a

⁹⁶³ Johns Hopkins University Corona virus Resource Centre, <https://coronavirus.jhu.edu/map.html>

⁹⁶⁴ <https://www.mygov.in/covid-19>

⁹⁶⁵ <https://economictimes.indiatimes.com/news/politics-and-nation/coronavirus-updates-111-labs-across-india-functional-from-today-for-covid-19-testing-informs-govt/videoshow/74750213.cms>

deficit of 600,000 doctors and the nurse: patient ratio is 1:483, implying a shortage of two million nurses⁹⁶⁶. Previously India's medical facilities included 25,778 government hospitals, 7.13 lakh beds in government hospitals, 11.5 lakh allopathic doctors which were not considered enough for the present population of 1.35 billion⁹⁶⁷. There was a requirement of more medical facilities in the nation. The present PPE kit is far less than the requirement rate and only 2 manufacturers were given approval for the production of the same. There was a major concern of the availability of ventilators as it cannot be plugged out from intensive care facilities. Therefore, the presence of number of ventilators is far more less of what is required in the present situation.

Take for example a case study in Assam, where 36 out of 200 ventilators in the government hospitals are used for critical patients. Also, in Telangana, there were only 1000 ventilators which made it difficult to treat patients at higher risk due to the pandemic.

Now talking about the conditions of the hospitals and the quarantine centres, many people had shared their grievances on the social media stating about the abysmal conditions at these facilities, which expressed that the toilets were choked and overflowing, no guidance of undergoing treatment, no clean drinking water, no nutritious food, no proper care was provided and no sanitation was observed in these places.

Testing was another issue. Initially, India had the lowest testing ratio which only amounted to 47 tests per million populations⁹⁶⁸. Further, it was found that testing was done in areas where the casualties were minimum like Kerala which had about 276 tests per million populations as compared to states like Madhya Pradesh, Bihar, Punjab, Gujarat and west Bengal where the tests were 15 per million populations which was devastating in itself.

Amid growing concerns, another issue popped up which was about the exorbitant increase in the rate chart of the private hospitals which made it impossible to approach these hospitals due to financial crisis. Many hospitals increased their prices in order to earn profit and continue with their business in these tough times. The Association of Healthcare Providers, which represents a vast majority of private hospitals, charged hefty prices from the corona

⁹⁶⁶ <https://economictimes.indiatimes.com/industry/healthcare/biotech/healthcare/india-facing-shortage-of-600000-doctors-2-million-nurses-study/articleshow/68875822.cms?from=mdr>

⁹⁶⁷ Ministry of Health, Railways and Defence

⁹⁶⁸ <https://www.hindustantimes.com/india-news/india-has-low-testing-rate-needs-to-scale-up-surveillance-analysis/story-yRQDOQITIHOq0sLDHU63IM.html>

positive patients for the treatment. It fixed Rs. 15,000 per day fee for the general wards, Rs. 20,000 per day fees would be charges for wards with oxygen, isolation ICU would cost Rs. 25,000 per day and isolation ICU with ventilator would cost Rs. 35,000 per day. This pricing did not include high end drugs like immunoglobulin, tocilizumab and plasma therapy which, if used, will be charged separately⁹⁶⁹. This hefty pricing by the hospitals, in times of a disastrous pandemic, is unfeasible and paradoxical in its very nature.

All these concerns pose a great threat to right to health as the crux of this right was to provide the people with highest attainable standards which in case of India were clearly inconspicuous. Neither there was availability of the resources nor accessibility was ensured. Considering that, one could also not neglect the absence of quality and acceptability of the present standard of healthcare facilities provided by the government of India. Thus, all in all right to health suffered immensely due to the unprecedented pandemic.

Remedies provided

“The best defence against any outbreak is a strong health system”. COVID-19 revealed how flimsy the world’s health services and systems were. This led to countries making tough choices on how to provide the citizens of the country with the right to health. India’s response to the COVID-19 pandemic is one of the most stringent in the world, based on data from 73 countries. India has scored a perfect 100 on the “Oxford COVID-19 Government Response Tracker (OxCGRT)” that aims to track and compare government responses to the corona virus outbreak worldwide, rigorously and consistently⁹⁷⁰.

Looking at the present conditions in comparison to the antecedent conditions where we stated that the healthcare services were understaffed under resourced, unhygienic, underfunding etc., the government has really stretched themselves to meet the challenge of the COVID epidemic. States such as Kerala have shown tremendous improvement in bringing down the active cases through improving primary healthcare facilities and not embezzling the right to health of the citizens. Though the cases of COVID-19 shot up, yet the recovery rate has been commendable as the total cases till date are 18,03,695 out of which active cases are 5,79,357 and the discharged cases are 11,86,203, which is 65.77% of the cases⁹⁷¹. The health facilities

⁹⁶⁹ <https://www.newindianexpress.com/nation/2020/jun/04/rs-15000-to-rs-35000-per-day-private-hospitals-fix-rates-for-treatment-of-covid-19-patients-2152266.html>

⁹⁷⁰ Oxford COVID-19 Government Response Tracker (OxCGRT) -<https://covidtracker.bsg.ox.ac.uk/stringency-scatter>

⁹⁷¹ supra

for COVID-19 are categorised into three parts namely, Dedicated COVID Hospital (DCH), Dedicated COVID Health Centre (DCHC) and Dedicated COVID Care Centre (DCCC). The first category is DCH which provides complete care to cases which are severe in nature, the second category is DCHC which deals with cases having moderate nature and lastly DCCC which handle cases that are clinically assigned the status of mild or very mild.

Firstly, taking into account the issue of testing, the National Centre for Disease Control (NCDC) now has the support of the COBAS 6800 testing machine which is a high throughput machine and would increase the testing rate to 1200 tests in 24 hours which was initially 300-350 tests per day. The latest report of Ministry of Health and Family Welfare which is dated 29th July, 2020 states that Test Per Million (TPM) has increased to 12,858 and cumulative testing has crossed 1.77 crore. The testing lab network in the country is continuously strengthened with 1316 labs in the country; 906 labs in the government sector and 410 private labs⁹⁷². These include:

- **Real-Time RT PCR** based testing labs: 675 (Govt: 411 + Private: 264)
- **True Nat** based testing labs: 537 (Govt: 465 + Private: 72)
- **CBNAAT** based testing labs: 104 (Govt: 30 + Private: 74)

Next move which the government undertook was to provide the patients with a ventilator which is important for the survival of the people. According to the press release by the government on 23 June, 2020, PM CARES fund trust allocated Rs. 2000 crore for the production of 50,000 ventilators under the garb of 'Made in India' to the government hospitals providing the services to COVID patients⁹⁷³. As far as other essential commodities are concerned such as PPE kit, masks, and other medicines the union has increased the production of the same under 'Made in India'. According to Union Health Ministry, "The Centre has distributed more than 2.02 crore N95 masks and over 1.18 crore PPE kits among the states, Union territories and central institutions for free." Apart from that 1.02 lakh oxygen cylinders have been supplied to the hospitals and 6.12 crore HCQ tablets have been provided to the states.

Hygiene and sanitization of the places where the patients stay during their period of illness is one factor which is essential for the right to health. Thus, the government of India released

⁹⁷² Ministry of Health and Family Welfare, Government of India, <https://www.pib.gov.in/PressReleasePage.aspx?PRID=1642034>

⁹⁷³ supra

guidelines for disinfecting the quarantine facilities⁹⁷⁴. These guidelines include disinfecting not only the toilets but also walls, doors, clothes, Beds etc. Every area of the facility has been ordered to be disinfected using the main element sodium hypochlorite.

In order to increase the availability of beds initiatives were taken by many people like Dhawan Brothers who are producing and making beds of cardboard which are easily made. This ensured the faster availability of beds which much security as the virus on cardboard only stays for 24 hours as compared to plastic and metal on which virus stays up to 3-4 days. India is now equipped over with more than 11,000 COVID facilities and over 11 lakh isolation beds.

Union Home Minister, Amit Shah recommended a committee to be formed so as to achieve a fixed rate chart for the private hospitals, for the treatment of corona virus, which were charging exorbitantly. The committee, under the chairmanship of V K Paul, Member NITI Aayog, suggested some changes. According to him, the cost or range for isolation beds in the private hospital should lay between Rs, 8000- Rs. 10,000, ICU bed without ventilator at Rs 13000 to Rs 15000 and an ICU bed with a ventilator at Rs 15,000 to Rs 18,000 per day. All these costs would include the cost of PPE. This rate chart gives a sense of relief and a feeling of security to not so affluent families and people belonging to poor background.

These remedies help the citizens to a great extent and ensure the right to health is provided to the people of this country. By making the resources available and accessible to the not only to the affluent families but also to the poor without any biasness is a substantial step towards imparting the right to health. Thus, all these measures taken up by the government is bearing fruitful result and it will surely improve the health infrastructure in India.

OVERVIEW AND SUGGESTIONS

There are many steps which the government undertook and will undertake in the near future to improve the conditions caused due to pandemic. Right to health is a right ensured to all the citizens of the country including the prisoners. Therefore, to ensure their rights are not violated the Supreme Court of India directed all the states and union territories to form committees headed by High Court judge to look after the process of decongesting the jails. While some states like Jharkhand and Rajasthan opted for shifting the prisoners, on the other

⁹⁷⁴ National Centre for Disease Control, Government of India, Guidelines for disinfection of quarantine facility (for COVID-19).

hand some states like Maharashtra and Uttar Pradesh released the prisoners on bail and parole. In order to prevent the export of the essential commodities outside the country the government of India amended the export policy of the medical coveralls under which the export of masks other than non-medical/non-surgical masks, and personal protection equipment (PPEs) will remain banned.

The government of India while is in discussion about the present health infrastructure with The Asian Infrastructure Investment Bank (AIIB), World Bank and Asian Development Bank, for providing USD-8 billion for improving the health infrastructure at the district level in order to protect the country in future from pandemics as such.

The National Human Rights Commission formed 11-member expert committee to assess and study the impact of COVID-19 on human rights, especially the marginalised and vulnerable section of the society, and future aspects of the government. The committee headed by Dr, KS Reddy, president of Public Health Foundation of India, will unfold the practices of the states in providing the people with health facilities from the public health perspective and would also give recommendations to the government.

The development of health infrastructure is a stepping stone towards accomplishing the desired goal of attainment of right to health and safeguarding the citizens of the country from such dangerous and unprecedented epidemics in future. Though, the government of India has taken several steps for the advancement and growth of health infrastructure, we are far behind and need to buckle up in providing highest attainable standards of health.

The frontline workers who are working day and night treating patients need to be protected. Governments should ensure that they are provided with PPE kits for their protection and they should ensure that the families of the frontline workers are provided with social protection. Apart from that, recently many cases have come up regarding attacks and molestation of doctors and other workers. The government should look into the matter and take necessary steps for the same and ensure the protection of those who are protecting our country. There should be no discrimination on the grounds of religion, gender, caste, culture and the government should ensure equal access to the medical services and emergency services to the marginalised sector and vulnerable people like older people and children. The government should ensure that every information related to the pandemic should be made available to the citizens accurately, timely and consistently. There should be no false and misleading information flowing through the market. The information should be available in all the

regional language and further it should be made accessible to the people. Regular checks for the proper sanitization and the facilities relating to clean drinking water, food and other requirements in the quarantine centres and the hospitals should be done on a large scale. The rights of other patients should not be neglected. Patients with other diseases and illness should be treated and not be abandoned due to COVID-19. Recently, cases have arisen whereby patients having other health problems like heart problems, lung disease etc. are not allowed in the hospital before getting a COVID negative report this make the conditions of the patients even worse. Provisions should be formulated to deal with this situation in hand. Therefore, the government should uplift the health infrastructure by investing more time, efforts and investment in it. Through this an imperative will be raised to reaffirm the universal commitment to the right to health⁹⁷⁵. A progressive approach is the need of the hour and is crucial to assure the highest attainable standard of health.

CONCLUSION

India, with the second largest world with maximum population of 1.35 billion, would be unable to cope up with the unprecedented pandemic if it was not the government which made necessary provisions and implemented important actions which were imperative from preventing the spread of the pandemic. Though the claws of COVID-19 clenched the roots of the country, but India is fighting and struggling hard to rise from the shackles of the pandemic. Till date many advancements and developments have been made in the field of healthcare and provided the citizens with the right to health in a feasible manner. Yet we need to climb many steps of the ladder to rise above the fetters of the pandemic and lead a life of manumission.

⁹⁷⁵ Universal Rights Group Geneva- Realizing the right to health must be the foundation of the COVID-19 response.