

HEALTH CARE SYSTEM AND PRIVACY INTERFACE

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INTRODUCTION

Right to health care is the economic, social and cultural right for which every individual is entitled to a standard of health universally. As the general duty to reasonable care is concerned no person should be divest of right to health care. The concept of right to health has been recapitulated in Universal Declaration of Human Rights, International Covenant of Economic, Social and Cultural Rights and the Convention on the Rights of Persons with Disabilities. Right to health and privacy are the two sides of the same coin where there is a need for medical aid by an individual, the privacy of the same should be provided as such. In emerging scenario, right to health of an individual having asserted of greater importance maintaining the confidentiality of individual's medical health condition is also of equal importance. The Supreme Court, in **Paschim Banga Khet mazdoor Samity & ors v. State of West Bengal & ors**¹, 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. 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. The hospitals are duty bound to extend medical assistance for preserving human life. Failure on the part of 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. While treating the individual with due care, the medical professional must provide privacy to every individual as they are duty bound not to disclose any information observed in the exercise of their profession.

DEFINITION OF HEALTH

According to World Health Organization, "Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity"². This is the definition of health given by WHO in the preamble of its constitution.

RIGHT TO HEALTH UNDER DIRECTIVE PRINCIPLES OF STATE POLICIES

¹(1996) 4 SCC 37

² Preamble to the Constitution of the World Health Organization as adopted by the International Health Conference, New York, 19-22 June 1946; signed on 22 July 1947 by the representatives of 61 states

Part IV of the Indian Constitution deals with certain principles known as Directive Principles of State Policy. Although the Directive Principles are asserted to be 'Fundamental in the governance of the country', they are not legally enforceable. They are guidelines for creating a social order characterized by social, economic, and political justice, liberty, equality, and fraternity as enunciated in the Preamble³. The following directives are the relevance perspective of Right to Health.

1. **Article 39: Certain principles of policy to be followed by the state**

This Article secures health and strength of the workers, men and women. It also mandates that children be given the opportunities and facilities to develop in a healthy manner and in condition of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.⁴In **Lakshmi Kant Pandey V. Union of India**⁵, J. BHAGWATI while delivering the opinion of the court observed that:

"It is obvious that in civilised society the importance of child welfare cannot be overemphasised because the welfare of the entire community, its growth and development depend upon the health and well-being of its children. Children are a 'Supremely important national asset and the future well-being of the nation depends on how its children grow and develop"

2. **Article 42: Provision for just and humane conditions of work and maternity relief**

This Article necessitates that the State shall make provision for securing just and humane conditions of work and maternity relief⁶. In **U.P.S.C. Board V. Hari Shankar**⁷, The Supreme Court has held that Article 42 provides the basis of the larger body of labour law in India. Further referring to Article 42 and 43, the Supreme Court has emphasised that the constitution expresses a deep concern for the welfare of the workers. The Court may not enforce the Directive Principles as such, but they must interpret law so as to further and not hinder the goal set out in the Directive Principles. In **Bandhua Mukti Morcha V. Union of India**⁸, J. BHAGWATI, observed: "This Right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and especially the clauses (e) and (f) of Article 39 and Article 41 and 42". Since the Directives Principles of State Policy are not enforceable in a Court of law, it may not be possible to compel the State through judicial process to make provision by statutory enactment or executive fiat for ensuring these basic essentials which go on to ensure a life of human dignity. The gist of Article 42 is that it stands as the basic of the body of labour

3 Sood, Deepika "Indian Perspective of Right to Health", available at <http://www.legalindia.in/indian-perspective-of-right-to-health>

4 Article 39(e) and (f)

5 AIR 1984 SC 469

6 Jain, Prof. M.P., "Indian Constitutional Law", Lexis Nexis Butterworths Wadhwa, Nagpur, 6th Ed. 2010, p.1383

7 AIR 1979 SC 65: (1978) 4 SC 16

8 AIR 1984 SC 802

law and welfare of the workers. The Court must interpret law to achieve the goals set out in the DPSP.

3. **Article 47: Duty of the state to raise the level of nutrition and the standard of living and to improve public health**

Article 47 enumerates that the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and in, particular, the State shall endeavour to bring about prohibition of the consumption except for medical purposes of intoxicating drinks and of drugs which are injurious to health.⁹ Article 47 is helpful for imposing stringent conditions on liquor trade with reference to Article 19(6) of the Indian Constitution. In **Vincent Panikurlangara V. Union of India**¹⁰, The Court stated that "Maintenance and improvement of public health have to rank high as these are indispensable to the very physical existence of the community and on the betterment of these depends, the building of the society of which the Constitution makers envisaged. Attending to public health, in our opinion, therefore is of high priority perhaps the one at the top". The Supreme Court while interpreting Article 47 has rightly stated that public health is to be protected for the betterment of the society. Further it has been held that, in this welfare era raising the level of nutrition and improvement in standard of living of the people are primary duties of the state.

4. **Article 48-A: Protection and improvement of environment and safeguarding of forests and wildlife**

Article 48-A requires that, the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.¹¹ This article was inserted by the 42nd amendment Act 1976. It obligates the State to endeavour to protect and improve the environment and to safeguard the forest and wild life of the country. In **M.C. Mehta V. Union of India**¹², It was held that, "Article 39(e), 47, 48-A by themselves and collectively cast a duty on the State to secure the health of the people, improve public health and protect and improve the environment".

FUNDAMENTAL RIGHTS AND HEALTH

The constitution is the supreme law of the land ensures to preserve the basic rights of an individual and Part III of the Indian constitution exclusively plays a vital role in protecting the rights of the people of India and also the aliens. According to Kelson's pure theory of law, constitution is the Grundnorm and nothing is beyond it. JUSTICE MISHRA

9 Bakshi, P.M., "The Constitution of India", Universal Law Publishing Co.Pvt.Ltd., New Delhi, 9th Ed, 2009, p.90

10 AIR 1987 SC 990: (1987) 2 SCC 165

11 Seervai, H.M., "Constitution Law of India", 4th Ed, Universal Law Publication, New Delhi, 2006

12 JT 2002 (3) SC 527

RAGNATH rightly pointed out in **Paramanand Katara v. Union of India**¹³, ‘preservation of life is of most importance, because if one’s life is lost, the status quo ante cannot be restored as resurrection is beyond the capacity of man’. Right to life is inalienable basic right of man. It is most important human, fundamental, inalienable, transcendental rights¹⁴. Naturally and logically this right requires the highest protection. It denotes the significance of human existence for this reason it is widely called the highest fundamental rights. Everyone has the right to life, liberty and security of person¹⁵. Article 21¹⁶ is most important fundamental right which is interpreted in broad aspects such as right to life, right to health, right to live with human dignity etc.

RIGHT TO HEALTH

Right to health is not directly included as a fundamental right in the Indian Constitution. The Constitution maker imposed this duty on state to ensure social and economic justice. Supreme Court of India interpreting article 21 of the Indian constitution held that the right to health inhered in the fundamental right to life under article 21¹⁷. International human rights treaties recognizing the right to health are,

1. The 1965 International Convention on the Elimination of All Forms of Racial Discrimination: Art. 5 (e) (iv)¹⁸.
2. The 1966 International Covenant on Economic, Social and Cultural Rights: Art. 12¹⁹

13 AIR 1989 SC 2039

14 Indian Bar Review, Vol. XIX, 1992, P. 100.

15 Article 3 of Universal Declaration of human Rights 1948

16 Protection of life and personal liberty; No person shall be deprived of his life or personal liberty except according to procedure established by law.

17 Naz foundation v Govt. of NCT of Delhi, 160 Delhi Law Times 277

18 The right to public health, medical care, social security and social services

19 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 steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: (a) The provision for the reduction of the stillbirth-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; (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

3. The 1979 Convention on the Elimination of All Forms of Discrimination against Women: Art. 11 (1) (f)²⁰, 12²¹ and 14 (2) (b)²².
4. The 1989 Convention on the Rights of the Child: Art. 24²³.
5. The 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families: Art. 28²⁴, 43 (e)²⁵ and 45 (c)²⁶.
6. The 2006 Convention on the Rights of Persons with Disabilities: Art. 25²⁷.

The Declaration of Alma-Ata 1978 affirms the crucial role of primary health care, which addresses main health problems in the community, providing promotive, preventive, curative and rehabilitative services accordingly (Art. VII). It stresses that access to primary health care is the key to attaining a level of health that will permit all individuals to lead a socially and economically productive life (Art. V) and to contributing to the realization of the highest attainable standard of health²⁸. In **Consumer Education and Research Center v. UOI**²⁹, the Court explicitly held that 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. It is the obligation of the welfare state to ensure priority to citizens with sufficient health. The Supreme Court, in **Paschim Banga Khet**

20 (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

21 1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

22 (b) To have access to adequate health care facilities, including information, counselling and services in family planning;

23 (Health and health services): Children have the right to good quality health care – the best health care possible – to safe drinking water, nutritious food, a clean and safe environment, and information to help them stay healthy. Rich countries should help poorer countries achieve this

24 Migrant workers and members of their families shall have the right to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the State concerned. Such emergency medical care shall not be refused them by reason of any irregularity with regard to stay or employment.

25 (e) Access to social and health services, provided that the requirements for participation in the respective schemes are met;

26 Access to social and health services, provided that requirements for participation in the respective schemes are met

27 States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation

28 Declaration of Alma-Ata, 1978

30 (1995) 3 SCC 42.

31 (1996) 4 SCC 37

mazdoor Samity & ors v. State of West Bengal & ors³⁰, 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. The court, while reiterating its stand for providing health facilities in **Vincent v Union of India**³¹, held that a healthy body is the very foundation for all human activities. That is why the adage 'Sariramadyam khalu dharma sadhanam'. In a welfare state, therefore, it is the obligation of the state to ensure the creation and the sustaining of conditions congenial to good health. In **CESC Ltd. vs. Subash Chandra Bose**³², the Supreme Court relied on international instruments and concluded that right to health is a fundamental right. It went further and observed that health is not merely absence of sickness: The term health implies more than an absence of sickness. Medical care and health facilities not only protect against sickness but also ensure stable manpower for economic development. **Unnikrishnan, JP vs. State of AP**³³, the maintenance and improvement of public health is the duty of the State to fulfill its constitutional obligations cast on it under Article 21 of the Constitution.

RIGHT TO LIVE WITH HUMAN DIGNITY

Human dignity is any quality of a person entitling them to be regarded, respected and honored by others³⁴. Human dignity is a human right across the world. The UN Charter, Universal Declaration of Human Rights and other several international covenants and also the Constitution of India in its preamble mentioned the value of 'dignity of the individual'. Every society is obligated to protect the right to life and dignity of the individual which is of highest fundamental rights. JUSTICE BHAGWATI in **Francis Coralie v. Union Territory of Delhi**³⁵, "that right to life includes the right to live with human dignity and all that goes along with it, namely the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading and expressing oneself in diverse forms freely moving about and mixing and commingling with fellow human beings". Health care professionals are inclined to treat the patients with honor or esteem, even though the practical sting will constrain the ways in which to do so. The World Medical Association declaration on the right of the patient represents the principle rights of patients that should be recognized and respected by physicians and health care institutions³⁶. The supreme court held as follows, 'the right to live with human dignity, free from exploitation enshrined in article 21 derives its life breath from the directive principles of state policy particularly clauses (e) and (f) of article 39 and of work and maternity relief. These are the

31 AIR 1987 SC 990.

32 AIR 1992 SC 573,585

33 AIR 1993 SC 2178, (1993) 1 SCC 645.

34 Ravi Rajan, 'Interrogating the Conceptualization of Human Dignity: A Human Rights Perspective' Social Action Journal, Vol. 65, No. 03, July-Sept. 2015, ISSN No. 0037-7627, P. 26.

35 SCC 608 (1981).

³⁶ Amended by the 47th World Medical Association, General Assembly Bali Indonesia Sep 1995.

minimum requirements which must exist in order to enable a person to live with human dignity and neither the central nor any state government has the right to take any action which will deprive a person of the enjoyment of these basic essentials³⁷.

RIGHT TO PRIVACY

Right to privacy is an essential component of right to life and personal liberty under Article 21 of the Indian Constitution. The first time this topic was ever raised in the case of **Kharak Singh v. State of UP**³⁸ where the Supreme Court held that Regulation 236 of UP Police regulation was unconstitutional as it clashed with Article 21 of the Indian Constitution. It was held by the Court that the right to privacy is a part of right to protection of life and personal liberty. Here, the Court had equated privacy to personal liberty matters. In **R. Rajagopal vs. State of T.N.**,³⁹ Right to Privacy held to be implicit in Article 21. "It is the right to be left alone". A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child bearing and education among many other. No one can publish anything concerning the above matters without his consent, whether truthful or otherwise whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in the action of damages. In **Mr. X v. Hospital Z**⁴⁰, it was held that where there is a clash of two fundamental rights, as in the instant case, namely, the appellant's right to privacy as a part of right to life and other person's right to lead a healthy life which is her fundamental right under article 21, the right which would advance the public morality or public interest, would alone be enforced through the process of Court, for the reason that moral consideration cannot be kept at bay and judges are not expected to sit as mute structures of clay as in Hail, known as Courtroom but have to be sensitive, "in the sense that they must keep their fingers firmly upon the pulse of the accepted morality of the day". In **Justice K.S. Puttaswamy and others v. Union of India**⁴¹, the Supreme Court said that privacy is a constitutional right. Nine judges were unanimous in their finding, though they cited different reasons for their conclusion. The verdict on the right to privacy in the present scenario is a major setback for the government, which had argued that the constitution does not guarantee individual privacy as an inalienable fundamental right. The judges concluded that, "The right to privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21 and as a part of the freedoms guaranteed by Part III of the Indian Constitution". Thus, right to privacy is a guaranteed right of article 21 of the Indian Constitution.

37 Association of victims of uphaar tragedy v union of India &ors 2000IVAD(Delhi)342; 86(2000) DLT246.

38 AIR 1963 SC1295: (1964) 1 SCR 332

39 (1994)6 scc 632

40 1998 Supp(1) SCR 723

41 Writ petition(civil) no 494 of 2012

INTERSECTION BETWEEN PRIVACY AND MEDICAL JURISPRUDENCE

The Black's Law Dictionary defines confidentiality as secrecy or the state of having the dissemination of certain information restricted. Confidentiality may also refer to the relation between lawyer and client or guardian and ward, or between spouses, with regard to the trust that is placed in the one by the other. Breach of Confidentiality, then, refers to the violation of this trust that has been placed in another in a fiduciary relationship, such as which exists between a doctor and his patient, or between spouses in a marriage, or between a lawyer and his clients or even between a bank and their customers. Breach of confidence has been seen as an independent tort in the United Kingdom⁴², suggested that provisions be made for recognition of breach of confidentiality as a statutory tort. Any information received by either an explicit or implicit (through the fiduciary nature of the relationship) responsibility of maintaining confidence in the part of the recipient of such information, if disclosed to others may give rise to the tort of breach of confidentiality. In India, there has been growing awareness about confidentiality in recent years. The tort of breach of confidentiality in India is based upon the violation of right to privacy.⁴³ The right to privacy is not explicitly guaranteed by the Indian Constitution, right to privacy is not granted as a specific constitutional right in any country in the world. It has been derived by the Supreme Court of India using the provisions of Article 21, 19(1)(a) & 19(1)(g) given in the constitution. The following cases are the seminal cases in determination of right to privacy in India. In **Kharak Singh V. State of U.P. & others**⁴⁴, **Gobind V. State of Madhya Pradesh**⁴⁵, **R. Raja Gopal V. State of Tamil Nadu**⁴⁶, **People's Union for Civil Liberties V. Union of India**⁴⁷, **Justice K.S. Puttaswamy and others V. Union of India & ors**⁴⁸ in all these above-mentioned cases right to privacy is seen as a fundamental right and it is a part and parcel of Article 21 of the Indian Constitution which is said by the Judiciary. The intersection between privacy and medical jurisprudence has been dealt with in a series of judgments one among them being. In **Tokugha yepothomi V. Apollo Hospital Enterprise**⁴⁹, In this case, the appellant was a doctor in the health service of a state. He was accompanying a patient for surgery from Nagaland to Chennai and was tested when he was to donate blood. The blood sample was found to be HIV+ status by the hospital, filed a claim to have been socially ostracized by the disclosure of his HIV+ status by the Commission (NCDRC) alleging that the hospital had unauthorizedly disclosed his HIV status resulting in his marriage being called off and in social opprobrium. Justice Saghir Ahamed, speaking for a Bench of two judges of this court, adverted to the duty of the doctor to maintain secrecy in relation to the patient but held that there is an exception to

42 Law Commission in 1981

43 <http://www.legalservicesindia.com>

44 (1964) 1 SCR 332

45 (1975) 2 SCC 148

46 (1994) 6 SCC 632

47 (1997) 1 SCC 301

48 Writ Petition (Civil) No. 494 of 2012

49 (1998) 8 SCC 296

the rule of confidentiality where public interest will override that duty. The judgment of this Court dwelt on the right of privacy under Article 21. A Code of Medical Ethics has been made by the Indian Medical Council which, provides as under "Do not disclose the secrets of a patient that have been learnt in the exercise of medical profession. Those may be disclosed only in a court of law under orders of the Presiding Judge". As the right to confidentiality in India is because of the right to privacy under Article 21 of the Indian Constitution. Doctor patient confidentiality is held to be one of the Sacrosanct rights according to the Hippocratic oath and it is codified in India in the form of the Code of Medical Ethics by the Indian Medical Council⁵⁰. This basis itself on the International Code of Medical Ethics. That right is that a doctor can not divulge details of the patients being treated by him even after his death except in a court of law. According to the researchers this right is extremely important as it gives legal remedy to people wronged by medical practitioners who have violated such an important right. In a 2007 judgement, the Central Information Commission(CIC) specifically upheld that information regarding the purpose and results of medical testing was exempted from disclosure under the RTI Act because it was, as the PIO had initially determined, "Personal information the disclosure of which has no relationship to any public activity or interest and would cause unwarranted invasion of the privacy of the individual"⁵¹, Further the CIC held the information had been made available within the doctor-patient fiduciary relationship, and was also exempt from disclosure on that ground. The party seeking the test results in this case did not allege a public interest in the information, but a "genuine right to seek" it as the estranged parent of the patient. This CIC judgement therefore provides little guidance in deciding what would constitute a relevant and overriding public interest. According to Section 8(1)(j) of RTI⁵² Act provides that personal information need not be disclosed unless the larger public interest justifies it. If the information is personal or would amount to invasion of privacy of the individual, what the Public Information Officer has to satisfy is whether the larger public interest justifies the disclosure. The Bombay High Court said that the Regulations framed under the Indian Medical Council Act 1956, will have to be read with section 8(1)(j) of the Right to information Act⁵³. If a spouse is subjected to suffering because of incurable disease of other spouse, it is a ground for divorce under Section 13(i)(v) of the Hindu Marriage Act, 1955, provides that a marriage can be dissolved on the ground that the other party has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent. Information relating to the public interest can be revealed.⁵⁴

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⁵⁰ Indian Medical Council Act, 1956

⁵¹ Arjesh Kumar Madhok V. Centre for fingerprinting & Diagnostics (CDFD) [cited 20 Aug 25]

⁵² Right to Information Act, 2005

⁵³ RTI ACT, 2005

⁵⁴ <http://www.thehansindia.com>

Privacy is valuable because it helps individual to maintain their autonomy and develop their individuality. Physical privacy allows people to act and to express themselves alone or with a group of chosen others, without shame or fear of public censure. In the healthcare context, the importance of maintaining patient's confidentiality is clear. Patients must feel comfortable sharing private information about their bodily functions, physical and sexual activities, and medical history⁵⁵. This is information that they would not want widely known because it may be embarrassing or may have negative practical consequences. If an individual has poor health and if the condition of his health is made public, he may have difficulty in finding a spouse, obtaining health or life insurance or obtaining employment⁵⁶. Some health conditions are stigmatizing and, if known, may cause an individual embarrassment or difficulty in interpersonal relations.⁵⁷ Therefore, healthcare providers need to keep patients health information confidential.⁵⁸ Respect for the confidentiality of personal health information requires that healthcare providers do not disclose this information to others without the individual's permission.⁵⁹ Sometimes even acknowledging that a particular person is, in fact, one's patient may constitute a harmful breach of that person's confidentiality. Medical professionals should not disclose any health information of the patient unless required by law or given permission by the patient.⁶⁰

CONCLUSION

In the present article, the authors like to conclude by stating that, the term "Right to Health" is nowhere mentioned in the Indian 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 and noted that it is the duty of the state to look after the health of the people at larger interest. In wider interpretation of Article 21, it was held by the Supreme Court that the "Right to Health" is a part and parcel of "Right to life" and therefore one of fundamental rights provided under Indian Constitution as well as origin of right to privacy as been emerged in the Article 21 of the Constitution.

⁵⁵ Edwards RB. Confidentiality and the profession in: Bioethics Edwards RB and Graber GC, editors, San Diego: Harcourt Brace Javanovich, 1988, p. 72-81

⁵⁶ Ibid

⁵⁷ Iyengar, P (2011) Country Report: Privacy in India.P. 105

⁵⁸ <http://www.livemint.com/Healthcare-sites-may-see-a-fun.html>

⁵⁹ <http://www.lawyerscollective.org/>

⁶⁰ <http://www.ijme.in/>