

Right to Health & Medical Care in the Time of Covid-19 Pandemic

Faizanur Rahman¹, Mohammad Haroon², Mohammad Haroon³

¹Assistant Professor, Faculty of Law Jamia Millia Islamia, New Delhi, ²Research Scholar, Faculty of Law Jamia Millia Islamia, New Delhi, ³Faculty of Law Jamia Millia Islamia, New Delhi

Abstract

Health is not merely the absence of disease but a state of complete physical, mental and social wellbeing. The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being globally. The World Health Organisation (WHO) as the global leader in public health is responsible to ensure public health globally. Every member states of the United Nation (UN) have developed own healthcare infrastructure and medical services to ensure citizen's health. The unprecedented health crisis aroused due to the Covid-19 pandemic has proved the healthcare infrastructure and medical services exist in India and abroad insufficient. The Pandemic has affected the socio-economic fabric of the world and forced the people to face new challenges. The study investigates the constitutional and legal position of right to health and medical care in India and the impacts of Covid-19 thereupon. The study critically examines the working of the WHO in the time of Covid-19 pandemic. Doctrinal method of research is applied in this study.

Keywords: Health Rights, Medical Care, WHO, Covid-19, Pandemic, Law, Judiciary

Introduction

Right to health and Medical care is the most fundamental rights of citizens. The Supreme Court of India has observed in *Vincent Panikurlangara vs. Union of India*⁽¹⁾ 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 on the building of the society of which the constitution-makers envisaged. Attending to public health, in the opinion of the court, therefore, is of high priority- perhaps the one at the top⁽²⁾. Under the flagship of the UN, all member states have made efforts to ensure public health. The countries have developed their healthcare infrastructure to meet the health needs of citizens. The unprecedented Public

health emergency of International concern declared by the WHO has put several question marks on the existing healthcare infrastructure and medical services throughout the world. Since December 2019 when China reported the first case of Covid-19 to the WHO, about 15 million cases of Corona positive and a death toll of 615,000 people have been reported worldwide⁽³⁾. Every day this number is spiking very fast. After the USA and Brazil, India is the third most affected country in the world. According to the Ministry of Health and Family welfare, more than 11.5 Million Covid-19 cases have been recorded till 20 July 2020. The spread of Coronavirus is on a spike in India, within 24 hours of July 20, 2020, 37,148 cases was reported. Till July 20, 2020 about 28 thousand people have been died due to Covid-19 disease⁽⁴⁾.

Corresponding Author:

Mohammad Haroon

Research Scholar, Faculty of Law Jamia Millia Islamia, New Delhi, Address: Campus Hashmi College of Law, Amroha (U.P.) Contact: mob. 9897205388, e-mail- almadina.haroon@gmail.com

Half of the world population were confined into their homes due to Covid-19 pandemic. The Government of India also imposed national lockdown to control and prevent the spread of Coronavirus and confined citizens inside their homes. During the national lockdown in India, several socio-economic challenges were faced

by the people. The basic rights like the right to learn, earn, freely movement etc. which are essential to the right to life remain seized during the lockdown. Several medical professionals, who were the frontline warriors in the fight against Coronavirus were infected and lost their life. This study was undertaken to demonstrate the impacts of Covid-19 pandemic over the Right to Health and Medical care in India.

Material and Methods

The study is based on analytical method of legal research by surveying national, comparative and international law relating to health and medical care. The case decided by various judicial and quasi-judicial forums has to be analysed for internal and external consistencies. Internal consistencies here mean consistencies *vis-a-vis* that particular issue amongst various case situations; external consistencies mean consistency *vis-a-vis* statutes, guidelines, rules etc. The primary sources like statutes, regulations, conventions and treaties are interpreted following the established canons of statutory interpretation in public law discourse. The secondary sources consisting of treatises, commentaries and glossaries are contextually analysed to reach the objective of the study.

Findings

The Covid-19 pandemic has affected the entire world directly or indirectly. The pandemic has affected the socio-economic life of the people as well as health rights globally. The readiness of the WHO as well as state governments around the world towards the fight against Covid-19 pandemic has proved insufficient. People's right to health, medical care as well as other basic human rights are at risk everywhere. The WHO as the world leader in public health has proved no more effective body to meet the present time health needs of the world.

Discussion

International Laws on Right to Health and Medical Care

The International Bill of Rights has strongly advocated healthcare rights and adequate system for their protection in favour of the people worldwide. Consequently, all the signatories of the international

conventions are conscious of healthcare and adequate medical services for their citizens. The modern International laws have a sufficient number of legal provisions to deal with human health, medicine and healthcare system throughout the world. In this regard, the UN and its subordinate agencies have made several legal efforts to regulate the medical and health sector.

Universal Declaration on Human Rights (UDHR), 1948

Article 25 (1) of the UDHR provides that, everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, cloth, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

International Covenant on Civil and Political Rights (ICCPR), 1966

ICCPR is dedicated to people's health worldwide. Article 6 (1) of the Covenant states that everyone has an inherent right to life which cannot be deprived arbitrarily. Therefore, the state is under an obligation to give primacy to public health and access to medical services. This provision relating to medical services and health rights is impliedly recognising legal protection against medical malpractices and negligence.

International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966

Article 12 of the ICESCR recognizes the right of everyone to the highest attainable standard of physical and mental health. This covenant urges the member states to take the right steps to ensure that everyone has access to medical services. These medical services must be proper and safe. In case of health damage due to improper and deficient health services state will be held liable to compensate victims.

The World Health Organisation

The Constitution of the WHO adopted by the International Health Conference held on 19 June to 22 July 1946 in New York and enforced from 7 April 1948 recognises the health rights of the people worldwide.

The Preamble of the WHO states that health is not merely the absence of disease or infirmity but a state of complete physical, mental and social wellbeing. The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being. The WHO provides global leadership in public health. The organisation works worldwide to promote public health, keep the world safe, and serve the vulnerable.

Role of World Health Organisation in Combating Covid-19 Pandemic

The WHO as the global leader in public health coverage has been at the heart of the battle against the Coronavirus since the first reported outbreak in Wuhan, China. The Organisation is trying to bring the world's scientists and health professionals together to accelerate the research, develop new norms and standards to contain the spread of the coronavirus pandemic and help those who are affected. During the Covid-19 pandemic, the Organisation played an important role in the fight against the unprecedented world health crisis. When the China on the last day of December 2019 reported to the WHO about a cluster of pneumonia cases of unknown cause in Wuhan, the WHO activated a crisis group, putting the body on an emergency footing for dealing with the outbreak. A day later, it published its first Disease Outbreak News destined for scientists and public health specialists on the Novel Coronavirus. The WHO Chief Tedros Adhanom Ghebreyesus convened an emergency committee to assess whether the outbreak constituted a public health emergency of international concern. A delegation travelled to Beijing, led by Tedros, who agreed with the Chinese government that an international team of scientists would visit China. On January 30, 2020 the WHO declared Covid-19 pandemic to be a public health emergency of international concern. The organisation alarmed the world to face a new health crisis and urged member states to speed up the development, production, distribution of treatments and vaccines and ensure universal access to therapeutics. Recently the WHO has remarked, the virus may never go away and could become a disease that the world has to learn to live with⁽⁵⁾.

The Research and Development (R&D) Blueprint which is a global strategy and preparedness plan that allows the rapid activation of research and development

activities during epidemics. It has a broad global coalition of experts come from medical, scientific and regulatory backgrounds have contributed to the Blueprint. It aims to fast-track the availability of effective tests, vaccines and medicines that can be used to save lives and avoid large scale crisis. The R&D Blueprint is working to accelerate diagnostics, vaccines and therapeutics for the epidemic⁽⁶⁾.

Criticism over the Working of the WHO during the Covid-19 Outbreak

The working of the WHO in the time of the Covid-19 pandemic has disappointed the people. Critics say the WHO ignored its early warning about the Coronavirus because of Chinese influence. When Coronavirus spread forced China to impose lockdown in parts of Hubei province in late January 2020, the WHO was reluctant to declare pandemic as global health emergency. The Organization officially called the spread of Coronavirus a global pandemic on March 11, 2020, it was too late. The delay in making such a declaration deprived countries to prepare hospitals for handling the rush of Covid-19 patients. In Japan, the Deputy Prime Minister Taro Aso noted that some people have started referring to the World Health Organization as the Chinese Health Organization because of what he described as its close ties to China. The US President Donald Trump has announced to halt payments to the WHO pending a review of its role in allegedly severely mismanaging and covering up the spread of the coronavirus, and accused it of being biased towards China.

The pandemic has affected international relations and caused diplomatic tensions between countries. International trade and transport of medicines, diagnostic tests and medical equipment used to cure Covid-19 disease have affected due to the tension. There will be time later to assess the success and failure of the WHO in dealing with public health in the time of Covid-19 outbreak.

Recently, the WHO has remarked as the virus may never go away and could become a disease that the world has to learn to live with. Only to warn the world about the severity of the Covid-19 disease is not enough to fight against deadly Coronavirus. The overall efforts made by the WHO in the way of control and prevention of the spread of Coronavirus are not sufficient. Drugmakers

across the world have been rushing to develop a vaccine for the Covid-19. Leading pharma companies have reached to human trial of their anti Corona vaccines. Glenmark Pharmaceutical Ltd. had received approval from India's drugs regulator to make and sell oral antiviral drug Favipiravir for treating mild to moderate Covid-19 patients in India. The world is awaiting still for an effective anti Covid vaccine from the WHO.

The Constitution of India and Right to Health & Medical Care

The right to health is recognised in India as a fundamental right. The right to health as fundamental right grew as an offshoot of environmental litigations in India. In *M.C. Mehta vs. Union of India*⁽⁷⁾ the right to healthy environment was recognised as a fundamental right in the first instance and the right to health and healthcare are derived from that. The right to health is inseparable from the right to life. Right to health and medical facilities are collateral of the right to health as part of the right to life under Article 21. It does not provide any special rights to the patient but the patient's rights are arising from the relevant provisions of the Constitution. Right to health and medical treatment of patients are the fundamental rights as well as human rights of citizens. The Supreme Court of India has observed in case of *Balram Prasad vs. Kunal Saha*⁽⁸⁾ hospitals, nursing homes, clinics are liable to provide treatment to best of their capacities to all patients. Erring or negligent doctors, hospitals are to be dealt with strictly.

Article 32 provides constitutional remedies on the violation of fundamental rights. It enables the victim to move the Supreme Court through an appropriate proceeding for the enforcement of his fundamental rights conferred by the Constitution. The right to constitutional remedies, therefore, allows citizens to stand up for their rights against anybody even the Government.

In the landmark judgment in *Parmanand Katara vs. Union of India*⁽⁹⁾ the Supreme Court has emphasised that the right to life covered within its scope the right to emergency healthcare also. In this case, a scooter rider injured severely in a road accident, when taken to the nearest hospital he was refused to admission with an excuse that the hospital was not competent to handle the medico-legal case. The Supreme Court held that the medical professionals are bound to provide treatment in

cases of emergency and they cannot refuse to treat the patient. The Supreme Court stated that Article 21 of the Constitution casts an obligation on the state to preserve people's life, not only government hospitals but also every doctor whether at government service or otherwise has the professional obligation to extend his services for protecting people's life.

In *Paschim Bangla Khet Majdoor Samiti vs. State of West Bengal*⁽¹⁰⁾ the Supreme Court further emphasised on the right to emergency healthcare and treatment. The court stated that the failure on the part of the government hospital to provide timely treatment to a person in need results in a violation of his right to life guaranteed under Article 21 of the Constitution. In this case a person suffering from head injuries occurred in a train accident was refused from giving treatment by various hospitals on the excuse of lack of adequate facilities and infrastructure required to provide treatment.

Further the Judiciary demonstrated its activism in the time of Covid-10 pandemic when the basic rights including right to health and medical care of the public were at high risk. The situation attracted the judiciary for taking necessary action in the public interest. The Supreme Court has emphasised that the Covid-19 lockdown does not eclipse personal liberty and the fundamental right to life. Right to health is imbibed in the right to life guaranteed under Article 21 of the Constitution⁽¹¹⁾.

Taking the notice on the gravity of the Covid-19 situation, Delhi High Court has directed the Centre and Delhi government to increase the number of the beds for Covid-19 patients and also try to increase the number of ventilators so that all Covid-19 patients in need can avail their right to healthcare⁽¹²⁾.

Recently, the Supreme Court on the petition of Advocate Shashank Deo Sudhi passed an interim order and asked the government to arrange for carrying out Covid-19 testing by private laboratories certified by the National Accreditation Board for Testing and Calibration Laboratories (NABL) free of charge⁽¹³⁾. And a bench of the Supreme Court has asked the Centre to identify private hospitals that can treat Covid-19 patients for free or at a very low price. The Apex Court had also taken suo moto cognizance on media reports of improper handling of Covid-19 patients and undignified disposal

of the victims' dead bodies in the country⁽¹⁴⁾.

Conclusion

The unprecedented Covid-19 pandemic has impacted the entire world directly or indirectly. Basic rights like right to life, health, liberty and livelihood etc. are at risk throughout the world. About one half population of the world is facing several health issues emerged due to the pandemic. The growing number of Corona positive cases throughout the world has proved the existing healthcare infrastructure and medical facilities exist in the world insufficient. The WHO as the global leader in public healthcare is no more effective body to meet the global public health needs. The organisation must be reorganised, financed and powered to fight against diseases like Covid-19 and future epidemics. During the pandemic heavy paucity of healthcare professionals, hospitals and infrastructure is recorded in India. The healthcare sector demands more investment and adequate policies to meet the needs of public health.

6. Ethical Clearance- No

7. Source of Funding- No

8. Conflict of Interest- No

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