

HEALTH AND LAW

The fundamental right to health care

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India is a party to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. **The Supreme Court held that Article 21 of the Constitution of India in relation to human rights has to be interpreted in conformity with international law (1). Further, Article 25 [2] of the Universal Declaration of Human Rights and Article 7 (b) of the International Covenant on Economic, Social and Cultural Rights have been cited by the Supreme Court while upholding the right to health by a worker (2).**

These covenants find statutory acceptance in the Statement of Objects and Reasons of The Protection of Human Rights Act, 1993. In addition, human rights commissions are empowered to study treaties and other international instruments on human rights and make recommendations for their effective implementation (3). In the recent past, many complaints of alleged medical negligence and deficient service by private and government hospitals and medical professionals have been filed with the national or state Human Rights Commissions.

The Constitution of India on the right to health care

The Constitution incorporates provisions guaranteeing everyone's right to the highest attainable standard of physical and mental health. Article 21 of the Constitution guarantees protection of life and personal liberty to every citizen. The Supreme Court has held that the right to live with human dignity, enshrined in Article 21, derives from the directive principles of state policy and therefore includes protection of health (4). Further, **it has also been held that the right to health is integral to the right to life and the government has a constitutional obligation to provide health facilities (5).**

Failure of a government hospital to provide a patient timely medical treatment results in violation of the patient's right to life (6). Similarly, the Court has upheld **the state's obligation to maintain health services (7).**

Public interest petitions have been filed under Article 21 in response to violations of the right to health. They have

been filed to provide special treatment to children in jail (8); on pollution hazards (9); against hazardous drugs (10); against inhuman conditions in after-care homes (11); on the health rights of mentally ill patients (12); on the rights of patients in cataract surgery camps (13); for immediate medical aid to injured persons (14); on conditions in tuberculosis hospitals (15); on occupational health hazards (16); on the regulation of blood banks and availability of blood products (17); on passive smoking in public places (18); and in an appeal filed by a person with HIV on the rights of HIV/AIDS patients (19).

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References

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2. ESC Ltd v. Subhash Chandra Bose (1992) 1 SCC 441 at 462.
3. Chapter III, Section 12 (f) of The Protection of Human Rights Act, 1993.
4. Bandhua Mukti Morcha v. Union of India (AIR 1984 SC 802).
5. State of Punjab v. Mohinder Singh Chawla (1997) 2 SCC 83.
6. Paschim Banga Khet Mazdoor Samity v. State of West Bengal (AIR 1996 SC 2426 at 2429 para 9).
7. State of Punjab v. Ram Lubhaya Bagga (1998) 4 SCC 117.
8. Sheela Barse v. Union of India (1986) 3 SCC 596.
9. Mehta v. Union of India (1987) 4 SCC 463; MC Mehta v. Union of India (regarding emission standards for vehicles) (1999) 6 SCC 12.
10. Vincent v. Union of India (AIR 1987 SC 990).
11. Vikram v. State of Bihar (AIR 1988 SC 1782).
12. Death of 25 Chained Inmates in Asylum Fire in TN In re v. Union of India (2002) 3 SCC 31.
13. S. Mittal v. State of UP (AIR 1989 SC 1570).
14. Parmanand Kataria v. Union of India (1989) 4 SCC 286; AIR 1989 SC 2039.
15. S. Lal v. State of Bihar (1994 SCC [Cri] 506).
16. Consumer Education and Research Centre v. Union of India (1995) 3 SCC 42.
17. Common Cause v. Union of India and Others (AIR 1996 SC 929).
18. Murli S Deora v. Union of India (2001) 8 SCC 765.
19. Mr X v. Hospital Z 1998 (6) SCALE 230; 1998 (8) SCC 296; JT 1998 (7) SC. 626).