



INTERNATIONAL LAW  
JOURNAL

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**WHITE BLACK  
LEGAL LAW  
JOURNAL**  
**ISSN: 2581-  
8503**

*Peer - Reviewed & Refereed Journal*

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

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# **RIGHT TO LIFE WITH SPECIAL REFERENCE TO HEALTH: AN ANALYSIS<sup>1</sup>**

AUTHORED BY - SAKSHI ANAND

## **ABSTRACT:**

*“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, 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”.<sup>2</sup>*

Throughout India's history, the concept of 'health' has held a central and enduring significance. Each phase of its development has showcased the nation's commitment to the well-being of its people.<sup>3</sup> In ancient times, a paramount focus was placed on maintaining hygiene and fostering a clean environment, recognizing their fundamental role in preserving health. This keen awareness of the interplay between cleanliness and well-being laid a crucial foundation. Furthermore, this era witnessed the flourishing of Ayurveda, a holistic system of medicine. Illustrious physicians such as Charaka and Susruta made remarkable contributions, dedicating themselves to the service of those in need of medical care.

During the Mughal Rule, other traditional systems of medicine, including Unani and Siddha, thrived alongside Ayurveda, enriching the tapestry of healthcare available to the population.

The British colonial period ushered in the advent of modern Western medicine in India. This era witnessed the establishment of medical colleges and the integration of Western medical practices into the Indian healthcare landscape, marking a significant transition while coexisting with traditional systems.

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<sup>1</sup> Sakshi Anand, LLM student, Chanakya National Law University.

<sup>2</sup> Article 25(1) of Universal Declaration of Human Rights.

<sup>3</sup> Article 25 of the Universal Declaration of Human Rights, 1948.

'Health' was added to the list of non-justiciable rights as part of the Directive Principles of State Policy after India gained Independence in 1947. However, the willingness of particular states to put these concepts into practice varied.

**Key Words:** Health, Physicians, Charaka and Susruta, Hygiene, Clean Environment.

## **INTRODUCTION:**

*“The Supreme Court of India played a crucial role in defining the "Right to Life" as including the "Right to Health" under Article 21 of the Indian Constitution in recognition of the vital relevance of health. With the aid of this ground-breaking legal interpretation, the right to health was transformed from a mere directive principle to a basic one that could be protected by the law”.*

The "Right to Health" is explicitly included under Article 21 by a constitutional amendment, despite this legal recognition, according to certain arguments. In addition to raising public awareness, such action would support the legal status of health as a basic right, comparable to the Right to Education under Article 21A.

A continuing discussion in India about the scope and character of social and economic rights guaranteed by the Constitution is reflected in the proposal for a constitutional amendment. It emphasizes the significance of guaranteeing equal access to healthcare and making it a legally protected right that people can claim in the event of violations.

*"Right to health"* is now included in the Court's expansive interpretation of Article 21 of the Constitution. According to this view, the right to life, as stated in Article 21, includes the right to health and well-being in addition to the basic right to exist.

The judiciary has come to the conclusion that the value of the right to health as a result of the knowledge that all other constitutionally given fundamental rights can only be fully exercised by people who are in excellent physical and mental health. As a result, it is believed that the right to health serves as the cornerstone upon which all other rights and freedoms are based.



Health was not specifically mentioned among the Fundamental Rights when the Indian Constitution was written by its founding fathers shortly after India gained independence. The time's economic climate played a role in this choice, and instead, they included a number of articles pertaining to health and welfare under the category of Directive Principles of State Policy in Part IV of the Constitution.

These Directive Principles did not offer residents with specific legal remedies, but rather served as guidance for the government's efforts to promote the welfare of the populace. In other words, because they were dependent on the states' financial resources, people could not use the legal system to enforce these values when they were violated.

*“The Hon'ble Supreme Court intervened after appreciating the importance of health as a basic right and that its absence would make all other rights less effective.”* Through a number of significant rulings, the Court, which serves as the protector of the Constitution and the people's rights and freedoms, elevated health as a Fundamental matter of Right.

In effect, judiciary's proactive approach filled a gap created by the Constitution's framers and made sure that the "right to health" was not just a general principle but also a right that could be enforced in court. India's residents' health and wellbeing have been protected and promoted thanks to this transformation, which is in line with the nation's democratic ideals and dedication to social welfare.

## **MEANING OF HEALTH**

A fundamental human right that is acknowledged both nationally and internationally is the right to health. This covers a wide range of other crucial elements in addition to the creation of a strong healthcare infrastructure and unrestricted access to healthcare services without discrimination. These include having access to safe drinking water, good sanitation, wholesome food, adequate housing, and safe working conditions. The right to health also encompasses gender equality promotion and health education.

In essence, the right to health is a comprehensive framework that encompasses a number of fundamental rights rather than standing alone as a single, independent right. Additionally, it protects people from forced sterilization, harsh, inhumane, or degrading treatment, as well as other essential

freedoms like protection from non-consensual medical treatment or research.

According to the World Health Organization (WHO), health goes beyond simply being free from illness or infirmity. It emphasizes health as a condition of total physical, mental, and social well-being, highlighting the fact that health has many facets.

The right to health is given the utmost priority on a global scale by the International Covenant on Economic, Social, and Cultural Rights (ICESCR), which was enacted by the UN General Assembly in 1966 and is in effect since 1976. It defines the right to health as having the best possible level of physical and mental health, representing the shared worldwide commitment to ensuring everyone has the best possible level of health.

The importance of health as a fundamental right is also emphasized in the Universal Declaration of fundamental Rights (UDHR). It declares that everyone has a right to a quality of living that ensures their own health and the welfare of their family. This includes having access to necessities including clothing, food, housing, healthcare, and social services.

Access to healthcare, environmental circumstances, and social welfare are all aspects of the right to health, which is a multidimensional human right. It is reflected in the worldwide commitment to safeguard and advance the health and well-being of all people, which is reflected in international accords and declarations.

## **CONSTITUTIONALITY OF ARTICLE 21**

A key principle of the Indian Constitution is that no one shall be deprived of their life or personal liberty except the legal procedures established by law. However, the definition of "life" as stated in Article 21 goes beyond only existing physically. It covers a wider range of rights, such as the right to live with dignity, the right to an adequate standard of living, the right to health, and the right to a clean environment.

*“In the case of State of Punjab v. M.S. Chawla, it was determined that the right to health and access to healthcare are additionally protected under Article 21 right to life. This interpretation supports*

*the notion that the right to life encompasses more than just the ability to survive and involves the ability to lead a healthy life”.*

In the case of “*Vincent v. Union of India*”, the Supreme Court emphasized the fundamental significance of a healthy body in facilitating all human pursuits. The state's responsibility to advance general health and discourage the use of health-harming substances is emphasized in Article 47, a Directive Principle of State Policy. It makes the state's fulfillment of this duty its top duty.

The Supreme Court placed a strong emphasis on the idea of social justice in the case of “*Consumer Education and Research Center v. Association of India*” as a way to ensure that life is meaningful and dignified in accordance with human rights.

It acknowledged that the state owes it to its citizens to give them with the resources and opportunities necessary to achieve, at the very least, a minimal level of health, financial security, and a respectable standard of living. The court emphasized that any denial of a worker's health or well-being violates Article 21 because these rights are essential components of their right to life.

These legal interpretations essentially highlight the comprehensive nature of Article 21's right to life, which includes not just the preservation of life but also the promotion of a life that is honorable, healthy, and beneficial to people's well-being.

## **HISTORICAL DEVELOPMENT AND CHANGES IN RELATION TO HEALTH IN INDIA**

Progress of healthcare services in India has unfolded through distinct historical stages, each marked by varying degrees of emphasis on health and the quality of available healthcare services. To gain a comprehensive understanding of this evolution, we need to look into the historical aspect:

- 1. Ancient time period***
- 2. Medieval time period***
- 3. British time period***
- 4. Post-independence time period***

### **1. Ancient time period:**

The pursuit of control over one's health and well-being has been an ongoing goal throughout human history. Ancient societies viewed illness via cosmological or anthropological lenses, frequently seeking cures in magical and religious practices. Human knowledge gradually increased over time.

The Indus Valley civilisation, which is said to have flourished between 3300 and 1900 B.C., is a tribute to the incredible accomplishments of the earliest human civilisation. During this time, planned townships, efficient sewage systems, and amazing engineering methods were uncovered during archaeological excavations. These results highlight the importance that these ancient people gave to sanitation and health. Surprisingly, remnants of ancient medical procedures have been found in the Harappan Civilization, including root canal procedures and the intake of high-protein "laddoos."

The Aryan Invasion signaled the start of the Vedic era as history developed. The Ayurveda medical system, which is thought to have its origins in the Vedas, developed during this time. The "tridosha" hypothesis of disease, which focuses on imbalances of pitta, wind, and mucus, is the foundation of Ayurveda. Atreya, Charaka, Susruta, and Vagabhatta, among others, became some of history's most well-known physicians during this time period. A number of public hospitals were established for the benefit of the populace as a result of the dedication of these medical titans to preserving public health.

The desire of health and wellness has been embedded in human society since the dawn of humanity. As civilizations developed, so did their knowledge of health and the creation of medical procedures, which resulted in The rich tradition of Ayurveda and the contributions of brilliant physicians who helped humanity's well-being emerged as a result of the advancement of civilizations' understanding of health and the development of medical practices.

### **2. Medieval time period:**

The expansion of the Mughal Empire in India was a key event during this time period in history. During this time, the Unani-Tibb medical system was adopted in India. It also represented a defeat for the age-old Ayurvedic medical system. As the Mughal Empire created its own Unani system of medicine across the nation, the Ayurvedic method lost imperial support. Up until the arrival of the British colonial powers, this dynamic was present in the Indian healthcare system.

### 3. The British time period:

India's healthcare system was exposed to the cutting-edge science and technology of the Western world during the British colonial era. Homeopathy, developed by Samuel Hahnemann, was a prominent medical system that emerged alongside the conventional medical systems, such as Ayurveda and Unani. The contemporary Indian healthcare system was significantly shaped by the British administration.

Up to 1885, the British government opened about 1250 hospitals and pharmacies, many of which were backed by the state. Various commissions were appointed by the British government to examine health-related issues. For instance, in 1859, the Royal Commission was tasked with making recommendations for improving the health of British Army officers stationed in India. This commission suggested crucial actions such as guaranteeing access to clean water for drinking, good sanitation, and the control of epidemics.

Additionally, the British enacted a number of laws pertaining to health throughout their time in power, including the Vaccination Act of 1880, the Birth and Registration Act of 1883, and the Epidemics Act of 1897.

Several commissions, including the “*Sokhey Committee and the Bhore Committee*”, were created to further improve the healthcare scene. In 1948, the Joseph Bhore-led Bhore Committee delivered its report and made numerous noteworthy recommendations. The necessity of making healthcare freely accessible to the entire public and guaranteeing that no one would be refused treatment because of a lack of funds was one of these proposals.

A structured healthcare system including health centers at primary level, health centers at secondary level, and district health system was also suggested by the “*Bhore Committee*”.

Through the introduction of contemporary medical procedures, the establishment of medical schools, and the introduction of legislative measures, the British colonial era had a considerable impact on the development of India's healthcare system. These innovations provided the groundwork for the nation's current healthcare infrastructure.

#### 4. Post-independence time period:

Committees were established in the post-independence era to address healthcare-related concerns and offer suggestions for bettering the nation's health status. The Mudaliar Committee, the Chaddah Committee, the Mukherjee Committee, the Jungalwalla Committee, the Kartar Singh Committee, and the Shrivastava Committee were some of these committees. These committees were crucial in evaluating India's current state of health and offering important recommendations for its improvement.

The Constitution's drafters anticipated the creation of a welfare state based on the ideals of social, economic, and political fairness when India attained independence on August 15, 1947. The Constitution gave health the highest priority even if it did not explicitly protect it as a Fundamental Right. The non-justiciable Directive Principles of State Policy, which are included in Part IV of the Constitution contain the significance of health.

For instance, Article 38 of the Indian Constitution mandates that the government work to create social structures that advance the wellbeing of the populace, and it is generally accepted that welfare is impossible to achieve without the preservation of health. The need for a policy that guarantees and safeguards the health and strength of employees and children is emphasized in Article 39(e) of the Constitution. The State must offer possibilities for children's healthy growth, according to Article 39(f).

According to Article 42 of the Constitution, the States also have obligations to guarantee decent working conditions and maternity leave. The State is required by Article 47 to improve public health, establish nutritional standards, and ban alcohol use unless it is medically necessary.

Furthermore, Article 48A mandates environmental protection from the State, acknowledging the obvious connection between environmental conservation and public health.

These constitutional clauses demonstrate India's dedication to placing its citizens' health and welfare first. Although the right to health was not specifically stated as a Fundamental Right in the Constitution, the Directive Principles clearly state that the government has a responsibility to advance and safeguard the wellbeing of the people of the country.

## **“PART-III OF THE CONSTITUTION OF INDIA AND ITS PROVISION”**

The Indian Constitution requires the government to take the necessary steps to promote the general health of the populace in addition to laying out provisions for the healthcare of its residents. Even though these Constitutional clauses may not directly address healthcare, numerous legal interpretations have proven the legislature's intention to include health as a fundamental right of individuals.

The notion of equality before the law is addressed in “*Article 14 of the Constitution, which states that no one should be denied equality before the law or equal protection under the law on Indian Territory.*” Article 15 expands on this idea by prohibiting discrimination against citizens on the basis of their place of birth, race, religion, caste, sex, or any combination of these. The protection of a person's life and personal liberty is guaranteed by Article 21 of the Indian Constitution. It clearly indicates that no one may be robbed of their life or personal freedom until doing so in accordance with the legal process.

Additionally, Article 23 forbids behaviors like human trafficking, forced labor, and beggary and classifies them as crimes subject to legal sanctions. Article 24 provides additional protection for kids by outlawing their employment in factories, mines, or any other dangerous occupations, protecting their welfare and growth.

The Indian Constitution lays a strong emphasis on protecting the health and well-being of its residents, especially women, children, and underprivileged communities, in addition to recognizing the significance of equality, non-discrimination, and personal liberty. These sections of India's constitution.

## **PART-IV OF THE CONSTITUTION OF INDIA AND ITS PROVISION**

India's dedication to safeguarding the fundamental rights and dignity of its citizens, particularly their right to health, is reflected in these constitutional provisions. In addition to the fundamental rights

established in the Indian Constitution, the state is directed by a number of directive principles in providing for its citizens' healthcare.

It seeks to prevent people from working jobs that are inappropriate for their age or physical capabilities out of requirement for income. Additionally, it emphasizes how crucial it is to give kids the tools they need to grow up in a safe environment free from abuse and abandonment.

Article 38 emphasizes that in order to further the welfare of the people, the state must establish a social system in which justice—a term that incorporates social, economic, and political aspects—directs all national institutions. Because of the direct connection between people's welfare and health, protecting public health is a component of this.

Article 39 explains the direction of the state's policy by emphasizing the importance of preserving the physical and emotional health of workers, men, women, and children. It

The right to employment, education, and public aid, particularly for the old, ill, and crippled, are all covered under Article 41. In the event of unemployment, old age, illness, or disability, the state is required to give public assistance, including healthcare.

The main goal of Article 42 is to guarantee fair and compassionate working conditions, including maternity leave. It gives the state the power to create policies that safeguard mothers' and newborns' health by providing maternity benefits and creating proper working conditions.

*“According to Article 47, the state has a responsibility to raise the nutritional status and standard of living of its population while enhancing public health”.* It makes it clear that improving living conditions, boosting public health, and strengthening nutritional standards are among the state's top priorities. Additionally, it supports initiatives to make it illegal to consume harmful pharmaceuticals and intoxicating beverages unless absolutely necessary for medical treatment.

Article 48A emphasizes the state's obligation to maintain and safeguard a pollution-free environment in order to advance well health.



These guiding principles offer the state a thorough framework for ensuring access to healthcare, addressing public health issues, and fostering an environment that is favorable to good health, which collectively reflects India's commitment to prioritize the health and well-being of its population.

## **PROVISIONS OF THE INDIAN CONSTITUTION**

### **UNDER PART - IV-A**

Every person has obligations under Article 51 A (g) of Part IV-A of the Constitution to preserve and improve the natural environment, including forests, lakes, rivers, wildlife, and the need to have compassion for all living things. This constitutional clause emphasizes the responsibility of all citizens to actively contribute to environmental preservation and show compassion for all life forms.

### **“JUDICIARY ROLE”**

The "right to health" has been acknowledged as a fundamental human right by a number of international human rights instruments. Although it is not stated expressly in the Indian Constitution, the judiciary has established the "right to health" as a basic right under Article 21 of the Constitution. It is closely related to the "right to life." The "right to health" is something that all public servants, including those in the legal and administrative sectors of government, must respect, safeguard, and uphold. Several notable court rulings on this subject are listed below:<sup>4</sup>

*“In Francis Coralie Mullin v. Union Territory of Delhi”*,<sup>5</sup> The Supreme Court made it clear that the "right to life" protected by Article 21 covers more than just basic needs like food, clothing, and shelter. This perspective highlights how closely related the "right to health" is to the larger right to life.

*“In Paschim Banga Khet Mazdoor Samity v. State of West Bengal”*,<sup>6</sup> The Supreme Court expanded the purview of Article 21 and the government's obligation to provide healthcare for every citizen. It was highlighted that the government's first priority in a welfare state is to ensure the wellbeing of the populace, which includes offering suitable medical care.

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<sup>4</sup> Address by Justice K.G. Balakrishnan in the National Seminar on the 'Human right to health' organized by the Madhya Pradesh State Human Rights Commission (At Bhopal) on September 14, 2008.

<sup>5</sup> 1981(1) SCC 608.

<sup>6</sup> (1996) 4 SCC 37

*“Unnikrishnan, J.P. v. State of Andhra Pradesh”*<sup>7</sup> It was highlighted that having the "right to protection of health" is part of having a dignified life. It emphasized that no state, including the federal government and state governments, has the authority to take measures that deprive people of this fundamental right.

In *“CESC Ltd. v. Subash Chandra Bose”*<sup>8</sup>, The "right to health" was determined by the Supreme Court to be a fundamental right based on international agreements. It underlined the importance of health for social and economic advancement and that it goes beyond simply being free from disease.

In *“Mahendra Pratap Singh v. State of Orissa”*<sup>9</sup>, The Court emphasized the significance of providing basic healthcare to villagers within their means and the government's responsibility to facilitate access to healthcare.

In *“Occupational Health and Safety Association v. Union of India and others”*<sup>10</sup>, The Supreme Court stressed that the state's obligation to safeguard workers' health and maintain decent working conditions becomes even more important when they are employed in dangerous and risky industries.

Collectively, these legal declarations highlight the judiciary's acceptance of the "right to health" as an essential element of the "right to life" and emphasize the state's responsibility to protect the welfare and health of its citizens.

## **“THE CONSTITUTION ON THE RIGHT TO HEALTH CARE”**

The Supreme Court, in the case of *“Paschim Banga Khet Mazdoor Samity and others v. The State of West Bengal and Others”*, signifies the Constitution's Article 21 and the government's duty to offer medical care to every citizen of the country were further increased. It claimed that under a welfare state, the government's main duty is to ensure the welfare of its citizens. The way the government fulfills this obligation is by making accessible to people who need them proper medical facilities. Protecting human life is of utmost importance since Article 21 requires the state to uphold each

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<sup>7</sup> AIR 1993 SC 2178 , (1993) 1 SCC 645.

<sup>8</sup> AIR 1992 SC 573,585 : (1992) 1 SCC 461.

<sup>9</sup> AIR 1997 Ori 37.

<sup>10</sup> AIR 2014 SC 1469.

person's fundamental right to life.

Government-run hospitals have a moral obligation to provide medical care in order to preserve lives. A government hospital is liable if it neglects to treat a patient who is in need of care in a timely manner.

1. **Emergency Medical Care:** Government hospitals have a duty to give people who are in need of emergency medical care, especially when their lives are at risk. A person's right to life may be violated as a result of delays or negligence in providing medical care.
2. **Provision of Essential Medicines:** It is the responsibility of government hospitals to make sure that the medical equipment and supplies needed for patient care are readily available. The lack of necessary medications might make it difficult for a patient to receive the care they need and threaten their right to life.
3. **Qualified Medical Staff:** To deliver proper medical care, government medical facilities should have a qualified and competent medical staff. Employing insufficiently qualified healthcare workers could prevent patients from receiving adequate care, violating their right to health. **Maintaining Accurate Patient Health Records:** Accurate patient health records are essential to providing patients with appropriate medical care. To enable prompt and knowledgeable care, government hospitals must ensure accurate documentation and storage of patient health records.

The Supreme Court's decision emphasized how important it is for the government to uphold people's right to life by offering them the necessary medical care and support. It stressed the crucial part that government hospitals play in carrying out this responsibility and provided precise guidelines to guarantee that patients receive prompt and efficient care, particularly in situations of extreme medical need.

## **HOW FAR INDIA HAS BEEN SUCCESSFUL IN IMPLEMENTING THE RIGHT TO HEALTH**

The Supreme Court used international accords and stressed the importance of the right to health in the case of "*CESC Ltd. v. Subash Chandra Bose*". It went a step further to emphasize that health is

more comprehensive than simply being free of disease. In addition to preventing diseases, medical treatment and healthcare facilities also guarantee a steady labor force for economic growth. The availability of healthcare facilities encourages employees' commitment and dedication, both physically and emotionally, which raises productivity. It gives employees the chance to take pleasure in the results of their job, keep up their physical condition, and remain mentally sharp—all of which are necessary for leading prosperous lives on an economic, social, and cultural level. Healthcare facilities are therefore a crucial component of social security and, like a gilt-edged investment, they produce immediate returns through increased output and decreased absenteeism from work owing to illness. However, the government continues to give this important industry scant attention and funding.

This viewpoint emphasizes how important health is to both an individual's total well-being and the growth of the national economy. It emphasizes the necessity of paying more attention to and investing more money in healthcare to guarantee the physical and mental health of the workforce and, as a result, the prosperity and progress of the nation.

## **INTERNATIONAL STANDARDS PERTAINING TO RIGHT TO HEALTH AS A MATTER OF FUNDAMENTAL RIGHT**

The World Health body (WHO) is currently the most important international body devoted to improving the achievement of the right to health. The WHO has an Indicatory Metadata Registry (IMR), which acts as a central repository for metadata and specifies particular indicators for keeping the highest standards in guaranteeing the right to health. Numerous other organizations, in addition to the WHO, follow these guidelines.

What these indicators cover is a sensible question to ask. These indicators actually provide a thorough knowledge of the issues at hand by including all definitions, measurement techniques, data sources, and other information. The international community has established up to 100 indicators that offer unambiguous data. To give clear statistics on the current state of global and national health, trends, and inequities, the international community has organized up to 100 indicators. Four main categories—Health status, Risk factors, Service coverage, and Health Systems—are used to group

these variables. The World Health Organization's list of the top 100 core health indicators for 2015 is shown below.

Although individual indicators can change over time and within organizations, it's crucial to keep in mind that these serve as a framework for broadly assessing and addressing health-related concerns.

## **CONCLUSION AND SUGGESTIONS:**

Unquestionably, everyone has the fundamental and essential human right to good health. After the COVID-19 epidemic, its importance has been even more apparent. People continue to be denied their entitlement to health care despite several government measures. Individuals frequently lack a thorough understanding of their right to health and the possible remedies in the event that it is violated.

The 'right to health' has been acknowledged as a fundamental right by the Honorable Supreme Court, but it might be more effective if it were added to Article 21 of the Constitution through a constitutional amendment, much like the 'right to education' was added under Article 21A by the Eighty-Sixth Constitution Amendment Act of 2002.

The insertion of Article 21A unambiguously recognized the right to education as a basic right and detailed the conditions under which the State would grant this right all Indian citizens. In a similar vein, the inclusion of the "Right to health" through a constitutional amendment, along with precise guidelines for its implementation, would not only increase public awareness of their rights but also make clear the available remedies, such as filing a writ petition under Articles 32 or 226 of the Indian Constitution in cases of violation.

Additionally, such a change would increase government organizations' commitment to safeguarding this essential and vital human right. Other rights can undoubtedly only be completely exercised when people are in excellent bodily and mental health. Therefore, ensuring that everyone has the "right to health" is essential for the development and prosperity of the country.

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