

**RIGHT TO HEALTH IN INDIA: LAW, POLICY, AND PRACTICE (2022). By Sougata Talukdar. Sage Publications. Pp. 322, Price INR 1327/-.**

HEALTH AND human rights are complementary to each other in securing and advancing human well-being.<sup>1</sup> Since 1948, the promotion and protection of human rights to health have received increased attention from international and national perspectives around the globe.

This present book is divided into ten chapters. Within the introductory part of the book, the author made an effort to list and analyse various human right regime, whether national or international, that recognise within itself the fullest enjoyment of the right to health. The author also examined Indian approach to securing the right to health of its citizen through numerous legislative enactments, judicial pronouncements, and policy orientations. Apart from general international legislations and domestic approaches under the Indian legal system, the author tried to analyse specific instruments on right to health of vulnerable sections like women and children, workers and disabled persons for a better understanding of the legal structure relating to the right to health.

*Chapter I* of the book deals with the theoretical foundation of health wherein the author discussed how the holistic and utopian view of health expands the ambit of traditional medical view by conceiving health as a positive state of well-being which includes social, psychological, physical, economic and political aspects along with physical health. The author started by underlining the importance of health for human existence and asserting it to be a positive claim on the resources of others to how it got recognised as a universal human right. The author indicated that the earliest notion of health under the traditional medical concept is based on the ‘germ theory of disease’.

The author endeavoured to compile the meaning of the word ‘*health*’ under various concepts of Greek, Greece, and in the Butterworth medical dictionary<sup>2</sup> and also the WTO. The right to a highest attainable standard of health as a normative standard was enunciated in 1946, since then it has been reiterated in several declarations and conventions which author had listed within his book. Further, author points out the overlapping and interrelationship elements of

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<sup>1</sup> Sougata Talukdar, *Right To Health In India: Law, Policy And Practice* (Sage Publication, 1st ed., 2022).

<sup>2</sup> M. Critchley, *Butterworths Medical Dictionary* (1978).

right to health with other human rights also and any violation of these connected human rights may also result in ill-health and thereby affects the right to health of an individual.<sup>3</sup>

Within the chapter, theoretical foundation to the concept of health, author mentioned six different opinions concerning the concept of health that are prominent in recent times, such as, (a) the medical or biological model (b) WHO model (c) wellness model (d) the normative and descriptive accounts of health (e) the ecological model (f) WHO's new operational model.

*Chapter II* deals with the concept of right to health with respect to international legal perspective, wherein the author examines the recognition of the right to health under various international instruments, listed as, WHO, UDHR, ICESR, ALMA ATA Declaration, Agenda 21, Millennium Development Goals, Sustainable Development Goals and Declaration of ASTANA. Author pointed out the journey from the 'survival of the fittest' as a motto of human society to a stage where 'survival of the weakest' is the main human value, can be deduced from all these human right instruments. As a result, the dominance of few individuals, who treat people as 'subjects' without any rights, could not continue for long.<sup>4</sup> The protection of the right to health in India as discussed broadly by the author in two aspects: (a) the protection under Indian constitutional law and, (b) the protection under specific legislative and policy framework.

*Chapter III* specifically deals with the former aspect, wherein the author has attempted to list various provisions of directive principles of state policies, fundamental duties, panchayats and municipalities, certain entries in seventh schedule and eleventh schedule as well as preamble to the constitution that ensures various principles relating to constitutional philosophy which are certainly useful for the protection of the right to health and their implementation in India besides article 21. Author along with the above provisions also emphasised on large number of judicial dimension that have emerged relating to right to health. These dimensions are as follows: (a) right to health under article 21, (b) right to access to medical aid, (c) right to receive medical treatment in emergencies, (d) right to access to medical records, (e) right to medical

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<sup>3</sup> WHO, *25 Questions and Answers on health and Human Rights* 8 (Health and human rights publication series, 2002).

<sup>4</sup> Rajesh Kumar, "Right to Health: Challenges and opportunities", 40(4) *Indian journal of community medicine* 218 (2015).

reimbursement, (f) right to access to medicine, (g) right to clean, hygienic and safe environment, (h) right to get treatment by qualified medical practitioners, etc.

Chapter IV deals with the latter aspect of right to health in India i.e. general legislative and policy framework of right to health in India. To realise the constitutional mandate for the protection of the right to health and its related issues certain special health-centric legislations have been enacted over time which the author attempted to emphasis on. These health-generic legislations are responsible to provide facilities for the fullest enjoyment of the fundamental right to health. To examine the contemporary relevance of the health-related legislative framework in India, author studied the working of these legislations and policy frameworks.

The legislations are as listed below:

- A. Legislations applied to prevent abuse of drugs and their distribution and storage:
  - i. Drugs and Cosmetic Act, 1940
  - ii. Drugs control Act, 1950
  - iii. Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954
  - iv. Patent Act, 1970
  - v. Narcotic Drugs and Psychopathic Substances Act, 1985
  - vi. Cigarette and other Tobacco Products Act, 2003
- B. Legislations applied for maintaining quality of food and securing Nutrition:
  - i. Food Safety and Standard Act, 2006
  - ii. National Food Security Act, 2013
- C. Legislations applied in case of Human Organ Transplantation:
  - i. Transplantation of Human Organ Act, 1994
- D. Legislations applied to maintain high standards in medical services:
  - i. Indian Nursing Council Act, 1947
  - ii. Dentist Act, 1948
  - iii. Indian Medical Council Act, 1956
  - iv. Indian Medicine Central Council Act, 1970
  - v. Homoeopathy Central Council Act, 1973
  - vi. Clinical Establishment (Registration and Regulation) Act, 2010

National health related policies are as follows:

- A. National Vaccine Policy 2011

B. National Policy for Containment of Antimicrobial Resistance 2011

C. National Mental Health Policy 2014

D. National Health Policy 2017

National health related missions are as follows:

A. National Rural Health Mission (NRHM)

B. National Urban Health Mission (NUHM)

*Chapter V* is primarily devoted to understanding the issues relating to the right to health of women and children under international and Indian law. Author considers that women's health should be reconstructed by considering gender, class, culture and social needs. The right-based approach to the health of women includes (a) right to marry and form a family, (b) right to health, reproductive health and family planning, (c) right to decide the number and spacing of children, (d) right to be free from gender discrimination, (e) right to be free from sexual assault and exploitation, and (f) right to modify customs that discriminate against women along with other gender-neutral rights. Two human right models are existing within the reproductive human right i.e. (a) reproductive right model and (b) right to health model. The reproductive rights model typically revolves around the protection of the right of women to make autonomous reproductive decisions. Whereas, the right to health model employs a different approach than the reproductive rights model to conceptualise reproductive health rights.<sup>5</sup>

Author listed right to health of women under various international instruments such as ICESCR, 1966, International Conference on Population and Development (ICPD), 1994, Cairo+5 key Actions Documents, 1999, UN Millennium Development Goals, 2000, UN world Summit 2005, Sustainable Development Goals 2015, and the convention on the Elimination of Discrimination against Women (*hereinafter* referred as 'CEDAW'), 1979. Further, author also listed down various women centric international instruments such as Declaration on the elimination of violence against women (DEVAW), 1993. This declaration was adopted for the universal recognition of women's rights concerning equality, security, liberty, integrity and dignity and to eliminate violence against women. Hence it aims to fill up gaps left by CEDAW. Another is Beijing conference on women, 1995. This platform for action has recommendation with the UN system, the medical community, research institutions, and non-governmental

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<sup>5</sup> *Supra* note 1.

organisations to design and implement gender-sensitive health programs and provide affordable primary health care and promote research on women's health.

The chapter provides a healthy discussion on the consent mechanism and autonomy of women in the termination of pregnancy that are also considered fundamental and ethical principles in providing reproductive health services.<sup>6</sup> As far as child's right to health is concerned, author had listed various international instruments such as ICESCR 1996, MDGs 2000, and Sustainable Development Goals, 2015. Apart from these, there are certain child-centric instruments under international law that also contain various provisions relating to the right to health of the children. Among these instruments, the United Nation Convention on the Rights of the Child is the most prominent one. In India, the specific child-centric legislative framework as enunciated by the author are Child Labour (Prohibition and Regulation) Act, 1986, Infant Milk Substitutes, Feeding Bottles and Infant Foods Act, 1992 and the Juvenile Justice (Care and Protection of Children) Act, 2015.

*Chapter VI* of the book deals with the human right to health of persons with disability within the international and national legislative framework of India, wherein the author described various models to conceptualise disability over time, such as (a) religious model, (b) medical model, (c) social model, and (d) rights based model. Amongst these, the medical approach towards disability considering medical treatment, physical rehabilitation, charity, welfare and public assistance as the basis of the determination, whereas the human right approach is the most modern and considers equal rights and equal status as determinants against the discriminating actions towards persons with disability. Under international law, author listed various rights that are recognised to secure the right to live with human dignity for disabled people and under the domestic legal framework in India, various legislative and policy orientations are there to address the needs of disabled people. However, author reveals that these rights and protections through the implementation of the international and national standards is not a strong footing.

The author titled *chapter VII* as right to health in context of Epidemic diseases. The author pointed out that the outbreak of the epidemics and pandemic highlights not only the importance

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<sup>6</sup> Rajalaxmi, "Reducing Reproductive Rights: Spousal Consent for Abortion and Sterilisation" 4(3) *Indian Journal of Medical Ethics* 102 (2007).

of ‘global health governance ’in which states are not the only actors but also of a more observative approach of ‘global public goods for health ’from which all states would benefit.<sup>7</sup> Judicial authorities across the globe are holding that claims to treatment articulate a justiciable right that is grounded in domestic law and is supported by international human rights commitments.<sup>8</sup> Author further highlights that within national legal framework in India, specific attempts through legislative enactments and policy orientation are made to secure human rights aspects including right to health for people affected by epidemic diseases including the right to health of people affected by epidemic diseases including HIV/AIDS and COVID-19 pandemic.

The last chapter of the book deals with the right to health and protection against occupational health hazards. Author concur that the realisation of worker’s health and safety as a fundamental human right is dependent upon revitalising labour rights in the working environment.<sup>9</sup> The chapter deals with the term ‘*occupational health right* ’ as a whole to include various rights such as right to just and humane condition of work, right to access to healthcare, right to get compensation, right to maternity benefit including social security measures and welfare facilities. Under international law, various initiatives were taken for protecting these occupational health rights by UN and ILO. However, in India, along with the available medical treatment, there are various specific legislations to deal with the issue of occupational health and to provide proper protection to the workers such as Workmen’s Compensation Act, 1923, Employees State Insurance Act, 1948, Factories Act, 1948, Plantation Labour Act, 1951, Mines Act, 1952, Maternity Benefit Act, 1961 and Unorganised Sector Worker’s Social Security Act, 2008.

To conclude, the author throughout the book has discussed that what exactly is right to health? Starting from the ancient system of protection of right to health to international instruments, all describe the absolute essentiality of right to health for the human existence. As per the international instruments, the principles of availability, accessibility, acceptability and quality are not only guiding concepts of the right to health but also help to clarify the nature of the responsibility that the states owe for proper realisation of it. Thus, by conceptualisation of

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<sup>7</sup> D.P. Fidler, “SARS: Political Pathology of the first Post- Westphalia Pathogen” 31(4) *The Journal of Law, Medicine and Ethics* (2003).

<sup>8</sup> Noah Novogrodsky, “Duty of treatment: Human rights and the HIV/AIDS Pandemic” 12(1) *Yale Human Rights and Development Law Journal* 5 (2009).

<sup>9</sup> Jeffrey Hilgrett, “The Future of Workplace Health and Safety as a Fundamental Human Right” 34(3) *Comparative Labour Law and Polity Journal* 715, 734 (2013).

health in social epidemiology, a rights paradigm explicitly links health with laws, policies and practices that sustain a functional democracy and focuses on accountability. Hence, as per the author, health is a universal concern and the enjoyment of the right to highest attainable standard of health can only be ensured through international cooperation and transfer of technology between developed and developing countries.<sup>10</sup>

The author specifically pointed out that the assurance of access to health care in India is very poor and substantial proportions of the population have limited access to health care. Further, the implementation of existing legislations is also of major concern for realising the right to health to fullest extent. Till now, numerous issues have already been addressed by the legislations over time. But all these legislations have not achieved their desired goals due to lack of implementation, lack of internal facets disability and functioning issues.

Indeed, the present scholarly work on right to health is useful for the judges, lawyers, academicians, research scholars 'law students and all those who are interested in pursuing their careers in health sector.

*Yashasvi\**

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<sup>10</sup> *Supra* note 1.

\*LLM Student, The Indian Law Institute, New Delhi.