Naveen Shodh Sansar (An International Refereed / Peer Review Multidisciplinary Research Journal)
RNI No.- MPHIN/2013/60638, ISSN 2320-8767, E- ISSN 2394-3793, Scientific Journal Impact Factor (SJIF)- 8.054,
October to December 2025, E-Journal, Vol. I, Issue LII (52), ISO 9001:2015 - E2024049304 (QMS)

Primary Health Care in India's Welfare State : A Legal and Human Rights Perspective

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Abstract: Human Rights and good health are inextricably intertwined. The fact that health is being discussed in the context of human rights and is mentioned in so many human rights instruments suggests that health is a social benefit rather than just a medical, technological, or financial issue. The UDHR and the ICESCR both acknowledge that the state is responsible for the population's health as a fundamental human right because it is crucial to one's dignity. Primary health care (PHC) forms the foundation of an effective and equitable health system. In a welfare state's context, providing Primary health care transcends legal and policy mandates and becomes a moral obligation. This paper explores the legal and ethical responsibility of India as a welfare state in guaranteeing comprehensive primary health care services to all the residents and in upholding the principles of social justice, equity, and human dignity. By analysing the legislative and policy frameworks and global health standards, the paper argues that a welfare state failing to prioritise primary health care undermines its foundational promise of societal well-being. The paper also discusses the relationship between the principles of human rights and the implementation of primary health care within India's welfare framework and identifies the challenges that impede the realisation of universal primary health care.
Keywords: Human Rights, Primary Health Care, Right to Health, United Nations, Welfare State.

Introduction - Human rights are the basic rights and freedoms that belong to everyone, from birth until death. They can never be taken away, although they can sometimes be restricted. These basic rights are based on shared values like equality, fairness, dignity, respect and independence, which are defined and protected by law (1). The idea of natural rights first appeared in the seventeenth and eighteenth centuries. After World War II (1938–1945), the idea of human rights as we know it today began to take shape. The newly established United Nations (UN), outraged by the atrocities of war and the Holocaust, set forth new regulations for the protection and promotion of human rights universally. Members of the United Nations adopted the Universal Declaration of Human Rights (UDHR) in 1948. The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) were two significant human rights treaties adopted in 1966. Both of these treaties entered into force in 1976. Karel Vasak, a distinguished human rights scholar, introduced the idea of **three generations of human rights**. The first generation of human rights is *civil and political rights*. The second generation of human rights includes *economic, social, and cultural rights*, and the third generation of human rights includes *solidarity rights*(2). The first generation's rights include the right to liberty, the right to life, freedom of speech and expression, etc. The second-generation rights include the right to education, right to social security, right to health care, etc. Part III of the Indian Constitution, 1950, i.e. Fundamental Rights, includes several of the civil and political rights outlined in the 1966 ICCPR, which has been ratified and signed by India. ICESCR, which primarily focuses on food, health, education, and housing rights, was also signed and ratified by India. Part IV, Directive Principles of State Policies (DPSPs) of the Indian Constitution contains most of this covenant's clauses. The State is required under the DPSPs to operate in a way that promotes economic democracy and the establishment of a welfare State. The framers of the Indian Constitution understood that it was the duty of the State to advance the health of everyone in general and of society's most vulnerable groups in particular. Article 21 of the Constitution provides that "No person shall be deprived of his life or personal liberty except according to procedure established by law"; this right would be meaningless if a person is not healthy and is suffering from diseases. In a sense, being ill prevents you from fully exercising your right to life and liberty. Furthermore, it demonstrates the State's incompetence in providing for public health, which is an essential function of a welfare state, when malnutrition, poverty, squalor, an unclean environment, or a lack of medical care brings on such ill health, sickness, or aggravation of diseases. While the right

to health care focuses on receiving medical attention or having access to health services, the right to health, seen in a larger context, includes any socio-economic, environmental, and legal concerns that have any bearing on health. Further, according to Section 2(d) of the Protection of Human Rights Act, 1993 of India, "Human Rights" includes the rights embodied in the International Covenants and enforceable by courts in India. Promoting human rights and health is inherently and intimately linked to each other. Health is essential to one's dignity, and both UDHR and the ICESCR recognise that the State is responsible for the population's health as a fundamental human right. Access to quality health care for all is also one of the prerequisites for long-term, equitable economic growth. The WHO constitution states: "Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity" (3). The Alma-Ata Declaration, 1978, stated that 'Governments have a responsibility for the health of their people, which can be fulfilled only by the provision of adequate health and social measures. The people have the right and duty to participate individually and collectively in planning and implementing their health care' (4). Thus, the right to health has to be understood in the context of a right to health care and healthy conditions.

Review of literature: S. P. Ranga Rao (5) has discussed the health policy and planning in India, concept of rural development, participation and administrative organisation for rural health. The author has also dealt with the establishment and management of PHC and functions of primary health centers and has further indicated that the availability of health and medical services in rural and urban areas is drastically different, with urban residents having access to more affordable medical facilities. S. L. Goel, in his book (6), has discussed the meaning and significance of health, factors influencing health, nature and scope of health care administration, need, meaning and scope of PHC and general principles of primary health care development. Trisha Greenhalgh (7) has given an explicitly multi-professional perspective on PHC and the meaning and concept of primary health care. It is further discussed that if health systems acknowledge the value of excellent primary care, they can operate efficiently. Atula Gaur (8) has examined the application of human rights norms in India and the Constitutional provisions and judicial rulings that align international law with domestic law. In his article, Chandrakant Lahariya (9) has discussed the evolution of the Public Health care Facilities (PHCFs) system in India since the independence, the PHCFs in India are egregiously underutilised; in 2013–14, only 11.5% of rural and 3.9% of urban people in need of health services utilised this extensive network, excluding mother and child health services.Harshal Tukaram Pandve and Tukaram K. Pandve (10) have discussed how the delivery of health services still depends heavily on PHC, which is an essential strategy. PHC is the routine care required to safeguard, preserve, or restore our health.The Bhore Committee's report from 1946 established the notion of PHC in India. The Nation's infrastructure, PHC services, and associated health care indices have significantly improved over the past six decades of independence. However, there are still many obstacles to achieving universal health. While the existing literature extensively covers the evolution, structure, and significance of PHC in India, there is limited focus on evaluating the implementation of existing policies, especially in bridging the rural-urban health care divide. Most studies address theoretical frameworks and historical progress but lack the integration of human rights perspectives. Furthermore, the impact of recent health care reforms and community participation in strengthening PHC remains underexplored.

Research objective:

1) To evaluate the right to health as a basic human right by analysing international human rights instruments.
2) To understand the meaning, concept and significance of primary health care.
3) To examine the nature of obligation imposed on the state regarding right to health and to evaluate the role of state in the realisation of right to health.

Methodology: The study adopts a doctrinal method by analysing the legal framework, statutory material, government reports, policy documents, international treaties and decided case laws of the Supreme Court, High Courts and quasi-judicial bodies. Secondary sources related to the present topic, such as books, legal encyclopaedia, dictionaries, etc., were also utilised. Further, articles and research papers written in periodicals and scholarly Indian law journals as well as international journals, newspaper articles and the Internet were used, and a comparative analysis of national and international standards was employed.

Meaning and Concept of Primary Health Care: Health care involves diagnosing, preventing, treating, and managing illness and preserving mental and physical health through the services offered by the medical, nursing, and allied health professions. The three-tiered structure of the human health care system is typically broken down into three categories. First, *Primary Health Care* - When a person or family first contacts the health care system, PMC is what they receive. The medical officer and other health care professionals provide this care at the primary health center and subcenter through their expertise. Second, *Secondary Health Care* - The level of medical care is intermediate. Specialist facilities are offered under secondary health care to address complex medical issues referred from PHC. Early detection and precise medication are part of secondary care, along with District hospitals and community health centers. Health experts such as medical specialists, dental specialists, etc., who typically do not have first contact with patients, supply the health care services

under secondary health care. Third, *Tertiary Level Health Care* - The third and highest tier level is where curative procedures can be carried out in addition to super-specialities in several medical sectors. Specialised expert advice and recommendations are given in tertiary health care. Typically, it is for hospital patients receiving treatment and referred by a primary or secondary health care professional. Health care at the tertiary level provides institutions with people, resources, and equipment for performing cutting-edge medical research and treatment.PHC is a whole-of-society approach to health that aims to ensure the highest possible health and well-being and equitable distribution by focusing on people's needs. PHC includes health promotion, disease prevention, treatment, rehabilitation, and palliative care. (11). It gives people the knowledge and tools they need for the best possible health outcomes and offers comprehensive care for health requirements across the lifespan, not only for a collection of particular disorders. PHC ensures patients receive complete care that is as close to their daily environments as is practical. It is a pathway to achieving basic human rights, essentially social justice(12) and opens up access to universal health care to all people and families living in a community. PHC programmes enable complete community involvement in implementation and decision-making. Those in primary care often treat a wide variety of patients and have an in-depth understanding of the numerous physical, psychological, and social conditions that may affect their patients. PHC typically covers about 80 per cent of a person's health needs during their lifetime (13). The Declaration of Alma-Ata in 1978 was a landmark in the history of global health, which made a commitment to PHC in pursuit of health and well-being for all, leaving no one behind. PHC includes three interrelated components: integrated comprehensive health care, policies, and initiatives to address the more extensive and upstream determinants of health, engaging and empowering people for better self-care and self-reliance in health, and increased social involvement.The COVID-19 pandemic highlighted the shortcomings of many developed and developing Nations' primary health care systems and their readiness, including India.

India as a Welfare State - A welfare state is a concept of government in which the State or a well-established network of social institutions plays a key role in protecting and promoting citizens' economic and social well-being. It is based on the principles of equality of opportunity, equitable distribution of wealth, and public responsibility for those unable to avail themselves of the minimal provisions for a good life. The general term may cover a variety of forms of economic and social organisation. (14) The benefits to the person and the community are tied to the welfare state. It is shaped and raised by societal requirements. The welfare state often provides public housing, health care, and basic education (sometimes for free or at a reduced cost). Thus, a welfare state is a modern idea of government with unique duties to enhance citizens' socio-economic circumstances and offer safeguards for their growth. India sought to establish a welfare state by adopting DPSPs in Part IV of the Constitution. India's central and State governments should consider the DPSPs when drafting laws and policies. The principles outlined in Part IV of the Indian Constitution are not enforceable by any court but are regarded as fundamental to the Nation's governance. The right to health has arguably presented the court with the easiest case to justify, albeit not necessarily to enforce.

Providing Primary Health Care Services - A Welfare State Function - Social welfare policies in India are intended to address the issues of resource scarcity and contingency. The welfare state ideology of government prioritises preserving and enhancing its residents' social and economic well-being. PHC is the moral responsibility of a welfare state because the citizens must have a basic health infrastructure to exercise their right to livelihood, as stated in the UDHR. Article 47 of the DPSPs establishes the State's obligation to advance public health. However, the court has consistently affirmed that the right to health is integral to the right to life and personal liberty guaranteed under Article 21. The State is responsible for evaluating our health care needs and assuring access to services as a regulator, protector, and promoter of our health. Furthermore, Articles 39, 41, 42, and 43 of Part IV of the Indian Constitution guarantee the right to health care. Several other legislations revolve around the right to health, including the Drugs and Cosmetics Act, 1940; Bharatiya Nyaya Sanhita, 2023; and Mental Healthcare Act, 2017. By judicially established and demonstrated analogy, rights under Part IV may be exercised in accordance with Article 21. At the same time, the directive principles may be enforced without restriction under Article 37 of the Constitution. The welfare state has a moral and legal obligation to ensure that its citizens have access to a healthy environment, medical facilities, preventive and curative methods of disease treatment, affordable access to necessary medications, the prevention of unused medications, and the establishment of primary health center's with the necessary supplies, medications, and doctors with specialised training. The Supreme Court of India has also instructed the government to create a PHC blueprint focusing on treating patients in an emergency in the case of Paschim Banga Khet Majoor Samity v. State of West Bengal (1996) 4 SCC 37.To direct upcoming health initiatives, the Indian government releases the National Health Policy (NHP) regularly.The Government of India has released three NHPs - NHP (1983), NHP (2002), and NHP (2017). The first NHP in 1983 had access to primary care for everyone in India as its goal by 2000.A national health policy with the goal of "health for all" by the year 2000 has also been adopted by the Indian government, but it failed to achieve the goals laid down. The National Rural Health

Mission and the National Urban Health Mission were merged into the National Health Mission (NHM) by the Indian government in 2005. Ayushman Bharat Programme (ABP) was also unveiled in February 2018 to realise the goal of universal health coverage. It is divided into two parts: Health and Wellness Centers (HWCs), which will offer comprehensive PHC services to the entire population, and Pradhan Mantri Jan Arogya Yojana (PMJAY), which will make hospitalisation services at secondary and tertiary level health facilities more accessible to the bottom 40% of the population. (15)**.** The National Health Policy of 2017 called for dedicating two-thirds of the health budget to PHC and proposed the construction of "Health and Wellness Centers" as the platform to deliver comprehensive PHC. The Report of the Primary Health Care Task Force, Ministry of Health and Family Welfare, Government of India, while reiterating that PHC is the only affordable and effective path for India to Universal Health Coverage, also provided valuable insights into the structure and processes in health systems to enable Comprehensive PHC. Primary Health Centers (PHCs) and their subsidiary jurisdictional Sub-Centers (SCs) provide PHC in India. Unfortunately, the public's perception of PHCs is frequently unimpressive and reminiscent of intermittently available, less reliable health care provided primarily by a health workforce that is overworked, less process-oriented, and ineffectively monitored. These programs are primarily restricted to focused maternal and child health initiatives, among other vertical disease-control programs (16).Evidence points that among all health workers, 66.91% were serving in urban areas where 33.48% of the population is based, and 33.09% were serving in rural areas where 66.52% of the population resides.Most vacancies of doctors and health professionals exist in remote, tribal, and other similarly underserved areas of India, and existing mechanisms do not seem to address these gaps (16). Every PHC should contain at least four to six beds with designated wards for males and females to provide adequate medical care, according to the Indian Public Health Standards (IPHS). A defined minimum infrastructure must also be accessible at these centers; however, most PHCs do not strictly follow these standards. The Rural Health Statistics 2019–20 reported that as of March 2020, only 3.4% of the 1.55 lakh Sub Centers were functioning as per Indian Public Health Standards (IPHS). A lowly 13% (3278) of the 24,918 PHCs, and 8.4% of CHCs adhered to basic standards. More than 37% of the health assistant positions, 19% of pharmacist positions, 34% of laboratory staff and 21% of nurse positions are vacant (16). As of March 31, 2023, the country has a total of 1,69,615 Sub-Centers (SCs), 31,882 Primary Health Centers (PHCs), 6,359 Community Health Centers (CHCs), 1,340 Sub-Divisional/District Hospitals (SDHs), 714 District Hospitals (DHs), and 362 Medical Colleges (MCs) serving both rural and urban areas.(17).

Conclusion: There is an international consensus that a better PHC system is the only way to attain universal health coverage and address the inequities in public health. The sustainable development goal of "Ensuring Healthy Lives and Promoting Well-being for All" cannot be achieved without an efficient primary health care system, as the 2018 Astana Declaration acknowledges. India's health status has made significant progress post-independence, yet it lacks efficiency compared to global standards. Although there is broad agreement on the guiding concepts of PHC, implementing the welfare policies is fraught with political, planning and administrative challenges. Effective planning and allocating cash, insurance, and budget can aid in improving medical facilities, as the rising costs of health care, mounting bills, and unaffordable medical facilities have reduced benefits that reach the disadvantaged. The delivery of Universal Comprehensive Primary Health Care, through HWCs can help increase the health system's responsiveness to people by bringing services closer to the communities and addressing the needs of the most marginalised, through the Primary Health Care team. Medical experts should be encouraged to practice in rural areas, and the government should be more proactive in opening hospitals and pharmacies. The government should also promote the understanding of welfare policies and maintain ongoing oversight of their implementation. The health system can produce the highest standard of health through carefully planned, well-executed, and high-quality services.

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