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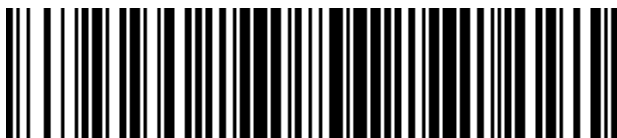
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**The impact of COVID-19 on Right to Health**

**Ishani Bhattacharjee**

## INTRODUCTION

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The first case of the Corona Virus in India was recorded on the 30<sup>th</sup> of January and was quick to react by testing the patient's immediate family members, and the people the patient had come across. Majority of the population didn't know back then what exactly this virus is and how they should protect themselves; no one took the prescribed precautions back then. By march, we saw a rise in COVID-19 cases in India and in order to tackle that our country went down on a lockdown to stop the virus from spreading .In a country like India, a lockdown meant extreme hardships because a majority of the section of the population is depended on daily wage jobs; but the lockdown gave our government the time it needed to set up containment zones and setting up of more hospital beds and ventilators for the patients. COVID-19 has a huge impact on the health industry, since we see India traditionally being an underinsured country as a number of people believe in ARYURVEDA or TRADITIONAL ways, but now we see people rushing to get medical insurance as we see corona virus is new and the traditional ways of treating a sick person is not working because of which they have to rush to the hospital and bear the high cost charged by the private hospitals for the treatment of a disease which they became a victim of. Considering the fact that this virus does not discriminate between the rich and the poor, the government should make sure that the treatment does not become a choice, where people have to choose whether they want to live or die because of the high cost treatment that they couldn't afford it.

## RIGHT TO HEALTH

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The definition which is widely accepted for the definition of health is given by WHO, "Health is a state of complete physical, mental and social wellbeing and not merely the absence of disease." Through this definition, WHO has helped to move from the traditional definition of health being only physical but we see this definition encompasses the entire "well-being", also by including the social and mental well-being, WHO has radically expanded the scope of health. Right to health is not included in the Fundamental Rights chapter of the Indian constitution but rather is included in the Directive Principles of State Policies. Now what differences does that make? Well to an extent it does, as when our Fundamental rights are violated either by a private party or by the state, we have the legal

remedy to rectify it by going to the court, whereas Directive Principles of State Policies are not enforceable by the court, it is just a duty imposed on the state to ensure social and economic justice.

The Constitution directs the state to improve or take measure to see that the health care provided to the people by the state are in a proper condition. Article 41 imposed duty on State to public assistance basically for those who are sick and disable. Article 42 makes provision to protect the health of infant and mother by maternity benefit. We see that not only the State, but also the Panchayat, Municipalities are liable to improve and protect public health. The constitution guarantees its citizen some fundamental rights in order to live life peacefully, the most important one being The Right to Life i.e. Article 21 which says “No person shall be deprived of his life or personal liberty except according to procedure established by law.”<sup>1</sup> which means something more than mere animal existence. In 1995, the Supreme Court in the case of *Parmanand Katra vs. Union of India*<sup>2</sup> held that “whether the patient be an innocent person or be a criminal liable to punishment under the law, it is the obligation of those who are in charge of the health of the community to preserve life so that innocent may be protected and the guilty may be punished”. It is pretty evident that no one can be denied access to healthcare and if they do, they shall be punished for their actions.

The Supreme Court, in *Paschim Banga khet mazdoor Samity &ors vs State of West Bengal*<sup>3</sup>, held that the primary duty of the government is to secure the welfare of the people. Providing adequate medical facilities is an obligation undertaken by the government in a welfare state. Article 21 imposes an obligation on the state to protect the right to life of every person. The government hospitals run by the state are duty bound to extend medical assistance for preserving human life. Failure on the part of a government hospital to provide timely medical treatment to a person in need of such treatment, results in violation of his right to life guaranteed under Article 21. In *CESC Ltd. vs. Subash Chandra Bose*<sup>4</sup>, the Supreme Court relied on international instruments and concluded that right to health is a fundamental right.

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<sup>1</sup> Constitution of India.

<sup>2</sup> AIR 1989 SC 2039

<sup>3</sup>*Paschim Banga khet mazdoor Samity &ors v. State of West Bengal*, 4 SCC 37 (1996).

<sup>4</sup>*CESC Ltd. v. Subash Chandra Bose*, AIR 573 (1992).



## THE IMPACT OF COVID ON THE HEALTH OF THE MASSES

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When corona virus first started in India it was labelled as the “rich-person’s disease”, since it came due to people travelling to the infected countries. When we talk about health, we automatically start thinking about our physical health instead of mental health. It is very important to understand how both are different and how both differently yet surprisingly work together. When we talk about physical health it is the overall physical condition, it is the soundness of the body, freedom from disease, and the condition of optimal well-being<sup>5</sup>. With this being said, how has our physical health been affected due to covid-19? Well, now you see our body is used to exercising which includes walking in the playground, playing any sport, being active. But this all somehow stopped due to the lockdown which made our body slow and weak since majority of your exercise stopped as going out became illegal and we were confined in our house. It is a fact that we need to exercise so as to maintain our health, be it even for 10mins but it is very important to move all your muscles through the day. As we know, in order to fight the virus, we need to be healthy which can be possible if we maintain and take proper care of your health. If you are healthy, you will heal quicker and bounce back to your normal routine sooner than those who do not maintain their health.

Now it’s time we know what mental health means, mental health refers to cognitive, behavioural, and emotional well-being<sup>6</sup>. It is about how a person thinks, feels and behaves on a daily basis. Mental health can have an overall effect on your daily living, relationships and physical health. In India people usually don’t talk about mental health as they think it’s a taboo and associate notions like “are you a retard, deal on your own everyone has difficulties in life”. India has the highest suicide rate amongst students in South- East Asia region according to WHO at 16.5 suicides per 100,000people.<sup>7</sup> Suicide rates went up during COVID-19 as people were forced to stay indoors for their own safety but it has its own cons as well, since we see people weren’t able to go to their psychiatrist and also, domestic violence went up, people couldn’t seek the much needed help they needed they resorted to suicide during this uncertain time. Mental health is as important as physical health; they go together in every possible way. It is important to say that COVID-19 has taken a massive effect on both our mental

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<sup>5</sup> School for Champions, What is Physical Health? (Jul. 28 2020), [https://www.school-for-champions.com/health/what\\_is\\_health.htm#.Xxlih54zbIU](https://www.school-for-champions.com/health/what_is_health.htm#.Xxlih54zbIU)

<sup>6</sup> Medical News Today, what is Mental Health? (Jul. 28, 2020), <https://www.medicalnewstoday.com/articles/154543>

<sup>7</sup> Down to Earth, India has the highest suicide rate in South-East Asia: WHO Jul. 28, 2020), (<https://www.downtoearth.org.in/news/health/india-has-the-highest-suicide-rate-in-south-east-asia-who-66625>)

and physical health and the only way to deal with it is by staying strong and facing the wind without giving up.

There have been numerous instances where we see people have been denied access to hospital bed during this pandemic, whenever a Covid-19 patient visits a hospital; they were denied beds because of non availability. So, either the hospitals are not punching in correct data or the government has no control over the functioning of these hospitals,<sup>8</sup> Another instance which took place during this pandemic was the money factor, since the treatment is costly and it is the duty of the state to make sure that everyone has access to their right to health without being exploited was particularly absent during this scenario where we see a 80 year old man was tied to a bed in a private hospital in Madhya Pradesh since his family couldn't pay the hefty bill. Instances like this make us question our government, during a pandemic if people are being denied to access health care then where are they supposed to go? How are they supposed to live? Hospitals are running out of resources and beds due to shortage and this makes citizens more worried and panicked thereby affecting their mental health and creating a fear amongst the citizens. Also, the way patients are being treated at some covid centres are morally and ethically wrong, one case being a female patient who went for her treatment was allegedly raped by a 25-year-old man, instances like makes the country questionable. Another instance where a patient went for his treatment but came back home with sights that potentially scarred him for life was a report of manhandling of a COVID-19 patient as his dead body was kept next to a patient, even after repeatedly requesting the authorities to shift the dead body, the authorities didn't. The body was shifted only after the picture went viral on social media, even after that the bed wasn't sanitised nor was the bed sheet sanitised<sup>9</sup>, which clearly goes against guidelines.

## **THE GOVERNMENT'S RESPONSE**

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With COVID-19 looming large and millions of lives at stake, the government had to respond to the situation quickly in order to contain the disease as much as possible. The COVID-19 pandemic is an unprecedented crisis that has exposed many governments around the world and India is hardly an

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<sup>8</sup>Indian Express, Delhi Lawyer Switches to fighting for Covid 19 cases denied beds in hospitals, (Jul. 28, 2020), <https://indianexpress.com/article/facebook-stories-of-strength-2020/covid-19-fighters/delhi-lawyer-switches-to-fighting-for-covid19-cases-denied-beds-in-hospitals-6488447/>

<sup>9</sup>News Click, Nalanda Medical College Hospital Patna-Bihar Covid 19 Patients care neglected (Jul. 28, 2020) <https://www.newsclick.in/Nalanda-Medical-College-Hospital-Patna-Bihar-COVID-19-Patients-Care-Neglected>

exception to a situation no one could foresee. When the first victim was identified, the government took quick steps in tracing his immediate contacts and got them tested as well as quarantined. Despite having a population of more than 1.3 billion people, India has reported low death rates and fast recovery rates as compared to other countries.

The strategy adopted by India to tackle the virus has been regarded as “impressive” by the World Health Organisation, by closing its borders and suspending visa’s and making quarantine mandatory for all incoming travellers by air, has helped quite to an extent. The Indian government has also taken right measures to ensure that there is no community spreading because if that had been the case, containing the virus would have been quite difficult but not impossible. The Central Government’s response was quick in order to educate the masses about the virus by issuing valid precautionary guidelines and postponing all mass gathering until the virus was contained. The state government suspended schools, colleges, gyms and swimming pools in the worst-hit region. The state government had already imposed section-144 in few parts of the state in order to avoid mass gathering. On 14<sup>th</sup> march The Ministry of Health and Family Welfare invoked the Epidemic Diseases Act of 1897 that temporarily gives it power to take special measures and prescribe regulations for curtailing the effect of the pandemic, The Ministry of Home Affairs invoked the National Disaster Management Act of 2005 and allocated State Disaster Response Fund to the states to help in limiting the spread of Covid-19.<sup>10</sup>

A Nationwide lockdown was introduced on the 24<sup>th</sup> of March which fairly went up for a month and later the state governments extended lockdown in places where the spread of virus was the most. The lockdown proved to be extremely beneficial in containing the virus but it had its own ill, as a majority of the population lost their jobs because of the lockdown, the daily wage workers were left with nothing to survive on as their source of income was suspended overnight. The workers survived on meagre food they could lay their hand on since the lockdown. Unemployment rate in India shot up from 8.4% in mid-march to the current 23% as per Centre for Monitoring Indian Economy’s weekly tracker survey<sup>11</sup>.

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<sup>10</sup>Businessinsider, Corona Virus updates in India and Steps taken by the Government (Jul 28, 2020), <https://www.businessinsider.in/india/news/coronavirus-updates-in-india-and-steps-taken-by-narendra-modi-government/articleshow/74723667.cms>

<sup>11</sup>India, Covid 19 impact on unemployment rate in India rises, (Jul. 28, 2020), <https://www.india.com/news/india/covid-19-impact-unemployment-rate-in-india-rises-to-23-4-amid-lockdown-shows-cmic-data-3992838/>

As the virus proved to be extremely difficult to deal with, the Indian government came up with different plans in order to make sure that the citizens are not suffering, not only the government but also NGO's were seen working day and night with the government in order to make sure that no one suffers. On the 26<sup>th</sup> of march 2020, the Union Finance & Corporate Affairs Minister Smt. Niramala Sitharaman announced a package relief of Rs.1.70 lakh Crore under Pradhan Mantri Garib Kalyan Yojana, particularly for the poor citizens in order to help them fight against the battle against Corona Virus as the government didn't want them to face any difficulties and wanted to help them with buying essential supplies and essential needs<sup>12</sup>.

We see that the Reserve Bank of India came up with a massive relief package of Rs.20 lakh crore under the Atmanirbhar Bharat in five tranches in order to help the economy as well as the citizens of India since a lot of people lost their job<sup>13</sup>. One of the major problem that the citizens were facing due to the pandemic as their source of income has been reduced and most of them not having medical insurance, was with regard to the COVID-19 treatment which turns out to be massive in a private hospital, the Supreme Court directed the Centre to use its vast powers under the Disaster Management Act to direct the States to regulate this cost. The court suggested that the private hospital could charge the same fees from COVID-19 patients as prescribed by the government under Ayushman Bharat scheme.

Numerous States have introduced a cap on the treatment rates of covid-19 patients in private hospital in order to make sure that they are not exploited and are able to afford healthcare during this pandemic which is a national emergency, on 23<sup>rd</sup> of June 2020 the Karnataka government announced a cap on the treatment rates. According to this new slab, patients in public health facilities will be charged from Rs.5200 to Rs 10,000, while those who are admitted in private facility will be charged between Rs 10,000 to Rs. 25,000<sup>14</sup>. Likewise in Maharashtra, the government has decided to take control of 80% of all private hospital beds, the capped charges gave relief to the patients to some extent and as per day charge for an ICU get with a ventilator and isolation facility has been capped at Rs.9000, like this many

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<sup>12</sup>Narendra Modi, Finance Minister announces Rs. 1.7 Lakh Crore relief package for Covid Cases, (Jul. 28, 2020), <https://www.narendramodi.in/finance-minister-announces-rs-1-70-lakh-crore-relief-package-under-pradhan-mantri-garib-kalyan-yojana-for-the-poor-to-help-them-fight-the-battle-against-corona-virus-548981>

<sup>13</sup>Financial Express, Breakup of the 20 Lakh Crore stimulus package, (Jul. 28, 2020). <https://www.financialexpress.com/economy/breakup-of-the-rs-20-lakh-crore-economic-stimulus-package-by-fm-sitharaman/1961843/>

<sup>14</sup>Live Mint, Karnataka Government announces cap on covid treatment, (Jul. 28, 2020), <https://www.livemint.com/news/india/karnataka-govt-announces-cap-on-covid-19-treatment-rates-in-private-hospitals-11592914111653.html>

States have capped the treatments in order to ensure that the patients do not have to choose between their life and money during this dire need of the day<sup>15</sup>. The government introduced special train for the migrant workers as they wanted to go back to their village, since they were left with no job and no pay for their previous work, so the sensible decision was to go back to their village which was difficult due to the ongoing lockdown then<sup>16</sup>. The special train was their only hope of reaching home safely, for that the government took all measures by making sure that everyone had to go through compulsory screening and temperature checks, in order to reach the railway station busses were arranged to make sure social distancing was being followed. On arrival the government along with NGO's and the police force were working tirelessly to provide the migrant workers with food and made sure that their journey back home was comfortable.

On repeated requests from students and citizens stuck abroad with no means of coming back, the government introduced special flights and naval ships in order to bring the citizens back under the Vande Bharat mission with special emphasis on social distancing and various other precautions some being, temperature check, thermal screening and if any signs of cold and sneezing the passenger were to be barred from travelling and quarantined right there. The travellers coming back to India had to undergo compulsory 14-day quarantines in selected hotels and quarantine centres. All expenses had to be managed by the travellers themselves and it wasn't paid by the government, compulsory nose swab and medical testing was also conducted during the 14-day quarantine. Though these steps have been taken for the easement in such delirious times, the Governments means of tackling the same has been inefficient.

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<sup>15</sup>Mumbai mirror, Covid 19 treatment in Maharashtra capped (Jul. 28, 2020), <https://mumbaimirror.indiatimes.com/coronavirus/news/covid-19-treatment-maharashtra-caps-per-day-private-hospital-charges/articleshow/75884756.cms>

<sup>16</sup>The Hindu, Lockdown Migrant workers leave for home with joy and relief, (Jul. 28, 2020), <https://www.thehindu.com/news/cities/Madurai/lockdown-migrant-workers-leave-for-home-with-joy-and-relief/article31667025.ece#!>

## CONCLUSION

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India witnessed its first case of the Corona Virus on 30 January. However, by March, 2020, there was a steady rise in the COVID-19 cases in the country. On 24 March, a nationwide lockdown was announced to stop the virus from spreading, while giving the government enough time to prepare hospital beds and ventilators for the patients and for setting up containment zones across the country.

The virus which was called the “rich-person’s disease” in its earlier stages is now affecting the rich and poor alike. The Right to Life i.e. Article 21 which says “No person shall be deprived of his life or personal liberty except according to procedure established by law.” Failure on the part of government hospitals to provide timely medical treatment to a person in need of such treatment, results in violation of his right to life guaranteed under Article 21.

India’s strategy to tackle the virus- closing its borders, suspending visa’s and making quarantine mandatory for all incoming travellers- has been regarded as “impressive” by the WHO. Measures were also taken to prevent community spread in the country through educating the masses about the virus and issue of precautionary guidelines. Many state governments had imposed Section-144 in order to avoid mass gatherings.

The lockdown proved to be extremely beneficial in containing the virus but it had its own ill, resulting in mass unemployment across the country. On the 26 March, 2020, the Union Finance Minister announced a package relief of Rs.1.70 lakh Crore under the Pradhan Mantri Garib Kalyan Yojana, to help the poor citizens affected by the pandemic.

The COVID-19 pandemic is an unprecedented crisis that has exposed many governments around the world and India is hardly an exception. While the government has taken many crucial steps, its response is still inadequate. The government can follow the New Zealand model to better tackle the pandemic and prevent a second wave of the disease.