

Basic Right to Health: Contingency and Reforms Amid Covid-19 in India

Prof. (Dr.) Kamal Jeet Singh
Vice- Chancellor, Madhusudan Law University,
Cuttack, Odisha

Dr. Manu Sharma
Assistant Professor,
Career Point University, Hamirpur

Abstract:- Right to health has always been a point of contention in human right jurisprudence because of its necessity and importance. In India right to health as such has not been defined in any constitutional provision or legislation but whatever there is in realm of right to health is in the form of case laws through judicial activism. The apex court at several times has recognised right to health as a part of Article 21 of the constitution. The covid-19 pandemic has once again makes the necessity of right to health evident. The pandemic has posed a question mark on the access of health care facilities and availability of right to health to general public all over the world and India is no exception to this. The medical system in India was seen at its lowest. There were no beds in hospitals to entertain patients followed by irregular supply of oxygen and essential medicines. It was not just the absence of medical treatment which resulted in death of thousands of people but also the mental trauma. The pandemic has taught great lesson to government and public at large. The pandemic has not yet over and in such a situation it has become unavoidable to ignore right to health. There is a need to increase finance allocation in government budget for strengthen the medical care system in India. There is no iota of doubt that India needs to strengthen its public health sector. Without a strong public health system we cannot imagine right to health in India. The States should prepare themselves to fight against pandemic keeping in notice the Odisha model. Right to health will be a reality only with the collaboration of Central government, State government and community.

I. INTRODUCTION

The covid-19 pandemic has changed the lives of human beings in various ways. The manner of living has undergone a radical change. Health, education and employment reached its lowest limits during the first and second phase of pandemic. The significance of Right to health gained great importance in the recent times with the advent of Covid-19. The second wave of Covid-19 rages across the country exposing the health facilities in India. The poor state of medical facilities in almost every State poses a question mark on the accessibility of medical and health facilities and right to health in India. People faced a lot of physical and mental trauma, the general way of living and earning has undergone huge change. The basic rights which are required for a dignified survival have been changed to the extreme end, especially of marginalised group of society. However there has been a constant struggle from government, courts and cross section of the society to uphold and retain the basic human rights which

ensures the dignified human survival. The Supreme Court of India has even termed the fight against Covid-19 in terms of medical structure as fight against “third world war”.

II. OBJECTIVES OF PAPER

The present paper has been written in the backdrop of Covid-19 pandemic. The present research paper has been written to achieve following objectives:

- To analyse the parameters of right to health in India
- To analyse the access of health facilities to common man viz-a-viz right to health
- To analyse the implementation of right to health in Covid-19 pandemic
- To suggest certain suggestions for making right to health a reality in India

III. RESEARCH METHODOLOGY

The present study is descriptive and evaluative in nature. For the present study the doctrinal methodology has been adopted for which the primarily reliance is based on secondary sources of data such as books, articles, case laws, newspapers, magazines, e-sources etc.

IV. INTERNATIONAL LAW AND RIGHT TO HEALTH

Every individual has the right to the best possible health and access to adequate medical care. Health entails much more than just the absence of sickness. Right to health also includes mental, psychological and emotional well-being¹. Right to health has been recognised as a basic human right under various international² as well as under domestic laws. The right to health is umbrella concept that encloses within itself not only timely and appropriate health care, but also the underlying determinants of health, such as access to safe and potable water and adequate sanitation, safe working and living conditions, and access to health-related education and information, including on sexual and reproductive health. A lot has been done on papers and on field in context with right to health both internationally and nationally.

¹ Dr. BK Teja, Recent Initiatives of National Human Rights Commission on Health Care as Human Right, p.2-3, NHRC (2015)

² International Covenant on Economic, Social and Cultural Rights, 1966

The UN Universal Declaration of Human Rights is not merely a treaty that has been signed by various nations of the world. In fact it is a statement of policy to call for action just like the Declaration of Independence. As per Article 25 (1) of the Universal Declaration of Human Rights, every human being has the right to a standard of living adequate for his or her health and well-being together with the basic necessities of food, clothing, housing, medical care, and necessary social services as well as the right to security in case of unemployment, sickness, disability, widowhood, old age, or other inability to work due to circumstances beyond his or her control. The right to health is also recognised as an essential right under various other instruments like the African Charter on Human and Peoples' Rights (1981), the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, also known as the Protocol of San Salvador (1988), and the European Social Charter. Both the American Convention on Human Rights (1969) and the European Convention for the Promotion of Human Rights and Fundamental Freedoms (1950) provided the provisions on health which together with includes the right to life, the prohibition of torture and other cruel, inhuman, or degrading treatment, as well as the right to family and private life.³

The Special Rapporteur on the right of everyone to the highest achievable quality of bodily and mental health was established by the Human Rights Council in 2002. The Human Rights Council appoints independent experts to investigate and report on a country's status or a specific human rights issue. Dr. Tlaleng Mofokeng was named Special Rapporteur by the Council. Ms. Mofokeng is a medical doctor with expertise advocating for universal health access, HIV care, youth friendly services and family planning⁴.

V. RIGHT TO HEALTH IN INDIA

The right to health is a basic human right recognized as a mandate under international law under Covenant on Economic, Social and Cultural rights to which India is also a party. It states that everyone has right to attain the highest standard of physical and mental health.⁵ Presently, the subject of "public health and sanitation; hospitals and dispensaries" falls under the State List of the VII Schedule of the Constitution of India. So, the State governments enjoy constitutional supremacy to adopt, enact and enforce public health regulations according to the financial status and needs of the general public. However the experience of covid-19 pandemic has changed the perception of general masses and government. There has been a constant demand to shift the subject of health and sanitation in list I or in

concurrent list. In 2019, NITI Aayog⁶ highlighted the issue of shifting the subject of "public health" in concurrent list. As per NITI Aayog India had unequal public health systems. The lack of technical expertise and fiscal constraints were the main reasons for such unbalanced health system in India. Beside this, there has also been a fiscal dependence of States on the Centre which continues to remain a major challenge. Secondly, if the subject of "health" would be shifted to the Concurrent List then it would definitely result in unwarranted bureaucracy, institutional restraints and red tapism. Even as the policy decision of states would continue to remain subjective to the political orientation of the federal executive, this centralisation would rip states of their constitutional rights. It would not be possible to provide a uniform strategy to the States across India⁷.

In India right to health is not expressly recognised under Constitution or any other legislation. Although there are provisions in the form of directive principles of state policy under part IV of the Constitution which provides for safeguarding various aspects of right to health. Like Article 38 of the Constitution sets out the duty of the State to take steps for the advancement of the government assistance of general health. Likewise Article 39 relates to the assurance of health of the labourers. Article 41 identifies with giving open help by the state in uncommon conditions, for example, disorder, handicap, mature age and so on. Article 42 of the constitution ensures the health of the infants and the mothers. Article 47 forces an essential obligation of the state in progress of general health, in making sure about equity, giving accommodating states of work to the labourers, augmentation of advantages relating to infection, handicap, mature age and maternity benefits⁸.

However right to health receives recognition under Article 21 part III of the Constitution with the gradual result of judicial activism in India. The judicial interpretation of the right to life and liberty under Article 21 in several judgments as inclusive of health was crucial, but has its limitations. The apex court in series of case laws recognised right to health as a part of right to life under Article 21 of the Constitution⁹. The right to health jurisprudence can be traced back to *Maneka Gandhi case*¹⁰. In this case the court expanded the interpretation of right to

⁶The NITI Aayog is a public policy think tank of the Government of India, established with the aim to achieve sustainable development goals with cooperative federalism by fostering the involvement of State Governments of India in the economic policy-making process using a bottom-up approach.

⁷<https://www.orfonline.org/expert-speak/declaring-the-right-to-health-a-fundamental-right/> accessed on 1.4.2023

⁸<https://www.orfonline.org/expert-speak/declaring-the-right-to-health-a-fundamental-right> last accessed on 1.4.2023

⁹<http://www.legalserviceindia.com/legal/article-450-health-as-a-part-of-fundamental-right-under-article-21-a-pursuit-by-india.html> last accessed on 1.4.2023

¹⁰ *Maneka Gandhi v. Union of India* AIR 1978SC 597

³Supra note 1 at 3-4

⁴<https://www.wma.net/what-we-do/human-rights/right-to-health/> last accessed on 1.4.2023

⁵<https://www.hrw.org/news/2021/04/28/india-protect-rights-dignity-amid-covid-19-crisis> visited at 20.6.2022 at 15.45

Life. Right to life does not mean mere animal existence. The expression 'personal liberty' in Article 21 was given an expansive interpretation covering a variety of rights "which go and constitute Personal liberty of man". The Court held that the expression "personal liberty" should not be read in a narrow and restricted manner so as to exclude those attributes of personal liberty which are specifically dealt with in Article 19. More significantly the Court re-interpreted the expression "procedure established by law" as synonymous to that of 'procedural due process' as adopted by America. It held that the procedure must be fair and reasonable and "cannot be arbitrary, unfair or unreasonable"

In another famous case, *Francis Coralie v. Delhi Administration*¹¹ Justice Bhagwati has observed that The right to life encompasses the right to live in human dignity and everything that entails. It encompasses the bare necessities of existence, such as proper nutrition, clothing, and a roof over one's head, as well as facilities for reading, writing, and expressing oneself in a variety of ways, as well as the freedom to move around and mix and mingle with other people.

The Supreme Court of India in the famous case *Vincet v. Union of India*¹² held that All human actions are built on the foundation of a healthy body. The court went on to say that maintaining and improving public health must be prioritised since they are vital to the community's physical survival, and their progress is dependent on the development of the society that the Constitution's framers envisioned.

In the subsequent case *Consumer Education Research Centre v. Union of India*¹³ held that right to health, medical aid to protect the health and vigour of a worker while in service or post retirement is a fundamental right under Article 21 read with Article 39(1), 41 and 43 of the Constitution.

In this case, the Life Insurance Corporation of India (LIC), a statutory agency, launched a life insurance policy that was exclusively available to government or semi-government employees, as well as employees of reputable commercial enterprises. This system was found unlawful because it violated Article 14 of the Constitution. This salaried group of lives, according to LIC, constituted a class in order to identify health issues. However the Supreme Court rejected this argument and observing that the classification based on employment in government, semi-government and reputed commercial firms has the insidious and inevitable effect of excluding lives in vast rural and urban areas engaged in unorganized or self-employed sectors to have life insurance offending Article 14 of the and socio-economic justice. Hence equality principle should be applied whenever the health facilities are provided by the Government¹⁴.

¹¹AIR 1981 SC 746

¹²AIR 1987 SC 990

¹³AIR 1995 SC 922

¹⁴Ibid.

In *Paschim Bangla Khet Majdoor Samiti vs. State of West Bengal*¹⁵ the Supreme Court further emphasised on the right to emergency healthcare and treatment. According to the court, a government hospital's refusal to give prompt care to a person in need is a violation of his right to life as guaranteed by Article 21 of the Constitution. In this case, a person who suffered brain injuries in a railway accident was denied treatment by multiple institutions due to a lack of proper facilities and insufficient funds and infrastructure required to provide treatment.

In another landmark judgment in *Parmanand Katara vs. Union of India*¹⁶ the Supreme Court has emphasised that the right to life as defined under Article 21 of the Constitution covered within its ambit the right to emergency healthcare also. In this case, a scooter rider was critically injured in a traffic accident and was refused admission to the nearby hospital with the justification that the hospital was not competent to handle the medico-legal matter. The Supreme Court ruled that in an emergency, medical professionals are obligated to treat the patient and cannot refuse to do so. The Supreme Court stated that Article 21 of the Constitution casts an obligation on the State to preserve people's life, not only government hospitals but also every doctor whether at government service or otherwise has the professional obligation to extend his services for protecting people's life.

The Supreme Court of India in case of *Balram Prasad vs. Kunal Saha*¹⁷ has dealt with health care facilities. The apex court observed that hospitals, nursing homes, clinics are liable to provide treatment to best of their capacities to all patients. Erring or negligent doctors, hospitals are to be dealt with strictly.

VI. PRINCIPLES OF HEALTH LAW

The three principles are suggested by Katharina OCathoir¹⁸ the expert on health law on addressing the present challenge posed by the COVID19. These three principles are as following:

A. The principle of solidarity:

This notion is intertwined with the principles of justice and equity. It means that everyone has equal access to public health systems in this context of the right to health. Equal access can be ensured via solidarity. Due to lack of or limited healthcare and the other basic requirements, India's marginalised populations have been disproportionately affected by the current pandemic, exacerbating already severe inequalities. The rule of solidarity necessitates that government and institutions treat everyone equally and preserve their rights

¹⁵ AIR 1996 SC 2426

¹⁶ AIR 1989 SC 2039

¹⁷ (2014) 1 SCC 384

¹⁸Katharina Ó Cathaoir, PhD, specialises in the **interplay** between health law and human rights. She is principal investigator of a project mapping legal responses to COVID-19 funded by the Danish Council for Independent Research

without regard to sex, caste, class, religion, or language. At the national level, domestic solidarity would mandate state governments and institutions to look for standard solutions to shared challenges for combined interests¹⁹.

B. The principle of proportionality:

This idea is utilised to find the right balance between the limits imposed by the government as a deterrent and the severity of the forbidden conduct. The idea of proportionality aids in establishing the circumstances under which constitutionally protected rights may be limited. At this time, the Indian government, along with other countries, has implemented far-reaching measures such as mobility restrictions, enforced institutional quarantine, and criminalization of individuals who do not follow the rules. As a result of these efforts, civil liberties and human rights have been severely curtailed. The government has a right to make decisions that benefit public health; but, these decisions should not be made without regard for proportionality. Tough and difficult decisions do not always lead to success; the path forward is a systematic approach and respect for human rights, as well as the interests of the community as a whole. For example the government of Japan, Sweden and South Korea while respecting the basic rights of their citizens also took less restrictive measures to address the challenge posed by COVID19 and are successful.²⁰

C. The principle of transparency:

This principle ensures the good governance and maintains the trust of people in the public administration. Information should be available, accessible, and widely shared among the community to facilitate effective scrutiny of decisions made by the government and its sponsored institutions. Transparency, accountability and reliability are two principles that go hand in hand.

Transparency in the framework of the right to health and healthcare will aid in keeping drug and medical service inflation under control, maintaining the proper functioning of public institutions, and maintaining public trust. Recent initiatives to leverage big data analytics to follow patients and trace contacts through apps like AarogyaSetu must adhere to the principle of personal data protection, with any usage or distribution requiring the citizens' prior consent in a transparent manner. There have been several reports of data falsification in India regarding COVID19 cases, which has shaken people's faith in government.²¹

¹⁹<https://www.orfonline.org/expert-speak/declaring-the-right-to-health-a-fundamental-right/>

²⁰Ibid.

²¹Id.

VII. ACCESSIBILITY OF RIGHT TO HEALTH DURING COVID-19 IN INDIA

The rise of Covid-19 in India especially the second wave ravished the whole idea of "health" as a basic human right. The central government remained clueless and ill-prepared. India remained one of the hotbeds of the pandemic. By the mid of April, 2021, India accounted for nearly quarter of new Covid -19 cases all over the world²². The opportunity provided by five months let up in spreading of the virus through elections and *kumbh fair*, which were later defined as "*super spreaders*". Though the government issued strict guidelines for a "cautious resumption of normalcy" by adopting "adequate precautionary and safety measures at workplaces, public places and public transport and on the premise of responsible self-regulation by the public at large". It claims that there has been no community spread—which is not totally true—but it has ordered that tight protocols be followed in confinement zones and on their perimeters at all times. People were not allowed to roam around in these locations unless they were supplying needed products and services. The government neither take steps to reduce second wave nor to hold down its scale. The health system were dominated by very less testing facilities, inadequate beds in hospitals, lack of supply of oxygen, shortage of essential medicines, long queues in and outside hospitals etc.²³ Beside this no concrete step was taken to tackle the situation. The failure of health system and denial of basic health facilities to common man were well depicted by media through the horrifying pictures of hospitals and graveyards.²⁴

Despite having a globally competitive vaccine production business, India has been a laggard in creating a COVID-19 vaccine when compared to the work done in the United States, China, Europe, and Australia. Prime Minister Narendra Modi convened a well-publicized meeting in May to assess the country's vaccination and diagnostic research. According to the government, Indian vaccine businesses, universities, and start-ups "pioneered" vaccine research efforts. More than 30 Indian vaccines were in various phases of research for corona vaccines, with a handful of them progressing to the trial stage. Although the government has not released a list of these developers, major vaccine manufacturers such as the Serum Institute of India, Bharat Biotech, and Zydus Cadilla, as well as a few biotech companies such as Bengaluru-based Mynvax, have begun laboratory work that could bear fruit in the coming year.²⁵

²²Frontline, The Centre Cannot Hold, 7 May, 2021, p. 4-5

²³Ibid.

²⁴Id. at 44

²⁵Thomas Abraham, The Vaccine Race, 12-13, Frontline, 17 July, 2021

The entire process, from lab to market, can take anywhere from five to ten years. Funding is frequently a big stumbling block, especially when transitioning from the laboratory to clinical trials. However, the pandemic has resulted in a rush of investment for vaccine development, primarily from the United States. The money as well as the regulatory authorities' determination to get a safe and effective vaccination out as soon as possible, has accelerated the process in ways that would have been unthinkable in normal circumstances.²⁶

The Central government bears a greatest responsibility for such havoc destruction. The central government alone has fiscal potential to remedy the situation since majority of States were dependent on the Central government for finance. However there were some States who present an exception to this and managed their own affairs in a great way. The best example was presented by the State of Odisha. The State of Odisha has well managed to curb the spread of novel coronavirus in the State in terms of numbers and also "breaking the chain". The Odisha government's campaign slogan on public awareness has been: "Are you going out of home to invite corona?" This sums up the State's continuous efforts to communicate with the public to avoid community transmission of the virus. This also demonstrates how the people of the State, having experienced many natural disasters in the past, have come together to handle another crisis with ease²⁷. The State took a series of steps at an early stage to contain the spread of the novel coronavirus and break the chain of infection as soon as the first case was reported in the State on March 16, 2020. By March 22, 2020 the Chief Minister Naveen Patnaik announced a lockdown of 40 per cent of the State, especially those areas which were affected by the virus and said that a strict lockdown will be observed for a week. This lockdown was before the national lockdown which came into effect from March 25, 2020. With this the State of Odisha became the first Indian State to further extend the lockdown to the entire State. Further the State of Odisha also became the first State to come up with India's first COVID-19 special hospitals. The State of Odisha signed two Memorandums of Understanding (MoUs) with city-based hospitals Kalinga Institute of Medical Sciences and SUM Medical College on March 27, 2020, for a combined 1000 dedicated beds facility to treat corona virus patients in the state. As per the government data, Odisha has been able to establish 34 COVID-19 specialised hospitals with 5,493 beds and 296 ICU beds with suitable facilities to treat corona virus patients in particular, as well as 15 sample testing laboratories. Government has been working round-the-clock to get the state's healthcare infrastructure pandemic ready. The State of Odisha drafted a plan to make a COVID-19 dedicated hospital in every district in the State and it successfully implemented the plan and became

India's first state to have a COVID-19 dedicated hospital in its entire districts²⁸.

The World Health Organization and UNESCO also praised Odisha after one of their delegations visited one of the COVID-19 special hospitals in the State and discovered that the hospital was running with 96 percent compliance with all requirements. Odisha was also recognised by the Centre for being one of India's top two states in terms of containing and combating the COVID-19 pandemic. According to the Ministry of Health & Family Welfare data for mid-April, Odisha and Kerala were tagged as the best-performing states in terms of the doubling rates of positive COVID-19 cases.²⁹

VIII. JUDICIARY ON PUBLIC HEALTH SYSTEM TO SAFEGUARD RIGHT TO HEALTH

The judiciary has played a very vital role during pandemic to ensure basic health facilities to all citizens including prisoners. The Supreme Court of India in a significant observation held that the affordable healthcare is a fundamental right and the state is responsible for ensuring the right and noted that the fight against COVID-19 was a "world war". The Right to health is a fundamental right guaranteed under Article 21 of the Constitution of India. Therefore, it is the duty upon the State to make provisions for affordable treatment³⁰.

The apex court has acted suo moto and passed various orders to protect and safeguard right to health. In the wake of unprecedented humanitarian crisis created by the second wave of Covid-19 when people are left to die in hospitals due to the shortage of basic medical facilities, the apex court of the country could not remain mute and taken the cognizance of issue suo moto in *re: distribution of essential supply and services during pandemic*³¹ on 22 April, 2021. In this petition the court dealt with the issues of medical infrastructure, oxygen allocation and distribution, vaccine disbursement and pricing and supply of essential drugs.

Based on the affidavits filed by the Central government it came to notice that there was no national policy in how admissions would be taken in hospitals and common man was left at their own devices and were facing great hardship. Different States follow different standards for admission in different hospitals. Hence the court directed the Central government to frame a policy in this

²⁸<https://swachhindia.ndtv.com/heres-what-odisha-is-doing-to-fight-covid-19-battle-successfully-44523/> visited on 5.7.2023 at 15.02

²⁹ *Ibid.*

³⁰<https://www.ndtv.com/india-news/supreme-court-says-its-a-world-war-against-covid-19-fundamental-right-to-health-includes-affordable-treatment-2340650> visited at 07.09.2021 at 15.03

³¹Suo motu writ petition (civil) No.3 of 2021 available at https://main.sci.gov.in/supremecourt/2021/11001/11001_2021_35_301_27825_Judgement_30-Apr-2021.pdf

²⁶*Ibid.*

²⁷ *Id.* at 51

context which can be followed uniformly throughout the country.³²

The court was further satisfied that the Central government in co-ordination with States was doing to increase the supply of oxygen and efforts are being made to supply it to the States in dire need.

The orders passed by apex court can be summarized as following:

- In accordance with the Solicitor General's guarantee, the UOI shall ensure that the deficiency in the supply of oxygen to the GNCTD is corrected within two days of the hearing, that is, by midnight on May 3, 2021.
- A buffer stock of oxygen shall be advanced by collaborated efforts of the Centre and States for emergency times and decentralize the location of the emergency stocks. The emergency stocks must be built within the four days from the order and oxygen shall be supplied on everyday basis, in addition to the existing allocation of oxygen supply to the States.
- The Central Government and State Governments shall direct all the Chief Secretaries, Directors General of Police, Commissioners of Police that any kind of limitation on news on social media or harassment of individuals seeking or delivering assistance on any platform will result in this Court exercising coercive jurisdiction. A copy of this order must also be given to all District Magistrate by the Registrar.
- The court further directed the Central Government to frame a national policy on "admissions to hospitals" within two weeks. The so framed policy shall be adopted by all the State Governments. No patient shall be left without hospitalization or essential drugs in any State or Union Territory on the ground of lack of proof of being a local resident of that particular State or Union Territory or even in the absence of identity proof.
- Before the next date of the hearing, which is May 10, 2021, the Central Government must revisit its initiatives and protocols, including the availability of oxygen, vaccine availability and pricing, and the availability of essential drugs at affordable prices, as well as respond to all other issues raised in this order. All affidavits must be served on the Amici ahead of time.
- Several other suggestions have been made in IAs and writ petitions filed by various parties before this Court. We have asked the Amici to collect and aggregate these proposals, which will be taken up subsequently, in order to simplify the hearing process. Because of the severity of the situation, the current order has concentrated on a few key topics.

The Supreme Court of India in *Re: Contagion of Covid 19 Virus in Prisons*³³ took *suo moto* view regarding prisoner's right to health. The Supreme Court held that India has more than four lakh prisoner inmates. It has been observed that some of the prisoners in India have been overburdened and housing the prisoners beyond their

³²Id. para 20-23

³³In *Re: Contagion of Covid 19 Virus in Prisons, Suo moto Writ petition (C) No. 1/ 2020* dated 8th May 2021.

optimal capacity. The requirement of decongestion has been a matter of concern for the health and right to life of both the prison inmates and police personnel who were deputed there³⁴.

The court went on to say that jail overpopulation is a problem that affects a number of countries, including India. Some inmates may be hesitant to be freed due to their social backgrounds and fears of becoming infected with the deadly illness. The authorities are directed to be sensitive of the inmates' concerns in such extreme instances. The authorities are directed to ensure that proper medical facilities are provided to all prisoners who are imprisoned. Regular testing of convicts, as well as jail employees, should be done to control the spread of the Covid-19 virus in jails, and urgent treatment should be made available to both inmates and staff. It is vital to maintain daily hygiene and sanitation standards, which must be improved. Precautions must be taken to prevent the deadly virus from spreading throughout the population.³⁵

The Chhattisgarh High Court has recently held that self-preservation is a facet of the health rights and is a vital right under Article 21 of the Indian Constitution. The high court accepted the request of petitioner for medical reimbursement and directed the authorities to consider the same. The court further held that the provisions regarding medical reimbursement should be interpreted liberally.³⁶

IX. CONCLUSION AND SUGGESTIONS

From the above it is quite clear that the pandemic has exposed the medical facilities, accessibility to the basic health facilities, government efforts and right to health in general in a bad picture. The right to health has remained a distant dream for common man during first and second waves of Covid -19 pandemic. However, the judiciary played a very prominent role in protecting the right to health of people at various times by acting *suo moto*. The pandemic has not been yet over, there are predictions of third or fourth wave. India should learn from its history else the history will repeat itself. There is no iota of doubt that India needs to strengthen its public health sector. Without a strong public health system we cannot imagine right to health in India. The States should prepare themselves to fight against pandemic keeping in notice the Odisha model. This State has been an excellent example for other States to combat with medical emergencies. If "health" is made an express fundamental right, it will certainly give a new life to the health ecosystem, empower doctors and healthcare workers and ensure transparency, inclusivity, and accountability. It will also open gates for enforcement mechanism through special legislation, greater finance to medical sector, medical training and research. Such efforts

³⁴*Id.* at para 8

³⁵*Id.* at para 14.

³⁶<https://www.livelaw.in/news-updates/right-to-health-provisions-relating-to-medical-treatment-reimbursement-are-to-be-construed-liberally-chhattisgarh-high-court-190105> last accessed on 1.4.2023

will ensure right to health to commonman and even in hard times like Covid-19 pandemic. There are some of the suggestions in this context:

- The Central as well as State governments should increase the share in health sector in the yearly budget to increase medical infrastructure.
- The government should organise frequent training and refresher programmes for medical staff and doctors to acquaint them with the use of latest technology in medical field.
- Government should also organise regular training programmes to private companies and employees for being eligible in manufacturing and dealing with medical equipment to become self-sufficient.
- There is a need for strong capacities at the district and local levels to contain the spread of the pandemic.
- The subject of public health should be shifted to concurrent list from the State list.
- The State governments should follow the State of Odisha model in combating with pandemic like situations, instead of totally relying on Central government.
- Lastly, the need of hour is to have a legal framework on right to health to fix the responsibility of State authorities