



## The outlook of the human right to health and health care in some selected civil law and common law admiring countries of the world with special reference to India

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### Abstract

The contemporary National legal system of the world is by and large founded on one of four fundamental systems: civil law, common law, statutory law, religious law or hodgepodge of these. Equally, Civil and Common law systems are generally well- thought-out as the most life in the world. In this article, an endeavor has been made by the author to bring before the readers the real position of the Human Right to Health in some selected Civil Law and Common Law admiring countries of the world, with special reference to India as a Common Law following nation. The intention of this study is to unmask whether the concept of the Human Right to Health is overtly talk about in the Constitution of these Civil Law and Common Law admiring countries or it is just an roundabout one. For doing this study Doctrinal Method had been made use of and so study stuff has been bunched up from Books, Journals, websites etc. The limitation of this study is that it principally concentrates on the Constitution of the selected Civil Law and Common Law admiring countries of the world.

**Keywords:** constitution, public health, principles of state policy, right to health, healthcare

### Introduction

The most well-known contemporary national legal system of the world is in general derived from one of the four basic systems: civil law, common law, statutory law, religious law or hodgepodge of these. Both Civil law system (also well-known as Roman) and Common law system are likely to be regarded as the most prevalent in the world. Civil law system is the most well-known for the reason that it is the most widespread by landmass and Common law system is the most well-known for the reason that it is utilized by the maximum number of the nation.

The Civil law system stems from Europe, it streamlined in the structure of late Roman law. For the most part, this system ultimately derived from the Corpus Juris Civilis delivered by the Emperor Justinian ca. AD 529. The Civil law system was also to a certain extent manipulated by religious laws for instance Canon law and Islamic law. The Civil law system can be sub-divided into four main groups, they are as follows:-

1. The French Civil legal system
2. The Soviet Socialist legal system
3. The German legal system
4. The Scandinavian legal system

Professor Philip Wood <sup>[1]</sup> divulges that English Common Law is nowadays the most prevalent legal system in the world because almost 30% of the population of the world is subsisting under English Common Law systems. At present the Common law system is put into practice in Ireland, the majority portion of United Kingdom (England Wales and Northern Ireland), Canada (excluding Quebec), Hong Kong, United States (on a state level excluding Louisiana), Australia, New Zealand, Bangladesh, India (excluding Goa), Pakistan, South Africa, and many other places. However, there are some

countries like Nigeria where though common law system functions basically but it also incorporates religious law.

Here in this article, the real position of the Human Right to Health in the Constitution of some of those countries will be discussed which are coming under the following legal systems:-

- The French Civil legal system
- The Soviet Socialist legal system
- The German legal system
- The Scandinavian legal system
- The English Common legal system

### Countries having basis from the French Civil Law

Constitution of some European countries, for example, the contemporary Constitution of Italy 1948, the Constitution of Spain 1978, the Constitution of Portugal 1976 and Constitution of Belgium 1994 has overtly accorded to its citizens a legal right to health. But Constitutions of Holland and Greece had recognized health simply as an essential significance of the country. The Greek Constitution emphasizes that the state shall be concerned with the health of the citizens and shall take special measures for the protection of special populations like children, elderly, etc. The Constitution of Netherland simply asserts that the authorities should take measures to encourage the health of the population. However, among Western European countries, Constitution of France is the only exception because its Constitution encloses no declaration pertaining to health or rights to health, with the exception of the preamble to its Constitution but the former French(outside of Western Europe), have a propensity to approve a legal right to health in their Constitutions.

It is prominent that a predominantly high fraction of Latin

American countries have also implemented Constitutions enclosing a right to health, for example, Constitution of Bolivia 2009, Constitution of Brazil 1988, Constitution of Colombia 1991, Constitution of Ecuador 2008, Constitution of Guatemala 1986, Constitution of Haiti 2012, Constitution of Honduras 1982, Constitution of Mexico 1983, Constitution of Nicaragua 1987, Constitution of Paraguay 1992, Constitution of Peru 1993, and Constitution of Venezuela 1999.

But yet again some Latin American countries have derived the constitutional right to health by coalescing other constitutional stipulations and international treaties. In Costa Rica, the judiciary has implicitly protected the right to health by interpreting the right to life in Article 21 of its Constitution and other international treaties. In El Salvador, the Supreme Court broadcast a verdict in favor of a plaintiff's claim, instructing the Social Security Institute to grant him with looked-for antiretroviral treatment founded on Article 65 of the Constitution and international treaties sanctioned by El Salvador in 2001. The Constitution of Republic of the Philippines 1987 explicitly refers to the right to health in its Article II, Section 15.

The African Constitutions adopted before 1990 mostly did not guarantee economic, social and cultural rights, including the right to health, on the contrary, most African Constitutions adopted ever since 1990 have directly integrated economic, social and cultural rights in conjunction with civil and political rights. Numerous African countries have too incorporated the right to health in their Constitutions, some of them are, Constitution of Algeria 2016, Constitution of Burkina Faso 1991, Constitution of Burundi 2005, Constitution of Guinea 2010, Constitution of Guinea-Bissau 1991, Constitution of Madagascar 2010, Constitution of Mali 2012, Constitution of Niger 2012, Constitution of Rwanda 2015, and Constitution of Togo 1992.

### **Constitution of Soviet Socialist Law Origin countries**

The USSR (forming the Union of Soviet Socialist Republics) was politically alienated into 15 constituent or union republics—Armenia, Azerbaijan, Belorussia, Estonia, Georgia, Kazakhstan, Kirghizia, Latvia, Lithuania, Moldavia, Russia, Tadjikistan, Turkmenistan, Ukraine, and Uzbekistan. After the breakup of the Soviet Union, ten countries uphold their human rights to health in their Constitution those countries are Azerbaijan, Belorussia, Estonia, Georgia, Kazakhstan, Kirghizia, Latvia, Russia, Tadjikistan, Turkmenistan, while another five countries Armenia, Lithuania, Moldova, Ukraine, and Uzbekistan gave up the individual enforceability of the rights but still provide free access to health care or social rights to health care.

The Constitutions of Kazakhstan, Tajikistan, and Turkestan overtly sanctions paid medical services based on the procedures established by law. New Constitution of Uzbekistan is distinctive because it curbs the scope of the right to health under the Soviet Constitution and simply recognizes the right to receive “skilled medical care” (Article 40). In the new national Constitution of Armenia, Moldova, and Ukraine the right to health is constrained by the words of the Constitution because the Constitution delegates the power to determine the extent of the right guaranteed by the constitutional provision on the legislature. In Armenia, the

right to health was granted to the citizens in the form of a right to the “preservation of health” (Article 38), the 1995 Constitution of Armenia provides that medical care and services “shall be prescribed by law”. In the Constitution of Moldova (1994), the right to health was granted to the citizens in the form of a right to the “health security” (Article 36), it is natural laws that establish “the structure of the national health security system and the means necessary for protecting individuals”. In the Constitution of Ukraine (1996), the right to health was granted to the citizens in the form of a right to the “health protection” (Article 49) because it is the state that can “create the condition for effective medical service accessible to all citizens”. This Constitutional expression points out that it is up to the government to decide the magnitude of these rights even though laws are inductive in name of the rights to health and provisions of health care services, but in reality, the right to use to health care services is inadequate, unreasonable, prejudiced, and disproportionate with regard to poor and wealthy populations. Constitution of Lithuania (1992) is more unequivocal about this point even if Article 53 of the Lithuanian Constitution states that the “state shall take care of people’s health and shall guarantee medical aid and services in the event of sickness”, this Article is incorporated in the chapter on social rights.

The Socialist Federal Republic of Yugoslavia disintegrated into six socialist republics Slovenia, Croatia, Bosnia and Herzegovina, Serbia, Montenegro, and Macedonia. Croatia, Slovenia, Bosnia, and Herzegovina became sovereign states, while Serbia and Montenegro bent into the Federal Republic of Yugoslavia. Article 60 of the Constitution of the Federal Republic of Yugoslavia acclaimed that “everyone shall be entitled to health care, in accordance with the law”. In June 2006 the unification of the state efficiently came to an end after the independence of Montenegro and Serbia. The right to health is accredited in Article 68 of the Constitution of Serbia (2006), Article 69 of the Constitution of Montenegro (2007) and Article 19 of the Constitution of Macedonian (2010) devoid of stipulation by statutory law conversely; the Constitution of Bosnia and Herzegovina does not have a right to health affirmed in its Constitution subsequent its independence from Yugoslavia. The Constitution of Croatia (Article 58) and Slovenia (Article 51) documented the right to health care under stipulation detailed by statutory law.

After 1991 the Constitution of Slovakia can no longer be categorized as a Constitution upholding the constitutional right to health because health care is no more regarded as a personally enforceable legal right. But alternatively, the current Constitution of the Czech Republic can be graded as a Constitution upholding the constitutional right to health for the reason that it refers to the international treaties in its Constitution.

Article 55 of the Constitution of Albania 1998 that recognized that from the state every citizen shall have the right to enjoy the right to health and health care and one and all have the right to health insurance compliant with the process provided by law. 2011 Constitution of the Hungary declared that each individual of the Hungary shall have the right to physical and mental health, in addition to this; Hungary shall encourage the implementation of the right mentioned-above (right to physical and mental health) by guaranteeing that its

agriculture remains open from any genetically modified organism, by providing access to healthy food and drinking water, by managing industrial safety and healthcare, by supporting sports and regular physical exercise, and by ensuring environmental protection (Article XX Freedom and Responsibility)

The 1992 Constitution of the Mongolia Article 16 clause 6 grants the privilege of a right to health protection and medical care but the Constitution also provides that the procedure and conditions for free medical aid shall be determined by law. Constitution of Poland 1997 in its Article 68 has recognised an individually enforceable constitutional right to health because Article 68 (1) lays down that each person of Poland shall have the right to have his or her health protected. Article 68 (2) of 1997 Constitution upholds one and the same right to use to health care services, funded from public funds, shall be guaranteed by public authorities to citizens, regardless of their material state of affairs. Article 68 (2) of the Constitution noticeably lays down that the conditions for, and scope of, the provision of services shall be established by statute. The Constitution of Poland in its Article 68 (3) obligates the Public authorities to guarantee special health care to children, pregnant women, handicapped people and persons of advanced age. Article 68 (4) of the Constitution further demands the Public authorities to fight against epidemic illnesses as well as to insists the Public authorities prevent the negative health consequences of degradation of the environment. Again, Article 68 (5) of the Constitution asks the Public authorities to support the development of physical culture, particularly amongst children and young persons.

The 1991 Constitution of Romania in its Article 34 acclaims that the right to protection of health is individually enforceable and also clearly stated that the state shall be obliged to take actions so as to guarantee all its people public hygiene and health. In 1976 the Constitution of Cuba was adopted. Article 50 of the Cuban Constitution mandated that all Cubans are at liberty to obtain free medical, hospital and dental care, including prophylactic services. The 2013 Constitution of Vietnam, in its Article 38 maintains that every person of Vietnam is expected to get health care and protection, apart from this every person of Vietnam is in the same way entitled to medical services and at the same time all persons has the duty to act in accordance with regulations concerning prophylaxis, medical examination, and treatment. Article 38 strictly prohibits all sorts of acts threatening to the life or health of other people and the community.

The 1982 Constitution of China is exceptional in the midst of socialist constitutions for the reason that it does not acknowledge the right to health of its citizens. Article 45 of the 1982 Constitution of China sustains that all citizens of the People's Republic of China when will become old, ill or disabled shall have the right to receive material assistance from the State as well as from society. The State should make available social insurance, social relief and medical and health services that are required for citizens to enjoy this right.

#### **Countries having basis from the German Law**

Five countries are there that adhere to a German legal folklore, including Germany, Austria, Switzerland, Korea, and Japan. Currently, the Constitutions of Germany and Austria do not

incorporate any health-related assertion; on the contrary, the Constitutions of Switzerland, Japan, and Korea do embrace such provisions. The genes of these Constitutions are habitually embedded in the Weimar Constitution of 1919. The Constitution of Switzerland is categorized as a country with no Constitutional right to health although it provides protection to health. Chapter 3 of the Constitution of Switzerland contains Article 41(1) (b) which espouse that the Confederation and the Cantons must do their utmost to make certain that, in addition to personal responsibility and private initiative, every person shall benefit from necessary health care. In addition to the above-mentioned Article 45, even Article 12 advocates that if any people are in trouble or is suffering or is not sufficiently expert of looking after themselves shall have the right to be helped and assisted as well as to receive the resources that are very important for leading life in human dignity. The Constitution of Switzerland aside from all these two Articles contains an elaborate provision on the health related matters. Section 8 of the Constitution asserts health related matters. Article 117 to 119 (a) of Constitution of Switzerland encloses comprehensive provision on the health, but among these Article 118 is the most important because it directly deals with 'Protection of Health'. Identical to the Constitution of China, the Constitution of Japan also does not presently approve a lawful right to health. Article 25 of the Constitution of Japan endorse that all people shall have the right to maintain the minimum standards of wholesome and cultured living. Article 25 goes further and says that the State should venture to promote social welfare and security, and of public health. Article 36 (3) of the Constitution of South Korea 1948 reveals that the State should protect the health of all citizens but this right is declaratory in character and does not have enforceable mechanisms until quite recently.

#### **Countries having basis from the Scandinavian Law**

Nations operating Scandinavian commercial law are Denmark, Finland, Norway, and Sweden. Health systems of all these four countries are mostly funded through taxation and the majority hospitals are publicly owned and managed. But still the right to health is not binding in these countries. There are no explicit provisions on the right to health in the Constitution of Denmark and Norway because in these countries, the right to health is only created in the national legislation and the international human rights treaties. In Sweden, the right to health is barely point out as an objective for the promotion of health in Chapter 1 Article 2(2) of the Instrument of Government. The right to social security is provided in Section 19 of the constitution of Finland. In the same section Health care is also mentioned. According to section 19(1) of the constitution of Finland urgent health care is a subjective right to everyone, while non-urgent health care in section 19(3) is not tenable as a subjective right.

#### **Constitution of countries having basis from the English Common Law**

Apart from the 1996 Constitution of South Africa, no one of the countries with the legal approach based on British common law can be categorized as countries with a constitutional right to health. The Constitution of South Africa

consists of 14 chapters out of all these chapters, Chapter 2 is a bill of rights which enumerates the civil, political, economic, social and cultural human rights of the people of South Africa. In this Chapter 2 provisions relating to Healthcare is mentioned expressly in its Section 27. Thus, the 1996 South African Constitution becomes the first Constitution among British legal origin countries that recognized a citizen's lawful right to health care access, after long years of exertion under Apartheid.

In certain urbanized countries like Cyprus, Singapore, and the United States no constitutional reference to health or health care is found humanly. The Constitution of United States does not overtly focus on a right to health care. The words "health" or "medical care" do not become visible anywhere in the transcript of the Constitution. The prerequisite in the Constitution reveals that the architect of the Constitution was to some extent more alarmed with assuring freedom from government, more willingly than with providing for explicit rights to governmental services for example for health care. Albeit, the Constitution of United States does not unequivocally describe a right to health care, but the pronouncements of the Supreme Court in the sphere of the 'right to privacy and bodily integrity' insinuate that the Constitution unconditionally provides an individual with the right to access healthcare services at one's personal expense from enthusiastic medical sources. The United Kingdom is a country devoid of a written Constitution. At the outset in the United Kingdom, the right to health was codified under the Human Rights Act of 1998 which became effective in 2000. In the United Kingdom there is no official dissimilarity between constitutional law and ordinary law, due to the fact that it is not the citizens but to a particular degree the parliament that is the sovereign power. On the whole, a country with British legal origin is less expected to rely on public sources of funding, in contrast with countries with another sort of legal origins because the private resource can be perceived to compose a high percentage of total health expenditure in a country with British legal origin.

Constitutions of some countries such as Malaysia, Nigeria incorporate simply a programmatic assertion that stipulates methods for the financing, delivery, or regulation of health care whereas Constitution of some other countries, for instance, Malawi, Papua New Guinea acknowledges the magnitude of a right to health and embraces population health as one of the countrywide objective devoid of specifying any obligations of the national government. The 1972 Constitution of Bangladesh has eleven parts. The Constitution of Bangladesh does not recognize the right to health as a fundamental right, however, the Part II of the Constitution of Bangladesh deals with the Fundamental Principles of State Policy and within this Part Article 18 deals with "Public health and morality". Even in the Constitution of India, the right to health has been implicitly cosseted by the judiciary by deciphering the constitutional right to life as one that takes account of the provision of emergency health care. The Part IV of the Constitution of India contains Directive Principles of State Policy and if we look through those provisions of Directive Principles of State Policy we will find that some provisions have been directly or indirectly interconnected with public health. Directive Principles of State Policy give

instructions to the State to carry out process to make better the condition of healthcare of the people. Articles 38 of the Constitution of India gives a lawful tasks to the State to guarantee a social order for the advancement of welfare of the people, but if a State wants to achieve the said social order then it need to improve the health of the people because without public health such welfare of the people cannot be achieved, thus, Articles 38 is indirectly related to right to health. The Indian Constitution in its Article 39(e) makes provision to protect the health of the workers. Article 41 of the Constitution of India entails an obligatory obligation on the state to make available public assistance fundamentally for those who are sick and disabled. Article 42 makes it a prime task of the state to protect the health of infants and mother by providing maternity benefit. Article 47 of the Constitution of India spells out the liability of the state to raise the level of nutrition and the standard of living of its people as the most important duty. Article 48- A of the Constitution compels that; the State shall make an effort to protect and make better the environment and to conserve the forests and wildlife of the country.

Article 51- A (g) of the Constitution of India declares that it shall be the fundamental duty of all citizen of India to preserve, protect, uphold and make better the natural environment as well as forests, lakes, rivers and wild life, and to have empathy for living creatures.

However, the Constitution of India not only makes the State responsible for the matters relating to public health but under the Constitution of India Panchayat (Article 243 G) and Municipalities (Article 243 W) are also legally held responsible to enhance and look after the public health of the people.

### Conclusion

After analyzing the Constitution of the various countries of the world it can be said there are two categories of countries found, one explicitly recognizing the Right to Health and Health Care in the Constitution of their country and the second are those countries which do not explicitly recognize the Right to Health and Health Care in the Constitution of their country, but rather they just ask their State machinery to provide facilities of health care to their people. In spite of the fact that though the Right to Health and Health Care has been recognized either directly or indirectly in the Constitution of various countries of the world, still the Right to Healthcare isn't an actuality for millions of people everywhere in the world, and more predominantly in developing and underdeveloped countries. Each year, in developing and underdeveloped countries more than 13 million children under the age of 5 years die as a result of poor health, disease and infection which could have been avoided or treated. According to the World Health Organisation, more than one-third of girls of developing and underdeveloped countries aged 15-19 years are anaemic. Even, HIV/AIDS is the leading cause of death worldwide for women aged 15-44 years, because the unsafe sex being the foremost risk factor in developing countries.

In the Indian Constitution, the phrase Right to Health is nowhere mentioned in spite of that the Supreme Court has figured out it as a fundamental right under Right to Life

protected by Article 21. The Supreme Court gave a wider interpretation to Article 21 of the Constitution and upholds that the Right to Health is a part and parcel of Right to Life and for that reason; the Right to Health is one of the fundamental rights which are provided under the Constitution of India. The Supreme Court has in the real sense, played a fundamental role in inflicting the positive responsibilities on authorities (States, Panchayats, Municipalities, etc.) to maintain and improve public health. But regardless of all these provisions of Constitution and role of Supreme Court India yet confronts a higher disease burden than other up-and-coming economies such as China, Indonesia, Brazil, Mexico and Sri Lanka. Yet poorer neighbors, for instance, Nepal and Bangladesh have an improved record in health put side by side to India. The main cause at the back the poor physical condition of the regular Indian is the low level of public investments in preventive health facilities such as sanitation and waste management, and in medical care facilities such as primary health centres and health professionals.

### **Reference**

1. Philip Wood, Special Global Counsel at the leading international law firm Allen & Overy, is the first person to complete a truly comprehensive analysis of how much of the world is governed by each type of legal system in his book "Maps of World Financial Law."