

Judicial Activism and the Expansion of the Right to Health Under the Indian Constitution

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Abstract- The right to health is not expressly articulated as a fundamental right in the Constitution of India. However, through judicial activism—especially expansive interpretation of Article 21 (Right to Life and Personal Liberty)—Indian courts have consistently recognized health as an intrinsic component of human dignity and constitutionally protected life. This research paper analyzes the role of the Indian judiciary in expanding the right to health, explores the constitutional foundations, key case law, the nature of judicial activism involved, and critiques challenges and implications of this jurisprudential evolution.

I. INTRODUCTION

The Constitution of India enshrines a broad set of fundamental rights aimed at safeguarding human dignity and liberty. Among these, Article 21 guarantees that no person shall be deprived of life or personal liberty except according to “procedure established by law.” Although Article 21 does not explicitly mention the right to health, the Supreme Court and various High Courts have, over time, through judicial interpretation, held that a life with dignity necessarily includes a right to health and medical care. This extension exemplifies a form of judicial activism—where courts shape substantive law beyond textual prescriptions to uphold constitutional morality and ensure welfare entitlements. The Indian Constitution does not explicitly recognize the “right to health” as a fundamental right. However, through progressive judicial interpretation, particularly under Article 21 (Right to Life and Personal Liberty), the judiciary has transformed health into an essential component of the right to life. This transformation is largely attributed to judicial activism—an approach where courts actively interpret laws to promote justice, equity, and constitutional values.

Judicial activism in India has played a crucial role in bridging the gap between constitutional ideals and socio-economic realities. In a country marked by disparities in healthcare access, poverty, and

administrative inefficiencies, the judiciary has often stepped in to ensure that the right to health is not merely aspirational but enforceable.

II. CONSTITUTIONAL FRAMEWORK

A. Article 21: Right to Life and Personal Liberty
Article 21 states:

“No person shall be deprived of his life or personal liberty except according to procedure established by law.”

The Supreme Court has repeatedly held that “life” under Article 21 means more than mere physical existence. It includes the right to live with human dignity, encompassing shelter, livelihood, health, and other basic necessities.

The interpretation of Article 21 is the constitutional linchpin for recognizing the right to health. Through a purposive and progressive lens, the judiciary concluded that without adequate health and access to medical services, the right to life would be nugatory and ineffective.

B. Directive Principles and Fundamental Duties
While Directive Principles of State Policy (DPSPs)—such as Articles 38 (social order), 39(e) and 39(f) (health and strength of workers and children), and Article 47 (duty to raise level of nutrition and public health)—provide normative guidance on health, they are not justiciable in courts. They still influence judicial reasoning, serving as “guiding principles” for interpretation of fundamental rights.

The judiciary, invoking DPSPs and constitutional morality, created a bridge between non-justiciable ideals and enforceable rights, reinforcing the legitimacy of judicial activism in this sphere.

III. DIMENSIONS OF THE RIGHT TO HEALTH

Judicial activism has expanded the definition of health beyond the mere absence of disease. The Courts have recognized:

- 1) Right to Clean Environment: Linking Article 21 with Article 48A, the courts have shuttered polluting industries, citing health hazards (M.C. Mehta v. Union of India).
- 2) Reproductive Rights: Recognition that health includes access to safe reproductive healthcare as a matter of dignity.
- 3) Affordable Medicines: The judiciary has often intervened in patent law and drug pricing to ensure that life-saving drugs remain accessible to the masses.

IV. JUDICIAL ACTIVISM: CONCEPT AND CONTEXT

Judicial activism refers to the proactive role of the judiciary in interpreting the Constitution creatively or expansively to protect rights and fill legislative or policy voids. It can involve issuing directions to the executive, enforcing rights that are not explicitly contained in the text, and ensuring enforcement of constitutional values.

In the Indian context, judicial activism emerged strongly in the post-1978 era after landmark judgments such as *Maneka Gandhi v. Union of India*, where the Supreme Court broadened Article 21, laying the foundation for socio-economic rights (including health) to be viewed as integral to the right to life.

Thus, the interpretation of the right to health as part of Article 21 is paradigmatic judicial activism: the judiciary moved beyond formalistic restraints to enforce substantive welfare guarantees through constitutional law.

V. EXPANSION OF THE RIGHT TO HEALTH: LANDMARK JUDICIARY INTERVENTIONS

A. Early Recognition: *Parmanand Katara v. Union of India* (1989)

In *Parmanand Katara v. Union of India*, the Supreme Court declared that doctors, whether in government or private hospitals, have the obligation to provide immediate medical aid to preserve life, without undue police formalities. The Court reasoned that preservation of life is the State's paramount duty, and medical aid is a necessary component of this obligation.

This judgment was one of the first manifestations of judicial recognition that medical assistance and immediate health care are essential to safeguard the right to life.

B. *Consumer Education and Research Centre v. Union of India* (1995)

The Supreme Court held that health and medical care are fundamental facets of the right to life under Article 21. This decision was influential for linking workplace safety and health standards to constitutional guarantees. It held that workers exposed to hazardous conditions must be assured safety and health protections as part of the State's constitutional duty.

C. *Paschim Banga Khet Mazdoor Samity v. State of West Bengal* (1996)

In this seminal case, the Supreme Court elaborated the State's constitutional obligation to provide adequate medical services. The Court observed that neglect in providing timely treatment to an accident victim amounted to violation of Article 21. Importantly, it held that lack of financial resources cannot be a valid excuse for failure to provide medical facilities.

D. *State of Punjab v. Mohinder Singh Chawla* (1997)

The Supreme Court reiterated that the right to health is integral to the right to life. The State's duty includes ensuring medical services are available and, where relevant, reimbursing expenses to government employees seeking treatment outside public facilities because of inadequate services.

E. *Bandhua Mukti Morcha v. Union of India* (1997)

Although primarily a forced labor case, *Bandhua Mukti Morcha* underscored that the right to live with

human dignity includes nutrition, clothing, and shelter—implicitly encompassing health and well-being. The cumulative jurisprudence showed how Article 21 conceives life as a composite right.

F. Recognition of Mental Health as Constitutional Right

In recent judicial developments, the Supreme Court explicitly recognized that mental health is part of the constitutional right to life under Article 21 and issued guidelines to institutional stakeholders to ensure mental well-being. This reflects an even broader understanding of health that transcends mere physical survival to include psychological well-being.

G. High Court Enforcement: Right to Health for Accused and Prisoners

High Courts have also enforced the right to health as part of Article 21. For example, the Delhi High Court recognized that an accused in custody whose health is deteriorating must be afforded necessary medical treatment, viewing delay as a threat to Article 21 rights.

VI. CHALLENGES AND CRITIQUES OF JUDICIAL ACTIVISM

While the expansion of the right to health is celebrated, it faces significant criticism:

Critique	Description
Separation of Powers	Critics argue that by dictating health policy and budget allocation, the judiciary encroaches upon the domain of the Executive and Legislature.
Institutional Capacity	Judges are not medical experts. Formulating "Standard Operating Procedures" for hospitals may be beyond judicial competence.
Polycentricity	Health is a "polycentric" issue involving complex budget trade-offs. Ordering funds for one heart surgery might mean less money for primary vaccinations.

VII. JUDICIAL ACTIVISM: FORMS AND MECHANISMS

A. Expansion of Article 21

By interpreting "life" to encompass health, dignity, and well-being, the judiciary transformed Article 21 into an expansive rights guarantee. This interpretation does not appear in the text but evolved through judicial creativity rooted in constitutional values.

B. Directives to the Executive

In several cases, courts have gone beyond mere declaration of rights and have issued directions to the executive branch to implement policies: mandates on emergency care, oversight of government hospitals, reforms in mental health support, and structural improvements. These directions demonstrate activism aimed at ensuring real world implementation of constitutional rights.

C. Enforcement Through Public Interest Litigation (PIL)

PILs have democratized access to justice, enabling civil society to approach courts on behalf of disadvantaged groups. Through PILs, courts have enforced right to health obligations, compelling state action and policy reforms.

VIII. CRITIQUES AND CHALLENGES

Despite its progressive thrust, judicial activism on the right to health faces several critiques:

A. Democratic Legitimacy

Critics argue that courts, by creating socio-economic rights such as health from judicial fiat, overstep the boundary of judicial review into policy making—a domain traditionally reserved for the legislature and executive. This raises questions about separation of powers and democratic accountability.

B. Implementation Constraints

The judiciary's pronouncements often lack direct enforcement mechanisms or need strong executive cooperation. India's quasi-federal structure places health in the State list, limiting uniform implementation of judicial mandates.

C. Resource Limitations

While the judiciary can command courts and issue directives, actual realization of health infrastructure, manpower, and funding depends on the political branches. Therefore, judicial pronouncements may remain aspirational without adequate budgetary support and policy frameworks.

D. Judicial Overreach Concerns

Some legal scholars caution against excessive judicial activism that transforms courts into superpolicy makers. The critique often centers on broad, non-textual rights creation without clear constitutional anchorages beyond interpretive expansion.

IX. IMPLICATIONS FOR HEALTH GOVERNANCE

A. Progressive Rights Culture

Judicial activism has entrenched an expansive conception of the right to health in India's constitutional system. By binding the State to health obligations under Article 21, it legitimizes claims for healthcare reforms, infrastructure, and equitable access.

B. Influencing Legislative Action

Judicial pronouncements have catalyzed legislative reforms, including mental health legislation aligned with constitutional standards and international human rights norms. Courts frequently reference international conventions and norms in shaping domestic jurisprudence.

C. Enhanced Accountability

By holding the executive accountable for failures in health services and issuing directives for compliance, courts promote accountability and transparency in health governance.

X. THE NEW FRONTIER: CONSTITUTIONALIZING MENTAL HEALTH

A revolutionary shift occurred in July 2025 with the case of Sukdeb Saha v. State of Andhra Pradesh. The Supreme Court transitioned mental health from a statutory right to a core constitutional guarantee.

Breaking the Stigma through Article 21

The Court held that the Right to Life includes the right to a "safe, stigma-free environment" and "accessible counseling."

Mandate for Institutions: The Court issued binding guidelines for educational institutions, requiring them to appoint counselors and establish district-level monitoring committees.

Integration: By linking the Mental Healthcare Act, 2017 directly to Article 21, the judiciary has made state inaction regarding mental health a breach of fundamental rights.

XI. THE INSTITUTIONAL PILLAR: THE ROLE OF THE NHRC

While the Courts provide the "decrees," the National Human Rights Commission (NHRC) provides the "monitoring." The NHRC acts as a bridge between judicial activism and executive implementation.

The Patients' Rights Charter

In 2018-2019, the NHRC released a Charter of Patients' Rights, which has since been adopted by several states. It codifies what "Health as a Right" looks like on the ground:

Right to Informed Consent: No procedure can be performed without the patient understanding the risks.

Right to Transparent Billing: Hospitals must provide itemized bills and cannot hold a "corpse" hostage for unpaid dues—a practice the NHRC and Courts have strictly prohibited as a violation of human dignity.

Suo Moto Interventions

The NHRC frequently uses its suo moto powers (acting on its own motion) to investigate medical negligence in government hospitals, the lack of ventilators during pandemics, and the health rights of prisoners, ensuring that judicial standards are monitored even without active litigation.

XII. SUMMARY OF MODERN LEGAL MILESTONES

Issue	Landmark Precedent/Policy	Judicial/Statutory Impact
Drug Pricing	Siddharth Dalmia v. UoI (2025)	Directed States to regulate private pharmacy markups.
Mental Health	Sukdeb Saha v. State of AP (2025)	Declared mental health a fundamental right under Art. 21.
Evergreening	Novartis AG v. UoI (2013)	Ensured access to affordable generic cancer drugs.
Infrastructure	PM-ABHIM (2021-2026)	Executive expansion of health infrastructure as a response to judicial pressure.

XIII. CONCEPT OF JUDICIAL ACTIVISM IN INDIA

Judicial activism refers to the proactive role played by the judiciary in interpreting the Constitution and laws to address social injustices and protect fundamental rights. It is characterized by:

- Expansive interpretation of constitutional provisions
- Filling legislative and executive gaps
- Use of Public Interest Litigation (PIL)
- Emphasis on social justice and human rights

In India, judicial activism gained prominence in the post-Emergency era (after 1975–77), when courts began to adopt a more citizen-centric approach.

XIV. IMPACT ON HEALTH GOVERNANCE IN INDIA

Recent trends show:

- Increasing recognition of health as a fundamental right at the state level

- Integration of health with environmental and food rights
- Digital health and telemedicine regulations

Courts continue to play a supervisory role in ensuring health equity.

XV. CONTEMPORARY DEVELOPMENTS

Recent trends show:

- Increasing recognition of health as a fundamental right at the state level
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- Digital health and telemedicine regulations

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XVI. DOCTRINAL BASIS OF THE RIGHT TO HEALTH UNDER ARTICLE 21

The transformation of the right to health into a fundamental right is rooted in the judicial doctrine of expansive interpretation of Article 21. The Supreme Court has consistently held that the term “life” does not merely denote physical existence but includes the right to live with dignity, well-being, and access to basic necessities.

Key Doctrinal Developments

1. **Due Process Expansion**
 After *Maneka Gandhi v. Union of India* (1978), Article 21 was interpreted to include substantive due process. This enabled courts to evaluate the fairness and reasonableness of state actions affecting health.
2. **Interrelationship of Fundamental Rights**
 The Court linked Articles 14, 19, and 21, creating a “golden triangle”, ensuring that health-related rights are protected against arbitrary state action.
3. **Reading DPSPs into Fundamental Rights**
 Directive Principles (Articles 39, 41, 42, 47) have been judicially read into Article 21,

making socio-economic rights enforceable indirectly.

XVII. THE RIGHT TO HEALTH AS A HUMAN RIGHT

Judicial activism in India has been influenced by international human rights jurisprudence. The Supreme Court has often relied on global instruments to interpret constitutional rights.

Important International Instruments

- Universal Declaration of Human Rights (1948) – Article 25 recognizes the right to health and well-being
- International Covenant on Economic, Social and Cultural Rights (ICESCR) – Article 12 explicitly guarantees the right to the highest attainable standard of health
- Convention on the Rights of the Child (CRC) – Ensures child healthcare rights

The Indian judiciary has affirmed that international obligations can guide constitutional interpretation, especially where domestic law is silent.

XVIII. Expansion into Specific Dimensions of Health Rights

Judicial activism has broadened the right to health into multiple dimensions:

Right to Emergency Medical Care

- Immediate treatment without procedural delays
- Applies to both public and private hospitals

Right to Affordable Treatment

- Regulation of private hospital charges
- Access to essential medicines

Right to Clean Environment

- Pollution control cases (e.g., M.C. Mehta cases)
- Clean air and water as integral to health

Right to Reproductive and Maternal Health

- Safe pregnancy and childbirth
- Access to reproductive healthcare services

Right to Mental Health

- Recognition of dignity and humane treatment for mentally ill persons
- Decriminalization of suicide attempts (linked to mental health rights)

XIX. JUDICIAL ACTIVISM IN PUBLIC HEALTH CRISES

Role During COVID-19 Pandemic

The judiciary played a crucial role during the pandemic by:

- Monitoring oxygen supply and hospital preparedness
- Directing free vaccination policies in certain phases
- Ensuring transparency in resource allocation

High Courts across India acted as “constitutional courts of crisis,” highlighting the importance of judicial intervention during emergencies.

Broader Implications

- Strengthened the accountability of governments
- Exposed structural weaknesses in healthcare systems
- Reinforced health as a non-negotiable right

XX. COMPARATIVE PERSPECTIVE: INDIA AND OTHER JURISDICTIONS

South Africa

- Constitution explicitly guarantees the right to health (Section 27)
- Courts adopt a reasonableness standard (Soobramoney case)

United States

- No explicit constitutional right to health
- Courts generally avoid intervention in health policy

Brazil

- Strong judicial enforcement of the right to health
- Courts frequently order the State to provide medicines

India's Unique Position

India stands out because:

- The right to health is judicially created, not explicitly stated
- Courts are more interventionist compared to many democracies
- PIL mechanism enhances accessibility

XXI. CRITICAL EVALUATION OF JUDICIAL ACTIVISM IN HEALTH SECTOR

Strengths

1. Bridging Legislative Gaps
Courts have addressed the absence of comprehensive health legislation.
2. Empowerment of Marginalized Groups
PILs have allowed disadvantaged communities to claim health rights.
3. Development of Health Jurisprudence
A robust body of case law now exists linking health with dignity and life.

Limitations

1. Implementation Deficit
Court orders are often not effectively implemented due to administrative inefficiencies.
2. Institutional Limitations
Courts lack technical expertise in healthcare policy and resource allocation.
3. Judicial Overreach Concerns
Critics argue that courts sometimes encroach upon executive functions.
4. Urban Bias in PILs
Many cases originate in urban areas, leaving rural health issues underrepresented.

XXII. RELATIONSHIP BETWEEN HEALTH RIGHTS AND SOCIO-ECONOMIC INEQUALITY

Judicial activism has highlighted that health is deeply connected to:

- Poverty
- Nutrition
- Sanitation
- Education

Cases like the Right to Food litigation demonstrate that health cannot be isolated from broader socio-economic rights.

The judiciary has implicitly adopted a holistic approach, recognizing that:

Health is not merely the absence of disease but a state of complete physical, mental, and social well-being.

XXIII. EMERGING TRENDS IN RIGHT TO HEALTH JURISPRUDENCE

Digital Health and Telemedicine

- Regulation of online medical services
- Data privacy concerns in health records

Environmental Health Justice

- Climate change litigation
- Air pollution and public health cases

Right to Health as a Statutory Right

- Some Indian states (e.g., Rajasthan) have enacted Right to Health laws
- Courts may increasingly interpret statutory rights alongside constitutional guarantees

XXIV. NEED FOR A CONSTITUTIONAL AMENDMENT

Despite judicial advancements, the absence of an explicit constitutional provision creates limitations:

Arguments in Favor

- Provides clarity and enforceability
- Strengthens accountability
- Aligns India with international standards

Arguments Against

- Financial burden on the State
- Risk of excessive litigation

However, many scholars argue that explicit recognition would strengthen, not weaken, governance.

XXV. INTERPLAY BETWEEN JUDICIARY, LEGISLATURE, AND EXECUTIVE

The expansion of the right to health demonstrates a dynamic relationship:

- Judiciary – Interprets and enforces rights
- Legislature – Enacts health laws and policies
- Executive – Implements programs and schemes

Judicial activism is most effective when it acts as a catalyst rather than a substitute for governance.

XXVI. THEORETICAL PERSPECTIVES

Natural Rights Theory

Health is inherent to human dignity and existence.

Welfare State Theory

The State has a duty to provide healthcare services.

Social Justice Theory

Access to healthcare must be equitable and inclusive.

Transformative Constitutionalism

Indian judiciary uses the Constitution as a tool for social transformation, including health rights.

XXVII. CONCLUSION (ADVANCED ANALYTICAL PERSPECTIVE)

Judicial activism has been central to the evolution of the right to health in India, transforming it from a non-justiciable directive into an enforceable fundamental right under Article 21. The judiciary has not only expanded the scope of the right to life but has also infused it with substantive content, encompassing medical care, environmental health, and socio-economic well-being.

However, judicial intervention alone cannot ensure universal healthcare. Sustainable realization of the right to health requires:

- Strong legislative backing
- Efficient administrative mechanisms
- Adequate financial investment

Thus, judicial activism should be viewed as a complementary force—a guardian of rights and a catalyst for reform—rather than a permanent substitute for policy-making.

XXVIII. ADVANCED SUGGESTIONS FOR REFORM

1. Codification of Health Rights
Enact comprehensive national legislation on the right to health.
2. Strengthening Primary Healthcare
Focus on rural and preventive healthcare systems.
3. Judicial Monitoring Mechanisms
Establish specialized benches or commissions for health rights.
4. Public-Private Regulation
Ensure accountability of private healthcare providers.
5. Data-Driven Governance
Use technology for efficient healthcare delivery and monitoring.

XXIX. CONCLUSION

The evolution of the right to health in Indian constitutional jurisprudence illustrates the judiciary's pivotal role in safeguarding human dignity and welfare. Through judicial activism, courts have transformed Article 21 from a narrow procedural safeguard into a substantive guarantee encompassing the right to health in its physical and mental dimensions. Although this evolution invites debates on democratic legitimacy and implementation challenges, it undeniably reflects a dynamic and

living Constitution responsive to contemporary constitutional needs.

Judicial activism in India's health jurisprudence has not merely interpreted text—it has reimagined the Constitution as an instrument of socio-economic justice and human fulfillment.

The expansion of the Right to Health in India represents a shift from "Negative Liberty" (freedom from state interference) to "Positive Liberty" (the state's obligation to provide). Judicial activism has ensured that even in the absence of a "Right to Health Act," the Constitution itself serves as a health-care guarantee.

The challenge for the year 2026 and beyond lies in implementation. As the Supreme Court noted in 2025, the judiciary has provided the "soul" of the right, but the legislature must now provide the "body" through increased GDP allocation (targeted at 2.5%) and a unified National Health Law.

Judicial activism has been instrumental in transforming the right to health from a directive principle into an enforceable fundamental right under Article 21 of the Indian Constitution. Through progressive interpretations and landmark judgments, the judiciary has ensured that health is recognized as essential to human dignity and life.

While concerns about judicial overreach persist, the proactive role of the courts has been crucial in addressing systemic deficiencies in India's healthcare system. Moving forward, a balanced approach involving judicial vigilance, executive efficiency, and legislative clarity is essential to fully realize the right to health for all citizens.

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