

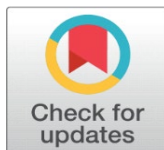
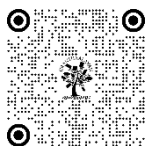
# RIGHT TO ACCESS TO HEALTHCARE: A FAR-REACHING DREAM OF THE TRIBES IN INDIA

Swathy P.S<sup>1</sup>, Dr. B. Venugopal<sup>2</sup>, Aswin S<sup>3</sup>

<sup>1</sup> Research Scholar School of Law, Vel Tech Rangarajan Dr. Sagunthala R&D Institute of Science and Technology Edu. Qualification: Ph.D. (Pursuing)

<sup>2</sup> Dean and Research Supervisor School of Law, Vel Tech Rangarajan Dr. Sagunthala R&D Institute of Science and Technology

<sup>3</sup> Assistant Professor MKES Nagindas Khandwala College, Malad, Mumbai, Maharashtra



## Corresponding Author

Swathy P.S,

[swathypvaishnavi@gmail.com](mailto:swathypvaishnavi@gmail.com)

DOI

[10.29121/shodhkosh.v5.i3.2024.4041](https://doi.org/10.29121/shodhkosh.v5.i3.2024.4041)

**Funding:** This research received no specific grant from any funding agency in the public, commercial, or not-for-profit sectors.

**Copyright:** © 2024 The Author(s). This work is licensed under a [Creative Commons Attribution 4.0 International License](https://creativecommons.org/licenses/by/4.0/).

With the license CC-BY, authors retain the copyright, allowing anyone to download, reuse, re-print, modify, distribute, and/or copy their contribution. The work must be properly attributed to its author.



## ABSTRACT

This paper is an attempt to understand the nature and scope of the right to access healthcare from the perspective of tribal people in India. The paper is based on a review of the literature published in the last few years. It is mainly focused on the issue of access to healthcare among the tribal community in India. This paper delves into the aspect of tribal development in India, the fate of the right to accessibility to healthcare in the tribal communities. The main findings are as follows. First, there are several reasons for the poor implementation of public healthcare schemes in tribal areas; thereby causing a serious threat to the rights of the individual and the obligation of the State. Second, there is a lack of proper planning associated with the establishment of health centers. Third, the State should address the issue relating to the integrity and accountability of the Public Healthcare System as well as its staff including the doctors. Finally, it is concluded that the implementation of healthcare schemes and policies should be framed consistent with the requirements, lifestyle and by respecting the aspirations of tribal community.

**Keywords:** Access to Healthcare, Fundamental Rights, Tribal Healthcare, Equality, Directive Principles of State Policy

## 1. INTRODUCTION

Any living form on this earth lives and perishes. Between these two points lies the phase of survival. This phase is often encountered with unwelcomed guests and requires the help and aid of third persons or agents to get back to state of normalcy. The same narration can be used to introduce the relationship between a human, illness, and healthcare. Therefore, health and access to healthcare has always been a significant point of importance for every Welfare State. And the Right to health and access to healthcare has been enumerated as basic human right as well as the fundamental right. But it is a reality that the realization of this right comes with great cost. Hence, much of the people especially the vulnerable communities like scheduled tribes and scheduled castes are almost deprived of effectively exercising this right. This paper is an attempt to understand the nature and scope of the right to access healthcare from the perspective of tribal people in India. Nearly 8.6 percentage of India's population comprises of tribal community. In addition to the political mandate the State, being a political association has a constitutional obligation to cater to the needs and requirements of the tribes. The inclusive growth of the tribal population plays a significant role in scaling India's commitment

towards an egalitarian society and most importantly to the constitutional goals. The article tries to answer the following aspects, first whether there is any fundamental right to healthcare. The second and third part delves into the aspect of tribal development in India and the fate of the right to access to healthcare among the tribal community.

## 2. AN OVERVIEW OF TRIBAL DEVELOPMENT IN INDIA

Development of any nation can't be achieved in seclusion and is intricately tied to the development, upliftment and inclusion of each and every sect of the security, tribal being no exception to this. Tribes are often considered as that fraction of society who are isolated and meagre.<sup>1</sup> But, the constant effort of each tribal person like any other individual is not merely restricted food and shelter, and their overall object of life is the realization of well-being. This understanding draws one's attention to Nehru's speech while addressing the people after the independence; where he stressed that each Indian should be guaranteed the right to opportunity to unfold his full potential.<sup>2</sup> Notably, the idea of development envisaged in such terms could only be actually realized when the quality of life of the lowliest layers of society is duly catered.<sup>3</sup> Recognizing the crucial role of their alleviation, socialist nations like India always strive to prioritize their growth and development. And therefore, there is a constitutional obligation on the part of the State to uplift the marginalized in the light of the preambular value, for India being a socialist republic that finds its germination in the egalitarian ethos that the country has ever nurtured within. The State, in exercise of this duty, formulates various policies. And while doing so, there are few factors that require serious consideration in the light of tribal welfare.<sup>4</sup> One of which is, the quality of life, culture and institutions of tribal society. With regard to the quality of life, the confusion would be, whether it should be preserved as such viz, raw and natural or should there be any State action aiming transformation of tribal society to the so-called 'mainstream' of the society.<sup>5</sup> The idea of tribal welfare in India is actually opposed to the traditional approaches which focused on development in isolation and forceful absorption as the key tool.<sup>6</sup> The Indian approach is more in alignment to the appreciation of tribal culture.<sup>7</sup> Thus, tribal development assumes a dual approach; legal protection of tribal interests and by adopting tribal development and promotion plans.<sup>8</sup> The Constitution of India, further embarks on tribal welfare by making the State obliged to have special care, development and administration of tribal community and areas.<sup>9</sup>

### Access to Healthcare as a Facet of Fundamental Right

Before venturing into the major aspect i.e., access to healthcare by the tribal community; it is very much essential to understand the nature of the right to access to healthcare in general. There can be two possible ways of doing so.

First, to analyse the scope of the right as a facet of right to life.<sup>10</sup>

Second, the nature of the right in the light of the obligation of the State.<sup>11</sup>

It would be ideal to start with the latter. Though the directive principles of state policies are not justiciable as such; reference to the Constituent Assembly debates and its various drafts would suggest a different perspective. There were instances where the directive principles were given precedence over fundamental rights. It went to such an extent that any law for the enforcement of these principles need not always be consistent with Article 13 of the Constitution.<sup>12</sup> Furthermore, these are the *instruments of instructions* for any Government against their whimsical exercise of power.<sup>13</sup> The State has a primary duty to improve the public health, level of nutrition and quality of living of its people.<sup>14</sup> This duty in itself forms the premise for the argument that, access to healthcare is a fundamental right. Though, no such right is explicitly provided by the Constitution; it becomes a part of right to life. This narration finds its way rooted in the aspect of *dignified life*. Thus, right to health is nothing but the pith and substance of a dignified life.<sup>15</sup> Furthermore, the Constitution envisages for *welfare state* irrespective of the federal divide. Providing medical facilities to the people

<sup>1</sup>Bose, N.K. (1971) *Tribal Life in India* /nirmal Kumar Bose. New Delhi: National Book Trust, India.

<sup>2</sup> Austin, G. (2018) *The Indian Constitution cornerstone of a nation*. New Delhi: Oxford University Press.

<sup>3</sup> Krishna Iyer VR, 'Tribal Upliftment and the Rule of Law' in Leelakrishnan P et al (eds), *Tribal Welfare Law and Practice* (Department of Law, University of Cochin 1985).

<sup>4</sup> P. M. Bakshi (1985) *Tribal Welfare and the Law: The Prospect in P Leelakrishnan et. al (Eds) Tribal Welfare Law and Practice*. Department of Law University of Cochin.

<sup>5</sup> P. M Bakshi (1985 p. 79).

<sup>6</sup> Elvin Verrier (1983). *The Baiga*,

<sup>7</sup> D. R. Pratap (1982) Planning for Tribal Development in *Occasional Papers on Tribal Developments- 28*, Ministry of Home Affairs.

<sup>8</sup> M. Soundarapandian (2000). *Tribal Development in India*, Anmol Publications pvt Ltd.

<sup>9</sup> Constitution of India. Arts. 46, 275 and 244 (1950).

<sup>10</sup> The Constitution of India. Art. 21 (1950).

<sup>11</sup> Part V Directive Principles of State Policy, The Constitution of India (1950).

<sup>12</sup> B. Shiva Rao (1969). *Framing of India's Constitution A Study* N. M. Tripathi Pvt Ltd.

<sup>13</sup> B. Shiva Rao (1969 p. 329).

<sup>14</sup> The Constitution of India. Art. 47 (1950)

<sup>15</sup>State of Punjab v. Ram Lubhaya Bagga 1998 (4) SCC 117, Vincent Panikurlangara v. Union of India (1987) 2 SCC 165, Kirloskar Brothers Ltd v. Employees State Insurance Corporation 1996 (2) SCC 682.

is an essential duty of the state. It is to be understood that, when a person has the right to life, the state has a corresponding duty to preserve it and extending adequate medical assistance by running government hospitals, primary healthcare centers, employing adequate medical officers and providing adequate service are part of state's duty in preserving human life.<sup>16</sup> Therefore, one can conclude that right to health and access to healthcare is a fundamental right under Article 21 of the Constitution. And to achieve the Constitutional object of achieving a welfare state, access to healthcare should be ensured even at the grassroots level of the society.

### **Tribal Community and Access to Healthcare: A Conundrum**

A study explaining the low utilization rates of healthcare services by *paniyas* and access to healthcare, finds that the perception of *paniyas* towards the public healthcare system is poor forcing them to go for alternative care.<sup>17</sup> The main reason for this is the inability to bear the cost unrelated to service use or costs of medicines. This primarily includes the cost to travel and reach out to the services. Another dimension of the right to access healthcare is the affordability of medicines. To this aspect, what needs to be read into, is the condition of living. For instance, the treatment of diabetes is more diet-oriented. Thus, providing medicines for free or low cost will not bring the desired outcome. For a community that severely relies on public distribution system, it is impossible to maintain a particular diet for better efficacy of medicines.

The quality of healthcare is often compromised when it is provided for free. This finding may not be universal in nature, however, few studies have shown that the primary health centers are not only under-staffed but are also filled with doctors and other staff having less or no motivation. There have been instances of not providing quality medical advice and medicines and this attitude has compelled people to go for private doctors or hospitals.<sup>18</sup> Another facet of this issue is the psychological and cultural differences between the patients and the doctors. This contributes to the ignorance of the patient's background by the doctor and reduces the doctor's urge to know the actual basis and consequence of the disease.<sup>19</sup> This will in turn foster non- medical healing system; indigenous healing methods using herbs and to far or dangerous extent the use of ritualistic healing practices. This indicates to the conclusion that the realization access to healthcare both as a right of the individual and the obligation of the State still lacks accountability, clarity, and effectiveness among the tribal communities. Therefore, there is a long way to go so as to reach the ultimate objective of ensuring access to healthcare to every normal citizen of India.

The question as to whether there had been any real positive act from the side of the State to improve the healthcare aspect of the tribes is very crucial. This aspect as such was the premise for the 2017 expert committee report<sup>20</sup>. One of the major contributions of the State in ensuring access to healthcare for the tribal population was the opening of primary health centers at three different levels. Sub-level Health Centers (SHC's), Primary Health Centers (PHC's) and Community Health Centers (CHC's) as part of the National Health Mission. For a long time, this was the major initiative by the State along with a few free drug and diagnostic service schemes. However, the efforts of the State were highly criticized by the expert committee for lack of quality and output. The major reason for the drawback was the lack of community participation, planning and implementation of public healthcare services. Therefore, the committee recommended for bringing a robust framework having sound principles inculcating the aspirations of the tribals. The aim of any healthcare scheme for the tribal should promote accessibility which includes affordability, comprehensiveness and adequacy.<sup>21</sup>

Aftermath the expert committee report the Ministry of Health and Family Welfare came up with a few initiatives for ensuring healthcare in tribal areas in 2022.<sup>22</sup> Accordingly, both SHCs and PHC's were transformed into Care and Wellness Centers under the Ayushman Bharat Scheme. The new scheme further provides for an additional twelve comprehensive primary health care which include promotive, curative, palliative and rehabilitative services at free of cost. To minimize the out-pocket expenditure initiatives for free drug services and free diagnostic service was also rolled down. Though the scheme is introduced, it has to be factually ascertained as to whether the newly introduced schemes are truly in alignment with spirit of the tribal community.

### **3. CONCLUSION**

The plight of the deprived, oppressed and marginalized was always a matter of utmost importance of the State. The Constitution of India itself is a testament to this fact. However, implementing the ideals of the same has never been to a reality. This is not because of any lack of deliberate effort by the State. There are multiple reasons for the poor implementation of public healthcare schemes in

<sup>16</sup> Paschim Banga Khet Mazdoor Samity v. State of West Bengal 1996 (4) SCC 36.

<sup>17</sup> K S Mohindran, D. Narayana, Slim Haddad. (2010). Evidence-based public health policy and practice: "My story is like a goat tied to a hook." Views from a marginalised tribal group in Kerala (India) on the consequences of falling ill: a participatory poverty and health assessment. *Journal for Epidemiology and Community Health*. 64 (6). 488- 494.

<sup>18</sup> David Hardiman, Gauri Raje. (2008) Practices of Healing in Tribal Gujarat. *Economic and Political Weekly* 43(9). 43-50.

<sup>19</sup> Pinak Tarafdar (2008). Right to Health: The Tribal Situation. *Indian Anthropologist*. 38 (1) 77- 89.

<sup>20</sup> Expert Committee on Tribal Health (2017), *Tribal Health in India Bridging the Gap and a Roadmap for the Future*. Ministry of Health and Family Welfare and Ministry of Tribal Welfare, Government of India.

<sup>21</sup> Expert Committee on Tribal Health (2017, p. 15)

<sup>22</sup> PIB New Delhi (2022 July). *Initiatives for Ensuring Healthcare in Tribal Areas*. Ministry of Health and Family Welfare, Government of India. <https://pib.gov.in/PressReleasePage.aspx?PRID=1846227>.

tribal area; thereby causing a serious threat to the right to access healthcare. One of the reasons is the natural habitat of the tribe. It is true that several tribes live in remote areas of the forest, and the access to them itself causes a hurdle. Still, there is lack of proper planning associated with the establishment of health centers. One is that it is not always proportional to the population and healthcare crisis. Second, it will be too far from the tribal habitat. This caused a financial burden upon the tribal patients and their families forcing them to go for alternative healing techniques including ritualistic methods. Though the State provides them with free medicines and diagnostic services, but there is failure from the State's side to ensure a life condition especially food and water in tune with the illness and its treatment. Thus, robust integration of healthcare and ensuring nutrition should be there for the actual realization of the right to healthcare among tribal populations.

Furthermore, serious note has to be taken with regard to other expenses allied with the treatment. This includes traveling expenses, some kind of financial relief for the family of the patient or the by-stander in case they are the sole breadwinner of the family. The outreach program should be enhanced so that the healthcare schemes and policies can be framed consistent with the requirements, lifestyle and by respecting the aspiration of the tribal community. The State can take up the initiatives with the aid and support of NGOs and by utilizing the CSR funds of the corporate giants. Most importantly the State should address the issue relating to the integrity and accountability of the Public Healthcare System as well as its staff including the doctors. Thus, when it is said the State's responsibility it is to be understood as the collective responsibility of all the functionaries and arms of the State to make maximum effort to meet the aspiration of tribal community and country as a whole to uplift the spirit and the constitutional ideals of equality, justice and socialism.

## CONFLICTS OF INTEREST

None.

## ACKNOWLEDGMENTS

None.

## REFERENCES

- Deb Roy, A., Das, D., & Mondal, H. (2023). The Tribal Health System in India: Challenges in Healthcare Delivery in Comparison to the Global Healthcare Systems. *Cureus*, 15(6), e39867. <https://doi.org/10.7759/cureus.39867>
- Baru, R., Acharya, A., Acharya, S., Kumar, A. K. S., & Nagaraj, K. (2010). "Inequities in Access to Health Services in India: Caste, Class, and Region." *Economic and Political Weekly*, 45(38), 49-58.
- Kumar D and others, "Identifying Potential Community Barriers for Accessing Health Care Services Context to Health for All in Rural-Tribal Geographical Setting in India: A Systematic Review" (2022) 9 *Journal of Community Health Management* 169 <https://doi.org/10.18231/j.jchm.2022.033>
- Monica Munjal Singh and Dandub Palzor Negi, "Health Status of the Tribal Communities in India: A Literature Review" (2019) 7 *International Journal of Innovative Knowledge Concepts*. [https://www.researchgate.net/publication/332013264\\_Health\\_Status\\_of\\_the\\_Tribal\\_Communities\\_in\\_India\\_A\\_Literature\\_Review](https://www.researchgate.net/publication/332013264_Health_Status_of_the_Tribal_Communities_in_India_A_Literature_Review).
- PIB New Delhi (2022 July). *Initiatives for Ensuring Healthcare in Tribal Areas*. Ministry of Health and Family Welfare, Government of India. <https://pib.gov.in/PressReleasePage.aspx?PRID=1846227>.
- Expert Committee on Tribal Health (2017), *Tribal Health in India Bridging the Gap and a Roadmap for the Future*. Ministry of Health and Family Welfare and Ministry of Tribal Welfare, Government of India.