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RIGHT TO HEALTH UNDER CONSTITUTION OF PAKISTAN: A LEGAL ANALYSIS OF STATE OBLIGATION

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ABSTRACT

Right to health is one of the universal human rights, a right that is the basic and crucial to the well-being and dignity of human beings. This paper evaluates the constitutive provisions in the right to health in Pakistan, It plays the key role that the state in guaranteeing the best possible standard of physical and mental health to its people. The Article 38(d) of the Constitution of Pakistan, 1973, states that the provision of basic needs, including medical relief, is a state responsibility. However this paper critically analyses the policy and legislative initiatives and steps that taken by Pakistan to meet its commitments and identifies loopholes and problems in their delivery. The paper also evaluates the contribution of judicial activism to the realization of the right to health, with landmark cases and the consequences of judicial activism on the advancement of the health policy. The present analysis is intended to contribute to the discussion on the justiciability of the right to health in Pakistan and to offer recommendations on how to improve the legal framework and state responsibility.

Keywords: *challenges, historical context, laws, opportunities, theoretical context.*

INTRODUCTION

The right to health is most significant and inalienable human right in Pakistan that plays a key role in the determining of health and the dignity of human beings in the society (Khan et al., 2023). Article 38(d) in the Constitution of Pakistan 1973 it provides and stipulates that the state is to offer basic needs to it's citizens , for instance medical relief is the most important relief (Ahmed, 2024). On the other hand this constitutional promise, the healthcare system in Pakistan is challenged by different ways and inadequate infrastructure, limited access to resources, and disparities in service availability (Haider, 2025; Memon et al., 2023).

The most important and crucial constitutional duty of the state is to safeguard the right to health which is closely linked to the promotion of social and economic well-being particularly in Pakistan (Shaikh & Ali, 2023). Notwithstanding, it is hard to implement in practice because of failures in governance, dearth of policies and poor implementation systems (Dayani et al., 2024). In the Pakistan health issues are still in alarming issues , as they are characterized by high maternal and infant mortality, malnutrition, and communicable diseases (Butt et al., 2024). This research paper delves into the constitution of the right to health in Pakistan and elucidates the level of the state's responsibility to reinforce the highest

possible standard of physical and mental health. It also critically reviews legislative and policy actions, highlighting discrepancies between the constitutional promises and practice (Shaikh, 2024).

The study also scrutinized how the judicial activism leads to the strengthen of the right to health via landmark judgments and their impact on the health policy (Yamin et al., 2024). This research work will add to the discussion on justiciability in Pakistan by evaluating constitutional provisions and legislation and judicial interpretations (Haider, 2025). It suggests the measures to be taken to improve the legal framework and increase the responsibility of the state to provide fair access to healthcare to every citizen and achieve sustainable changes in the population's health (Motevalian et al., 2024).

Research Justification

The issue of the right to health is urgent in Pakistan as this state encounters some serious healthcare problems. Right to life, and right to health are guaranteed by the Constitution of Pakistan, under the right to dignity. Nevertheless, not all Pakistanis can access the basic healthcare services, which is why it is necessary to question the responsibilities of the state to guarantee the basic right. This study is intended to examine the constitutional provisions and legislative efforts which have been made by Pakistan in order to meet its duty to guarantee the right to health. The paper will examine the state responsibilities of respecting, protecting, and fulfilling this right and determine policy and practice gaps.

The study aims to be part of the evolution of the rights-based approach to healthcare in Pakistan that will inform policy interventions and advocacy actions that will enhance the healthcare system. The results will help in transforming healthcare practices to enhance better health, decrease health disparities, and enhance human wellness in Pakistan. This study will foster accountability and transparency in healthcare governance by exploring the responsibilities of the state. The study will offer the perspectives of the judiciary, legislature and executive in guaranteeing the right to health, which will inform the strategy to reform and enhance it.

Literature Review

Health in the constitution of Pakistan is more aspirational than enforceable in practice in Pakistan (Shaikh & Ali, 2023). Constitution of Pakistan, 1973, provides strong framework for responsible the right to life and dignity. Therefore , researchers have noted that there is no specific and direct article about to health that would facilitate the implementation of these rights. (Dayani et al., 2024). That is because the right to health was indirectly recognized through Article 9 of the Constitution of Pakistan, which guarantees the right to life, and thus it is interpreted through judicial interpretation rather than by the legislature (Butt et al., 2024; Memon et al., 2023). Empirical studies discussed the limitations and areas of structural governance, lack of administrative capacity and fiscal constraints as the major reasons for failure is to deliver healthcare to the marginalised and low-income groups and needy people , for instance in rural areas (Khan et al., 2023). These are the endemic inadequacies that shows there is a clear disconnect between constitutional promises and realities, and enhanced the argument that state responsibilities are still poorly met even with formal assurances (Yamin et al., 2024).

The obligations for Pakistan under international law are positive, meaning that it is expected to implement the obligations of the global human rights instruments, and these include broader social determinants of health including education, sanitation, housing and environmental protection (Ahmed, 2024). However, there have been challenges to the effectiveness of the implementation of the standards, due to fragmented policy frameworks and poor domestic integration of these standards (Shaikh, 2024).

In part, through judicial activism, these issues have been addressed in an attempt to expand the interpretation of fundamental rights and shift responsibility from the state for inadequate provision of healthcare services (Motevalian et al., 2024). The courts have affirmed health as a part of life and dignity further strengthening the constitutional protection for health. In the Inconsistency of an enforcement, institutional inertia and an inadequate accountability system in Pakistan , however, constrain progress (Haider,

2025). Thus, the existing literature highlights the essentials of the enacting comprehensive legal reforms, the effective application of policies and a permanent judicial oversight to ensure that the right to health is guaranteed to every citizen throughout Pakistan, and is enforceable and justiciable (Butt et al., 2024).

Historical Context of Right to Health Under the Constitution of Pakistan

Translating the core objects of the constitution of Pakistan that binding on the legislation and policy has also been argued to be a precondition of achieving the right to health (Shaikh & Ali, 2023). Poor governance due to the absence of comprehensive health laws, inadequate regulation of private health care and poor accountability (Dayani et al., 2024). In a conclusion promises in the Constitution are symbolic, supporting the inequalities in access, as well as access to quality, of healthcare services in Pakistan (Khan et al., 2023; Memon et al., 2023).

The current literature also emphasizes the fact that fiscal constraints and Inefficient distribution of resources are still the factors that hamper the possibility of public healthcare to fulfil the constitutional commitments (Yamin et al., 2024). There have been a number of constraints on spending on infrastructure, manpower and required medicines, and these have adversely affected the rural and marginalised population, particularly the latter (Khan et al., 2023). This under-investment indicates that Pakistan is not fulfilling its commitments towards international obligations and is not meeting its domestic health-related standards (Ahmed, 2024).

Jurisprudence has played a significant role and element in enforcing the right to health as a part of life and dignity in the Constitution (Motevalian et al., 2024). Courts have also intervened to address administration shortfalls, but the decisions are not enforced permanently which limits the impact of the court decision (Haider, 2025). Thus, researchers underline judicial control and institutional change to guarantee the enforceability of health rights on a national level (Butt et al., 2024).

Theoretical Context of Right to Health Under the Constitution of Pakistan

The right to health in Pakistan is theoretically based on human dignity, social justice and the welfare of the state. These principles are reflected in the Constitution of Pakistan, 1973 which underlines the role of the state to guarantee the well-being of the citizens. The right to health is regarded as one of the key elements of human dignity, without which individuals would not be able to live a dignified life. The theory of distributive justice including the theory of justice as fairness by John Rawls is used to guide the interpretation of what the state should do to guarantee the right to health. The obligation of the state to offer healthcare services is regarded as a tool of fostering social and economic equality, especially to marginalised groups.

These theoretical frameworks in Pakistan be influence to the state's responsibilities in achieving the right to health, which underlines the role of a fair distribution of healthcare services, non-discrimination, and accountability. These theories can be applied in understanding the provisions of the Constitution particularly for the right to life and the dignity of the person in informing the responsibilities of the state in promoting the health and well-being of its citizens.

Laws Regarding Right to Health Under the Constitution of Pakistan

The right to health is not expressly mentioned in the Constitution of Pakistan, 1973; but is dealt with in the context of it. The affairs of medical education and medical practice in Pakistan are regulated by the Pakistan Medical Council Act, 1973. The Health Care Commission Act 2010, is the law that establishes the Health Care Commission to run the healthcare services. The National Health Policy, 2017 has an objective of improving the health services. The SDGs were incorporated into Pakistani legislation in the form of the Sustainable Development Goals (SDGs) Act, 2020 in 2020.

Article 9: Right to life: This article guarantees life, the right to health has been interpreted by the courts. The state must defend and safeguard the well-being of its people, and provide healthcare services. This article can be used to challenge any

law or policy which infringes on the right to health. The occasion will be dedicated to the dignity of man (Article 14):

This article indicates the human dignity right to health and well-being. The State is responsible for ensuring that the health services are provided in such a manner as to protect human dignity.

Article 38(d): Social and economic welfare: This article compels the state to offer the bare necessities of life to all citizens such as medical relief. The State has the responsibility to ensure the availability of healthcare services, their affordability and quality.

The Sustainable Development Goals (SDGs) Act, 2020: Integrates the SDGs into the Pakistani legal framework, such as Goal 3, and its emphasis on the idea of health and well-being. Points out the importance of universal health coverage and access to health care services. Understand the importance of sustainable and equitable health systems. Such laws and policies offer a guideline on how to advance the right to health in Pakistan, and the responsibility of the state to provide this basic right.

Challenges for Right to Health Under the Constitution of Pakistan

The right to health is challenged in Pakistan in several ways and the state is unable to meet its constitutional rights. Healthcare services are also man and one of the biggest challenges, particularly in rural and marginalised regions because they are inaccessible. Most Pakistanis do not access health facilities, specialist physicians, and necessary medicines, leading to their poor health conditions and increased mortality.

Poor infrastructure, lack of funds, and under-deployment of competent healthcare experts are some of the vices that have afflicted the healthcare system in Pakistan. The resources provided by the state to the healthcare sector are not adequate and as a result, there is a huge disparity in the provision of healthcare. The issue is further worsened by corruption and mismanagement, which divert the resources to other sectors other than health services. Competing priorities and limited resources tend to limit the state in its duties to guarantee the right to health. Ineffective implementation mechanisms and accountability frameworks are also against the realization of this right. Lack of proper check and balance and regulatory frameworks and enforcement of healthcare standards is a contributor to poor healthcare services.

The openness of healthcare services is being hampered by a lot of factors in vulnerable populations such as women, children, and marginalised communities. Health inequities are increased by social and cultural factors like poverty, illiteracy, and gender differences. Health disparities are maintained by the fact that the state is not taking care of these underlying determinants of health. The judiciary has been instrumental in enhancing the right to health although the enforcement of court orders has been a challenge. To address these issues, Pakistan should enhance its health care system, invest more in healthcare infrastructure, and improve access to healthcare services. The state should take into consideration the right to health and make sure healthcare services are affordable, accessible, and of high quality to everyone especially vulnerable groups.

Opportunities for Right to Health Under the Constitution of Pakistan

The right to health in Pakistan has several ways which can be enhanced, and which is in line with the constitutional duties of the state. There are many opportunities such as international human rights instruments that Pakistan is committed to, including the Sustainable Development Goals, can offer a structure to support the healthcare system. With the help of digital health technologies, one can increase access to healthcare, especially in remote locations. Healthcare services can be enhanced by investing and focusing in infrastructure including the hospitals, clinics, and medical equipment. The lack of skilled personnel could be addressed by strengthening the healthcare workforce through training and retaining healthcare professionals. With the idea of public-private collaboration can mobilize resources such as, knowledge, and innovation in healthcare provision. Universal coverage of health services can guarantee access to healthcare services fairly, eliminating financial strain and enhancing health outcomes. The youthful population in Pakistan is an

opportunity to work in health education, which would help to promote and support healthy and good lifestyles and prevent diseases. Enhancing health data systems can be used such as to guide policy decisions, monitor progress, and deal with health inequities.

By addressing the issues of funding the healthcare sector, allocating more funds in the budget, and allocating resources, that the state will be capable to meet its duties to the right to health. That helps to promote ,support and enhances the quality, safety, and accountability of healthcare services, regulatory systems may be reinforced. Health awareness like, social mobilization, and community empowerment can be achieved through community-based activities and social mobilization. The functions of the judiciary can be strengthened in enforcing the right to health where medical services are available, affordable, and of high quality. Pakistan can leverage regional and international cooperation to learn from best practices, share knowledge, and access technical assistance. By the ways of capturing these opportunities, Pakistan can achieve a lot in the achievement of the right to health, which is in line with its constitutional requirements and international obligations.

Discussion

In Pakistan, the right to health is not a simple question, which is connected with the constitutional and international human rights binding of the country. The right to life has been guaranteed in the Constitution of Pakistan, 1973, which has been construed to mean the right to health. This makes the state have a responsibility of safeguarding and advancing the health of its residents, making them have access to health care facilities. The responsibilities of the state to guarantee the right to health are tripartite, respect, protect and fulfil. Every state should avoid intervening in access such as healthcare, make sure non-state actors do not hinder access, and offer necessary healthcare services, especially to vulnerable groups.

Nevertheless, the healthcare system in Pakistan is always characterized with considerable challenges, like ineffective infrastructure, a lack of finances, and a lack of skilled professionals, competent, educated in healthcare. The resources that the state has allocated to the healthcare sector are not adequate and hence a huge disparity in healthcare provision. Universal health coverage can further ensure equal access to health services, lessening the burden on the pockets of individuals and enhancing health outcomes. Through the right to health, Pakistan can go a long way towards achieving this basic right.

Conclusion

Health is a right, which is a fundamental right that is provided by the Constitution of Pakistan, 1973. The responsibilities of the state in the satisfaction of this right are manifold, including the safeguarding and support of the population's health, the provision of healthcare services and the elimination of health inequities. For the achieving of this requirement, the state should place healthcare as a first priority and provide reasonable resources and enhance, maintain healthcare infrastructure. The courts have been instrumental in advancing the right to health and there is a need to ensure that the state executes court orders and policies. Finally, to guarantee the right to health, collective action is needed by both the state and civil society as well as by individuals. Through the collaboration, Pakistan can achieve a lot in the realization of this essential right, better health outcomes, and better citizen well-being. The state's dedication to the right to health is critical in creating a healthier, more equal and thriving society.

Recommendations

Based on these analysis, here are some strong recommendations for strengthen the right to health in Pakistan such as:

1. **Budget Healthcare:** Spend a large share of the national budget on healthcare, to achieve at least 5% of GDP.
2. **Enhance Healthcare Infrastructure:** enhancement of healthcare can be Invest in the construction and modernization of healthcare facilities, equipment and human resources in Pakistan.
3. **Adopt Universal Health Coverage:** This can adopt an all-inclusive health insurance plan to guarantees for equal access to healthcare services.

4. **Foster Public-Private Partnerships:** This plays an important role for Foster cooperation between the government and business to combine resources and capabilities.
5. **Strengthen health Education:** Incorporate health education in school curricula and promote awareness of programs on healthy living and prevention of diseases.
6. **Enforce Regulatory Frameworks:** These have good regulatory institutions to guarantee the quality, safety, and accountability within the healthcare services.
7. **Address Health Disparities:** Establish specific measures to combat health disparities, especially in rural and marginalised communities. In Pakistan, criminal justice ethics is characterized by many difficulties, which is indicative of law enforcement and judicial.
8. **Ratify International Treaties:** Ratify International human rights treaties, e.g. International Covenant on Economic, Social and Cultural Rights Independence, and human rights issues.

Research Limitations

1. **Constitutional Uncertainty:** The right to health is not particularly mentioned and discussed in the Constitution of Pakistan, which creates ambiguity and inconsistency in the application of the right by the courts and other policymakers in Pakistan.
2. **Absence of clear state obligations:** The obligations of the state to offer healthcare services are not well stated which is why it is difficult to hold the government responsible.
3. **Poor Judicial Enforcement:** Although the right to health has been established as a fundamental right in certain instances by the courts, it has been poorly enforced by different factors, for example inadequate resources and inadequate healthcare facilities.
4. **Lack of Data and Research:** the most important problem is a lack of research and data on the issue of right to health in Pakistan is a concerning problem that makes it more difficult to evaluate how the state should adheres to the international human rights requirements.
5. **Competing Priorities:** The healthcare system of Pakistan is not free of difficulties and facing several problems such , as it has competing priorities, scarce resources, and insufficient funding, which may restrict the state from meeting its responsibilities.

Research Implications

The study implications include the urgency of the state .that make the right to health first priority for it's citizens . This analysis shows that the responsibilities of the state to guarantee the right to health are manifold and include safeguarding and encouraging the population's health first , guaranteeing the availability of healthcare services, and mitigating health disparities.
The study's findings have significant implications for policy and practice, emphasizing the need for the state to:
1: Enhance healthcare facilities and services.
2: Allocate more funds to healthcare.
3: Create universal health coverage.
4: Reduce health inequities and foster health equality.
The study also highlights the role of judicial activism and the involvement of civil society in facilitating the right to health in Pakistan. This paper will inform the policy and advocacy work by pointing the duties of the state, that ultimately leading to the fulfillment of the right to health by all Pakistanis.

Future Research Directions

This research suggested several areas or gaps where there future research can be conducted on the right to health in Pakistan:
1. Comparative Analysis: The comparative studies of other countries, on how they have enforced the right to health, can be of great benefit to Pakistan.
2. Impact Assessment: The targeted interventions can be informed by the research on the effects of healthcare policies and programs on marginalized groups and areas.
3. Healthcare Financing: Research on new financing options, such as social health insurance, can be used to tackle healthcare finance issues.
4. Accountability Mechanisms: The studies on promoting the accountability mechanisms such as grievance redress systems can enhance the healthcare service provisions.

5. Role of Non-State Actors: There is the main role of Non-State actors, including NGOs and private healthcare providers, could inform the process of collaborating to provide healthcare.

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