

# CONSTITUTIONAL PROVISIONS WITH RESPECT TO HEALTH LAWS IN INDIA

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## *Abstract*

*Human development is measured by health, and human development is the foundation of economic and social progress. "The right to health care and protection has been acknowledged in India since independence. Since then, Independent India has approached the public as the right holder and the state as the primary supplier of health care for everyone. As a founding member of the United Nations, our country has accepted a number of international agreements that promise to protect individuals right to health care. The basic right to health is not explicitly recognized in the Indian Constitution. Article 21, Constitution of India, on the other hand, provides a basic right to life and personal liberty. In this article, the term life refers to a life of human dignity, not only survival or animal existence. It has a far broader definition that encompasses the right to livelihood, a higher quality of living, and sanitary working and recreational environments. The right to health is fundamental to living a dignified life, and Article 21 should be read in conjunction with Articles 38, 42, 43, and 47 to grasp the nature of the state and its duty to guarantee the effective implementation of this right." The project finally provides detailed structure regarding public health and health laws with reference to the Indian Constitution.*

## **HYPOTHESIS**

According to Article 25(1) of Universal Declaration of Human Rights "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control".

"Health is a situation of total physical, mental, and social prosperity, not just the absence of disease," as stated by the World Health Organization in the introduction to its constitution. This declaration has since been expanded to include the ability to live a "socially and economically useful life."

## 1. INTRODUCTION

The Indian Constitution, which was enacted by the Constituent Assembly on November 26, 1949, went into effect on January 26, 1950. “To define their own future, to follow their long-proclaimed objectives and aspirations, and to build the national institutions that would assist the realization of their aims,” Indians yearned for independence.

Citizens are entitled certain essential rights<sup>1</sup>. These rights are particularly significant when it comes to health and health treatment. Though it does not specifically provide for healthcare, the Indian Supreme Court's broad reading of the word life placed healthcare under the purview of the word life and proclaimed it a basic human right to every citizen of India.

Despite the fact that health as a sector does not occur in many places in the Indian Constitution, there are indirect and implicit allusions to people's health and the role the state plays in their growth. The following paragraphs seek to examine the various parts of the Indian Constitution as they relate to the health sector.

“Previously, the Right to Health was included in the Directive Principles State Policy (DPSP). Indian Constitution mandates that states provide the fulfillment of a social request for the advancement of government aid to individuals, but we won't be able to do so without good health.<sup>2</sup> It indicates that individual aid from the government without regard to overall health is impossible. In India, Article 47 of the Directive Principle of State Policy considers it to be the states fundamental responsibility to promote general health, ensure fairness, human condition of employment, growth of disorder, mature age, disablement, and maternity benefits, among other things.

The Supreme Court, on the other hand, has upheld the right to health under Article 21. The scope of this arrangement is enormous. It endorses the right of life and individual freedom. The idea of individual freedom fathomed numerous rights, identified with by implication to life or freedom of an individual. In addition, an individual can now protect his right to health. As a result, the Indian Constitution manages insurance for the right to health, as well as numerous other social, political, and monetary rights.”

## 2. PUBLIC HEALTH UNDER INDIAN CONSTITUTIONAL HISTORY

The Nehru Report, published in 1928, was the first constitutional document to recognize public health as a fundamental right. The Nehru Report ordered parliament to "maintain the health and fitness for employment of all people" under the "basic rights" section. Three years later, the Karachi Resolution 1931 included a similar provision: industrial employees must be

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<sup>1</sup> Part 3, Indian Constitution.

given with "healthy working conditions," as well as maternity leave for women and the prohibition of minors working in factories. Surprisingly, the articulation of public health in both of these historical constitutions is dominated by a concern for the health of (industrial) employees.

The right to health was included, which stated that "the promotion of public health and sanitation will constitute a charge on public income."<sup>3</sup>

Two essential rights relating to public health were included.<sup>4</sup> The first guaranteed residents the right to rest and not be forced to labour for more than eight hours per day; this was reminiscent of the Nehru Report and Karachi resolution, in which public health issues were largely regarded as a problem involving 'work' and 'workers.' Second, every person would have a "right to medical liberty"; the Gandhian Constitution appeared to oppose mandatory vaccination and inoculation.

During the discussions in the Constituent Assembly between 1946 and 1950, the Socialist Party of India prepared a Draft Constitution of the Republic of India, 1948, which was strongly inspired by the debates. The employment of women and children in situations "detrimental to health" was prohibited under this document's "economic rights" provision. It also had directive concepts that were quite similar to Article 39(E) of the Indian Constitution of 1950.

Aside from Article 39(E), the Indian Constitution has another significant public health provision: Article 47 imposes an obligation on the state to improve people's nutrition and living standards, to prioritize public health, and to ban the sale and use of "intoxicating" beverages and medicines. The Karachi Resolution and the Nehru Report had a strong impact on the Constitution's public health provisions, which prioritize worker health, women's health, and children's health.

### 3. HEALTH IN THE PREAMBLE TO CONSTITUTION

"The Constitution's Preamble, which sets the tone for the Indian Republic, mentions social, economic, and political justice, as well as equality of position and opportunity. The issue of access to health care facilities, as well as the notion of justice involved in equitable access to these services, can be brought up under the phrase Social Justice. Similarly, equality of status and opportunity may be interpreted to relate to the equality of medical practise, access to medical educational institutions, and so on, in order to enhance peoples socioeconomic and health status."<sup>5</sup>

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<sup>2</sup> Article 38, Indian Constitution.

<sup>3</sup> M. N. Roy, Constitution of Free India (1944)

<sup>4</sup> Gandian Constitution, 1944

<sup>5</sup> Preamble of the Indian Constitution

#### 4. REFERENCE TO HEALTH UNDER FUNDAMENTAL RIGHTS

Fundamental rights are addressed in Part III of the Indian Constitution. Fundamental rights are not unrestricted; they are subject to reasonable limits. The Supreme Court's primary role is to interpret the law. The right to health, i.e. the right to enjoy the greatest achievable level of bodily and mental health, is not specifically mentioned in the Indian Constitution. However, Indian court treats the right to health as an inherent element of the right to life, which is fundamental to all human beings.<sup>6</sup>

The Supreme Court has recognized the right to health through several interpretation approaches. “The government is required under the Constitution to offer health-care facilities.” The right to health is also one of the rights indicated by the Indian Constitution's guarantees of life and personal liberty.

##### 4.1 ARTICLE 19 (1) (G)

All citizens have the right to practise any profession or carry out any employment, trade, or business, subject to limits established in the public interest under Article 19 (6)<sup>7</sup>. “The Court held in *Municipal Corporation v. Jan Mohammed*<sup>8</sup> that the phrase in the interest of the general public in clause (6) of Article 19 has a broad meaning, encompassing public order, public health, public security, morals, community economic welfare, and the objects listed in Part IV of the Constitution. Furthermore, the Supreme Court decided in *Burrabazar Fire Works Dealers Association and Others v. Commissioner of Police, Calcutta*<sup>9</sup> that Article 19 (1) (g) does not protect freedom that jeopardizes a community's safety, health, or peace.”

It might be stated that the reasonable limits imposed on freedoms are broad in the sense that the Court has the authority to interpret them in the public interest. As a result, while exercising one's constitutional rights, one must consider public health. In recent years, the Supreme Court has emphasized the importance of public health on several occasions in its decisions.

##### 4.2 ARTICLE 21: PROTECTION OF LIFE AND PERSONAL LIBERTY

The multi-dimensional interpretation of Article 21 is a significant breakthrough in Indian constitutional law. Under its broad reading of Article 21, the Supreme Court has come to put affirmative responsibilities on the state to take efforts to ensure the individual's greater

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<sup>6</sup> Article 21, Indian Constitution.

<sup>7</sup> Article 19 (1) (g), Indian Constitution

<sup>8</sup> 1986 AIR 1205

<sup>9</sup> AIR 1988 Cal 121

enjoyment of life and dignity. The right to health is concerned with the preservation and enhancement of public health, as well as environmental betterment.<sup>10</sup>

“In *C.E.R.C. v. Union of India*<sup>11</sup>, the Supreme Court ruled that the right to health, as well as medical assistance to maintain a workers health and vigour while in service or after retirement, is a fundamental right under Article 21. Another case involving medical treatment and health was *Mr. X. v. Hospital Z*<sup>12</sup>, in which the court was asked if a doctor can tell a persons would-be wife (with whom the marriage is contracted) that he is HIV positive, or if it violates the persons right to privacy. Both issues were addressed in the negative by the court. The lady intending to marry such a person is likewise entitled to all human rights afforded to any human being, according to the Court. As a result, it includes the right to know if a person with whom she was engaged to be married was the victim of a contagious disease. In this case, the Supreme Court prioritized the right to health over the right to privacy.

In *Parmanand Katara v. Union of India*<sup>13</sup>, the Supreme Court examined a major problem in the medico-legal sector, such as situations of accidents in which doctors typically refuse to provide urgent medical assistance to the sufferer until legal formalities are fulfilled.”

In rare situations, the injured die as a result of a lack of medical care while legal procedures are being completed. The Court noted that health preservation is of the utmost significance. It is impossible to restore life after it has been lost. As a result, doctors have a responsibility to save life without prejudice.

The Court decided in *Paschim Banga Khet Mazoor Samity v. State of West Bengal*<sup>14</sup> that the government's primary obligation under welfare state policy is to provide appropriate medical services for its citizens. The government fulfills this need by operating hospitals and health centers to offer medical treatment to people who require it. The Supreme Court acknowledged in *State of Punjab v. Ram Lubhaya Bagga*<sup>15</sup> that “provisions of Health facilities cannot be unlimited.” It has to be to the degree that financial resources allow. No country can spend a limitless amount of money on any of its initiatives.

The Supreme Court concluded that the "Right to Health" is one of the basic rights in the aforementioned decisions, based on an expanded interpretation of Article 21. Accordingly, "Right to Life" encompasses more than only survival and existence.<sup>16</sup>

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<sup>10</sup> Article 21, Indian Constitution

<sup>11</sup> 1995 AIR 922

<sup>12</sup> (1998) 8 SCC 296

<sup>13</sup> 1989 AIR 2039

<sup>14</sup> 1996 SCC (4) 37

<sup>15</sup> (1998) 4 SCC 117

<sup>16</sup> Article 21, Indian Constitution

#### 4.3 ARTICLE 25 AND 26: FREEDOM TO PROFESS OR PRACTICE RELIGION AND FREEDOM TO MANAGE RELIGIOUS AFFAIRS

Constitution protects the freedom to profess and exercise religion to everyone, including non-Indians<sup>17</sup>, while Article 26 provides particular protection to religious denominations. Both can be enjoyed by anybody as long as they follow the rules of public order, morality, and health, as well as the rest of the Constitution.

The individual has the right to exercise these liberties, but it must not infringe on the rights of others, particularly the right to be undisturbed in their activities.

The Indian Constitution establishes a federal government. Between the union and the states, there is a split of legislative powers that allocates some subjects to concurrent competence. The topic of health has been left to the states to a considerable extent in this arrangement.

“State legislature may equip municipalities with such rights and authorities as may be required to allow them to function as institutions of local self-government by legislation.”<sup>18</sup>

This power relates to topics covered by the Twelfth Schedule, item 6, which includes public health, sanitation, and solid waste management.

However, there is a considerable distinction between local government agencies and state health authorities, with the latter possessing vast authority to allocate financial resources and select crucial appointments. If health is to be properly promoted, healthy partnerships between the two sorts of authority are essential.

Article 243-G makes similar provisions for Panchayats in areas relating to the Eleventh Schedule's item 23 (Health and sanitation), which includes hospitals, primary health centers, and dispensaries.”

#### 5. HEALTH UNDER THE DIRECTIVE PRINCIPLES

Part IV of the Indian Constitution deals with the "Directive Principles of State Policy," which are a set of principles that govern government policy. Despite the fact that the Directive Principles are described as "essential in the country's governance," they are not legally enforceable. As stated in the Preamble, they are rules for establishing a social order defined by social, economic, and political justice, liberty, equality, and brotherhood. These principles are important to the country's governance, and the state has a responsibility to apply them while

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<sup>17</sup> Article 25, Indian Constitution

<sup>18</sup> Article 243-W, Indian Constitution

creating laws. The following instructions are important from the standpoint of the Right to Health.

#### 5.1 ARTICLE 39: CERTAIN PRINCIPLES OF POLICIES TO BE FOLLOWED BY THE STATE

This article protects the employees' health and strength, including men and women. It also requires that children be provided with the opportunity and resources they need to develop in a healthy, free, and dignified way, as well as that childhood and youth be safeguarded from exploitation and moral and material abandonment. It is true that Article 39 (e) and (f) of the Constitution show that the framers were concerned about protecting and safeguarding the interests and welfare of employees and children.

It declares that the working class plays an essential role in nation-building, and that the state government must safeguard their health. In the case of **Lakshmi Kant Pandey v. Union of India**<sup>19</sup>, BHAGAWATI, J. wrote in the court's opinion that:

*“It is obvious that in civilized society the importance of child welfare cannot be over emphasized because the welfare of the entire community, its growth and development depends upon the Health and well being of its children. Children are a supremely important national asset and the future well being of the nation depends on how its children grow and develop.”*

Further, In **Sheela Barse v. Union of India**<sup>20</sup>, Supreme Court has held that:

*“A child is a national asset and therefore, it is the duty of the State to look after the child with a view to ensuring full development of its Personality.”*

The Constitution 42nd Amendment Act of 1976 changed clause (f) to emphasize the government's positive role in the lives of children.

#### 5.2 ARTICLE 42: PROVISION FOR JUST AND HUMANE CONDITIONS OF WORK AND MATERNITY RELIEF

This Article requires the state to provide provisions for equitable and humane working conditions as well as maternity leave. The Supreme Court ruled in **U.P.S.C. Board v. Harishankar**<sup>21</sup> that Article 42 is the foundation of India's wider corpus of labour legislation. The Supreme Court further emphasized that the Constitution indicates a strong concern for the welfare of employees, citing Articles 42 and 43. The Directive Principles may not be enforced as such, but the Court must interpret the legislation in a way that advances rather than hinders the Directive Principles' objective.

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<sup>19</sup> 1984 AIR 469

<sup>20</sup> 1986 SCALE (2) 230

<sup>21</sup> AIR 1979 SC 65



BHAGWATI, J. remarked in *Bandhua Mukti Morcha v. Union of India*<sup>22</sup> that the Directive Principles of State Policy, particularly clauses (e) and (f) of Article 39 and Article 41 and 42, give life to the right to live with human dignity inherent in Article 21. Because the Directive Principles of State Policy are not enforceable in a court of law, it may not be feasible to compel the State to make provisions for these fundamental necessities by statutory legislation or executive fiat through the legal process.

“The Supreme Court ruled in *P Sivaswamy v. State of Andhra Pradesh*<sup>23</sup> that Article 42 of the Constitution requires the state to make measures for equitable and humane working conditions. Several articles in Part IV of the Constitution state that it is the states responsibility to provide a social environment that is worthy of human dignity for citizens to live in. The essence of Article 42 is that it serves as the foundation for the body of labour legislation and worker welfare. The Court must interpret the law in order to fulfil the DPSP objectives.

### 5.3 ARTICLE 47: DUTY OF THE STATE TO RAISE THE LEVEL OF NUTRITION AND THE STANDARD OF LIVING AND TO IMPROVE PUBLIC HEALTH

The State shall regard raising the level of nutrition and the standard of living of its people, as well as improving public health, as among its primary duties, and in particular, the State shall endeavour to prohibit the consumption of intoxicating beverages and drugs that are harmful to health, except for medical purposes.

With regard to Article 19 (6), Article 47 is useful for imposing strict regulations on the liquor trade. The Court stated in *Vincent Panikurlangara v. Union of India*<sup>24</sup> that the maintenance and improvement of public health must be prioritized because they are essential to the community very physical existence, and the betterment of these is dependent on the development of the society that the Constitution makers envisioned. As a result, we believe that public health is a major priority, if not the top one.”

When interpreting Article 47, the Supreme Court correctly stated that public health must be safeguarded for the good of society. Furthermore, it has been held that in this welfare era, the state's primary responsibilities include improving people's nutrition and standard of living.

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<sup>22</sup> AIR 1963 SC 1638

<sup>23</sup> 1988 AIR 1863

<sup>24</sup> 1987 AIR 990



#### 5.4 ARTICLE 48: PROTECTION AND IMPROVEMENT OF ENVIRONMENT AND SAFEGUARDING OF FORESTS AND WILD LIFE

State must make every effort to conserve and develop the environment, as well as the country's forests and animals.<sup>25</sup>

The 42nd Amendment Act of 1976 added this item. It requires the government to work to conserve and develop the environment, as well as the country's forest and wild life. “Art 39 (a), 47, and 48-A, individually and jointly place a duty on the State to ensure the health of the people, enhance public health, and protect and improve the environment,” it was held in *M.C. Mehta v. Union of India*<sup>26</sup>.

#### 6. HEALTH UNDER FUNDAMENTAL DUTIES

In the same way that the state is required to offer certain facilities and services to residents, the Constitution mentions a reciprocal need in the shape of citizens' basic responsibilities to the country. Every citizen of India has a duty to conserve and develop the natural environment, including forests, lakes, rivers, and wild life, as well as to have compassion for living beings.<sup>27</sup> In this view, both the state and residents share responsibility for maintaining human and animal health, as well as long-term concerns pertaining to human and animal health improvement. The state legislature is referred to in Chapter 3, Part 7 of the Constitution. The Constitution has sought to prevent the negative consequences of poor mental health in the communal decision-making process in this way. Thus, the Indian Constitution attempts to incorporate the problem of health as well as concerns of decision-making and administration.

#### 7. CONSTITUTION AND THE RIGHT TO HEALTH

The right to health is not explicitly guaranteed in India's constitution. The Constitution, on the other hand, makes several allusions to public health and the responsibility of the state in providing healthcare to individuals.

The right to health is based on the Directive Principles of State Policy.<sup>28</sup> Article 39 (E) imposes a duty on the state to protect workers' health, Article 42 imposes a duty on the state to provide just and humane working conditions and maternity benefits, and Article 47 imposes a duty on the state to improve people's nutrition and standard of living, as well as public health.

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<sup>25</sup> Article 48-A, Indian Constitution

<sup>26</sup> (1997) 2 SCC 353

<sup>27</sup> Article 51A, Indian Constitution

<sup>28</sup> Part 4, Indian Constitution

Furthermore, Article 243G of the Constitution not only requires the state to improve public health, but it also empowers Panchayats and Municipalities to do so.<sup>29</sup>

The Supreme Court of India in *Bandhua Mukti Morcha v Union of India & Ors*<sup>30</sup> construed the right to health under Article 21, which ensures the right to life, because there is no express acknowledgment of the right to health or healthcare in the Constitution. The Supreme Court reiterated in *State of Punjab & Ors v Mohinder Singh Chawla*<sup>31</sup> that the right to health is essential to the right to life and that the government has a constitutional responsibility to provide health care. The court went on to support the state's obligation to sustain health services in *State of Punjab & Ors v Ram Lubhaya Bagga*<sup>32</sup>.

In September 2019, the 15th Finance Commission's High-Level Group on the Health Sector suggested that the right to health be designated a basic right. It also proposed that the issue of health be moved from the State List to the Concurrent List. If enacted, the suggestion to make the right to health a basic right will improve people's access to healthcare. The later suggestion to move health to the Concurrent List, on the other hand, will raise a constitutional question about whether centralizing public health will be beneficial in the context of Indian cooperative federalism.

The topic of "public health and sanitation; hospitals and dispensaries" is now covered under the State List of the 7th Schedule of the Indian Constitution, which gives state governments constitutional authority to establish, enact, and enforce public health legislation.

If enacted, the suggestion to make the right to health a basic right will improve people's access to healthcare. The later suggestion to move health to the Concurrent List, on the other hand, will raise a constitutional question about whether centralizing public health will be beneficial in the context of Indian cooperative federalism.

India's states have uneven public health systems.<sup>33</sup> This disparity was caused largely by a lack of technical knowledge and financial restrictions. While states' budgetary dependency on the federal government remains a serious problem, moving health to the Concurrent List would result in unnecessary bureaucracy, red tape, and institutional limitations. Even while state policy decisions would remain subject to the federal executive's political bent, this centralization would strip states of their constitutional rights. Furthermore, a unified approach would not give the specialized attention that is required by states across India.

On a critical issue like health, cooperation between the centre and states is required without jeopardizing cooperative federalism, which is a cornerstone of the Indian Constitution.

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<sup>29</sup> Read with 11<sup>th</sup> Schedule, Entry 23.

<sup>30</sup> 1984 AIR 802

<sup>31</sup> AIR 1997 SC 1125

<sup>32</sup> (1998) 4 SCC 117

<sup>33</sup> 2019 NITI Aayog Assessments

The coordinated response to COVID-19 has proven the need of strong district and local capacities in controlling the pandemic's spread. Lessons learned from the reaction demonstrate that, while effective cooperation between states and the centre is critical, health must remain on the State List. It is consequently critical to decentralize power and money to states in order to strengthen their unique public health systems. For example, despite initial difficulties, Uttar Pradesh and Bihar were able to contain the Japanese Encephalitis epidemic in 2019. Even in the midst of the epidemic, Maharashtra and Delhi invoked the Epidemic Diseases Act of 1897 before the federal government did on March 23.

The Constitution has made a strong appeal to the state to ensure a reasonable quality of life through the Directive Principles of State Policy. Several judicial precedents have shown that the government is accountable for the healthcare of its citizens. As a state party, India is obligated to improve and offer appropriate public services and a minimum quality of universal health care as part of its commitment to international legal treaties and conventions. Existing constitutional safeguards, legal precedents, and international obligations provide a solid foundation for India's basic right to health. Access to health will become legally obligatory and accountable as a result of a legislatively protected right. For appropriate healthcare in India, a constitutional amendment along the lines of the 93rd Amendment to the Constitution, which gave constitutional support to the right to education, should be approved.

## 8. CONCLUSION

The Indian Constitution clearly reflects its profound concern for human, animal, plant, and aquatic health in India, as seen by the preceding debate. It can also be observed that different tiers of government have been entrusted with distinct responsibilities for various elements of health under the Indian Federal Set-up. Assigning these tasks appears to have a clear socioeconomic justification and administrative practicality. The Constitution also establishes some responsibilities for people in terms of contributing to the country's health promotion. There might be a variety of departures from the Constitutional requirement in real practise. However, it must be recognized that a good understanding of the necessity for such deviations in practise may be regarded a helpful basis for the constitutional adjustments necessary for the growth of the Indian nation's citizens', animals', and plants' health. The idea of health for everyone must encompass the well-being of all living things. It appears that the Indian Constitution recognizes the need of such a broad view of health for all people. True, there is no time limit for achieving the objective of universal primary education, just as there is no time limit for achieving the goal of universal health. However, the framers of the Constitution recognized the necessity for a flexible and pragmatic approach in not prescribing a time period for achieving the objectives. The Constitution, which is a statement of the nation's objectives and ambitions, should be read in the same way in the case of the aim of universal health care; otherwise, setting unreasonable deadlines for the goals would only raise expectations and lead to dissatisfaction. This is

especially true when contemplating a holistic definition of health for everyone, which includes human, plant, animal, and aquatic health, as well as physical and mental health. It may, however, be useful to specify some specific measures of action with time constraints, at least with regard to some non-negotiable topics in the health sector. However, in the health sector, which issues are non-negotiable must be chosen from time to time, and therefore may be part of collective decision-making.

It is long past time for India to declare health to be a fundamental human right. In the face of future pandemics and public health emergencies, strong health laws will help in the building of social resilience. In the event of an emergency, human rights obligations cannot be neglected. As a result, the right to health must be implemented in line with transparency, proportionality, and solidarity ideals. The COVID-19 experience has also revealed the necessity for a decentralized response; as a consequence, India's cooperative federalism must be strengthened.

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