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THE RIGHT TO HEALTH – A CONSTITUTIONAL VIEW

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ABSTRACT

This article is an attempt to reflect the concept of health and right to health through the constitution of India. The author has also relied upon various judicial decisions in order to extract the meaning of health and right to health in India. However nowhere in Indian Constitution the health or right to health has been defined but through its provisions the implicit references has been drawn. Through Judicial interpretation it has been observed that Right to life includes Right to Health and thus a fundamental right.

KEYWORDS

right to health, constitution of India, right to life.

INTRODUCTION

"It is health that is real wealth and not pieces of gold and silver."

Mohandas Karamchand Gandhi

Since long human civilisation has been searching to know the reason behind the mystery of leading a healthy, wealthy and a long lasting life. To eradicate the disease is a more important issue than to cure a patient. Sir George Newman has rightly observed, "It is not the event of death which we can escape but the incidence of avoidable invalidity and pre-mature death. It is the enlargement of life and the increase of human capacity, physical and mental, which we seek to ensure."¹

According to the Oxford Dictionary the word 'Health' means the state of being free from illness or injury but this definition is not complete. However the most acceptable definition of health has been given by the World Health Organisation in the preamble of its constitution, it says, "Health is a state of complete physical, mental and social well being and not merely the absence of disease. In 2000, the WHO further expanded the definition of health. It includes a reduction in disparities for improving health status and sharing the financial burden in accordance with the ability to pay as being a fair form of health financing".²

Human Right to Health and Healthcare in India got the momentum when India joined the United Nation in the year 1945 and particularly when the Universal Declaration of Human Rights (UDHR) was proclaimed. The formulation of India's Constitution was certainly influenced by the Universal Declaration of Human Rights. The basic ideologies on which Indian constitution relies had been influenced by UDHR in varied ways. Neither the 'Health' nor the 'Right to Health' is directly defined in Indian Constitution. However through its preamble casts an implied obligation on state to ensure social and economic justice in which implicit is the health and right to health. Right to health is prima facie not a fundamental right either in Part III and the reference in Part IV the right to health is ineffective for it being non enforceable. Hence it becomes pertinent to analyse the contours of different provisions of Indian Constitution to know the right perspective of right to health and health care.

PROVISIONS UNDER PART-III OF THE CONSTITUTION OF INDIA

The provisions enshrined under this part are not directly related to Health however with the help of judicial interpretation, the intention of the legislature was there to cover the health as a right of the citizens.

Article 14 articulates Equality before law where the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

Article 15 provides Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth where the state shall ensure access to shops, public restaurants, hotels and palaces of public entertainment; or the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public. Most importantly the state shall make any special provision for women and children for their betterment of life.

Article 21 of the Indian constitution ensures Protection of life and personal liberty of the Individual, Where no person shall be deprived of his life or personal liberty except according to procedure established by law.

Article 23 prohibits Traffic in human beings and beggar and other similar forms of forced labour and any contravention of this provision shall be an offence punishable in accordance with law.

Article 24 again prohibits the children below the age of fourteen years shall not be employed to work in any factory or mine or engaged in any other hazardous employment.

PROVISIONS UNDER PART-IV OF THE CONSTITUTION OF INDIA

Article 38 of Indian Constitution imposes liability on State that states will secure a social order for the promotion of welfare of the people but without public health we cannot achieve it. It means without public health welfare of people is impossible.

Article 39 (e) provides "that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;"

Article 39 (f) provides "that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment."

¹ "A Treatise On Hygiene And Public Health"

² The World Health Report 2000, Health Systems: Improving Performance, World Health Organisation, Geneva, 2000

Article 41 imposed duty on State to public assistance basically for those who are sick and disable. It provides right to assistance in case of sickness and disablement. It deals with "The state shall within the limits of its economic capacity and development, make effective provisions for securing the right to work, to education and to public assistance in case of unemployment, Old age, sickness and disablement and in other cases of undeserved want". Their implications in relation to health are obvious.

Article 42 makes provision to protect the health of infant and mother by maternity benefit. It also gives the power to the State for making provisions for securing just and humane conditions of work and for maternity relief and for the protection of environment.

Article 47 provides that "the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health."

Article 48 A ensures that State shall Endeavour to protect and impose the pollution free environment for good health.

PROVISIONS UNDER PART-IV A OF THE CONSTITUTION OF INDIA

Article 51 A (g) provides "it shall be the duties of every individual to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures."

JUDICIAL INTERPRETATION ON HEALTHCARE AND RIGHT TO HEALTH

The "Right to health" as a basic human right has been recognised by several human rights instruments. In India, though 'Right to health' is not recognised as a fundamental right expressly, the judiciary by its expounded role has recognised the same as a fundamental right under Article 21 of the Indian Constitution as an adjunct to the right to life. By a liberal interpretation of Article 21 of constitution of India, the Supreme Court has taken a strong propeople stand with regard to Right to health. The responsibility to respect, protect and fulfil the 'right to health' lies not only with the medical profession but also with public functionaries such as administrators and judges.³

In *Francis Coralie Mullin v Union Territory of Delhi*⁴, the court held that, right to life guaranteed in Article 21 of the constitution in its true meaning includes the basic right to food, clothing and shelter.

The Supreme Court has in *Bandhua Mukti Morcha etc v. Union of India and Ors.*⁵ case addressed the types of conditions necessary for enjoyment of health and that right to live with human dignity also involves right to "protection of health".

In *Vincent v. Union of India*⁶, held that a healthy body is the very foundation for all human activities. That is why the adage 'Sariramadyam khalu dharma sadhanam.' In a welfare state, therefore, it is the obligation of the state to ensure the creation and the sustaining of conditions congenial to good health.

In the case of *Parmanand Katra vs Union of India*⁷, held that whether the patient be an innocent person or be a criminal liable to punishment under the law, it is the obligation of those who are in charge of the health of the community to preserve life so that innocent may be protected and the guilty may be punished. In *CESC Ltd. v. Subash Chandra Bose*⁸, the Supreme Court relied on international instruments and concluded that right to health is a fundamental right. It went further and observed that health is not merely absence of sickness: "The term health implies more than an absence of sickness. Medical care and health facilities not only protect against sickness but also ensure stable manpower for economic development. Facilities of health and medical care generate devotion and dedication to give the workers' best, physically as well as mentally, in productivity. It enables the worker to enjoy the fruit of his labour, to keep him physically fit and mentally alert for leading a successful economic, social and cultural life. The medical facilities are, therefore, part of social security and like gilt edged security, it would yield immediate return in the increased production or at any rate reduce absenteeism on grounds of sickness, etc.

In *Unnikrishnan, JP vs. State of Andhra Pradesh*⁹, the maintenance and improvement of public health is the duty of the State to fulfil its constitutional obligations cast on it under Article 21 of the Constitution.

In *Consumer Education and Research Centre v. Union of India*¹⁰, the Court explicitly held that the right to health is an integral factor of a meaningful right to life. Further the court held that the right to health and medical care is a fundamental right under Article 21 of the Constitution.

In *Virender Gaur vs. State of Haryana*¹¹, the Supreme Court held that environmental, ecological, air and water pollution, etc., should be regarded as amounting to violation of right to health guaranteed by Article 21 of the Constitution.

The Supreme Court, in *Paschim Banga Khet mazdoor Samity & ors v. State of West Bengal & ors*¹² while widening the scope of art 21 and the government's responsibility to provide medical aid to every person in the country, held that in a welfare state, the primary duty of the government is to secure the welfare of the people. Providing adequate medical facilities for the people is an obligation undertaken by the government in a welfare state. The government discharges this obligation by providing medical care to the persons seeking to avail of those facilities.

In *Mahendra Pratap Singh v. State of Orissa*¹³, a case pertaining to the failure of the government in opening a primary health care centre in a village, the court had held "In a country like ours, it may not be possible to have sophisticated hospitals but definitely villagers within their limitations can aspire to have a Primary Health Centre. The government is required to assist people get treatment and lead a healthy life. Thereby, there is an implication that the enforcing of the right to life is a duty of the state and that this duty covers the providing of right to primary health care.

In *Murli Deora v Union of India and Ors.*¹⁴ the Supreme Court prohibited smoking in public places in the entire country on the grounds that smoking is injurious to health of passive smokers and issued directions to the Union of India, State Governments as well as the Union Territories to take effective steps to ensure prohibiting smoking in all public places such as auditoriums, hospital buildings, health institutions, educational institutions, libraries, courts, public offices and public conveyances, including railways.

For Protection of health of workers and humane conditions of work the Supreme Court in *Occupational Health and Safety Association v. Union of India and others*¹⁵ that when workers are engaged in hazardous and risky jobs then the responsibility and duty on the state is double fold.

CONCLUSION

"Health is Wealth". The loss of health is loss of all happiness. Public Interest Litigations have been filed frequently on health issues involving fundamental right to health, right to food, reproductive rights, rights of workers to occupational health and safety, right to clean environment, right to adequate drugs, medical

³ Address by Justice K.G. Balakrishnan National seminar on the 'Human right to health' Organized by the Madhya Pradesh State Human Rights Commission (At Bhopal) - September 14, 2008

⁴ 1981(1)SCC 608

⁵ AIR 1984 SC 802

⁶ AIR 1987 SC 990

⁷ AIR 1989 SC 2039

⁸ AIR 1992 SC 573,585

⁹ AIR 1993 SC 2178 , (1993) 1 SCC 645.

¹⁰ AIR 1995 SC 636

¹¹ 1995 (2) SCC 577

¹² (1996) 4 SCC 37

¹³ AIR 1997 Ori 37

¹⁴ (2001)8 SCC 765

¹⁵ AIR 2014 SC 1469

negligence, right against medical malpractice, right to emergency health care, HIV/Aids and public health care. It is evident from the analysis that the Constitution of India has expressed its deep concern for health care in India. The Constitution also stipulates certain duties for the citizens towards contributing to the promotion of health in the country. Moreover, the right to health within the human rights framework is defined as the right to achieve the "highest attainable standard of health" not merely the absence of disease. Our Prime Minister of India Honourable Sh. Narendra Modi has recently started for SWACCHA BHARAT MISSION and has urged people to take the 'Swachhta Shapath' to ensure healthy India.

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