



RIGHT TO HEALTH AND HEALTHCARE – CONSTITUTIONAL DIRECTIVES AND JUDICIAL PRONOUNCEMENTS

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ABSTRACT Right to health is recognized by many international human rights treaties. There is also a body of international standards and declarations relating directly or indirectly to the right to health. Right to life is a fundamental right guaranteed by Article 21 of the Indian Constitution. The Directive Principles mentioned in Part IV of the Constitution of India, imposes duty on the State to provide health care to its public. The Supreme Court and the High Courts through its judgements has recognized right to health as fundamental right and had laid down the obligation on the State to provide medical health services.

KEYWORDS :Right to health, Constitution, Directives, Judicial Pronouncements

INTRODUCTION

Human development is an essential ingredient of economic and social development of a country and health forms an important aspect of human development. Being human, our health and health of our family members is a matter of daily concern. Regardless of age, gender, socio-economic or racial background, we consider our health to be our most basic and essential asset. The right to health is fundamental to human rights and is particularly mentioned in numerous core international treaties. The most significant is the ICESCR [International Covenant on Economic, Social and Cultural Rights], which refers to this right as the “enjoyment of the highest attainable standard of physical and mental health”.^[1] World Health Organization [WHO] in its preamble defines health as “a state of complete physical, mental and social well-being and not merely absence of disease or infirmity”.^[2] It further states that “the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition”. Article 25 of the Universal Declaration of Human Rights mentions health as part of the right to an adequate standard of living.

India, being a founder member of the United Nations has ratified various international conventions promising to secure health care right of individuals in society. Indian constitution does not expressly recognize this right as fundamental right though Article 21 of the Constitution of India guarantees a fundamental right to life and personal liberty. The Indian Judiciary through its various judgements have widely interpreted Article 21 recognizing right to health as a fundamental right. Certain provisions exist in the Constitution of India regarding the right to health. The obligation of the State to ensure the creation and the sustaining of conditions congenial to good health is cast by the Constitutional directives contained in Articles 38, 39 (e) (f), 42, 47 and 48 A in part IV of the constitution of India.^[3] This article is an attempt to understand the right to health in the light of provisions of Constitution of India and various judicial pronouncements.

Directive principle of state policy and right to health

Part IV of the Indian Constitutions is related to the Directive Principle of State Policy which is imposed duty on states. It directs the state to take adequate measures to improve the health condition of the people. Article 38 imposes state to secure a social order for the promotion of welfare of the people. As per Article 39 (e), the state has to direct its policy towards securing that 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 and as per Article 39 (f), 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 moral and maternal abandonment. Article 41 imposed duty on state to public assistance basically for those who are sick and disable. According to Article 42, its primary of the state to protect the health of infant and mother by maternity benefit. Article 47 imposes duty on the state to raise the level of nutrition and the standard of living of its people as primary responsibility. Despite of the above directive principles, the right to health is not guaranteed. Right to health must be clearly defined so that the common public can have this right enforced and its violation adequately addressed. The Indian

Judiciary through various judgments on public interest litigations as well as litigations arising out of individual claims made on the state has interpreted the right to health in many ways.

Article 21 of the Indian Constitution and Right to health

Article 21 says that “no person shall be deprived of his life or personal liberty except according to procedure established by law”. The right to live means something more than mere animal existence and includes right to live with dignity and decency. In a historic judgment in **Consumer Education and Resource Centre vs Union of India**,^[4] the supreme court has held that the right to health and medical care is a fundamental right under Article 21 of the constitution as it is essential for making the life of the workman meaningful and purposeful with dignity of person. “Right to life” in Article 21 has wider meaning which includes right to livelihood, better standard of life, hygienic conditions on workplace and leisure. The court held that the State, be it Union or State Government or an industry, public or private is enjoined to take all such action which will promote health, strength and vigour of the workman.

The Supreme Court in **Bandhua Mukti Morcha vs Union of India**,^[5] has held that the right to live with human dignity, enshrined under Article 21, is derived from the directive principles of state policy and therefore includes protection to health. This was the first case where the court held that humane working conditions are essential to the pursuit of right life. It lay down that workers should be provided with medical facilities, clean drinking water and sanitation facilities so that they may live with dignity.^[6]

The issue of adequacy of medical health services provided by government health services is addressed in **Paschim Banga Khet Mazdoor Samiti vs State of Bengal**.^[7] It was a question before the court that whether the non-availability of services in the government health centres amount to violation of Article 21. The court held that Article 21 imposes an obligation on the State to safeguard the right to life of every person. Preservation of human life is thus paramount importance. The government hospitals run by the State and the medical officer employed therein are duty-bound to extend medical assistance for preserving human life. Failure on the part of a government hospital to provide timely medical treatment to a person in need of such treatment results in violation of his right to life guaranteed under Article 21. Further, the Court ordered that Primary health care centres to be equipped to deal with medical emergencies and that the lack of financial resources cannot be a reason for the State to shy away from its constitutional obligation.

In, **State of Punjab and Others vs Mohinder Singh Chawla**,^[8] it has been held that right to health is integral to right to life. Government has constitutional obligation to provide health facilities.

The issues related to providing emergency medical care to a victim of accident in medicolegal case was decided in **Pt. Parmananda Katara vs Union of India**.^[9] It has been held that it is the professional obligation of all doctors, whether private or government, to extend medical aid to the injured immediately to preserve life without waiting for legal formalities to be complied with by the police under Criminal

Procedure Code [CrPC]. No law or state action can intervene to avoid or delay the discharge of the paramount obligation cast upon the members of the medical profession. The obligation being total, absolute and paramount, laws or procedure whether is statutes or otherwise which would interfere with the discharge of this obligation cannot be sustained, and must, therefore give away. This is a very important ruling of the court and if it is followed in true sense many lives of accident victim would be saved as doctors do not give medical aid immediately on the ground that they are not authorized to treat medicolegal cases. The court laid down the following guidelines for doctors, when and injured person approaches them:

1. Duty of a doctor when an injured person approaches him – Whenever, on such occasions, a man of the medical profession is approached by an injured person, and if he finds that whatever assistance he could give is not really sufficient to save the life of the person, but some better assistance is necessary, it is the duty of the man in the medical profession so approached to render all the help which he could, and also see that the person reaches the proper expert as early as possible
2. Legal protection to doctors treating injured persons – A doctor does not contravene the law of the land by proceeding to treat an injured victim on his appearance before him, either by himself or with others. Zonal regulations and classifications cannot operate as fetters in the discharge of the obligation, even if the victim is sent elsewhere under local rules, and regardless of the involvement of police. The 1985 decision of the Standing Committee on Forensic Medicine is the effective guideline."
3. No legal bar on doctors from attending the injured person- There is no legal impediment for a medical professional, when he is called upon or requested to attend to an injured person needing his medical assistance immediately. The effort to save the person should be the top priority, not only of the medical professional, but even of the police or any other citizen who happens to be connected with the matter, or who happens to notice such an incident or a situation.

In the landmark case of M C Mehta vs Union of India, [10] the apex court has held that environment pollution causes several health hazards, and therefore violates right to life. The case dealt with pollution of Ganges from waste discharged by the industries.

CONCLUSION

The Courts has interpreted right to health as a fundamental right under right to life enshrined in Article 21 of the of Indian Constitution. The Supreme Court first interpreted right to health under Part IV of the Constitution [DPSP] and noted that it is the duty of the State to provide and look after the health of its people. Further in wider sense through its judgement, the Supreme Court has held that the health rights are integral part of right to life and hence fundamental right provided under Indian Constitution. The question arises whether we need an amendment to the Constitution stating right to health as fundamental right so that accountability can be cast upon the State for its violations.

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