



ORIGINAL RESEARCH PAPER

Law

HEALTH INSURANCE RIGHT OR PRIVILEGE: CRITICAL ANALYSIS OF INCLUSIVE SCOPE OF ARTICLE- 21 WITH JUDICIAL APPROACH.

KEY WORDS: Health Insurance, Article-21, Directive Principles

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ABSTRACT

Health is the fundamental element of life. In pandemic scenario everyone has actually realized it India is the democratic country with biggest population. It is very difficult for any government to govern the country like India with the diversified culture, religion, language, sect etc. Constitution of our country provides solution to maximum problems of governance. Dynamic nature of society creates need of improvement in land law here Judiciary plays crucial role in interpreting the supreme law by various perspectives this leads to expansion of its scope.

Conclusion- On the basis of detailed analysis researcher found that India is biggest democracy with abundant population, still since formation of our constitution country have tried to accommodate maximum features of welfare country and extended facilities by means of assuring fundamental rights and directive principles.

Objectives- To Study inclusive scope of Art-21 & evaluate position of right to health under constitution To examine health insurance as right or Privilege with government perspective.

Statement of Research-

Health insurance is state's obligation under right to health critically analyze scope of Article-21 from various judicial approaches.

Research Methodology- researcher will follow doctrinal, descriptive and Analytical research method with secondary sources.

INTRODUCTION-

India by adopting international law of human rights as per Universal Declaration of Human rights Incorporated many rights as welfare country for the betterment of citizens. Constitution as being the wholesome document having supreme power have adopted many features from the constitution of various countries, as fundamentals rights we have adopted form U.S.A. and the concept of directive principles we have taken from Ireland. These features make our constitution much richer. In This paper Researcher mainly wants to focus upon right to lie and right to health. The Art-25 of Universal declaration of Human rights directs that is basic right of human beings to avail fundamental living standard of life. This right shall be given to every citizen and to the family as whole. Fundamental standard of living contains right to food, right to shelter, right to clothing, right to health, right to medical assistance etc. there is one saying in hindi that basic essentials of life is "roti, kapda and makaan" but international law in UDHR recognized right to health and right to medical assistance as essential right to enjoy right to life. In our Indian constitution right to life has been given as fundamental right under Article-21. If We look back in the judgment of A.P. Gopalan case in which right to life has been discussed for Detention of Mr. A. K. Gopalan under Preventive Detention Act, here Honorable court has followed concept of due process of law of American court and given narrow interpretation of fundamental right of right to life, and held that if the detention have done following any due process of law than it cannot be violation of right to life under Art-21, this judgment has given in the year, 1950. After this in 1978 the very famous case of Indian judiciary decided the case of (Maneka Gandhi Vs. UOI, 1978) in which her passport was impounded by authority stating the reason about security of country. Here supreme court has given wider interpretation and taken the different stand as in India concept of "procedure established by rule" will get followed now onwards and the rules shall be just, fare and reasonable in nature. This is how judiciary in India started incorporating various perspectives under Article-21 of right to life.

rulers, so the British ruler's hardly used to give basic right to life to the citizens of our country, they have ruled our country for around 150 years during this period our country has witness very difficult time. The people of those days have undergone exploitation by many ways, humiliation, poverty, ill-treatment in our own country, they used to treat us as slaves etc. so many evils we have gone through then after battling for 150 years and many use with great and bold hearts have sacrificed their lives for our country than we have received this freedom. So the foundation people of our country while constitution our constitution they have tried to incorporate all good things from others they have also considered that now as we will be in free country people shall get all their basic rights without any kind of discrimination. So in chapter 4 they have incorporated directive principles of state policy to provide basic guidelines to state. By adopting these principles welfare country like India can always provide better life to citizen's of the country.

While doing research on right to health researcher identified that there are many directive principles which have given focus on this right of life. Art-38 directs to provide secure and social welfare to the citizen in reference to healthcare, state can provide affordable and secure healthcare to citizens to guarantee right to life. Under Art-39 it is specifically given that it is responsibility of state to assure about health and strength of the workers working in particular state. Here not only workers but their families also be given proper health care, children are given health protection to prevent them against social abuse. Further Art-41 Also directs to state that as per the availability of economic capacity state shall provide social security to the needy people like old age people, disabled, sick people or unemployed persons. Here also researcher can correlate the mention of needy people is based on the capacity o their health based on age or sickness accordingly they will be given assistance by state so we can say that this is also supporting right to health under right to life. Again in Art-42 researcher can observe that state has been given responsibility to provide just and good working condition for maternity relief, so women with maternity to maintain her health she shall be given extra relaxation and support at workplace, to support this we are also having separate Act on maternity benefit Act. This confirms that health is having

Directive principles of our country are also incorporated in our constitution by realizing need of developing country. Before the time of independence we were under colonial

paramount important for individual's life. In Art-47 state has been given responsibility of providing nutritious food to the individual further this provision also says that no one shall take any intoxication drug except prescribed by doctor. Here researcher can also analyze that based on these directives; in government school primary school students are given mid-day meal. This government initiative not only to provide them nutritious food but also motivate children for education. Further states are also directed to put restriction on intoxication drugs which also one of the step to motivate individual to live healthy life. We can also see various initiatives of government as Pradhan mantra surakshit matrutv yojana in which as per given in Art42 & 47 pregnant women are issued separate card with help of that cards women can get free checkup every month, get them tested as per required treatment, they can get free vaccination and financial Aid for nutritious food too, every state is empower to design various schemes to provide assistance to their people. This also assures that state is not only giving right but supporting every citizen as in form of privilege. In Art-48(A) state has been given responsibility to maintain healthy environment to foster, wildlife, and to protect environment against pollution. This has been supported by various judgments that right to life provide right to life in pollution free environment than only everyone can live healthy life. This is how researcher can learn that various directive principles not only facilitating citizens but also taking care in sense that they shall get right to life by all better means.

Health insurance sector of today's India has improved from earlier. The very first idea of health survey was given by bhore committee report in 1946³ in which committee suggested integration of preventive and curative health services at all levels of administration level, providing primary health care facility to all individuals and suggested that the education about health care shall be reached to the population at large. Recently Ayushman bharaat yojana is universal insurance plan is launched to provide health care solution to all classes of individual.

National Health Policies-

The first National health Policy of India was launched in 1983, here researcher learn that as per definition of world health organization's definition of health given in 1946 that being healthy is having well being physically, mentally and socially being healthy it is not only being without any diseases. Then WHO in an international conference made one important declaration which became known as Alma-Ata Declaration of 1978, the motto of this declaration was mainly about primary healthcare, this declaration suggested all parties to develop some specific laws or policies to provide primary health care facility to all individuals of the country without any disparity. The very first policy also has included increasing healthcare education among population, providing all citizens treatment at reasonable rate. Also to make and promote universal vaccine plan to cover communicable disease which can irradiate by these steps. Policy in 16th points emphasized on designing health insurance schemes state wise to reach all needy people based on the capacity and fund allocation. In 2002 the second National health policy launched by government to plan effective strategy to meet unreached goals of previous policy, this policy suggested to implement decentralized service system & strengthening of public sector healthcare to make it reachable to maximum people. Then finally in 2017 the latest National health policy launched. His policy contains major points like maintenance of swatch bharaat, clean pollution free environment, focus on nutritious food, exercise etc. this plan suggested to launch universal health insurance plan to provide maximum benefit to all classes of people without discrimination.⁴ By the analysis of policies researcher can observe that the government trying their best as part of formulation of health plan for better tomorrow.

Case Laws-

(Bandhua Mukti Morcha v Union of India, 1997) the case is mainly known as bonded labor case in which court held that child have right to education, right to health and development to ensure better tomorrow for nation.⁵ (State of Punjab vs. Mahendar Singh Chawla, 1996) In the said case court have directed state to give full medical reimbursement to the retired employee, then it has made principle that as per constitutional direction, right to health is inclusive part of right to life so state is liable to pay for medical treatment for employee as well as for retired person.⁶ (State of Punjab & Ors v Ram Lubhaya Bagga, 1998) The case says that as per government policy state is liable to make reimbursement for medical facilities, further Art-47 also direct state to provide adequate medical facility to citizen but Art-41 give this privilege to state to spend and extend the help as per the economic policy and availability of fund in any state, this is how again it confirms that right to health is part of Art-21 and it is state's duty to extend the facility.⁷ (Kumar, 2015) In the paper author said that government shall offer universal healthcare services on tax-based funding, priority based investment can improve position of health care in India.⁸ (Armijos Pineda MAe Ariel Frisancho MHPFF Duniska Tarco MDg Mitra Motlagh LLMh DanaFarcasanuMPHiCristianVI, 2008) the authors done real survey and concluded that right to health is not only good governance or management of country but it is obligation under human right law.⁹ So researcher can conclude that right to health is inclusive right under right to life and state supporting by various directive principles so citizen can enjoy that privilege in form of right.

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