

Right to Health, Constitutional Safeguards and Role of Judiciary

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INTRODUCTION

Health is wealth. “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 and motherhood and childhood are entitled to special care and assistance.”¹ Throughout the world health care has now been a matter of great concern. The United Nations has adopted various resolutions to safeguard the interest of patients. The World Health Organisation has also played a pivotal role in guiding health policy development and ensuring and attaining the highest standards of health care to all the people around the globe.

Right to health is an age-old phenomenon. It may be traced back in the common law principles under the ‘Law of Torts’. Right to health care and protection has also been recognized in India since early times. As a founder member of the United Nations, it has ratified various International Conventions promising to secure health care rights of individuals in society. In this regard a number of committees have been set up by the government at different times to look into

the aspect of public health, and several recommendations have been made by these committees to improve the health care system in India.

So far as the Indian Constitution is concerned, nowhere the term ‘health’ or ‘right to health’ has been defined in it. Through Judicial interpretations it has been observed that ‘right to life’ also includes ‘right to health’ and thus it is a fundamental right. This article is a humble attempt to focus on the constitutional provisions regarding ‘right to health’ and to analyse various judicial decisions relating to health care.

PROVISIONS UNDER PART-III OF THE CONSTITUTION OF INDIA

The Constitution of India not only provides for the health care of the people but also directs the state to take necessary measures to improve the condition of health of the people. Though the provisions enshrined under this part have no direct link with the healthcare, however from various judicial interpretations it has been established that the intention of the legislature were there to cover the health as a right of the citizens.

Article 14 speaks about 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.

Article 15 contains provisions for a particular application of the general principle of 'equality of treatment' embodied in Article 14. It prohibits discrimination against citizens on the grounds only of religion, race, caste, sex, place of birth or any of them. Further no citizen shall also be subjected to any disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels and places of public entertainments; 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. Even nothing in this Article shall prevent the State from making 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 also prohibits the employment of children below the age of fourteen years in any factory or mine or in any other hazardous employment.

PROVISIONS UNDER PART-IV OF THE CONSTITUTION

Apart from the above fundamental rights, the Constitution of India provides for the following directive principles to be followed by the state regarding health care of the citizens.

Article 38 in this regard provides that, "the State shall strive to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice-- — social, economic and political, shall inform all the institution of the national life". Thus this is an imposition of liability on state that the State will secure a social order for the promotion of welfare of the people including public health because without public health welfare of people is practically meaningless.

Article 39 further speaks that "the State shall, in particular, direct its policy towards securing –

- (e) 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;
- (f) 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."

Article 41 deals with right to work, education and public assistance in certain cases and thus imposed duty on the State to public assistance basically for those who are old, sick and disable. This Article specifically says that "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 provides for just and humane conditions of work and maternity relief and gives

the power to the State for making provisions in this regard, which implies that this Article is intended to protect the health of infants and mothers by providing maternity benefit.

Article 47 imposes duty on the State to raise the level of nutrition and the standard of living and to improve public health. It categorically 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 48A ensures that State shall endeavour to protect and impose the pollution free environment for good health.

PROVISIONS UNDER PART - IV-A

Article 51 A (g) under Part IV – A of the Constitution says that “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.”

ROLE OF JUDICIARY

Several human rights instruments, throughout the globe, have recognized ‘right to health’ as a basic human right. In India, though ‘right to health’ is not recognized as a fundamental right expressly, the judiciary by its expounded role has recognized it as a fundamental right under Article 21 of the Constitution as an adjunct to the ‘right to life’. The responsibility to respect, protect and fulfill the ‘right to health’ lies not only with the medical profession but also with public functionaries such as administrators and judges.²

Some of the important pronouncements on this issue are given hereunder.

The Supreme Court, while interpreting Article 21 of the Constitution ruled that the expression ‘life’ does not connote mere animal existence or continued drudgery through life but includes, *inter alia*, the opportunities to eliminate sickness and physical disability. In *Francis Coralie Mullin v. Union Territory of Delhi*,³ it was 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 Apex Court, in *Paschim Banga Khet Mazdoor Samity v. State of West Bengal*,⁴ while widening the scope of Article 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 *Unnikrishnan, J.P. v. State of Andhra Pradesh*,⁵ it was held that the maintenance and improvement of public health is the duty of the State to fulfill its constitutional obligations cast on it under Article 21 of the Constitution.

In *Consumer Education and Research Centre v. Union of India*,⁶ the Supreme Court explicitly held that the right to health and medical care is a fundamental right under Article 21 of the Constitution and this right to health and medical care, to protect health and vigour are some of the integral factors of a meaningful right to life.

In *Bandhua Mukti Morcha v. Union of India*⁷ the Apex Court addressed the types of

conditions necessary for enjoyment of health and said that right to live with human dignity also involves right to 'protection of health'. No State, neither the central government nor any state government, has the right to take any action which will deprive a person the enjoyment of this basic essential.

In *Virender Gaur v. State of Haryana*,⁸ 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.

In *Vincent v. Union of India*,⁹ it was held that a healthy body is the very foundation for all human activities. 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.

The Apex Court, in its landmark judgment in *Pt. Parmanand Katara v. Union of India*,¹⁰ ruled that every doctor whether at a government hospital or otherwise has the professional obligation to extend his service with due expertise for protecting life, whether the patient be an innocent person or be a criminal liable to punishment under the law. No law or state action can intervene to avoid/delay, the discharge of the paramount obligation cast upon members of the medical profession.

In *CESC Ltd. v. Subash Chandra Bose*,¹¹ 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. Health is thus a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity."

In *Mahendra Pratap Singh v. State of Orissa*,¹² 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."

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*,¹³ held that when workers are engaged in hazardous and risky jobs/occupations, the responsibility and duty on the state becomes double fold.

CONCLUSION

From the foregoing discussion, it is evident that right to life also includes right to health and therefore the state and its instruments, are duty bound to provide health care facilities and services to all its citizens without any discrimination. The Constitution also stipulates certain duties for the

citizens towards contributing to the promotion of health in the country. But till date it has not been given due recognition for which public interest litigations have been filed frequently on health issues involving fundamental right to health, rights of workers to occupational health and safety, right to clean environment, right to adequate drugs, medical negligence, right against medical malpractice, right to emergency health care, public health care etc. It is high time, let us be united and do the needful to achieve this goal and to live healthy.

References :

1. See Article 25 of the Universal Declaration of Human Rights, 1948.
2. Address by Justice K.G. Balakrishnan in the National Seminar on the '*Human right to health*' organized by the Madhya Pradesh State Human Rights Commission (At Bhopal) on September 14, 2008.

3. 1981(1) SCC 608.
4. (1996) 4 SCC 37.
5. AIR 1993 SC 2178, (1993) 1 SCC 645.
6. AIR 1995 SC 636: (1995) 3 SCC 42.
7. AIR 1984 SC 802.
8. 1995 (2) SCC 577.
9. AIR 1987 SC 994.
10. AIR 1989 SC 2039.
11. AIR 1992 SC 573,585 : (1992) 1 SCC 461.
12. AIR 1997 Ori 37.
13. AIR 2014 SC 1469.

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