



## RIGHT TO HEALTH

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“HEALTH CARE IS A RIGHT NOT A PRIVILEGE”

### ABSTRACT

The Constitution of India has provisions in relation with the right to health. The accountability of the State to safeguard the formation and the sustaining of conditions agreeable to good health is cast by the Constitutional directives incorporated in articles 38, 39 (e) (f), 42, 47 and 48 A in Part IV of the Constitution of India.

Health is often adjudged as a scientific controlled behavior that requires proficiency, knowledge and skill of medicine confined to the medical professionals and scientists but it circumscribes socio-economic and political determinants as well as defined by the WHO. Right to health has been often confined to right to healthcare that has often restricted to the equitable access and availability of healthcare services. This article aims at highlighting the importance of health as a right. The paper aims at reflecting the Indian Judicial approach in correspondence with the decisions of Honorable Supreme Court as well as respective High Courts in India as well as some of the major provisions which are incorporated in the Directive

Principles of State Policy of the Indian Constitution.

Health is one of the basic preconditions of human being. Nowadays India is facing complications of deterioration of health. The Constitution of India is supreme law to govern the whole Nation. The condition of health is getting worse day by day in spite of various health schemes and policies. The Supreme Court is performing decent function of elucidation of provisions of Constitution. The framers of Indian Constitution have rightly kept various provisions regarding health of public. Further the role of Indian Supreme Court is significant in protecting health of people at large with the help of various decisions. The compelling implementation of Laws enacted based on Constitutional provisions will control the present problem.

### INTRODUCTION

Every State in the present day has its individual Constitution to direct, control and manages its organs correspondence to some primitive rules. The Constitution of India is the law of the land. The constitutional rule governs the correlation between State and its citizens.

The very cause behind Constitutional framework is to accomplish goals set out in its Preamble. The Preamble to the Constitution of India bestows rights on citizens, levy duties on them and issues directives to State to protect the rights of its citizens.



The Constitution of India is the principal law of India. It focuses to establish social, economic and political justice. Among the various rights under Indian Constitution, Right to Health is an essential one. Development of the nation relies upon the healthy population. The fundamental law of the State safeguards individual rights and encourages national wellbeing. It is the duty of the State to furnish a productive mechanism for the welfare of the public at large.

Health is the most important factor in national instigation. Right to health is an indispensable right in absence of which none can exercise one's basic human rights. The Government is under commitment to ensure the health of the people, as there is close connection between Health and the standard of life of a person.

There are miscellaneous allocations under the Constitution of India which are assigned with the Health of the Public at large. The instigators of the Indian Constitution rightly incorporated Directive principles of State Policy (DPSP) with a perspective to preserve the health of the communal at large. Health is the most cherished, esteemed and highly valued indispensable stipulation for contentment.

### HEALTH

If we talk generally, publicly or expansively, the admissible definition of health is that given by the WHO in the preamble of its constitution, according to World Health Organization-“Health is a state of complete physical, mental and

social wellbeing and not merely the absence of disease.” In recent years, this statement has been escalated to incorporate the aptness to escort a ‘societal and economical worthwhile life’.

Right to health is not embraced forthwith in as a fundamental right in the Indian Constitution. The Constitution generators enforce this duty on state to fortify social and economic justice. Part four of Indian constitution which is DPSP promulgates duty on States. If we see those provisions then we can find that some provisions of them are in some or the other manner related with public health. The Constitution of India not impart for the right to health as a fundamental right. The Constitution control and administer the state to take appraise to improve the condition of health care of the people. Thus the preamble to the Constitution of India, attempts to assure for all its citizens justice-social and economic. It illustrates a configuration for the accomplishment of the aspirations laid down in the preamble. The preamble has been splendid and extravagant in the Directive Principles of State policy.

### JUDICIAL RESPONSE TOWARDS RIGHT TO HEALTH AND MEDICAL ASSISTANCE-

The Indian judiciary impersonated a vigorous role by riveting and intriguing public interest litigation which gives an opportunity to the judiciary to scrutinize the socio economic and environmental conditions of the suppressed, poor, subdued and unprivileged people through



PIL under Article 32 of the Constitution, the Supreme court has coordinated the government to effectuate the fundamental right to life and liberty and executed protection measures in the public interest. While broadening the purview of Article 21 of the Constitution in *Paschim Bangal Khet Mazdoor Samity & Others V State of West Bengal & Others*<sup>1</sup> held that in a welfare state, foremost duty of the government is to secure the prosperity and well-being of the people and more over it is the responsibility of the government to provide assurance for the adequate medical convenience for its people. The government liberates this accountability by providing medical assistance to the persons seeking to avail those facilities.

Article 21 institute an accountability on the state to protect the right to life of every people's maintenance of human life is thus of predominantly significant. The government hospitals run by the state are duty bound to broaden medical assistance for preventing and securing human life. The court made certain supplementary regulations in respect of serious medical cases-

- Adequate facilities are given at the public health centers where the patient can be given basic treatment, aid and his condition to get stable.
- Hospitals at the district level should be upgraded so that serious cases are treated there.

- Facilities for specialist treatment should be widened and correspondence to the growing needs, it must be made available at the district level hospitals.
- To ensure availability of bed in any emergency at the state level hospitals, there should be a effective centralized communication system so that the patient can be sent instantly to the hospital where bed can be made available in respect of the treatment, which is required.
- Proper arrangement of ambulance should be made for transport of patient from the public health center to the state hospitals
- Ambulance should be adequately provided with necessary equipment and medical aid as well as assistance.

#### DIRECTIVE PRINCIPLE OF STATE POLICY AND HEALTH

Article 38 of Indian Constitution inflicts responsibility on State that states will procure a social order for the advancement of prosperity, profit and success of the people but without public health we cannot consummate it. It means without public health, well-being of people is paradoxical.

Article 39(e) is in correspondence with workers to inoculate their health.

<sup>1</sup> (1996) AIR SC 2426/ (1996) 4 SCC 37



Article 41 imposed duty on State to public reinforcement essentially for those who are sick and incapacitates.

Article 42 makes contingency to preserve the health of infant and mother by maternity comfort.

In India the Directive Principle of State Policy under the Article 47 evaluates it the fundamental duty of the state to ameliorate public health, strengthen of justice, human condition of works, and extension of sickness, old age, disablement, incapacitates and maternity comforts.

Further, State's duty includes forbidding of dissipation of vinous drinking and drugs are injurious to health. Article 48A ensures that State shall endeavor to preserve and provide the pollution free environment for good health.

Article 47 makes enhancement of public health which is a principle duty of State. Hence, it becomes very necessary for the court that court should enforce this duty against a defaulting authority on pain of penalty endorse by law, nevertheless of the financial resources of such dominance. The State shall contemplate the raising of the level of nutrition and standard of living of its people and improvement of public health as among its fundamental duties.

The State under Article 47 has to protect poverty stricken people who are consumer of inadequate and imperfect food from injurious effects.

Public Interest Petition for maintenance of authorized standards for drugs in

general and for the banning of import, composing, sale and distribution of destructive drugs is maintainable. A healthy body is the very substructure of all human activities. In a welfare State, it is the authoritative responsibility of the State to take proper care for the creation and sustaining of conditions for prosper and good health.

Some other provisions correspondence to health falls in DPSP. The State shall in particular, administer its policy towards securing health of workers. State organized village panchayat and gave such powers and authoritative rules for to function as units of self-government. This Directive Principle has now been translated into action by the 73<sup>rd</sup> Amendment Act 1992 whereby part IX of the constitution titled "The Panchayats" was incorporated. The Panchayat system has significant indications for the health sector.

Article 41 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 prerequisites for ensuring 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 the power to State for implementing provisions for ensuring just and humane conditions to work and for maternity relief and for the conservation of environment same as given by Article 48A and same





responsibilities govern to Indian citizen by Article 51A.(g).

### CONCLUSION

Health is a most important measure of human development, and human development is the basic part of economic and social development. Indian Constitution does not expressly recognize the fundamental right to health. However, Article 21 of the Constitution of India guarantees a fundamental right to life & personal liberty.

The expression 'life in this article means a life with human dignity, prosperity & not mere survival or animal existence. It has a much wider meaning which includes right to livelihood, better quality of life, hygienic condition in workplace & leisure. The right to health is essential to a life with dignity, and Article 21 should be take in accordance with the Articles 38, 42, 43, &47 to understand the nature of the responsibility of the state in order to safeguard the effective realization of this right.

The term Right to health is nowhere mentioned in the constitution yet the Supreme Court has explicated it as a fundamental right under Right to life placed in Article 21. It is a significant view of the Supreme Court that first it interpreted Right to Health under part IV i.e. Directive Principles of state policy & noted that it is the duty of the state to look after health of the people at large. The court has played momentous role in implementing positive responsibilities as authorities to maintain & develop public Health.

Till today no compelling actions have been taken to discharge the constitutional responsibility upon the state in preservation of the health and firmness of people. It has rightly been said that nutrition, health & education are the three inputs accepted as significant for the development of human resources.

For accomplishing the Constitutional accountability and also aims and objectives of Health care for all there is a requirement on the part of the government to actuate nongovernmental organization and the general communal towards their cooperation for monitoring and implementation of health care facilities.

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