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Chapter - 6
**Judicial Interpretation to Incorporate Right to
Health as Fundamental Right under Constitution
of India**

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Chapter - 6

Judicial Interpretation to Incorporate Right to Health as Fundamental Right under Constitution of India

Dr. Vijay Madhu Gawas

Abstract

According to the views that social justice everyone deserves to access the justice rights to health care. The Indian Constitution is a supreme law Land. There are four main pillars of the Indian Republican Constitution i.e. democracy, social justice, federalism, and secularism. Through Amendment the Indian Constitution has rightly inserted the provisions of the right to health. The Supreme Court play very important role to protecting health of citizens of India, with the help of various decision through interpretation of provisions of Indian Constitution. The enactment of various acts related to health right by central as well as state to control the problems of health issue. In this current study has undertaken a number of research publications, Supreme Court cases. The effort has been made to examine the constitutional safeguards for the right to health and to assess the judiciary's innovative reaction in elevating the position of having the right to health as a fundamental right.

Numerous books, newspapers, periodicals, journals, articles, conferences, and websites are accessible as sources of literature used for study. The literature relating to the right to health, including legislative, constitutional, and governmental programmes and policies have been used.

Keywords: Fundamental rights, fundamental duties, directive principle, judicial

Introduction

The health is the most fundamental and important quality in people. The right to health is fundamental understanding the value of human life is one of one's rights. The greatest satisfaction of human life in the physical realm is the right to health as well as psychological well-being. A state of full mental, social, and physical wellness as opposed to just the absence of disease or infirmity was how the worldwide World Health Organisation described health in 1946 in its preamble. The preface goes on to say that everyone has the basic

right to the best possible quality of health, regardless of their ethnicity, religion, political affiliation, economic status, or social standing condition.

Similarly, an adequate quality of life is a right that includes health, according to the 1948 Universal Declaration of Human Rights. The following its adoption, the International Convention of Social, Economic and Cultural Rights for 1966 with other a number of international human rights accords reiterated the basic human right to health care. A minimum of a single international human rights treaty that affirms the entitlement to health has been approved by every state. Furthermore, states have made a commitment to upholding having the right to health through both domestic and global laws.

Constitutional law and right to health

The Indian Constitution's preamble outlines the country's general course in terms of social, economic, and political justice as well as equality of opportunity to all. It also aims to establish a welfare state the socialistic social patterns in accordance with Article 21 in the Constitution, which protects one's right to life and individual freedom. Democratic socialism seeks to enhance the state of health care for the populace. The socialist doctrines are also reflected in a number of the Constitution's articles III and IV. The rights and dignity of every person are upheld according to socialist egalitarian ideals.

The state is required by Article 21 to protect each and every Indian citizen's right to life. The preservation of life for humans is of the utmost significance because state-run government hospitals have a responsibility to provide medical care that helps preserve life. Still, the public hospital inability to provide prompt medical care assistance for preserving life person, leads to a breach in his right to life as specified in Article 21.

"No person will be deprived of his life nor personal liberty except under a procedure established by law" is the subject of Article 21 [1]. A person's right to life encompasses more than just the existence of animals; it also refers to one's right to live in a way that upholds human decency and dignity. The Supreme Court has ruled in many decisions that the right to health and medical treatment is an essential right protected by Article 21. Given that workers' personal dignity and a meaningful, purposeful existence depend on their health [2].

¹ Mahendra p. Singh, (2008), V.N. Shukla's Constitution of India, Eastern Book Company, Lucknow, at p. 191.

² Consumer Education and Research Center union of India (1995)3SCC 604

However, the Health is indirectly connected to Article 23. Article 23(1) forbids the trafficking of persons [3]. It is well recognised that prostitution, which is a key contributing factor to the spread of AIDS, is a direct result of women trafficking. Article 24 pertains to child labour and states that children under the age of 14 are not allowed to work in factories, mines, or other dangerous jobs [4]. As a result, this essay focuses on the importance of child health.

It is evident from the explanation above that the majority of the constitution's health-related clauses are found in the DPSP. They are not justified, and nobody can make a claim that these instructions weren't followed. Nonetheless, the judiciary has broadened the definition of the right to health by Article 21 (the right to life), making it clear that the right to health is an implicit basic right. Article 21 and other Part-III provisions have been connected to the right to health. Article 23(1), for instance, forbids the trafficking of persons. This item has been connected to Right to Health because prostitution, which is a key component in the spread of AIDS, is a direct result of women trafficking. In a similar vein, Article 24 states that no kid under the age for 14 may work in a mine, factory, or other dangerous workplace. It has a direct bearing on children's health.

Furthermore, in the case *paschim Bang Khet Mazdoor Samiti v. State of W.B* (1996) 4SCC37, the Supreme Court issued the following guidelines on the critical medical cases availability of sufficient medical facilities in public health centres. Every Sub divisional level hospitals should be upgraded so they can handle more complex cases. A centralised communication system should be in place to guarantee bed availability in the event of an emergency in State level hospitals. This would allow patients to be promptly transferred to the hospital with the necessary bed for their treatment. Ambulances arranged correctly and sufficiently supplied with the required staff and equipment.

Directive principles of the state policy and right to health

Both the Directive Principles and the Fundamental Rights have been used as political instruments, as shown by the governance experience in India. Even while the fundamental rights were legally enforceable and have been upheld by people and courts on many occasions, there have also been many cases in which the courts have failed because the governing government has oppressed them or because the court rulings have been disregarded.

³ Ibid 2 at 233

⁴ Ibid 4 at 237

Making such advancements in healthcare is even more important as, often, one's health is a matter of life or death. As previously said, a tiny portion the working population has the legal entitlement to healthcare via social security or social insurance. It implies that the general public may also have access to this kind of security. In fact that only a small number of individuals benefit from this privilege is also evidence of discrimination and injustice, which is against both the Fundamental Rights chapter of Article 14 in the Constitution and the non-discrimination norm of international law.

Article 38: The State shall to strive to promote the welfare of the people by securing and promoting as effectively as it may a social order in which justice, social, economic, and political shall inform all the institutions of the national life, the state will work to advance the wellbeing of its citizens^[5]. Clause 2 stipulated that state shall, in particular, strive to minimize inequalities in income and endeavour to eliminating status, facilities and opportunity, not only amongst individual but also amongst group of people residing in different areas or engaged in different vocations^[6]. As per Article 39, which is meant to bring about meaningful socio-economic changes, the state shall direct its policy towards securing: clause (e) the protection of the strength and health of workers and avoiding circumstance which force citizen to enter a vocations unsuited to their age or strength^[7].

For cases in which demands for access to healthcare have been made using, for example, one's right to life, the 21 article for the Constitution, or several Directive Principles. In the case Directive Principles, the Articles 41, 42, and 47 address old age, Sickness, disablement, maternity benefits, social security, and improvement of public health. The Indian Constitution contains clauses guaranteeing the right to healthcare to its citizens. However, the Articles 41, 42 and 47 of the Directive Principles enshrined in Part IV of the Constitution provides the basis to evolve right to health and healthcare. It declared in Article 41 for the Indian Constitution as the right to employment, education, and public aid in the event of disability, old age, illness, or unemployment, among other situations. Article 41: Right to work, education, and public assistance in specific situations: The State shall, to the extent of its economic development and capability, provide effective measures for guaranteeing the right to work, education, and public assistance in situations involving unemployment, old age, illness, or disability, as well as in other

⁵ Bidyut Chakrabarty, (2017), Indian Constituion, Text, Context and Interpretation, published by sage, India at Pp.52

⁶ Ibid

⁷ Ibid

unjustifiable cases of want^[8]. Article 42: directs to state to make Provision for Maternity Relief and Just and Humane Work Conditions^[9].

Regarding the Directive ideals, the ideals that are addressed via governance are mostly determined by political expediency. According Article 46 is the most effective means of achieving objective of directive principle of the state policy, example, that article 46 deals with the responsibility of the state to promote, with special care, the education and economic interest of the weaker section of the people, especially Scheduled caste, and Scheduled Tribes^[10].

Article 47: The State's obligation to enhance public health by improving living standards, nutrition, and both. The State's primary responsibilities raising of the level of nutrition and the standard of living of its peoples and the include improving public health as mong the primary duties and in particularly, the State shall endeavour to bring about prohibition of the consumption except for medicinal purpose of intoxicating drinks and of drugs which are injurious to health^[11]. Therefore, the foundation for the development of India's right to health and healthcare is social security, social insurance, public health, and a decent standard of living, along with policy statements over time that, in a sense, constitute the interpretation for these constitutional provisions and are backed by international legal commitments.

The concept is the only legal or constitutional tenet that is absent of justifiability. One of the State's fundamental responsibilities is to protection and improvement the environment (Article 48 A)^[12]. Therefore, the preamble to the Indian Constitution has given prime importance to the concept of justice in all its manifestation. In view of these significance provision in the constitution that the preamble of the constitution was called the very soul of the constitution ad and the directive principles were characterised as the conscience of the constitution and also to a charter of social revolution^[13].

Panchayat, municipality and health

Additional than the DPSP, a few additional health-related laws are covered under the 11th and 12th Schedules of the Indian Constitution. In

⁸ Dr. J.N. Pandey, (44th Edition 2007), Constitution of India published by central Law Agency, Allahabad-2, P.390

⁹ Ibid

¹⁰ Ibid

¹¹ P.M. Bakshi, (2010), The constitution of India, published by Universal Law Publishing Co. Pvt. Ltd, New Delhi, P.90

¹² Ibid

¹³ Dr. B.R. Sharma, (1984), Socio-Economic Justice under Indian Constitution, published by Deep & Deep Publications, New Delhi, P. 205.

respectively, the responsibility of Municipalities and Panchayats to include social welfare, women's and children's development, family welfare, health and sanitation, and drinking water.

Today the real question before the nation is the implementation of the mandate of Article 243-G and 243-W of the constitution inter alia to provide the promote and protect the interest of public welfare. In addition to the State endow powers, authority, and responsibilities of Panchayats for safeguarding and enhancing public health under Article 40. The objective laid down in the Article 40 have now fulfilled by enacting the constitutional 73rd Amendment Act 1992 known as Panchayati Raj. These Amendment provide constitutional sanction to democracy at the gross root Level.

As per Article 243G, the state may endow the panchayats with necessary power and authority in relation to matters listed in the eleventh Schedule of the Indian Constitution ^[14]. According to Article 243-W of the Constitution, the State legislature may provide municipalities the legal authority and powers required to allow them to operate to be institutions of local self-government ^[15].

Fundamental duties and health

Indian Constitution part IV deal with article 51-A's core responsibilities for citizens It is the responsibility of each and every Indian citizen. On the other hand, Article 51(g) requires people to protect and improve the natural environment including forests, lakes, rivers and wildlife, and have compassion for all living creature ^[16]. Given how closely the environment and public health are intertwined, it demonstrates that every person has a basic obligation to maintain and enhance the environment Health.

Judicial pronouncements on right to health

The International Covenants on Political and Civil Rights and Economic, Social, and Cultural Rights have both been ratified by India. The Court determined that, with regard to human rights, Article 21 for the Indian Constitution must be construed in accordance with international law ^[17]. Additionally, the International Covenant for Economic, Social, and Cultural Rights according to Article 7 (b) and the Universal Declaration for Human Rights under its Article 25 (2) were mentioned by the Supreme Court in supporting a worker's right to health ^[18].

¹⁴ Ibid 14 at 207

¹⁵ Ibid 14 at 213

¹⁶ G.S Pande, (2007), constitutional Law of India (As Amended up to Ninety-Third Amendment) vol-I, Published by University Book House (p) Ltd, Jaipur, at P. 299

¹⁷ People's Union for Civil Liberties v. Union of India (1997) 1 SCC 301.

¹⁸ ESC Ltd v. Subhash Chandra Bose (1992) 1SCCC441.

The Constitution includes clauses that protect everyone's right to the best possible level of mental and bodily well-being. Every individual is entitled to the protection of their life as well as their freedom under Article 21 for the Constitution. According to the Supreme Court, the preservation of one's health is a part of the right to live in human dignity, which is guaranteed by Article 21 and stems from the directive tenets of state policy ^[19]. Additionally, it has been decided that the government is required under the constitution to offer health facilities since an individual's health is inextricably connected to the right to life ^[20]. Patient's entitlement to life Violation by inability for a government-run hospital to care for a patient in a timely manner. In a similar vein, the Court has maintained the state's duty to continue providing health services ^[21].

Petitioners in the public interest have been brought under Article 21 for reaction to infringements on one's right to health. A request has been made to provide youngsters incarcerated preferential treatment. The Supreme Court ruled in the cases of Kirloskar Brothers Ltd. v. Employees State Insurance Corp ^[22] and Consumer Educational and Research Centre v. Union of India ^[23] that the right to health and medical treatment is a basic rights under Article 21 combined with Article 39(e), 41, and 43. The Supreme Court also ruled that the right to air and water free from pollution is an enforceable basic right protected by Article 21 ^[24]. In a same vein, the Supreme Court held that Shantistar Builders v. Narayan Khimalal Totame ^[25] that the right to a pleasant environment is protected by Article 21 rights.

On relying article 21 the certain directions regarding hazardous chemicals were given by the Supreme Court on various judgment, there are dicta that life, public health and ecology have priority over unemployment and loss of revenue. Any disturbance of the basics environment elements, namely air, water, ad soil, which are necessary for life would be hazardous to life within meaning of the article 21 of the constitution ^[26].

Furthermore, the Supreme Court mandated that the State take action to ensure that each person has a better quality of life and dignity as well as to

¹⁹ Bandu Mukti Morcha v. Union of India, AIR 1984 SC802

²⁰ State of Punjab v. Mohinder Singh Chawla (1997) 2SCC83

²¹ State of Punjab v. Ram Lubhaya Bagga (1988) 4SCC117

²² AIR 1996 SC 3261

²³ AIR 1995, 3 SCC 42.

²⁴ Subhash Kumar v. state of Bihar. AIR 1991 SC420

²⁵ AIR 1990 SC 630

²⁶ M.C. Mehta V. Kamal Nath, AIR 2000 SC 1997

remove air and water pollution in the cases of *M.C. Mehta v. Union of India*²⁷, the *Rural Litigation and Entitlement Kendra v. State of U.P.*²⁸, and *Subhash Kumar v. State of Bihar*²⁹. It is also pertinent to note that, in accordance with the rulings rendered by the Supreme Court in the cases of *Vincent Panikurlangara v. Union of India*³⁰ and *Unnikrishnan, JP v. State of A.P.*³¹, the State is required to uphold and enhance public health in order to fulfil the constitutional duties imposed upon it by Article 21 for the Constitution.

Suggestion and Conclusion

In conclusion, the judiciary has attempted to establish the interdependence of rights as expressed in Article 21 of the Indian Constitution's idea of the "protection of life and liberty". The court of India recognition of the "right to health" as stated in Article 21 of the Indian Constitution. Additionally, the different laws in relation to the 'right to health, and effort has been made both by the government and judiciary to provide medical facilities to all, both urban and rural people so to create a justiciable "right to well-being". To safeguard the right to wellness and make it more meaningful some concrete steps are necessary.

In this connection the following suggestions are made:

- 1) The State shall take steps to implement Part III in the Constitution guarantees the right to health declaring it as a fundamental right of the citizens by suitable amendment.
- 2) Every states or National Level organize health care awareness campaigns and various other programmes not only to educate general society but also to bring about awareness among all medical practitioners with regard to the implementation the defending the health right.
- 3) To make up the local health committees headed by expert medical practitioners and social activists in every village.
- 4) To make adequate measures to implement the Court decisions to set-up more government hospitals and health care centres with necessary lifesaving equipment and qualified medical personnel having social commitments to provide emergency medical assistance to various accident victims without waiting for the legal compliances.

²⁷ AIR 1987 SC 1086

²⁸ AIR 1987 SC 359

²⁹ See, supra Note at 23

³⁰ AIR 1987 SC 990

³¹ AIR 1993 SC 2178

- 5) It ensures better, safe and healthy working conditions in all work places including mines and other places involving hazardous works, by protecting the dignity of all workmen.
- 6) To defend women's reproductive rights by reckoning her consent paramount in terminating or preserving her pregnancy.
- 7) To take all reasonable steps to eradicate all forms of environment pollution by Pollution Control Board of state.
- 8) To strive to obey all judicial directions in its letter and spirit and implement all Court directions within the given time frame.
- 9) To implement all health-related existing legislations in its letter and spirit and strive to enact a comprehensive common health legislation for all citizens of the country in the best interest of the children, adults, old aged persons, sick and disabled, by giving special attention to the health of women in general.
- 10) To strive to honestly implement the various social security schemes meant for uplifting and strengthening the health of all by educating the public to avail the benefits thereof.

The Supreme Court has defined the right to health as a basic right under the Article 21 right to life, despite the word being unmentioned in the constitution. The Supreme Court's first interpretation of the Right to Health within Part IV is a noteworthy perspective. i.e. Directive: As of right now, no meaningful action has been done to carry out the state's constitutional duty to protect the health and well-being of its citizens. It has been claimed correctly that the three inputs acknowledged as important for the advancement of human resources are education, health and nutrition. The government must encourage nongovernmental organizations & the general public to participate in the oversight and execution for health care facilities in order to fulfil its constitutional commitment and achieve the goals of health treatment for all.

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