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THE CONSTITUTION OF INDIA ON RIGHT TO HEALTH

## RIGHT TO HEALTH IN THE CONSTITUTION AND ROLE OF JUDICIARY

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### ABSTRACT:

*"He who has health, has Hope and he who has, Hope everything"*

--Thomas Carlyle

It is very often said that "Health is wealth". Health is obviously one of the basic requirements of human beings. However it is also true that accessible and affordable health care is an allusion in India. Health is a subject matter that is very essential and basic for all of us but is very conveniently ignored one of the major rezones for ignoring. It can be kind of life style which we are leading in today's fast changing world. Although there have been major improvement in public health. Since 1950's India is passing through demographic and environment transition which is adding to the burden of

diseases. The condition of health is worsening day by day in spite of various health schemes and policies. It has been almost 70 years since independence but the position is still very pathetic.

**KEYWORDS:** Health is wealth, major rezones, demographic and environment transition.

### 1. INTRODUCTION

Right to health is an issue of fundamental importance in the society. The responsibility to protect, respect and fulfill the right to health lies not only with the medical profession also with the public functionaries such as administrators and judges. The field of professional ethics in the medical profession has accordingly dealt with doctor patient relationship and the expansion of facilities for curative treatment. There is an obvious intersection between health care at the individual as well as societal level and the provision of nutrition, clothing and shelter. Also the term health has an inter-relationship

with aspect such as the provision of a clean living environment, protection against hazardous working conditions, education about diseases prevention and social security measures in respect of disability, unemployment, sickness and injury. The right to health care is primarily a claim to an entitlement a positive right, not a protective.

The emphasis thus needs to shift from 'respect' and 'protect' to focus on fulfill. For the right to be effective optimal resources that are needed to fulfill the care obligations have to be made available and utilized effectively.

### 2. CONSTITUTIONAL PROVISIONS RELATING TO HEALTH:-

The main source of law in our country is the constitution,

which itself provides for health care of the people. The preamble to our constitution, serves the following two purposes:-

- (A) It indicates the source from which the constitution derives its authority.
- (B) It also state the objects, which the constitution seeks to established and promote .

Hence it does not grant any power but it gives a direction and purpose to the constitution. It outlines the objectives of the whole constitution. The constitution interpreted in the light of preamble and in the majority of decisions of supreme court of India has held the objectives was justice, liberty, equality and fraternity stated in the preamble constitute the basic structure of The constitution. The preamble directs the state to initiate measures to establish

injustice, equality, dignity etc. which have a direct bearing on people's health.

When right to health care is seen within the constitutional framework it is clear that the constitution of India does not provide the right to health in anyway. Right to health has been evident in India through the various case laws decided by the judiciary from time to time. Human rights in the Indian constitution are divided into two separate part. Part III of the constitution the "**Fundamental Rights**" which include the right to life, the right to equality, and right to freedom which in conventional human rights language may be termed as civil and political rights. Part IV of the constitution contains the directive principles of state policy which includes all the social, economic and cultural rights such as the right to education, the right to livelihood etc .

Initially the supreme court of India enforced right to health among the people through various public interest litigations which came before the Indian judiciary. Article 21 of the Indian constitution deals with protection of life and personal liberty. It lays down that no person shall be deprived of his life or personal liberty except according to established by law. Right to life mans the right to lead meaningful, complete and dignified life. It does not have restricted meaning. It is something more than surviving or Animal existence. It has a much wider meaning which includes right to live with human dignity.

This article to live with human dignity enshrined in article 21 derives its life breath from the directive principle of state policy and particularly classes (e) and (f) of article 39 and article 41 and 42 and at the least before, therefore, it must include protection of the health and, opportunities and facilities for children to develop in a healthy manner just and human condition of work etc. These are the minimum requirement which must exist in order to enable a person to live with human dignity and no state neither the central government nor any state government has right to take any action which will deprived a person of the enjoyment of these basic essentials.

According to article 47 of Indian constitution the shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health and among its primary duties and the state shall prohibit the consumption of intoxicating drinks and drugs which are injurious to health except for medical purposes. The right to health has been articulated and recognized as an integral part of the right to life only from the mid -nineties by the Indian supreme court. The recognition of the right to health has emerged out of a gamut of different petitions and public interest litigations in the supreme court.

### **3. PUBLIC INTEREST LITIGATION:-**

#### **1. Naz foundation V/S Government of NCT of Delhi and others WP (C) no. 7455/2001,2009**

The writ petition was filed by Naz foundation, a Non Governmental Organization as a PIL to challenge the constitutional validity of sec. 377 of Indian penal code which criminally penalizes what is describes as "unnatural offences" to the extent that it violates article 21 of the Indian constitution. It was submitted that sec 377 acts as a serious impediment to successful public health interventions. According to NACO those in the high risk groups are mostly reluctant to reveal same sex behavior due to fear of law enforcement agencies keeping a large section available and unreachable and there by pushing the case of infection underground making it very difficult for the public health workers to even accors them. The situation is aggravated by strong tendencies created within the community who deny MSM (men who have sex with men) behavior it self. Since many MSM are married to have sex with women, their female sexual partners vary consequently also at risk for HIV infection. The court declared that on 2 July 2009 that sec 377 IPC criminalizes consensual sexual acts of adult in private, so far as it is violative of article 21 of the constitution of India.

#### **2. Murli S Deora V/S Union of India AIR 2001**

In this case supreme court prohibited in public places in the entire country on the ground that smoking is injurious to health of passive smokers and issued directions to the union of India, State Government as well as union territories to take effective steps to ensure prohibiting smoking in all public places.

### 3. Mahendra Pratap Singh V/S Orrisa State AIR 1997

The judgement stated that the gram panchayat was agreeable to offer of the gram panchayat building for running of the health centre. If the building was still available, the same could be utilized for the purpose of running of the public health centre, till the new building was completed. Necessary arrangement would be made within in a period of three months from that day. This is perhaps a the only judgment commending the right to health for a general population.

### 4. Consumer Education and Research Centre V/S Union of India air 1995

The supreme court for the first time explicitly held that the right to health is as integral fact of a meaningful right to life. This case was concerning the occupational health hazards faced by workers in the asbestos industry. Supreme court held that the right to health and medical care is a fundamental right and it makes the life of the workman meaningful and purposeful with the dignity of person.

### 5. CBSE Ltd V/S Subhashchandra Bose AIR 1992

The supreme court relied on international instruments and concluded That right to health is a fundamental right.

### 6. Francis Coralie V/S Delhi Administration AIR1981

It was held that the right to life includes the right to live with dignity and all that goes along with it, the right to health and access to medical treatment has been brought within the fold of article -21. The state is now mandated to provide to all the people all rights essential for the enjoyment of the right to life in its various perspectives. The reason is quite obvious that without being health a person cannot enjoy other rights.

### 8. Bandhua Mukti Morcha V/S Union of India AIR 1984

The court addressed the types of conditions necessary for enjoyment of health. The court held be that right live human dignity also involves right to "protection of health".

### 9. Parmanand Katara V/S Union of India 1989

The court held that every medical practitioner is professionally obligated to treat emergency cases with expertise and cannot refuse to offer to treatment to such cases.

In all the above judgments, we see the supreme court carving out a right to health from the various judicial pronouncements which came before the court and thus incorporated the right within article 21 of the Indian constitution, the scope of the right has also been very broad encompassing several different aspects of health care and services.

### 4. WOMEN'S RIGHT TO HEALTH:-

Any form of discrimination, be it gender or practice of untouchability, has serve implication for health, preventing or limiting access to basic needs and opportunities that impact health and access to health care . while the provisions of health services is essential to ensure good health, pregnancy, childbirth and the post partum period are one of the riskiest stages of a woman's life . every year over 1,30000 Indian women lose their lives in pregnancy and child birth. The right to life can be extended to include the health rights of mothers to go safely through pregnancy and childbirth. However, this right has not been explicitly guaranteed, through the Indian constitution does make reference to maternity related benefits for the women.

### Ramakant Rai and Health Watch up and Bihar V/S Union Of India 2003

The court directed to central government to established uniform standards on various issues including norms for compensation Formatting of statistics, uniform checklists consent forms, and an insurance policy with in four weeks. In the interim the court instructed all states to follow the compensation norms of the state of Andhra Pradesh. In response to the PIL the central government has

issued a national family planning insurance scheme to award monetary compensation to women and their families in cases of complications pregnancy or death after sterilization procedures in either government or accredited private health facilities.

### 5. DRUGS AND PUBLIC HEALTH:-

The constitutionality of drugs and magic remedies act 1954 was challenged before the supreme court on the ground that it violates the freedom to speech and expression under article 19 (1) (a).

#### Hamdard Dawakhana V/S Union of India AIR 1960

The supreme court upheld the constitutionality of drugs and magic remedies act 1954 and to begin with held that through it was true that advertisements were protected under article 19(1) (a) concerning freedom of expression commercial advertisements prohibited by section 3 of the act relate to commerce or trade and not to propagation of ideas and advertising of prohibited drugs and commodities of which the sole in not in public interest, cannot be speech within the meaning of freedom of speech and would not fall within article 19(1) (a). As the main purpose and true intent and aim object and scope treatment and for the purpose advertisements commending certain drugs and medicines have been prohibited, it cannot be said that this is an abridgement of the petitioner's right to free speech.

#### Vincent Panikulangara V/S Union of India AIR 1995

Filled the petition in the supreme court asking direction for banning import, manufacture, sale and distribution of such, drugs as had been recommended for banning for direction by drugs consultative committee set up the government and also asked for the cancellation of licenses granted in respect of these drugs.

#### S.R. Pvt. Ltd. V/S Prem Gupta Drug Controller (India) New Delhi AIR 1993

The supreme held that the central government in consultation with the ayurvedic, siddha and unani drugs technical advisory board, an expert body constituted under section 33 D of drugs and cosmetics act 1940 had arrived a conclusion that tobacco contained carcinogenic elements and therefore it used should be banned in toothpaste. A similar view was AIIMS, New Delhi. It is justified in public interest and falls under article 19(6) of the Indian constitution being a reasonable restriction on the right to carry on trade or business.

### 6. HIV AND RIGHT TO HEALTH:-

This is social right to health which has been very well articulated to persons suffering with HIV/AIDS, due to large level of discrimination faced by them. The denial of services care and support represent one of the most immediate and pressing concerns of people living with AIDS. The courts have protected people with HIV/AIDS against discrimination in employment and services, but the issue of the right to health of persons with HIV is a new and emerging area of adjudication. A recent full bench decision of the Andhra Pradesh High Court View AIDS as a public health issue and one that needs to be articulated in terms of the constitutional guarantee to the right to life making employers and health providers accountable for any negligence. Omission or failure to conform to procedure.

#### Lucy D'Souza V/S State of Goa AIR 1990

In this case the wide powers were given to the government to take away the liberty of the individual on grounds that a person was suffering from AIDS. Apart from the vacation of the rights guaranteed under the constitution of India the petition raised four basic issues regarding this provisions :-

1. Provisions for isolation is based on wrong scientific material and foundation.
2. Object sought to be achieved by isolation is nullified by provision.
3. Discretion to isolate in unguided and uncontrolled.

4. The provision for isolation is procedurally unjust in the absence of the right hearing.

### **Mr. X V/S Hospital Z AIR 1999**

The petition dealt with two issues firstly right to privacy of a patient specially an HIV/AIDS and secondly the right of an individual to be safeguarded from any threat to her health. Supreme court held that when rights collide the one that promotes morality and public interest should be upheld. Further to condemn a person to death by transmitting AIDS not only violates his/her right to life but is also punishable under provisions of Indian penal code under section 269 and 270. These Statutory Provisions impose a duty upon the person not to marry as marriage would have the effect of spreading the infection, which obviously is dangerous to life of the women whom he marries therefore the hospital's act was to protect the life of another person, they could not be held liable for consequences of their act.

### **7. MENTAL DISABILITY AND RIGHT TO HEALTH:-**

Since the bio centric approach to disability equates disability with diseases, abnormality and danger, the law and practice in the area of health grounded on this approach generally aim towards prevention of disability and condition in which treatment to care disability is to be administered. Mental health of India is a classic example of this approach but a positive aspect of this enactment is that it promotes dignity, autonomy and respect of individual receiving treatment in line with constitutional provisions. The provision of the constitution, the mental health act 1987 in section 81 stipulates that:-

1. No mentally ill person shall be subjected during treatment to any indignity or cruelty.
2. No mentally ill person under treatment shall be used for purposes of research.

### **Dr. Upendra Baxi V/S State of U.P AIR 1983**

The court recommended that psychiatric treatment be provided to the mentally ill inmates for which the record of the time and place of the treatment should be maintained.

### **Rakesh Chandra Narayan V/S State of Bihar**

The court gave directions for the mental health institutions to be modeled on the lines of NIMHANS at Bangalore. The court observed that in a welfare state it is obligation of the state to provide medical attention to every citizen.

### **Sheela Barse V/S Union of India 1986**

The court dealt with children who were kept in jails across the country for 'safe custody' as allegedly they are physically and mentally retarded. Those children who are abandoned or lost and are presently kept in jails must also be removed by state governments and appropriate places where they can be looked after and rehabilitated.

In conclusion one can say that the state's concern for creating conditions in which persons can lead their lives free from disability and its life long implications are very well provided through the legal and administrative initiatives but the issue of the enjoyment of right to health without discrimination by the already disabled people has yet to be addressed by the lawmakers the court and the executive.

### **8. SUGGESTIONS:-**

1. The overall infrastructure of primary health care institution should be under the direct control of panchayati raj.
2. The general public of local area take active role in the selection of village health workers and it should be strongly supported by the three tier system.
3. The local government should be vested with adequate power and responsibilities should be provided with sufficient funds.
4. New strategy should be developed for pooling all financial resources in the health sector.

5. Standard norms should be fixed for redistribution of existing health resources according to the geographical area.
6. Medical graduates should undergo compulsory public medical services in the village areas before seeking admissions into any post graduate medical course.
7. Need of senior citizen physically and mentally challenged, the under privileged should be looked after by the medical council and it should be made accountable to the community.
8. Last but not least, issues of health care must become the focus of political discourse in the country.

### 9.CONCLUSION:-

The presenting inequalities denials and the violations in the matter of health care prevailing in the country since times are a course of concern to all. It is high time to central and state government gears up its legislative machinery to provide a legal frame work and a common set of standards norms and values to facilitate the public health sector. The above judicial pronouncements by the Indian judiciary suggest a potential role for a creative and sensitive judiciary to enforce constitutional social rights the deep analysis of the litigations reading the supreme court described above have given rise to the court articulating and recognizing the specific rights to health. The constitutional and human rights interpretation is a dynamic process that involves the creativity and commitment of individuals to the underlying values of society. There is no reason therefore , why social rights such as the right to food, health, education, housing, livelihood and other cannot be made subject to judicial determination .the Indian experiment proves that societies can indeed choose to make social rights justifiable and develop appropriate methods of their implementation and enforcement.

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