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RIGHT TO HEALTH AS A BASIC HUMAN RIGHT

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Abstract

Right to life is considered one of the fundamental rights, and health is one of the vital indicators reflecting quality of human life. In this context, it becomes one of the primary responsibilities of the state to provide health care services to all its citizens. India, despite being a signatory to the Alma Ata Declaration of 1978, which promised 'Health for All' by 2000, is far from realizing this objective. On paper, India has an excellent health care structure that has the potential to reach a large section of the population. Yet, despite this elaborate structure and the rapid advancement of medical sciences, the reality is deplorable. The percentage of population actually covered by the public health care services is reportedly a mere 30 per cent. Although programmes are being constantly reviewed and revised, the problems persist and continue to worsen.

Introduction

Health is a vital indicator of human development and human development is the basic ingredient of economic and social development. In India, the right to health care and protection has been recognized, since early times, Independent India approached the public as the right holder and the state as the duty-bound primary provider of health for all. As our country is a founder member of the United Nations, it has ratified various international conventions promising to secure health care right of individuals in society. In 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 & not mere survival or animal existence. It has a much wider meaning which includes right to livelihood, better standard of life, hygienic condition in workplace & leisure. The right to health is inherent to a life with dignity, and Article 21 should be read with Articles 38, 42, 43, & 47 to understand the nature of the obligation of the state in order to ensure the effective realization of this right.

Evolution of Healthcare System in India

The health policies, plans, and programmes in India mostly evolved during the national movement against colonial rule. The British authorities set up a Health Survey and Development Committee, commonly known as the Bhore Committee (1946)¹ that was also greatly inspired by the aspirations of the national movement. Some of the key recommendations of the Bhore Committee were:

1. Integration of preventive and curative health services at all administrative levels;
2. Development of primary health centers in two stages;
3. Major change in medical education;
4. Formation of district health board for each district;
5. Laid emphasis on preventive health services;
6. Inter-sectoral approach to health service development

It also recommended a comprehensive proposal for development of a national programme of health service for the country.² Subsequently in 1948, the Sokhey Committee recommended that manpower and services be developed from the bottom upwards. The Committee represented ‘*a people centered and pluralistic*’ model of development. However, in the post Independence era, i.e., in the 1950s and 60s, advanced research institutes, medical colleges with tertiary hospitals and primary health centers emerged, while the sub-centers at village level lagged behind. India experienced a crisis in the late 60s, when it went through widespread drought that raised concerns about the ‘development model’, adopted so far. The international community put the onus of this crisis on the rising population growth, which was seen to be a hindrance to India’s growth and development.

Right to Health and the Preamble of the Constitution

The preamble of the Constitution of India, which strives to provide for welfare state with socialistic patterns of society under the Article 21 of the Constitution, guarantees the right to life & personal liberty. The concept of democratic socialism aims to improve the condition of health care of the people. The principle of socialism is also embodied in various provisions of part III & part IV of the Constitution. Socialist when the egalitarian principles are followed, rights are valued & the dignity of each individual is upheld.

Directive Principle of State Policy and Health

Part IV of the Indian Constitution which is DPSP imposed duty on states. If we only see those provisions then we find that some provisions of them has directly or indirectly related with public health. It directs the state to take measures to improve the condition of health care of the people. **Articles 38** impose liability on state that state secure a social order for the promotion of welfare of the people but without public health we

¹ The Bhore Committee was constituted by the government in 1940 to prepare a comprehensive proposal for the development of national programme of health services. They submitted the same in 1946. Several National Programmes were developed based on their recommendations.

² Gopalan Dr. Sarala & Shiva Dr. Mira (2000) National Profile on Women, Health and Development, VHAI, New Delhi.

can't achieve it. **Article 39(e)** related with workers to protect their health. **Article 41** imposed duty on state to public assistance basically for those who are sick & disable. **Article 42** it's a primary responsibility of the state to protect the health of infant & mother by maternity benefit. **Article 47** spell out the duty of the state to raise the level of nutrition & the standard of living of its people as primary responsibility.³ Some other provisions relating to health fall in DPSP. The state shall in particular, direct its policy towards securing health of workers. State organized village panchayats & give such powers & authority for to function as units of self government.

Panchayat, Municipality and Health:

Not only the state but also panchayat, Municipalities are liable to improve and protect public health. "The legislature of a state may endow the panchayats with necessary power and authority in relation to matters listed in the eleventh schedule."⁴ The entries in this schedule having direct relevance to health are as follows;

1. Drinking
2. Health and sanitation including hospitals, primary health centers & dispensaries
3. Family welfare
4. Women and child development
5. Social welfare including welfare of the handicapped and mentally retarded
6. Water supply for domestic industrial and commercial purpose
7. Public health, sanitation conservancy and solid waste management
8. Regulation of slaughter – houses and tanneries.

Fundamental Right and Health

The DPSP are only directive to the state. These are non – justifiable. No person can claim for non- fulfilling these directions. **Article 21** deals with "no person shall be deprived of his life or personal liberty except according to procedure established by law". The right to live means something more, than more animal existence & includes the right to life consistently with human dignity & decency. In numerous cases the Supreme Court held that right to health & medical care is a fundamental right covered by Article 21 since health is essential for making the life of workmen meaningful & purposeful & compatible with personal dignity. Article 23 is indirectly related to health. **Article 23(1)** prohibits traffic in human beings. It is well known that traffic in women leads to prostitution, which is turn is to major factor in spread of AIDS. **Article 24** is relating to child labor it deal with "no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment. Thus this article directs the relevance to child health⁵. In addition to Constitutional remedies sensitizing of the relevant ordering law towards late health for all adds to the content of right to health. Legal prohibition of commercialized transplantation of human organ and effective application of consumer protection Act to deal with deficient medical services has animated right to health.

Judicial Response towards Right to Health and Medical Assistance;

The Indian judiciary played a very active role by entertaining public interest litigation which provides an opportunity to the judiciary to examine the socio economic and environmental conditions of the oppressed, poor and the downtrodden people through PIL under Article 32 of the Constitution, the Supreme court has directed the government to implement the fundamental right to life and liberty and executed protection measures in the public interest. Likewise, the court also pointed out that fundamental rights are intended to foster the ideal of political democracy and to prevent the establishment of authoritarian rule but they are of no value unless they can be enforced by resort to courts. But it does not mean that directive principles are less important than fundamental rights or they are not binding on the various organs of the state the supreme court, while widening the scope of Article 21 of the Constitution in *Paschim Bangal Khet Mazdoor Samity & Others V State of West Bengal & Others*⁷ held that in a welfare state, primary duty of the government is to secure the welfare of the people and more over it is the obligation of the government to provide adequate medical facilities for its people. The government discharges this obligation by providing medical care to the persons seeking to avail those facilities. Article 21 impose an obligation on the state to safeguard the right to life of every person preservation of human life is thus of paramount importance. The government hospitals run by the state are duty bound to extend medical assistance for preserving human life. Failure on the part of a government hospital to provide timely medical treatment to a person in need of such treatment, results in violation of his right to life guaranteed under art 21. The court made certain additional direction in respect of serious medical cases:

1. Adequate facilities are provided at the public health centers where the patient can be given basic treatment and his condition stabilized.
2. Hospitals at the district and subdivision level should be upgraded so that serious cases be treated there.
3. Facilities for given specialist treatment should be increased and having regard to the growing needs, it must be made available at the district and sub divisional level hospitals.
4. In order to ensure availability of bed in any emergency at state level hospitals, there should be a centralized communication system so that the patient can be sent immediately to the hospital where bed is available in respect of the treatment, which is required.
5. Proper arrangement of ambulance should be made for transport of patient from the public health center to the state hospitals
6. Ambulance should be adequately provided with necessary equipment and medical personnel.

It is true that no state or country can have unlimited resources to spend any amounts on its projects. Similarly providing medical facilities to an employee by the state cannot be unlimited and this point has arisen in the case of *State of Punjab V Ram Lubhaya Bagga*, Where medical services under a policy continue to be given to an employee, to get treatment in any private hospital in India, but the amount of reimbursement may be limited. Such a policy does not leave this limitation to the free will of the director,

but it is done by a committee of technical experts. The Supreme Court held that if no scale or rate is fixed then in case private clinics or hospitals increase their rate to exorbitant scales, the state would be bound to reimburse the same. The principle of fixing of rate and scale under such a policy is justified, and cannot be held to violate art 21 or art 47 of the Constitution. The court further held that the state can neither urge nor say that it has no obligation to provide medical facilities.

It is the primary duty of the state to provide for secured health to its citizen. No doubt the Government is rendering this obligation by opening government hospitals and health centre's, but to be meaningful they must be within the reach of its people and of sufficient liquid quality. Since it is one of the most sacrosanct and sacred obligation of state, every citizen of this welfare state looks towards the state to perform this obligation with top priority including by way of allocation of sufficient funds. This in turn will not only secure the rights of its citizen to their satisfaction, but will benefit the state in achieving its social, political and economic goals. This sacred obligation shall be carried out by the health professionals whenever they are attending the life of an accident victim with due care and diligence. In light of the above statement, the

Supreme Court, in its land mark judgment in *PramandKatara V Union Of India & others* ruled that every sector whether at a government hospital or otherwise has the professional obligation to extend his services with due expertise for protection life. No law or state action can intervene to avoid or delay the discharge of the paramount obligation cast upon members of the medical profession. The obligation being total, absolute, and paramount, laws or procedure whether in statutes or otherwise which would interfere with the discharge of this obligation cannot be sustained, and must, therefore give way. Similarly again the Supreme Court in *State of Karnataka V Manjanna* deprecated the tendency of refusal to conduct medical examination of rape victims by doctors in rural government hospitals unless referred by the police. The court observed 'we wish to put on record our disapproval of the refusal of some government doctors, particularly in rural areas, where hospitals are few and far between to conduct any medical examination of a rape victim unless the case of rape is referred to them by the police'. The court added that such a refusal to conduct the medical examination necessary results in a delay in the ultimate examination of the victim by which the evidence of rape may have been washed away by the complainant herself or be otherwise lost, the court, therefore, directed that the state must ensure that such a situation does not recur in future. In *CESE Ltd V Subhash Chandra Bose*, the court held that, the health and strength of worker is an integral facet of the right t life. The aim of fundamental rights is to create an egalitarian society to free all citizens from coercion or restriction by society and to make liberty available for all. The court, while reiterating its stand for providing health facilities in *Vincent V Union of India*, held that a healthy body is the very foundation for all human activities. A three judge's bench of the Supreme Court in *Consumer Education & Research Centre & others V Union of India* ruled that right to health and medical care, to protect health and vigour while in

service or post retirement, is a fundamental right of a worker under article 21, read with articles 39(e), 41, 43,48A.

All related article and fundamental rights are intended to make the life of the workman meaningful and purposeful. Lack of health denudes him if his livelihood compelling economic necessity to work in an industry exposed to health hazards due to indigence to bread winning for himself and his dependants should not be at the cost of the health and vigour of the workman. The court further ruled that the jurisprudence of personhood or philosophy of the right to life envisaged in art 21 of the Constitution enlarges its sweep to encompass human personality in full bloom to sustain the dignity of a person and to live a life with dignity and equality. The health of the worker is an integral facet of the right to life. In that case, health insurance while in service or after retirement was held to be a fundamental right and even private industries are enjoined to provide health in insurance to the workman.

Though the Supreme Court of India in a series of judgments has declared the right to health care to be fundamental right, it had not been given due recognition by the state. What is also quite unfortunate is that in a country where poor and marginalized are more in members and these people cannot afford paid services in any government and private hospitals, the state should develop novel health insurance policies at a nominal rate

Conclusion

The term Right to health is nowhere mentioned in the constitution yet the Supreme Court has interpreted it as a fundamental right under Right to life enshrined 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. In its wider interpretation of Article 21 it was held by the Supreme Court that, the rights to Health is a part and parcel of right to life & therefore are of fundamental right provided under Indian Constitution.. The court has played a pivotal role in imposing positive obligations as authorities to maintain & improve public Health. Till today no effective steps have been taken to implement the constitutional obligation upon the state to secure the health and strength 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 achieving the Constitutional obligation and also objectives of Health care for all there is a need on the part of the government to mobilize nongovernmental organization and the general public towards their participation for monitoring and implementation of health care facilities.