

RIGHT TO HEALTH: A CONSTITUTIONAL MANDATE IN INDIA

Md. Baharul Islam

Asst. Professor, ICFAI Law School, The ICFAI University, Tripura, India

Abstract

Health is the most important factor in national development. It is a condition of a person's physical and mental state and signifies freedom from any disease or pain. Right to health is a vital right without which none can exercise one's basic human rights. The Government is under obligation to protect the health of the people because there is close nexus between Health and the quality of life of a person. There are various provisions under the Constitution of India which deal with the Health of the Public at large. The founding fathers of the Indian Constitution rightly inserted Directive principles of State Policy (DPSP) with a view to protect the health of the public at large. Health is the most precious prerequisite for happiness.

Keywords: *Right to health, Fundamental right, Constitution, Health Care*

“Health care is not a privilege. It's a right. It's a right as fundamental as civil rights. It's a right as fundamental as giving every child a chance to get a public education.”

---Rod Blagojevich

Everyone has “the right...to the enjoyment of the highest attainable standard of physical and mental health”.

-International Convention on Economic, Social and Cultural Rights, Article 12

“Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services...”

-Article 25 of the UN Declaration of the Human Rights

I. INTRODUCTION

Health is one of the basic requirements of human being. Nowadays India is facing problem of degradation of health. The Constitution of India is supreme law to govern the whole Nation. The condition of health is worsening day by day in spite of various health schemes and policies. The Supreme Court is performing Nobel function of interpretation of provisions of Constitution. The framers of Indian Constitution have rightly inserted 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 effective implementation of Laws enacted based on Constitutional provisions will control the present problem. 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.

II. MEANING OF HEALTH AND HEALTH CARE

The widely acceptable 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".¹ In recent years, this statement has been amplified to include the ability to lead a 'socially and economically productive life'. Through this definition, WHO has helped to move health thinking beyond a limited, biomedical and pathology-based perspective to the more positive domain of "well being". Also, by explicitly including the mental and social dimensions of well being, WHO has radically expanded the scope of health and by extension, the role and responsibility of health professionals and their relationship to the larger society.²

According to World HEALTH organization, Health is a state of complete physical, mental and social wellbeing and not merely the absence of disease³.

From the definition itself, it is clearly indicated that condition of life of the individual should incorporate physical, mental & social well being & must be devoid of disease & infirmity. Thus, this pioneering institution (WTO) has played the best supportive role in guiding health policy development and action at the global and national levels, with an overall objective of ensuring & attaining the highest standards of health care to all the people around the world. WHO has not only given a wider definition to HEALTH but also brought the vision of HEALTH CARE.

The human right to health means that everyone has the right to the highest attainable standard of physical and mental health, which includes access to all medical services, sanitation, adequate food, decent housing, healthy working conditions, and a clean environment.

¹ Preamble to the Constitution of the World Health Organization as adopted by the International Health Conference, New York, 19–22 June 1946; signed on 22 July 1947 by the representatives of 61 States (Official Records of the World Health Organization, no. 2, p. 100); and entered into force on 7 April 1948

² Kumar Avanish, "Human Right to Health", satyam law international 2007 at 21

³ preamble to the Constitution of the WHO as adopted by the International Health Conference (Official records of the WHO, no 2, P. 100

- The human right to health guarantees a system of health protection for all.
- Everyone has the right to the health care they need, and to living conditions that enable us to be healthy, such as adequate food, housing, and a healthy environment.
- Health care must be provided as a public good for all, financed publicly and equitably.

The human right to health care means that hospitals, clinics, medicines, and doctors' services must be accessible, available, acceptable, and of good quality for everyone, on an equitable basis, where and when needed. The design of a health care system must be guided by the following key human rights standards:

Universal Access: Access to health care must be universal, guaranteed for all on an equitable basis.

Availability: Adequate health care infrastructure (e.g. hospitals, community health facilities, trained health care professionals), goods (e.g. drugs, equipment), and services (e.g. primary care, mental health) must be available in all geographical areas and to all communities.

Acceptability and Dignity: Health care institutions and providers must respect dignity, provide culturally appropriate care, be responsive to needs based on gender, age, culture, language, and different ways of life and abilities.

Quality: All health care must be medically appropriate and of good quality, guided by quality standards and control mechanisms, and provided in a timely, safe, and patient-centered manner.

Non-Discrimination: Health care must be accessible and provided without discrimination.

Transparency: Health information must be easily accessible for everyone.

Participation: Individuals and communities must be able to take an active role in decisions that affect their health.

Accountability: Private companies and public agencies must be held accountable for protecting the right to health care.

III. WHY RIGHT TO HEALTH?

Health and well-being are deeply personal matters. Nothing is more intimate than the experience of conceiving and bearing a child, and giving birth to a unique human being; none of us can live another's fear or pain; and death itself is something we cannot share, however real the grief we suffer.

And yet, it is precisely when we or those close to us face illness or chronic suffering that we perceive that health is in reality a very public issue. Policies which dictate what level of health care provision is guaranteed, what kinds of service will be offered, how priorities are established between competing claims, where resources are

concentrated, and what alternatives are available all become far more immediate when they affect us or our loved ones.

Disempowerment and exclusion are caused by a similar combination of personal experience and circumstances on the one hand and the social and political context on the other . . . At one end of the spectrum, we see the importance of the macroeconomic and ideological settings. Economic policies that result in the underfunding of public services and the fragmentation of the regulatory role of government tend to reduce the threshold of what is considered an acceptable minimum standard of health-care provision for the population at large. Access to health care becomes dependent on the individual's capacity to pay; patients are turned from citizens who have rights and responsibilities into clients or consumers . . . The question of financing health care may thus be posed as a pseudo-technical one; what kinds of cost-recovery and insurance mechanisms "work", and in what circumstances? The goal of "Health for All by the Year 2000" is eroded into one of "health for those who can pay today".

Current trends suggest that "the enjoyment of the highest attainable standard of health" which WHO describes as "one of the fundamental rights of every human being" is seen almost as a by-product, something that will trickle down to the bottom sometime in the future. There is a long way to trickle before this fundamental right reaches those who are destitute (currently one fifth of the human race), those who survive precariously in the informal sector, or those whose access to health care is limited by their age or their disabilities, or by armed conflict. And while seven out of ten of the world's poorest people are female, women's health needs are widely neglected, whatever their background. Yet, if development is not for health, what is it for-and who can expect to enjoy it?⁴

IV. COMPONENTS OF RIGHT TO HEALTH⁵

a) The Right to Appropriate Health Care

The right to health care requires the establishment of the health facilities, goods and services, such as hospitals, doctors and drugs, that are of good quality and available to all, on an equal basis. They must be affordable to everyone, respect dignity and diverse needs and operate transparently. These facilities must provide preventive, creative, palliative and rehabilitative health services, including regular screening programs, appropriate treatment of prevalent diseases, illnesses, injuries and disabilities, both physical and mental, and all necessary medications.⁶

b) Right to An Adequate Supply Of Water, Food, Nutrition And Housing

⁴ Deborah Eade, preface to *Development for Health: Selected articles from Development in Practice*, Oxford, UK: Oxfam (UK and Ireland, 1997), 4-5.

⁵ http://www.nesri.org/sites/default/files/Right_to_Health.pdf (Accessed on 15/03/2017)

⁶ U.N. Committee on Economic, Social and Cultural Rights(CESCR), General Comment 14 (GC 14), Par 12

The right health requires equal access for all to the underlying determinants of health, such as an adequate supply of food and proper nutrition, safe and potable water, basic sanitation, and adequate housing and living condition.⁷

c) The Right to Healthy Environment And Healthy Working Condition

The right to a healthy environment requires “the prevention and reduction of the population’s exposure to harmful substances...or other detrimental environmental conditions that directly or indirectly impact upon human health.” including the pollution of air, water and soil. The right to safe and healthy working condition requires the establishment of “preventive measures in respect of occupational accidents and diseases,” as well as the minimization of the “causes of health hazards inherent in the working environment.”⁸

d) The Right to Maternal, Child And Reproductive Health

The right to health requires special provisions for improving child and mental health, sexual and reproductive health services⁹ as well as the treatment of disease affecting women, reduction of women’s health risks, and protection of women from domestic violence.¹⁰

e) The Right to Participate In Health-Related Decision Making

The right to health requires the promotion of effective community participation in “setting priorities, making decisions, planning, implementing and evaluating strategies to achieve better health.”¹¹ This includes participation in the “provision of preventive and curative health services, such as the organization of the health sector, the insurance system and, in particular, participation in political decisions relating to the right to health taken at both the community and national level.”¹²

f) The Right to Access Health-Related Information

The right to access health-related information requires “the promotion of medical research and health education, as well as information campaigns, in particular with respect to HIV/AIDS[and other sexual transmitted diseases], sexual and reproductive health, traditional practices, domestic violence, the abuse of alcohol and the use of cigarettes, drugs and other harmful substances.”¹³

⁷ General Comment 14 (GC 14), Par 12

⁸ General Comment 14 (GC 14), Par 15

⁹ General Comment 14 (GC 14), Par 14

¹⁰ General Comment 14 (GC 14), Par 21

¹¹ General Comment 14 (GC 14), Par 54

¹² General Comment 14 (GC 14), Par 17

¹³ General Comment 14 (GC 14), Par 36

V. RIGHT TO HEALTH UNDER INTERNATIONAL LAW

Under international law, there is a right not merely to health care but to the much broader concept of health. Because rights must be realized inherently within the social sphere, this formulation immediately suggests that determinants of health and ill health are not purely biological or “natural” but are also factors of societal relations.^{14,15} Thus, a rights perspective is entirely compatible with work in epidemiology that has established social determinants as fundamental causes of disease.¹⁶⁻¹⁷

The first notion of a right to health under international law is found in the 1948 Universal Declaration of Human Rights (hereafter called Declaration), which was unanimously proclaimed by the UN General Assembly as a common standard for all humanity.¹⁸ The Declaration sets forth the right to a “standard of living adequate for the health and well-being of himself and his family, including . . . medical care and . . . the right to security in the event of . . . sickness, disability . . . or other lack of livelihood in circumstances beyond his control.” The Declaration does not define the components of a right to health; however, they both include and transcend medical care.

The Cold War polarized countries’ positions on human rights. In 1966, instead of the indissoluble whole reflected in the Declaration, twin covenants on civil and political rights and economic, social, and cultural rights were promulgated.¹⁹ The right to health was included in the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 12 of the ICESCR explicitly sets out a right to health and defines steps that states should take to “realize progressively” “to the maximum available resources” the “highest attainable

¹⁴ UN Committee on Economic, Social and Cultural Rights. *General Comment 14: The Right to the Highest Attainable Standard of Health*. Geneva, Switzerland: United Nations: 2000. UN Document E/C.12/2000/4. Available at: [http://www.unhcr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.2000.4.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(symbol)/E.C.12.2000.4.En?OpenDocument). Accessed April 26, 2005.

¹⁵ Yamin AE. Transformative combinations: women’s health and human rights. *J Am Womens Assoc*. 1997;52:169–173. [[PubMed](#)]

¹⁶ Link BG, Phelan J. Social conditions as fundamental causes of disease. *J Health Soc Behav*. 1995;Spec No: 80–94. [[PubMed](#)]

¹⁷ Marmot M, Wilkinson RG, eds. *Social Determinants of Health*. London, England: Oxford University Press; 1999.

¹⁸ *Universal Declaration of Human Rights. United Nations General Assembly Resolution 217 A (III)*. New York, NY: United Nations; 1948.

¹⁹ Craven M. *The International Covenant on Economic, Social and Cultural Rights: A Perspective on Its Development*. Oxford, England: Clarendon Press; 1995.

standard of health,” including “the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child”; “the improvement of all aspects of environmental and industrial hygiene”; “the prevention, treatment and control of epidemic, endemic, occupational and other diseases”; and “the creation of conditions which would assure to all medical service and medical attention in the event of sickness.”^{20(article 12(2))}

In addition to the ICESCR, a wide array of international and regional treaties recognizes health as a rights issue, and these reflect a broad consensus on the content of the norms.²¹ A review of the international instruments and interpretive documents makes it clear that the right to health as it is enshrined in international law extends well beyond health care to include basic preconditions for health, such as potable water and adequate sanitation and nutrition.²²

VI. RIGHT TO HEALTH & PREAMBLE TO THE CONSTITUTION

The Preamble to the Constitution which gives a broad direction for the Indian Republic, refers to social, economic and political justice and also equality of status and of opportunity.

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.²³

VII. DIRECTIVE PRINCIPLE OF STATE POLICY AND HEALTH

Article 38 of Indian Constitution impose liability on State that states will secure a social order for the promotion of welfare of the people but without public health we cannot achieve it. It means without public health welfare of people is impossible.

Article 39(e) related with workers to protect their health.

²⁰ *International Covenant on Economic, Social and Cultural Rights*. New York, NY: United Nations; 1966. UN document A/6316. Available at: http://www.unhchr.ch/html/menu3/b/a_ceschr.htm. Accessed April 26, 2005.

²¹ *Convention Concerning Indigenous and Tribal Peoples in Independent Countries (Convention 169)*. Geneva, Switzerland: International Labour Organization; 1989.

²² *International Convention on the Elimination of All Forms of Racial Discrimination*. New York, NY: United Nations; 1966. UN document A/6014. Available at: http://www.unhchr.ch/html/menu3/b/d_icerd.htm. Accessed April 26, 2005.

²³ Bakshi, P.M., “The Constitution of India”, Universal Law Publishing Co. Pvt. Ltd., New Delhi, 2003

Article 41 imposed duty on State to public assistance basically for those who are sick and disable.

Article 42 makes provision to protect the health of infant and mother by maternity benefit.

In the India the Directive Principle of State Policy under the Article 47 considers it the primary duty of the state to improve public health, securing of justice, human condition of works, extension of sickness, old age, disablement and maternity benefits and also contemplated. Further, State's duty includes prohibition of consumption of intoxicating drinking and drugs are injurious to health. Article 48A ensures that State shall Endeavour to protect and impose the pollution free environment for good health.

Article 47 makes improvement of public health a primary duty of State. Hence, the court should enforce this duty against a defaulting authority on pain of penalty prescribe by law, regardless of the financial resources of such authority.²⁴

Under Article 47, the State shall regard the raising of the level of nutrition and standard of living of its people and improvement of public health as among its primary duties. None of these lofty ideals can be achieved without controlling pollution inasmuch as our materialistic resources are limited and the claimants are many.²⁵

The Food Corporation of India being an agency of the State must conform to the letter and spirit of Article 47 to improve public health it should not allow sub-standard food grains to reach the public market. The State under Article 47 has to protect poverty stricken people who are consumer of sub-standard food from injurious effects.²⁶ In a welfare State, it is the obligation of the State to ensure the creation and sustaining of conditions congenial to good health.²⁷

Some other provisions relating to health fall in DPSP. The State shall in particular, direct its policy towards securing health of workers.²⁸ State organised village panchayats and gave such powers and authority for to function as units of self-government.²⁹

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 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

²⁴ Ratlam Municipal Council Vs Vardichand, AIR 1980 SC 1622

²⁵ Javed Vs State of Haryana, AIR 2003 SC 3057

²⁶ Tapan Kumar Vs FCI, (1996) 6 SSC 101

²⁷ Vicent Vs UOI, AIR 1987, SC 990

²⁸ Article 39(e) of the Constitution of India

²⁹ Article 40 of the Constitution of India

cases of undeserved want".³⁰ Their implications in relation to health are obvious. Article 42 give the power to State for make provision for securing just and humane conditions of work and for maternity relief and for the protection of environment same as given by Article 48A and same obligation impose to Indian citizen by Article 51A.(g).

VIII. FUNDAMENTAL RIGHT & HEALTH

The DPSP are only directive to the state. These are non – justifiable. No person can claim for non- fulfilling these directions.

In *CESC Ltd. vs. Subash Chandra Bose*³¹ the Supreme Court relied on international instruments and concluded that right to health is a fundamental right.

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 labour 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 health.³²

Article 25 guarantees to every person and not citizen of India the right to profess and practice religion and Article 26 gives special protection to religious denominations. Both can be enjoyed by any person subject to public order, morality and health and other provisions of the respective part of the Constitution. The person has the right to enjoy these freedoms but it should not adversely affect the right of others including that of not being disturbed in their activities.³³

IX. FUNDAMENTAL DUTIES AND HEALTH

PART- IV-A of Indian Constitution deals with fundamental duties of citizens.

Article 51- A: Fundamental duties:

It shall be the duty of every citizen of India-

³⁰ Article 41 of the Indian Constitution

³¹ AIR 1992 SC 573,585

³² Shukla M N .Indian constitution, Central Law Agency Publication, 2013

³³ Church of God in India v. K. K. R. Majestic Colony Welfare Association (2000) 7 SCC 282

(g) To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.

It shows that every citizen is under the fundamental duty to protect and improve natural environment since it is closely related to public health.

X. LOCAL SELF GOVT & HEALTH

Panchayat, Municipality and Health: – Not only the State also Panchayat, Municipalities liable to improve and protect public health. Article 243G says “State that the legislature of a state may endow the panchayats with necessary power and authority in relation to matters listed in the eleventh Schedule”.³⁴

Article 243-W of the Constitution provides that the legislature of the State may by law, endow the municipalities with such powers and authorities as may be necessary to enable them to function as institutions of local self-government.³⁵

XI. JUDICIAL RESPONSE

With the recognition that both the Indian Constitution and the fundamental right of life emphasize human dignity, began to address the importance of health to Indian citizen. In the DPSP, Art.47 declares that the State shall regard the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties. Since DPSP are not enforceable by the court, implementation of the guarantee has remained illusory.³⁶ However, in a series of cases dealing with the substantive content of the right to life, the court has found that the right live with human dignity including right to good health.³⁷ In *Consumer Education and Research Center v. UOI*³⁸, the Court explicitly held that the right to health was an integral factor of a meaningful right to life. The court held that the right to health and medical care is a fundamental right under Article 21. The Supreme Court, while examining the issue of the constitutional right to health care under arts 21, 41 and 47 of the Constitution of India in *State of Punjab v Ram Lubhaya Bagga*,³⁹ observed that the right of one person correlates to a duty upon another, individual, employer, government or authority. Hence, the right of a citizen to live under art 21 casts and obligation on the state. This obligation is further reinforced under art 47; it is for the state to secure health to its citizens as its primary duty. No doubt the government is rendering this obligation by opening government hospitals and health centers, but to be meaningful, they must be within the

³⁴ Article 243 G of Indian Constitution

³⁵ Jain, Prof. M. P., Supra note 7, p. 474

³⁶ Bandhua Mukti Morcha AIR 1984 SC 812

³⁷ Ibid at-811

³⁸ AIR 1995 SC 636

³⁹ (1998) 4 SCC 177: AIR 1998 SC 1703.

reach of its people, and of sufficient liquid quality. Since it is one of the most sacrosanct and valuable rights of a citizen, and an equally sacrosanct and sacred obligation of the 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 citizens to their satisfaction, but will benefit the state in achieving its social, political and economic goals.

XII. RIGHT TO HEALTH CARE AS A FUNDAMENTAL RIGHT

The Supreme Court, in *Paschim Banga Khet mazdoor Samity & ors v. State of West Bengal & ors*,⁴⁰ while widening the scope of art 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.

Article 21 imposes 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 Article 21. The Court made certain additional direction in respect of serious medical cases:

- a. Adequate facilities be provided at the public health centers where the patient can be given basic treatment and his condition stabilized.
- b. Hospitals at the district and sub divisional level should be upgraded so that serious cases be treated there.
- c. 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.
- d. 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.
- e. Proper arrangement of ambulance should be made for transport of a patient from the public health center to the State hospital.
- f. Ambulance should be adequately provided with necessary equipments and medical personnel.

XIII. CONCLUSION

⁴⁰ (1996) 4 SCC 37.

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

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.

Right to health and right to education are similar. Right to education was not fundamental right at the time of Constitution rafting. It was also inform of DPSP because for education there is a need of schools and it will made by States itself. How in the State of Kerla before right to education there was 100% literacy, because State government of Kerla provides entitlements for education and realized its duty and achieved it by taking necessary steps in this regards.

