
CONSTITUTIONAL MECHANISM AND JUDICIAL INITIATIVE FOR RIGHT TO HEALTH

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ABSTRACT

The Right to Health is a fundamental aspect of human rights, encompassing the right to access healthcare services and facilities necessary for the maintenance and improvement of one's well-being. In many countries, including India, the Right to Health is recognized as a constitutional right, embedded within the framework of fundamental rights. Constitutional safeguards play a crucial role in ensuring the protection and promotion of this right, while the judiciary serves as a vital mechanism for its enforcement and realization.

In India, the Right to Health finds its roots in various provisions of the Constitution, particularly Article 21, which guarantees the right to life and personal liberty. The Supreme Court of India has interpreted this right expansively to include the right to health and healthcare services. Additionally, the Directive Principles of State Policy enshrined in the Constitution place an obligation on the state to ensure the provision of adequate healthcare facilities for all citizens, further reinforcing the Right to Health.

The role of the judiciary in safeguarding the Right to Health is multifaceted. Firstly, it acts as a guardian of constitutional rights, ensuring that the government fulfills its obligations towards providing healthcare services to its citizens. Courts have often intervened in cases where individuals or communities are denied access to essential healthcare or where the healthcare system fails to meet minimum standards. Through public interest litigation and judicial activism, the judiciary has compelled governments to formulate and implement healthcare policies and programs aimed at achieving universal healthcare coverage.

Moreover, the judiciary plays a crucial role in interpreting laws and policies related to healthcare, ensuring that they are in line with constitutional principles and international obligations. This includes addressing issues such as equitable access to healthcare, quality of healthcare services, affordability of treatment, and protection of vulnerable populations.

Keywords: Healthcare, Vulnerable, Constitution, Populations, Judiciary.

Introduction

Health is Wealth. In addition to the right to security in the event of unemployment, illness, disability, widowhood, old age, or other lack of livelihood due to circumstances beyond his control, 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, medical care, and necessary social services. Childhood and Motherhood are also entitled to special care and assistance.¹ Nowadays, health care is a major concern on an international level. To protect the interest of patients, the United Nation has passed the number of resolutions. The World Health Organization has also been essential in guiding the shaping of health policies and ensuring that everyone on the globe receives the best possible medical care.

The concept of the right to health is not new. Its roots can be traced in the "Law of Torts," which is a body of common law. In India, the rights to healthcare and protection have also been recognized since early times. Being one of the founding members of the UN, it has accepted several international conventions that guarantee the rights of individuals to health care in society. In this regard, the government has established a number of committees to examine various aspects of public health, and these committees have offered a number of proposals to enhance India's healthcare system.

According to the World Health Organization (WHO), "Health is a state where a person has achieved physical, mental, and social well-being," They make a distinction between health and the popular perception of it as the simple absence of illness or disability. According to the World Health Organization, everyone has the fundamental right to "a basic right where they achieve the highest attainable form of health." It is critical that everyone has access to the right to health care, regardless of their gender, color, political affiliation, or social or economic background.

The World Health Organization and the United Nations (UN) share the same guidelines when it comes to the right to health. Article 25 of the Universal Declaration of Human Rights (UDHR) acknowledges the right to health. It states that every individual has a right to a quality of living that is appropriate for their family's health and well-being. This right, include the provision of food grains, clothes, shelter, medical treatment, social services, and the assurance

¹ See Article 25 of the Universal Declaration of Human Rights, 1948.

of one's health in the event of unemployment, illness, widowhood, old age, or incapacity to support oneself due to circumstances outside one's control.

Article 38 of Constitution of India requires the State to ensure that social requests for the advancement of individual government assistance are fulfilled; nevertheless, this cannot be done in the absence of general health. It suggests that government aid for individuals is unimaginable without general health. According to Article 47 of the Directive Principle of State Policy in India, it states fundamental responsibility to promote public health, taking into account issues of justice, human rights, the spread of disease, advanced age, disability, and maternity benefits. However, the right to health under Article 21 has been upheld by the Supreme Court. This arrangement's scope is incredibly broad. It supports each person's freedom and right to live. The concept of individual freedom encompassed many rights that were indirectly linked to one's life or freedom. Additionally, a person can now guarantee his or her right to health. Thus, the Indian Constitution treats the right to health as managed insurance, along with a host of other common, political, and financial rights.

Regarding the Indian Constitution, neither the term "health" nor the "right to health" are defined anywhere in it. It has been noted by judges that the "right to life" incorporates the "right to health," making it a fundamental right. This article is a meek attempt to examine the constitutional provisions of the "right to health" and to examine several court rulings pertaining to medical care.

PROVISIONS UNDER PART-III OF THE CONSTITUTION OF INDIA

In addition to ensuring the people's access to healthcare, the Indian Constitution of India instructs the government to take the necessary steps to enhance the general public's health. Though there is not a clear link between the provisions included in this part and healthcare, it has been proven via a variety of judicial interpretations that the legislature intended to protect citizens' rights to health care.

Article 14 of the Indian Constitution states that no one should be denied equality before the law or equal protection under the law within the territory of India.

The fundamental concept of "equality of treatment," which is expressed in Article 14, is given specific application in Article 15. It prohibits discrimination against citizens based

only on their place of birth, race, caste, religion, or any of them. Additionally, no citizen shall be subject to any limitations, liabilities, restrictions, or conditions regarding their ability to access public accommodations such as hotels, shops, restaurants, or entertainment venues; or their ability to use roads, swimming ghats, wells, tanks, or public resort areas that are either entirely or partially funded by state funds or dedicated for public use. Nothing in this Article prohibits the State from implementing any specific provision to improve the life of women and children.

Under Article 21 of the Indian Constitution,² an individual's life and personal liberty are protected, and neither can be taken away from them except according to procedure established by law. Human trafficking, begging, and other types of forced labor are prohibited by Article 23, and any violation of this provision shall be an offence punishable in accordance with law. According to Article 24, Children under the age of fourteen are not allowed to work in mines, factories, or other hazardous jobs.

PROVISIONS UNDER PART-IV OF THE CONSTITUTION

In addition to the above fundamental rights, the Indian Constitution provides the following directive principles that the government must abide by with regard to citizens' health care.

In this context, Article 38 states that "the State shall endeavor to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice—social, economic, and political—shall inform every institution of the national life." Thus, the state is obligated to ensure a social order for the advancement of public health and welfare of the people, as the public health and welfare of the people is essentially worthless without the social order.

Further, according to Article 39, "the State shall, in particular, direct its policy towards securing³ –

e) that workers' health and strength, both male and female, and the tender age of children are not abused, and that citizens are not compelled to pursue occupations that are inappropriate for

² The Constitution of India

³ Ibid

their age or strength because of a lack of money;

f) that children and adolescence are protected from exploitation and from material and moral abandonment, and that children are provided with opportunities and chances to grow up in a healthy way, under conditions of freedom and dignity."

Article 41 imposes a duty on the State to provide public help, primarily for the elderly, sick, and disabled, as it deals with the rights to work, education, and public assistance in certain instances. 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 cases of undeserved want," according to this article. There is no question about the implications of health.

It is implied that the purpose of Article 42, which grants the State the authority to make rules in this regard and guarantees fair and humane working conditions and maternity benefits, is to safeguard the health of mothers and infant.

The State is required by Article 47 to enhance public health, boost public health, and raise the level of nutrition. "The State shall regard the raising of the level of nutrition and the standard of living of its citizens and the improvement of public health as among its primary duties," the law states clearly. "In particular, the State shall endeavour to bring about prohibition of the consumption of intoxicating drinks and drugs which are harmful to health, except for medicinal purposes."

Article 48A guarantees the State's commitment to protect and enforce a pollution-free environment for good health.

PROVISIONS UNDER PART - IV-A

Article 51 A (g) under Part IV – A of the Constitution says that "it shall be the duties of every individual to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatur

ROLE OF JUDICIARY

A number of international human rights instruments have acknowledged the "right to health"

as a fundamental human right. In India, the judiciary has expanded its authority to recognize the "right to health" as a basic right under Article 21 of the Constitution, though it is not explicitly recognized as such. This recognition comes as an adjunct to the "right to life." It is not only the duty of the medical community to protect, safeguard, and accomplish the "right to health," but also that of public servants like administrators and judges.⁴ Some of the important pronouncements on this issue are given hereunder.

According to the Supreme Court's interpretation of Article 21 of the Constitution, "life" includes opportunity to eradicate physical disability and illness as well as more than just existing as an animal or going through life in a state of constant drudgery. *In Francis Carolin Mullin v. Union Territory of Delhi*,⁵ The fundamental rights to food, clothing, and shelter are included in the right to life guaranteed by Article 21 of the Constitution.

In *Virender Gaur v. State of Haryana*,⁶ the Supreme Court held that violations of the right to health, as protected by Article 21 of the Constitution, should be considered to include environmental, ecological, air, and water pollution, among other things.

In *Bandhua Mukti Morcha v. Union of India*,⁷ The Supreme Court discussed the kinds of circumstances required to enjoy good health and declared that the right to "protection of health" is a component of the right to live with human dignity. No State, neither central government, nor state government has the authority to take any action that would prevent someone from enjoying this fundamental necessity.

The Apex Court, in its landmark judgment in *Pt. Parmanand Katara v. Union of India*,⁸ that all medical professionals, whether working in government hospitals or not, have a duty to use their professional skills to save lives, regardless of whether the patient is a criminal who faces legal penalties or an innocent person. No state action or legislation can prevent or postpone the fulfillment of the primary duty imposed on members of the medical profession.

In CESC Ltd. v. Subash Chandra Bose,⁹ The Supreme Court came to the conclusion

⁴ Address by Justice K.G. Balakrishnan in the National Seminar on the 'Human right to health' organized by the Madhya Pradesh State Human Rights Commission (At Bhopal) on September 14, 2008.

⁵ AIR1981(1) SCC 608

⁶ AIR 1995 (2) SCC 577.

⁷ AIR 1984 SC 802

⁸ AIR 1989 SC 2039

⁹ AIR 1992 SC 573,585 : (1992) 1 SCC 461

that the right to health is a fundamental right after consulting international instruments. It went on to say that being healthy is more than just not being sick: "Health refers to more than just not being unwell. Health institutions and medical services not only guard against illness but also guarantee steady labor for growth of the economy. Health and medical facilities inspire commitment and determination to provide the highest possible physical and emotional well-being for employees. It allows the laborer to reap the rewards of his labor and maintains his physical and mental well-being necessary for leading a prosperous social, cultural, and economic life. Therefore, medical facilities are a component of social security. Similar to gilt-edged security, they would immediately result in higher productivity or, at the very least, lower absence due to illness, etc. Therefore, health is a condition of total mental, bodily, and social well-being rather than only the absence of illness or disability.

The Supreme Court concluded in *Occupational Health and Safety Association v. Union of India and others*¹⁰ that the state has a dual obligation for safeguarding workers' health and ensuring humane working conditions when they engage in dangerous jobs.

The Supreme Court in *Devika Vishwas vs. Union of India*,¹¹ while reiterating the settled law held that "right to health" is a facet of the "right to life" guaranteed vide Article 21 of the Constitution.

In *Navtej Singh Johar and others Vs. Union of India*,¹² The Supreme court held that one aspect of the right to life guaranteed by Article 21 of the Indian Constitution is the right to health and medical care. It was held that "the right to life is meaningless unless certain concomitant rights, such as the right of health, are guaranteed." It is widely acknowledged that having the right to health is essential to living a life of dignity and well-being. Examples of this right include the right to emergency medical care and the right to the preservation and enhancement of public health.

CONCLUSION

It is clear from the discussion above that everyone has the right to health care, and as such, the state and its institutions have a duty to ensure that all citizens have access to these

¹⁰ AIR 2014 SC 1469

¹¹ (2016) 10 SCC 726

¹² (2018) 10 SCC 1

facilities and services without facing any form of discrimination. The Constitution also lays forth specific obligations for citizens to support national health initiatives. However, till now, it has not received the recognition it deserves, leading to a frequent filing of public interest lawsuits on health-related matters involving the fundamental right to health, workers' rights to occupational health and safety, a clean environment, access to sufficient medication, medical malpractice, medical negligence, emergency medical care, public health care, etc. It is essential that we join together and take the necessary actions to fulfill this mission and lead healthy lives. The Right to Health is a constitutionally protected right, and the judiciary serves as a key instrument in its enforcement and realization. By upholding constitutional safeguards and interpreting laws in favour of health equity and justice, the judiciary plays a pivotal role in ensuring that every individual can enjoy their right to health without discrimination or deprivation.