

AN ANALYTICAL STUDY ON RIGHT TO HEALTH AND JUDICIARY

DHARITRI SHARMA

Assistant Professor, Tezpur Law College, Assam.

Abstract

Health is an important aspect in everyone's life. From the perspective of Human Right, there are three key aspects of health. They are physical, mental and social health. The constitution of India has provided us numbers of rights. Amongst them right to health is implicit under Art.21 of the Constitution of India. Although there are no direct articles under the Constitution of India where right to health got recognition as directly a fundamental right. But there are series of judicial pronouncement where judiciary interpreted broadly about the aspects of right to health. In this article the researcher would like to analyses all those judicial interpretation on right to health.

OBJECTIVE

The objective of the researcher is to analyses the role of judiciary regards right to health and also to analyses various Judicial Interpretation in the light of Article 21 with the help of various Supreme Court and High Court cases.

METHODOLOGY

The researcher in this study uses analytical method by using secondary sources for data collection

Concept of health

Every human being considered Health as one of the most essential asset. "Health is a state of complete physical, mental and social wellbeing. Health does not imply merely the absence of disease or infirmity" as defined in the Constitution of WHO which is considered as one of the most accepted definition of health given by WHO. Today, three types of definition of health seem to be possible. First is that health is the absence of any disease or impairment. The second is that health is a state that allows the individuals to adequately cope with all demands of daily life. The third meaning state that health is a state of balance that an individual's has established within himself and his social and physical environment. From the prospective of Human Rights, there are three key aspects of health. They are physical health, mental health and social health.

Definition of Health

According to the preamble of WHO, "Health is the complete physical, mental and social wellbeing not merely the absence of disease or infirmity". The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, and political belief, economic and social condition.

The International Covenant on Economic, social and Cultural Rights of 1966, "Right to health is the right of every one of the enjoyment of the highest attainable standard of physical and

mental health.”

“Health for all” is the call given by declaration of Alma-Ata, 1978 which is the Magna – Carta of people which declares the health as a human right.

Health is a human right and it is the duty of each state to protect and promote the health of the people across the globe. Life is not more living but living in health. Health is not the absence of illness but a glowing vitality the feeling of wholeness with a capacity for continuous and spiritual growth. Physical, social, spiritual and phonological wellbeing is intrinsically interwoven into the fabric of life”

Right to health is always not to be understood as right to be healthy. It includes the right access to a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of health. The Committee on Economic, Social and Cultural Rights (CESCR), created to monitor the ICESCR, in its General Comment on the Right to Health, analyses four interrelated and essential elements necessary for right of health which are availability, accessibility, acceptability and quality. It also specified the duties of the state to respect protect and provide this right to the people. Hence, it becomes the responsibility of the government to preserve, protect and promote right to health, as one of the important human rights to each and every individual without any discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. To make health rights accessible to all and to provide the highest attainable standard of health to every men and women, governments have to adopt various measures either constitutionally or through policies, programmes and schemes.

Right to health and Judiciary

The Constitution of India does not contain any direct provision in regards to right to health. Right to health has been enshrined in the right to life by liberal interpretation of Art.21. The Supreme Court of India by dynamic interpretation of Art. 21 declared that right to health is implicit in right of personal liberty guaranteed under the Constitution of India.

Through various judicial interpretations, the Supreme Court of India explained and expanded the scope of Right to life. In a series of judicial decision, the scope of Art.21 has been broadly interpreted. In *Bandhua Mukti Morchav. Union of India*,¹ the apex court has declared that “This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the last, therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. 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 the right to take any action which will deprive a person of the enjoyment of these basic essentials”. Another important case where judiciary gave its liberal interpretation on Art.21 is *Kirloskar Brother Ltd. v. Employees State Insurance Corporation*². In that case, the Apex Court has held that right to

health enshrined under art. 21 of the Constitution of India is a fundamental right. Further in the case of

State of Punjab v. Mohinder Singh Chawla³, The Supreme Court of India has affirmed that the right to personal liberty includes right to health also. Besides these there are some other cases like in M. C. Mehta v. Union of India⁴, The Supreme Court held that in any case where there is an environmental pollution that hazards public health would amount to a violation of fundamental rights of an individual. In Consumer Education and Research Center v. Union of India⁵, a historical judgment has been given by the Apex Court where it has held that right to health as well as medical care is a fundamental right enshrined in Art.21 of the Constitution of India. The Right to health under Art.21 also includes the protection of health and strength of a person. The expression Life in Art.21 does not connote simple animal existence but it has much wider meaning and includes right to better standard of living, hygienic conditions in workplace etc.

In Parmanand Katara v. Union of india, ⁶the Apex Court has put obligation on all private and government doctors to extend their medical aid and provide assistant to the injured person immediately for preserving or saving life without waiting any legal formalities. It is the primary duty of persons who are in charge of the public health to preserve the life and as a result the innocent persons may be protected and the guilty persons may be punished. It is the duty of the persons who are working in the medical profession to give quick emergency medical aid to the needy people also to protect the health. Hence neither any law nor any State action can interfere to delay regards providing the medical aid to needy persons. And to protect public health is one of the most essential. Primary duty of the medical professional.

Another important case is Paschin Bang Khet Mazdoor Samiti v. St. of W. B.⁷, there the Apex Court of India held that to deny the medical aid to an injured person due to non-availability of beds by Government hospitals amounts to violation of fundamental right to life and health under Art.21 of the Constitution of India.

In State of Punjab v. Mohinder Singh, the Apex Court of India has held that the life in Art. 21 of the Constitution of India include the right to health and therefore the State employees are also entitled for medical reimbursement. .

In N. D. Jayalv. Union of India,², the Supreme Court held that Right to Health is a fundamental right under Article 21 of the Constitution of India and this protection inextricably linked with the clean environment.

Another important Judgment has given by the Apex Court in the case of Visakhav. State of Rajasthan⁹, where the court held that Article 21 of the Constitution of India which is right to life and life under this means life with dignity and sexual harassment at work place is the violation of fundamental right enshrined in Article 14, 19 and 21 of the Indian Constitution.

In a series of judicial pronouncement where the Supreme Court gave Judgments on health. Such cases are as CERC v. Union of India, Parmanand Katara v. Union of India, Kapila Hingorani v. State of Bihar¹⁰, Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd where

Supreme court made it very clear that right to life which is guaranteed under Art. 21 of the Constitution of India also include the right to health and proper medical assistance. Supreme Court of India plays an important role regarding interpretation on Art.21 of the Constitution of India. Under its interpretation toward right to life, Supreme Court held that right to health includes variety of rights which includes right to health also. The recognition of right to health as a part or inherent right under right to life under art.21 is found through different judgment of the judiciary. One of the important is C.E.S.C. Ltd. v. Subhash Chandra Bose,¹¹, where Justice Ramaswamy has opined that ‘physical and mental health have to be treated as integral part of right to life, because without good health the civil and political rights assured by our Constitution cannot be enjoyed’. Justice Hansaria has explained the right to life as “Life is not mere living in health. Health is not the absence of illness but a glowing vitality the feeling of wholeness with a capacity for continuous intellectual and spiritual growth. Physical, social, spiritual and psychological well-being is intrinsically interwoven into the fabric of life.”

An another case held between State of Punjab v. Mahindra Singh Chawla¹², where the Supreme Court held that Article 39(f) directs the States to ensure the health and Strength of workers and the tender age of children are not abused. According to Article 47 of the constitution of India, one of the primary duties of the State is to improvement of public health. The apex court in Ashok Kumar Thakur v. Union of India¹³, has held that improvement of public health is one of the primary duties of the State under Article 47 of the State. In Municipal Council, Ratlam v. Shri.Vardhichand¹⁴, the Supreme Court held that the Constitutional duty of Municipal Council is to protect health of the people is nonnegotiable. The apex court in Vellore Citizen Welfare Forum v. Union of India¹⁵, also held that it is the Government’s duty to improve the public health. In Vicent v. Union of India¹⁶, the Supreme Court has rightly held that for healthy body the improvement of public health is necessary. Attending to public health is of high priority, perhaps they are at the top. In a welfare State it is the obligation of the State to ensure the creation and sustaining of conditions congenial to good health. In P. Rathiram Katara v. Union of India,¹⁷, the Supreme Court held that the Right to life includes physical and mental health. The Supreme Court in Govind v. State of M. P.¹⁸, held that interference with the right to privacy is deleterious to a man’s physical happiness and health. In Kapila Hingorani v. State of Bihar¹⁹, the Supreme Court held that the right to life includes right to health and medical care. Parmanand Katara v. Uninon of India,²⁰, the Supreme Court held that the right to life includes right to medical care and aid. In Vishal Jeet v. Union of India, (1990)3 SCC 318, the apex court has criticized that the Primary health center not equipped with to deal with serious patients and denial of treatment amounts to denial of Article 21 of the Constitution of India. In M. C. Mehta v. State of T.N²¹, the Supreme Court held that working in the match industry is hazardous to children’s health. In Bandhua Mukti Morcha v. Union of India, ²²the Supreme Court held that the employment of children in Carpet industry of U. P. is violation of Art. 24,39(e) of the Indian Constitution as the right to health is a fundamental right. In Regional P. F. Commissioner v. Shillong City Bus Syndicate,²³, the apex court has held that right to health of a worker is a fundamental right. The Supreme Court in Bandhua Mukti Morcha v. Union of India,²⁴ has interpreted that right to life derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 of the Indian

Constitution. Therefore, it must include protection of the health and strength of workers, men and women, and children of the tender age.

CONCLUSION

From the above analysis the researcher comes to a conclusion that although in a series of judicial pronouncement it is held that right to health is an inherent right under Art.21 of the Constitution of India and under the liberal interpretation of Art.21, judiciary in its series of judgment held that right to health and medical care is a fundamental right. But still few sections of the society are depriving from accessing their health right and also deprive from availing health benefits. This is mainly the reason of illiteracy and lack of knowledge and understanding of constitutional provisions. As the non-inclusion of any direct provision of fundamental right regarding health which is another prime reason for few sections of the society for lacking and unaware about their health rights. The researcher through this research study wants to draw the concern authority for inclusion of health rights as directly fundamental right like other fundamental rights under part III of the constitution of India.

References and Notes

1. Jain, M.P. (2021) Indian Constitutional Law, Bombay: N.M.Tripathy
2. Durga Das Basu, Introduction to the Constitution of India 306 (LEXI Snexis Butter worths Wadhwa. Nagpur, 2001)
3. Deepika sood, Indian Perspective of Right to Health, Legal india, Nov.15, 2010, accessed on 4.5.2023 at 3 pm
4. H.Q. Agarwall, Human Rights 36 (Central Law Publication, Allahbad, 15th Edition, 2014)
5. M. Ramaswarm, "Constitutional Development in India" 8 Stan. L. Rev. 1600-1955(1955)
6. Awasthi, R.C.: Economics of Tea Industry in India with special reference to Assam, United Publishers, Guwahati, 1978
7. Auradhkar, J.B. (2017) Changing Paradigm of Women's Right To Health A Human Right Perspective In Indian Scenario, Swami Ramanand Teerth Marathwada University (Thesis)
8. Kaur, Kirandeep(2018) Analyzing the latest reforms in the legal framework with respect to the health sector of India a study from the perspective of women's issues. National Law school of India (Thesis)