



Constitutional Perspective of Health Laws: An Overview Harpreet Kaur*

Health is a condition of complete physical, mental and social prosperity and not only the nonappearance of disease.¹

Abstract

People have become health conscious because of increase in per capital, free medical schemes launched by the Government from time to time and dissemination of information through mass media and now more particularly through social media. The Government has come up with diverse laws to safeguard the interest of Patients. The patients now enjoy contractual as well as story protection but it is the constitutional protection that has wider reach as enunciated by the courts from time. This paper makes an attempt to provide an overview of constitutional perspective of health laws.

Keywords: Health Laws, Public Health, Health Centres, Dispensaries, Rashtriya Arogya Nidhi, RAN

1. Introduction

India is a world's second-most-populous country but incidentally it is a fastest-growing economies also. This brings fore both challenges as well as opportunities, especially in the context of public health. India is now known globally as having reservoir talent and it is further confirmed by the medical tourism in India that has witnessed unprecedented surge in the recent years. In the health sector, India is considered as a hub for pharmaceutical and biotechnology industries; world-class scientists, clinical trials and hospitals. This glittering side apart, India is at the same time facing

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¹ Right to Health-A Part of Article 21, < [Http://blog.pleaders](http://blog.pleaders) > Accessed on 24th May, 2022 at 3.10 p.m.

daunting public health challenges like child mal-nutrition, significantly high rates of neonatal and maternal mortality, growth in non-communicable diseases, high rates of road traffic accidents and other health related issues.²

The administration and public spirited individuals have jointly taken initiatives and measures to strengthen the health laws for public at large. Out of the three lists given under constitution of India, the concurrent list supports public health by making and implementing health laws. The Ministries and Departments like Health and Family Welfare, Labor Ministry, Department of Women and Child Welfare and Public Works play a critical role in augmenting public health departments.³

Article 21 of the Constitution of India deals with the right to life. This right to life has given birth to jurisprudence that would not have even envisioned by the architects of this Article. The Supreme Court of India played an instrumental role in crafting this new jurisprudence by intermixing it with the human rights and infusing content from the trans-border laws. The Supreme Court additionally held that the option to live with human poise, gets from the mandate standards of state arrangements and consequently incorporates security of well-being.⁴

The right to health is a part of directive principles of state policy (DPSP). Article 38 of Indian constitution imposes an obligation on the state that it will protect and implement the social mandate by effectively securing justice of all sorts like social, political and economic. The social mandate includes welfare measures for general public that would bring public health, without any doubt in its fold. It implies without general health government assistance of individual is unthinkable.⁵ The Constitution lays down the responsibility of the state to secure social order by promotion

² <https://en.wikipedia.org/>,

³ Kunal Goswami, Public Health: Laws in India, <http://www.probo-india.in> accessed on 24th May 2022

⁴ Article 21, Constitution of India.

⁵ Article 38, Directive Principles of State Policy

welfare of public health.⁶ The directives of state policy require that the health of the workers be protected.⁷ The public assistance in the form of social security by the state in special circumstances such as sickness, disability, old age etc has to be ensured.⁸ The health of the infant and the mothers, i.e. in a way, it pertains to maternity benefit has to be safeguarded.⁹ The socio-economic rights envisaged in the directive principles of state policy imposes a primary duty of the state in improvement of public health, in securing of justice, providing humane conditions of work for the workers, extension of benefits pertaining to sickness, disability, old age and maternity benefits. In addition to this, the state is under an obligation to prohibit the consumption of liquor in the interest of the public good.¹⁰ A duty is imposed on the state to provide good, healthy pollution free environment.¹¹ Not only the state but also Panchayats and Municipalities are liable to improve and protect public health. Article 243-G provides that the Legislature of a state may endow the panchayats with necessary power and authority in relation to matters in the eleventh Schedule. The entries in this schedule having direct relevance to health are as follows; (Article 243 G)

- Drinking water
- Health and sanitation including hospitals, primary health centres & dispensaries
- Family welfare
- Women and child development
- Social welfare including welfare of the handicapped and mentally retarded
- Water supply for domestic industrial and commercial purpose

⁶ Article 38 of the Constitution of India.

⁷ Article 39 of the Constitution of India.

⁸ Article 41 of the Constitution of India.

⁹ Article 42 of the Constitution of India.

¹⁰ Article 47 of the Constitution of India.

¹¹ Article 48-A of the Constitution of India.

- Public health, sanitation conservancy and solid waste management
- Regulation of slaughter houses and tanneries.

New local and national level institutions have been created which play critical role in protecting and promoting public health. The Panchayat Raj Act has placed emphasis on building local government and devolving health activities to them. Through the 73rd and 74th Constitutional Amendment Acts (1992-93), the local bodies (Municipalities and Panchayat) have been assigned twenty-nine developmental activities. These tasks have direct as well as indirect bearing on health. These include health and sanitation which covering hospitals that have pivotal role in combating various health issues¹².

The right to health dates back to 1946 when the World Health Organization (WHO) came into existence. It is the first international organization dedicated to the cause of health of all across the nations. Its mandate is to formulate policies and programmes that would ensure quality life of the human beings on this globe. The right to health was declared as a human right. Before coming into existence of WHO, there were several countries that have been in the phase of declaring of health as a fundamental right. The industrial revolution is responsible for this awakening. The workers were treated as commodity and the employers paid no heed to the insanitary conditions of working areas. These sub human conditions gained voice after every passing day. The demand for health grew to the extent that it came to be treated as one of the important aspects of the fundamental and basic human rights. These rights would extend to every human being having his/her existence on earth.¹³ These developments at the international level echoed in India when the

¹² Sanjay Nikaash, Right to Health And Health Care, <https://www.legalserviceindia.com/>

¹³ Anishajhavar, "Health as a part of Fundamental Right under Article 21: A pursuit by India", <<https://www.legalserviceindia.com/>> accessed on 6.11.2022

supreme court of India was called to put its gloss on Article 21 of the Constitution.

The bare text of the Constitution of India will lead to the conclusion that the Right to health has not been expressly incorporated as a fundamental right. However, the framers and the founding fathers of the constitution had really far-fetched vision and thus, had imposed the duty on state in the nature of Directive Principles of State Policy under Part IV of the Constitution wherein it is the responsibility of the state to ensure social and economic justice to its citizens. Therefore, a general inference is that Part IV of the Constitution directly or indirectly relates to the public policy in terms of health.¹⁴

There are two professions which never discourage the recipient. One is food industry and the second one is medical profession. First, people's health is affected by wrong eating habits and then they go for treatment for their ailing health. but today's world is not based on medicine rather we are moving in the world of wellness, which says that people should adopt healthy habits of life style which protect them from falling sick. It ultimately results into wellness of people. So emphasis should be on wellness not on medicine, which has become outdated concept. This right of well-being is assured in many national and international laws, which are as under:

(a) Well-being of all ages

Every individual has right to standard of living adequate for proper health and well-being of himself and his family, which includes food, shelter and clothing, medical care, and social security to unemployed, sick, disable, widow, old age or lack of livelihood.¹⁵

(b) Well-being of workers

Everyone has right to just conditions of work like fair wages, equal pay for equal work, safe and healthy working conditions in which work efficiency of workers may enhance. Every person who is working in any institute has right of rest and leisure during lunch

¹⁴ Socio Economic Rights Under Part IV of the Constitution.

¹⁵ Article 25(2) Universal Declaration of Human Rights, 1948.

break.¹⁶ Socio economic right related with labors to ensure their well-being.¹⁷ It is an essential duty of the state to secure the soundness of newborn child and mother by maternity advantage.¹⁸

(c) Well-being of Young Children

This provision of constitution identified the implication of well-being, wherein it precludes human dealing. It is notable that traffic in ladies prompts prostitution, which is central point in spread of AIDS.¹⁹

(d) This provision identifying with kid work it manage, “No kid below the age of 14 years will be utilized to work in any production line or mine or occupied with some other hazardous business. Hence this article guides the significance to youngster well being.

(e) Well-being of Kin and kith

The state is under obligation to raise the degree of nourishment and the way of life of its kin as essential duty. Some different arrangements identifying with well-being fall in directive principles of state policy too.

2. Umbrella scheme of Rashtriya Arogya Nidhi (RAN)

The Government has come up with novel policies that include providing of financial assistance to poor patients living below threshold poverty line and suffering from life threatening diseases relating to heart, kidney, liver etc. for their treatment of government hospitals/ institutions having super specially facilities. Some of the salient features are as follows:

The RAN (Rashtriya Arogya Nidhi) scheme provides financial assistance to the patients for their treatment at government hospitals that are covered under the scheme and are having super specialty facilities.

¹⁶ Article 7(b) of International Covenant on Economic, Social and Cultural Rights, 1966.

¹⁷ Article 39(e) of Directive Principles of State Policy.

¹⁸ Article 42 and Article 47 of Indian Constitution.

¹⁹ Article 23, of constitution of India.

- The patients going through treatment in private hospitals will not be eligible for any financial assistance under the scheme.
- Only the BPL (Below poverty line) people are covered under the scheme.
- If the patients get financial assistance under any other sources like the prime minister's National Relief Fund, it shall be deducted from the amount of financial assistance under the RAN scheme significance of RAN in providing health security to poor people.²⁰

3. Obligation of the State

The independence of India is now 75 years old, but the dream of providing basic amenities for a dignified human existence of citizens of India is yet to be fulfilled. A highly inequitable health system has denied quality health care to all those who cannot afford it. The directive principles are asserted to be “fundamental in the governance of the country” but they are not legally enforceable. Directive Principles are the guidelines for creating a social order that is characterized by social, economic and political justice, liberty equality and fraternity as enunciated in the constitution's preamble. Both, center and state have powers to legislate in the matter of social security and social insurance, medical profession and prevention of extension from profession and prevention of the extension from one state to another of infection disease or pets affecting man, animals or plants.²¹ It is pertinent to mention here that *15th finance Commission has recommended that the right to health be declared as a fundamental right*. It has also submitted a recommendation to shift the subject of health from state list to concurrent list. The recommendation to declare the right to health a fundamental right, if implemented, will strengthen people's access. NITI AYOJ report, 2019, brought out a list of States in India that have unequal

²⁰ Patil Amrita, Rashtriya Arogya Nidhi-UPSC Govt Scheme Notes, <http://prepp.in> accessed on 24th May 2022 at 3.15 p.m.

²¹ Article 36 to article 51, Directive Principles of State policy.

public health systems. Fiscal dependence of states on the center continues to be a major hurdle. There is another school of thought that is of the opinion that if subject of health is listed in the concurrent list, it would lead to excessive bureaucracy, red tapism and institutional constraints.²²

4. Judicial journey on health issue

The right to life ensured under Article 21 incorporates an inbuilt right to health and clinical consideration.²³ A healthy body is the very established principle of state policy. It emphasizes improvement of general health and denial of medications harmful to health as one of the essential obligations of the state.²⁴ The Supreme Court has given the widest possible interpretation to the right to health under article 21 which guarantees the right to life.²⁵ The apex court reaffirmed that right to health is a fundamental to the right of life and should be put on record that the government had a constitutional obligation to provide health services.²⁶ The court further endorsed the state's responsibility to maintain health services.²⁷

The Supreme Court held that right to health is a sacrosanct, sacred and valuable right. Article 21 was further widened by the court by holding that it is the responsibility of the government to provide adequate medical aid to every person and to work in the welfare of the general public. Moreover, Article 21 imposes obligation on the state. The state is required to protect and safeguard right to health to every person. In a landmark case, the Supreme Court expressly opined that the right to health was also an integral factor to lead a meaningful life and for the right to life under part III of

²² Seventh schedule, constitution of India. *also available at*: Nishant Sirohi, Declaring the right to health a fundamental right, www.orfonline.org accessed on 25th May 2022

²³ State of Punjab v. M.S. Chawla AIR 1997 SC 1225.

²⁴ Vincent v. Union of India AIR 1987 SC 1990.

²⁵ Bandhua Mukti Morcha v. U.O.I and others AIR 1984 SC 812.

²⁶ State of Punjab and others v. Mohinder Singh Chawla, 1996.

²⁷ State of Punjab and others v. Ram Lubhaya Bagga, (1999) 1 SCC 297.

the constitution and the court also stated that health includes the access to medical care for the highest attainment of living standards.²⁸ The Supreme Court has said that whether the patient was innocent or a criminal it is an obligation of those in charge of community health to preserve the life of that patient. Every doctor had a professional obligation to extend his services with due expertise and care for protecting life.²⁹ The right to health is integral to right to life and has a constitutional obligation to provide health facilities.³⁰

The Hon'ble Supreme Court held that those who are into the medical profession they are in charge of public health and have a sacred obligation to protect the same so that those who are innocent can be saved from punishment and the guilty be filtered out for punishment.³¹ The court held that there is a need for sensitization of relevant law pertaining to the content of the right to health. The Act that prohibits commercialized of transplantation of organs has further animated the right to health.³² Therefore, the recognition of dignity and fundamental right to life led to recognizing of the importance of health. The Supreme Court held that although the Directive Principles of State Policy hold persuasive value, yet they should be duly implemented by the state; and it was in this case also that the court had interpreted the dignity and health within the ambit of life and liberty under Article 21 of the Constitution of India.³³ In *Consumer Education and Research Centre v. Union of India*, the court had expressly opined that right to health was also an integral factor to lead a meaningful life and for the right to life under Part III. And the court also stated

²⁸ *Consumer education and research centre v. union of India*, 1995 AIR 922, 1995 SCC (3) 42.

²⁹ *Parmanand Katara v. union of India*, 1989 (4) SCC 286.

³⁰ *State of Punjab and others v. Mohinder Singh*, AIR 1997 SC 1225.

³¹ *Parmanand Katara v. Union of India*, 1995 3 SCC 248.

³² *Sprinf Meadows Hospital*, 1997 2 CPJ 98 NC.

³³ *Bandhua Mukti Morcha v. U.O.I and others* AIR 1984 SC 812.

that health includes the access to medical care for the highest attainment of living standards.³⁴

5. Conclusion

It is now evident that the judiciary has led from the front by giving meaningful interpretation to Article 21. It has been consistently held that the language of Article 21 embodying the right to life embeds in it the right to health care, treatment and medication regardless of race, religion, social status and ability to pay. It is trite to say that the term right to health is nowhere expressly mentioned as specific right in the Indian constitution, yet the Supreme Court has interpreted it as a fundamental right. It is a significant and far reaching interpretation to right to health because the supreme court first interpreted right to health under part IV i.e. directive Principles of state policy and noted that it is the duty of state to look after the health of the people at large. In its wider interpretation of Article 21, it was held by the Supreme Court that the right to health is a part and parcel of right to life and therefore one of fundamental rights provided under Indian constitution. In the real sense, the court has played a pivotal role in imposing optimistic obligation on authorities to maintain and improve public health.

³⁴ *Consumer Education and Research Centre v. Union of India*, 1995 AIR 922, 1995 SCC (3) 42.