

# INDIAN JUDICIARY AND RIGHT TO HEALTH - A LEGAL PERSPECTIVE

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## **Abstract:**

Constitution of India is a holy book for the Indian citizens, which governed the relationship between the state and its citizens. To achieve the goals set out in the part III of the constitution, it confers certain rights upon the people, imposes duties upon the citizens, and issues certain directives to the state. The Right to health forms part of basic human right. There are various national and international declarations to the effect.

The Supreme Court has asserted that in order to treat a right as fundamental right it is not necessary that it should be expressed in the constitution as a Fundamental Right to health is also one such rights. The Right to enjoyment of the highest attainable standard of health is enshrined in numerous international human rights treaties. If everyone has to be benefited by a particular medicine or operation then no one would die of disease.

**Key words** – Right to Life, Constitution of India, Judiciary

## **Introduction:**

Constitution of India is a holy book for the Indian citizens, which governs the relationship between the state and its citizens. To achieve the goals set out in the part III of the constitution, it confers certain rights upon the people, imposes duties upon the citizens, and issues certain directives to the state. The Right to health forms part of basic human right. There are various national and international declarations to the effect.

The Supreme Court has asserted that in order to treat a right as fundamental right it is not necessary that it should be expressed in the constitution as a Fundamental. Right to health is also one such right. The Right to enjoyment of the highest attainable standard of health is enshrined in numerous international human rights treaties. If everyone has to be benefited by a particular medicine or operation then no one would die of disease.

India has over 260 Million people living below the poverty line and people in India are living without the fundamental assurance of health. The right to health is important as for as

the people of India are concerned. Right to life is an inalienable and inherent right of every human being. In a country like India more than 90% percent of people are economically backward and they are subjected to discrimination in medical care, and health. In such an explosive situation causing adverse effect in society, when the executive and legislature are pathetic and fail to discharge their constitutional duties, the Judiciary has to enter into the shoes of legislature and interpret the provisions of Indian Constitutional and guarantee the Right to health to the Indian Citizens.

The Right to Health has been recognized in the national constitutional and statutory laws as well as in International law. Constitutional of India is a Public law, which governs the relationship between state and its citizens and to activate that goals as set out in the preamble of the constitution, it confers certain rights upon people and issues certain directions to the state. From the perspective of the Right to health, though their have been initiatives from the legislature and the executives the judiciary has taken a lead in terms of the actual, immediate effect in the right to health. Provisions of Right to health under Indian Constitution: The constitution of India has provisions regarding the right to health. They are various. Directive Principle of State Policy, Article 42 and 47 in Part IV and are therefore non-justifiable. Recently Article 21 of the Indian Constitution, has been interpreted to incorporate the right to health is right to life and hence this right having now acquired a Constitutional status through judicial activism, can be judicially enforced.

Everyone has the right to life, liberty, and security of person (Art 21). The right to life is undoubtedly the most fundamental of all rights. All other rights add quality to the life and question and depend on the pre-existence of life itself for their operation. As human rights can, only be attached to human beings, one might expect the right to life itself to be in some sense primary since none of their rights would have any value or utility without it. There would have been no Fundamental Right worth mentioning. Article 21 has thus been interpreted in its original sense by the Indian Judiciary.

### **Role of Indian Judiciary in guarantying of Right to Life:**

The Indian Judiciary has shown proper interest in protecting the health of people in the society and has accepted it in clear-cut manner that administrative as well as judicial wings of the state are under a duty not to adopt an indifferent attitude in this respect. Right to health is one of the

various indivisible rights that have been recognized by the Supreme Court under Article 21. The right to health as extended under Article 21 relates to occupational accidents and diseases which as remains, the most appealing human tragedy of modern Industry. Health hazards faced by the workers in the asbestos factories have brought to the attention of the Supreme Court in *C.E.R.C. Vs Union of India* (AIR 1995 SC 992 See also *M.C.Mehta Vs. Union of India*, A.I.R.2001 SC.1948, 1950). The court held that right to health, to provide medical aid and to protect the health and vigour of a worker while in service or post-retirement is Fundamental right under Article 21.

Apart from recognizing the right to health as an integral part of the right to life, it also laid down in many decisions that it is an obligation of the state to provide medical and health services. The increasing role of the court from the recognition of right to health at the first and then to the Managerial role is a welcomed trend. This change can be understood from the gradual development from the division of Supreme Court from *Paramanand Karta Case* (AIR 1989 SC 2039). This case related to medical – legal case such as an accident case, when doctors usually refuse to give immediate medical aid to the victim till legal formalities are completed. In some cases, the injured die for want of medical aid due to the pending of the completion of legal formalities. The Courts have stated that preservation of health is paramount, and important as if one's life is lost it cannot be restored. Hence it is the duty of the doctors to preserve the life of the patients whether the concerned person is a criminal or an innocent person.

Right to get timely medical treatment to persons in need was considered by the Hon'ble Supreme Courts in the decision of *Paschim Barga Khet Mazdoor Samity Vs State of West Bengal* (1996 (4) SCC 37). In Para 9 the court says, that the Government hospitals run by state and medical officers employed, There in 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 result in violation of his rights to life guaranteed under Article 21 of the Constitution. Having regard to the facts and circumstances of the case, the court fixed such a compensation of Rs.25, 000/- paid to the victim's a legal heirs, in the above case.

In *State of Punjab Vs Lubhaya Bagga* (AIR 1998 SC 1703) the Supreme Court has recognized that provisions of health facilities cannot be unlimited, it has to be to the extent to

which the finance permit, no country has unlimited reasons to spend on any of its project. In *Dr. Chandra Prakash Case Court (Dr.Chandra Prakash Vs. Ministry of Health, AIR 2002, Delhi 188)* took the managerial role by commenting on tapping the resources of revenue for free medical treatment to the victims of road accidents.

In *A.S. Mittal Vs State of Uttar Pradesh (AIR 1989 SC 1570)* the court directed the UP government to pay the compensation, because it had not followed the norms prescribed for conduction of eye-camp which resulted in serious injuries to 84 patients. In *Vincent Panikurlangara Vs Union of India (AIR 1987 SC 990)* the Supreme Court observed that in a welfare state it as the obligation of the state to ensure the creation and the sustenance of conditions congenial to good health. Directions were sought from the directions Supreme Court for banning the import, manufacture, sale and distribution of drugs recommended for ban by the Drugs consultative committee, and for the cancellation of all licenses authorizing such drugs (AIR 1987 SC 990). The court stated that maintenance and improvement of public health have to rank high as these are indispensable to the very physical existence of the community and on the betterment of these depends the building of the society of which the constitution makes envisaged, attending to public health, in our opinion, therefore is of high priority perhaps the one at top. In *M.C.Mehta Vs Union of India (2002 (4) SCC 356)*, Article 39(a), 47 and 48-A by themselves and collectively cast a duty on the state to secure the health of the people. Notwithstanding adequate laws being in place the administration did not show much concern about environmental pollution.

In an *Organization of Pharmaceuticals producer of India Vs Union of India (AIR 1987 SC 1414)*, the Supreme Court held that there could be no fundamental right to manufacture drugs which are injurious to human health. In *Kirloskar Brothers Ltd Vs Employees State Insurance Corporation (1996) 2 SCC 682*, the Court held that Right to Health is the Fundamental Right of the workers and is available not only against the state and its Instrumentalities but also against the private industries.

### **Conclusion:**

The preamble of the Constitution of India, the Fundamental Rights and Directive Principles Constituting trinity, assures to every person in a welfare state social and economic democracy with equality of status and dignity of person. Political democracy without social and economic



democracy would always remain unstable. Social democracy must become a way of life in an egalitarian social order. Economic democracy aids conciliation of social stability and smooth working of political democracy. For welfare of the citizens, the government should provide facilities and opportunities to make their life meaningful. Health implies more than an absence of sickness; Medical Care and health facilities not only protect against sickness but also ensures manpower for economic development. Medical facilities, therefore, part of social security and like gilt-edged security, it would yield immediate returns to the country in the form of increased health care. It would thus save valuable man power and conserve human resources.

The Maintenance of health is most imperative constitutional goal whose realization requires interaction of many social and economic factors. The Indian Judiciary through the judicial decisions ensures safe and healthy working conditions to the workmen protecting the poor from diseases, and it renders efficient service which is a valuable asset for the ordering citizens and also protecting the fundamental right to live, in this country. Health is thus a State of complete physical, mental, and social well being and right to health, therefore is a fundamental. Judiciary has clearly read into Article 21, that Right to Life is, the right to health.

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4. Indian Constitution - Article 21 of the Constitution of India 1950, provides "No person shall be deprived of his life or personal except according to procedure established by law.
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