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JUDICIAL INTERPRETATION IN THE LIGHT OF ARTICLE 21 OF THE CONSTITUTION OF INDIA AND RIGHT TO HEALTH OF WOMEN

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Abstract:

Health is an essential element to live a happy and healthy life. Like men, women's health is an important aspect which needs to be seriously concerned. As only women have the most super power to produce a new life in this world, therefore they deserved the best education along with best health care. In this respect, the humble judiciary in the light of Article 21 of the Constitution of India played an important role. In this article, the researcher would like to analyze the interpretation of the judiciary towards protecting the health of women in the light of Article 21 of the Constitution of India.

Objective:

The objective of this research paper is to analyse the role of Judiciary towards protecting health of women in the light of Article 21 of the Constitution of India. The researcher would like to discuss whether the judicial pronouncement towards protection of right to health is sufficient or not.

Research methodology:

In this article, the researcher has applying doctrinal method by applying secondary sources for data collection. Secondary sources include previous articles related with the research topic, newspapers, journals etc.

Introduction:

Health is one of the essential elements to live a happy and healthy life. Like men, women's health is an importance factor which needs to be addressed seriously. As women have the most super natural creativity of producing a new life towards the world, therefore they deserved best education along with best health care.

Women have the full right to have better education and best medical facility. Each and every individual has a right to live a decent life and for such a life, one has to take care of their body. It is our right to live and no one can deny it. The right to health and medical care has been declared as a fundamental right under Article 21 in conjunction with Articles 39(e), 41 and 43 of the Constitution of India¹.

Concept and Definition of Health

The concept of health and right to health are complementary and supplementary to each other. Therefore to understand the meaning of right to health; one must understand the meaning of health.

The concept of health is a complex matter and it means different thing to different people which is depending upon the situations under which it has defined along with various determinates of health². Etymologically, the term health is derived from the word “hale” which literally means wholeness, being whole, complete and sound.

The definition of health has evolved over time. In keeping with the biomedical perspective, early definitions of health focused on the theme of the body’s ability to function. Health was seen as a state of normal function that could be disrupted from time to time by disease³.

The Butterworth Medical Dictionary defines the term health as normal physical state, i.e. the state of being whole and free from physical and mental disease or pain, so that the parts of the body can carry on their proper function⁴.

After the World War II, with the development of human rights, there was a need to review the definitions of health which were based on biomedical nature. After recognizing various aspects of health which includes self perception of illness, various social variables which affecting the concept of sickness and health in order to describe healthcare rights, the World Health Organization has given the most popular definition of health.⁵

¹ M.P.Jain, *Indian Constitutional Law* 112(Kamal Law House, Calcutt,14th edition,2014)

² A Vanish Kumar, *Human Right to Health 1*(Satyam Books Pvt.Ltd., New Delhi, 2007)

³ *Supra* Note 3 at 2.

⁴ M. Critchley(ed.), *Butterworths Medical Dictionary* 784(Butterworths, London, 1978)

⁵ Preamble to the Constitution of WHO

In 1948, in a radical departure from previous definitions, the world health organization proposed the definition as “Health is the state of complete physical, mental and social well-being and not merely an 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 or social condition.”⁶

The definition provided by WHO overcame the negative definition of health and in terms of positive qualities it conceptualized health. This view of health expands the ambit of traditional medical view. The above definition provided by WHO aimed higher: linking health to well-being, in terms of physical, mental, and social wellbeing and not merely the absence of disease and infirmity.”⁷

Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) state “Right to health means the rights of everyone to the enjoyment of the highest attainable standard of physical and mental health”⁸

There is a close nexus between health and human rights. WHO through its interpretation discuss the nexus between health and human rights from three aspects, firstly, WHO held that any kind of violation or lack of attention towards Human Rights can lead to serious health hazards like slavery, harmful traditional practices, in human treatment including violence against woman and children.⁹

The second aspect of WHO where it gives interpretation regarding the close nexus between Health and Human Rights is that numbers of Health policies and programmers can promote or violate human rights in their design or implementation like freedom from discrimination, privacy, individual autonomy and rights to participation.¹⁰

Third aspects is that vulnerability to ill-health can be reduced by way of taking steps to protect, respect and fulfill human rights like freedom from discrimination on account of race, sex and

⁶ *Ibid.*

⁷ *Ibid.*

⁸ International Convention on Economic, Social and Cultural rights, 1966, Article 12

⁹ WHO, ‘The Right to Health’, *WHO Fact Sheet No.233*, reviewed in November 2013, available at <http://www.who.int/mediacentre/factsheets/fs323/en/> (last accessed on 1 august, 23 at 4 p.m.)

¹⁰ *Ibid.*

gender roles, right to health, food and nutrition including education and housing.¹¹

The concept of health can be understood from modern aspect also. There are two different disciplines. They are medicine and public health from which the concept of modern health can be understood. Generally medicine always gives importance and focuses on individual's health whereas public health focuses on health of the population.

Medical and other health care services always give importance towards individual's physical health, mental illness and disabilities. On the other hand public health is always concern with society for assuring collective health provisions for health of the people at large.

Thus it can be understood that public health having a distinct goal for promoting health and concern with the prevention of various diseases, disabilities and premature death. 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. "Health for all" is the call given by declaration of Alma-Ata, 1978¹² which is the Magna – Carta of people which declares health as a human right.

Concept of Right to Health and Women

Both women and men have a significant relation with health. Though health is equally important for both women and men but there are biological and gender related differences between them. Due to the particular biological and social differences between them, the health of women deserves particular attention.¹³

Primarily, the notion of health right of women is originated from international endeavors. Regarding reproductive rights for the first time in the International legal area, the Convention on the Elimination of Discrimination against Women, 1979 expressly addressed. In the area of health, it requires states to eliminate all the discrimination between women and men.¹⁴

In the year 2015, The Sustainable Development Goals (SDGs) which are a set of goals, set out in order to achieve a new sustainable development agenda for the world by the year 2030. The third goal out of the 17 development goal is directly linked to health. Within W H O, the WHA,

¹¹ *Ibid.*

¹² Alma Ata Declaration, 1978

¹³ Neelem Singh, "Issues of Women's Health," 1(1 and 2) *Nyaya Deep* 4(2014)

¹⁴ Convention on the elimination of discrimination against women 1979, Article 12

the highest decision-making organ accepted a resolution related to women's, children's and adolescents' health¹⁵.

The above resolution strives to ensure that every woman, child and adolescent worldwide able to survive and thrive by the year of 2030, which is directly aligned with the SDGs and goal number.¹⁶

Judicial interpretation in the light of article 21 of the Constitution of India and right to health of women:

For promoting justice, the Constitution of India has the provisions of Judicial Activism and Independence of Judiciary. As Judiciary is the guardian of Indian Constitution and the concept of Separation of power is existed. Therefore, Executive, Legislature and the Judiciary have to do their function within the sphere allotted to them without interfering each other.

Under the Constitution of India, Article 13 deals with the concept of Law which includes any ordinance, order, bye-law, rules, regulation, notification, custom and usages having the force of law in India. According to Article 13(1) of the Constitution of India, any law which infringes any of the provisions of Fundamental rights shall be void. Again Article 13(2) of the Constitution of India says that the state shall not make any provisions which takes away or infringes any of the rights conferred in Part III of the Constitution of India.

In *Keshava Nanda Bharti v. State of Kerela*¹⁷, the Supreme Court of India held that the Parliament under Article 368 of the Constitution of India has power to amend any provisions of the constitution of India but the basic structure of the Constitution cannot be amended. The legislatures of the Country are also under limitation that while making any laws they cannot infringe any of the provisions of Part III of the Constitution of India.

To fulfill the above task the Judiciary has given the power of judicial review through which judiciary has power to control the government authority. As constitution of India having its impartial and Independent judicial body so it is the judiciary who guarantee that there is no misuse of power by any branches of government. The Supreme Court and High Court are the

¹⁵ World Health Organization, *Maternal and Newborn Health*. <http://www.euro.who.int/en/health-topics/Life-stages/maternal-and-newborn-health/maternaland-newborn-health>, (retrieved on 8.7.2023 at 3 p.m.)

¹⁶ *Ibid.*

¹⁷ AIR 1973 SC 1467.

guarantor and Protector of the Rights of Citizen. So to protect the rights of the citizen, with the help of Article 32 of the Constitution of India, any citizen can seek justice by applying the writ petition for violation of their Fundamental Rights. At the same time under article 226, The High Courts are given exclusive power for entertaining any writ petition from Indian citizen if their fundamental rights and any other rights are violated.

Besides that under Article 131-136 of the Constitution of India, the Supreme Court is under the authority to adjudicate any disputes which are held between individuals, between different states and union. Under Article 137 of the Constitution of India, the Supreme Court is entrusted with the power of Judicial Review through which Supreme Court is under the authority to review any judgments pronounced or order made by it.

The supreme court of India has also rights to revoked if any records contain errors. Under Article 142 of the Constitution of India, the Supreme Court is given exclusive power to exercise its jurisdiction to pass such decree and order which are necessary for providing complete justice.

Regarding the concept of “Right to Health” the Court has played an important role by trying to change the Jurisprudential aspect of Right to Health by including access to medical care, doctor’s duty and imposing a positive duty on the State to take some positive step for the better health facilities to the people.

There are numbers of instances where health rights are violated in many sphere. Regarding this the judiciary has uphold numbers of pronouncement where it tries to uphold various health rights which are violated in many cases. Although health rights including reproductive rights which has been recognized as a human right but still it is not recognized as a fundamental rights under the Constitution of India.

Under series of judicial pronouncement through the light of right to life, judiciary has given the status of right to health as an important essence and aspect of right to life under Article 21 of the constitution of India. Besides that under the provisions of Directive Principle of the State Policy under Article 47 it is the duty of the State to protect the public health. These directives Principle of the State Policies are not enforceable by law and these are required to follow by the state as a direction. Judiciary being an Independent Body always plays an important role

regarding Interpretation of Law and work as a watchdog of the Constitution of India.

A dignified life would include adequate health facilities and also a healthy environment. The *Maneka Gandhi v. Union of India*¹⁸ was the first case where the Judiciary liberally interpreted the term right to health. The judiciary for the first time held that the phrase “procedure established by law” within the meaning of Article 21 must be “right, just and fair and not arbitrary, fanciful or oppressive”.

Regarding judicial interpretation on right to health, the Supreme Court in *Common Cause v. Union of India*¹⁹, held that the right of bodily integrity and self-determination are the rights which belong to every human being. When an adult person having mental capacity to take a decision can exercise his right not to take treatment or withdraw from treatment, the above right could not be negated for a person who is not able to take an informed decision due to terminal illness.

In *Kirloskar Brothers Ltd v. Employees State Insurance Corporation*,²⁰ the Supreme Court observed that facilities of health and medical care generate devotion and dedication to give the worker's best, physically as well as mentally, in productivity. Thus health is recognized as a state of complete physical, mental and social wellbeing and thus right to health is a fundamental and human right to the workmen.

Another important judgment is in the case of *Ramar v. Director of Medical and Rural Health Services*²¹ the Madras High Court held that failure on the part of a Government hospital to provide timely medical treatment to a patient in need of such treatment amounts to a violation of the right to life.

Another important judicial interpretation was held in *Sri Pratam Kumar Nayak v. State of Orissa*,²² the Orissa High Court held that right to health and medical care is a fundamental right and right to life includes protection of health. Further in the case of *Chaobi Devi v. State of*

¹⁸ AIR 1978 SC 597.

¹⁹ AIR 2018 SC 1665 (2018) 5 SCC 1.

²⁰ AIR 1996 SC 3261: 1996 SCALE (2)1.

²¹ (2010) 1 MLJ 1409.

²² AIR 2012 Ori 53: 2013 ACJ 1464.

Manipur,²³ the petitioner sought for compensation from respondent State on the ground of failure on part of state in giving proper medical care and treatment to petitioner's husband resulting in violation of his fundamental right guaranteed under Article 21 of the Constitution.

In *Martin F. D'Souza v. Mohd. Ishfaq*²⁴, the Supreme Court held that it is the duty of the doctor in an emergency to begin treatment of the patient and he should not wait till the completion of legal formalities or arrival of the police. The preservation of the life of a person is far more important than following the legal formalities.

The Supreme Court of India in *Rajasthan Pradesh Vaidya Samiti, Sardarshahar v. Union of India*,²⁵ held that the citizens of India have a right under Article 21 of the Constitution to get protection and safeguard with regards to health and life from mal-medical treatment. Therefore, every citizen has the right to get treatment by qualified medical practitioners. This right has been protected under the Indian Medical Council Act, 1956.

Under the provisions of Constitution of India, though there is not any specific provisions regarding right to health of women including their reproductive rights but there are numbers of article where women's right to health including their reproductive rights are dealt with. Articles 14 of the Constitution of India which deals with Equality before law and Article 15 of the Constitution of India which says that state shall not make any discrimination on the grounds of religion, caste, sex, race or place of birth.

The judiciary has given its interpretation regarding Article 51(c) of the Constitution of India and gave its interpretation by recognizing that government has a constitutional obligation to respect the International Law and treaty obligation.²⁶ Under Article 15(3) of the Constitution of India, the states are given right to make special provisions for both women and children and they cannot be prohibited from doing so.

There are numbers of cases where judiciary gave pronouncement on women's health right. There are some cases where Indian court has adopted a firm definition of reproductive right

²³ 2018(2)GLT 393: II(2018)ACC 303.

²⁴ AIR 2009 SC 2049.

²⁵ AIR 2010 SC 2221.

²⁶ *Apparel Export Promotion Council v Chopra* (1999) 1 SCR 117, Para. 27.

which reflects human rights standards.²⁷

In Suchitra Srivastava v Chandigarh Administration,²⁸ the Honorable Supreme Court held that Article 21 which deals with right to life and personal liberty includes right to make a reproductive choice. Women's right to privacy, dignity and bodily integrity should always be respected in every society. If the health condition of women does not allow her to carry a baby, it should be supported.

Regarding denials of maternal health services to two ladies who were living below the poverty line the Delhi judiciary gave a judgment through a joint decision in the instance of *Jatiun v. Maternity Home, MCD, Jangpura and Ors*²⁹ and *Laxmi Mandal v. Deen Dayal Harinagar Hospital & Ors*.³⁰

*In Indian Medical Associations v. V.P. Shantha*³¹ a significant decision regarding Right to health of Women has been given where it was held that providing medical services, whether therapeutic or diagnostic, for monetary consideration amounted to service within the meaning of service as per the Consumer Protection Act 1986.

Therefore any medical practitioner or hospital found guilty of negligence or deficiency in services shall be held liable as per the Consumer Protection Act. One another important judicial interpretation has found in the case of *Devika Biswas v. Union of India & Ors*,³² where the Humble Supreme Court held through a judgment that reproductive health framework has to recognize women's autonomy and gender equality as core elements of women's constitutionality that means protected reproductive rights.

In a number of cases judiciary has recognized that reproductive rights are part of right to health and it is an important essential of personal liberty of every individual. So Right to health as well as right to health of women are recognized as one of the indispensable rights under Article 21 of the Constitution of India.

²⁷ *Devika Biswas v Union of India*, W.P. (C) 81/2012.

²⁸ (2009) 9 SCC 1.

²⁹ *Ibid*.

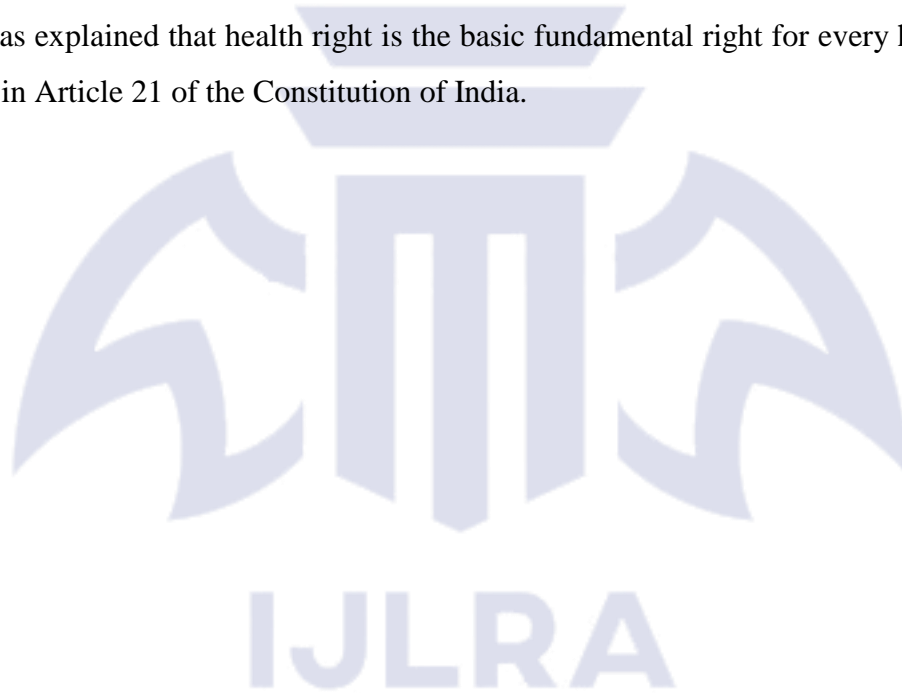
³⁰ *Laxmi Mandal v. Deen Dayal Harinagar Hospital & Others*, W.P. (C) No. 8853/2008

³¹ Air 1996 SC 550.

³² W.P. (C) 81/2012

An important decision has taken place in the case of *Own Motion v. State of Maharashtra, the Bombay*,³³ the High Court ruled to progress women prisoner's health status, which included access to abortion. The Court has held that women's right to abortion is an essential component of their Fundamental Rights because according to Article 21 of the Constitution of India life means living with human dignity.

The constitution of India has been regarded as the Supreme law of the land. It has made three organs of the government namely Executive, Legislature and Judiciary. Judiciary is the guardian of the Constitution and it is the watch dog of fundamental right in various times. The judiciary has explained that health right is the basic fundamental right for every human being as implied in Article 21 of the Constitution of India.



³³ W.P. (CRL) No.1/2016, Maharashtra H.C. On its own Motion Lajja Devi v. State, W.P. (CRL) No. 338(2008)(High Court of Delhi)