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CONSTITUTIONAL PERSPECTIVES ON RIGHT TO HEALTH IN INDIA

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A healthy body is the very foundation for all human activities. That is why the adage "*Sariramadyam Khaludharma Sadhanara*"¹. The maintenance and improvement of public health and welfare rank as one of the highest priorities because 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 makers envisaged.

In a welfare state² such as ours, the government assumes responsibility for the social and economic well-being of its citizens, aiming to ensure that everyone has access to basic necessities and essential services. Central to this commitment is the recognition of the right to health as a fundamental human right and a cornerstone of social welfare policies.

The framework of the right to health in India primarily draws from the Fundamental Rights, Directive Principles of State Policy and judicial interpretations by the Supreme Court.

I. Fundamental Rights

Fundamental rights in Part III of the Indian Constitution have been described to be the *Magna Carta* of India. The need and necessity of fundamental rights arises from the fact that the Constituent assembly envisaged India as a modern democracy and hence, deemed it essential to protect and preserve the rights of its people against encroachment of the power that they themselves have given to their government.

¹ "*In order to fulfill our dharma, first start with the body.*"

² Article 38. State to secure a social order for the promotion of welfare of the people.—(1) The State shall strive 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 all the institutions of the national life. (2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

Fundamental rights have gone through several stages of evolution in terms of their interpretation. Starting from the *A.K. Gopalan case*³ which recognized the notion that individual rights must always be subject to reasonable conditions to the widening of scope of the fundamental rights to then, ruling in the case of *Maneka Gandhi*⁴ that the widest possible interpretation should be given to the provisions of third part of Constitution.

Article 21 of the Constitution provides for the protection of life and liberty of person. It may be noted that throughout the passage of time, the Hon'ble Apex Court has been instrumental in widening its meaning and scope. The expression 'life' used in the said Article has a broad connotation and import. It includes within itself an array of or a bundle of rights which have been given recognition by the law makers from time to time and the also the judiciary. Right to life is not only limited to preserving life of a person but encompasses several aspects such as Right to live with dignity, Right to privacy⁵, Right to livelihood⁶, Speedy delivery of justice⁷, Right to shelter⁸, Right to free legal aid⁹, Right against solitary confinement¹⁰ etc.

The right to health is intricately linked with various fundamental rights, including the right to life provided under Article 21. Right to health is a fundamental aspect of human dignity and well-being, and it finds expression within the constitutional framework of India.¹¹ Although the Indian Constitution does not explicitly enumerate a right to health, various provisions implicitly recognize and protect this right.

In the year 2018, Supreme Court decided the case *Ashwini Kumar v. Union of India*¹² whereby the rights of dignity, health and safety of the elderly was considered before the Hon'ble Court, it was held that the said rights of health, safety and shelter are to be protected and enforced by the state¹³ and are indelible part of Article 21 of the Indian Constitution.

³ *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27.

⁴ *Maneka Gandhi v. Union of India* AIR 1978 SC 597.

⁵ *K.S. Puttaswamy v. Union of India* AIR 2017 SC 4161.

⁶ *Narendra Kumar v. State of Haryana* JT (1994) 2 SC 94

⁷ *Hussain v. Union of India* AIR 2017 SC 1362

⁸ *Chameli Singh v. State of U.P.* (1996) 2 SCC 549

⁹ *M.H. Hoskot v. State of Maharashtra* AIR 1978 SC 1548

¹⁰ *Sunil Batra (No.1) v. Delhi Administration* AIR 1978 SC 1575

¹¹ It is well established that the right to life under [Article 21](#) of the Constitution includes the right to lead a dignified and meaningful life and the right to health is an integral facet of this right. See [Devika Biswas v. Union of India and others](#), (2016) 10 SCC 726

¹² AIR 2018 SC (SUPP) 2541

¹³ We accept that the right to life provided for in [Article 21](#) of the Constitution must be given an expansive meaning. The right to life, we acknowledge, encompasses several rights but for the time being we are concerned with three

II. Directive Principles of State Policy

Directive principles of state policy can be found in Part IV of the Constitution. This part provides for the principles which are to be followed by the state while governing the country. Even though these principles are non-enforceable which entails that no person can approach the Court of law for enforcing these principles, these directive principles are fundamental in governance of our country and establishing a welfare state.

It can be said that Directive principles are those goals or ideals that are to be kept in mind by the legislature be it at the Union level or State level. The ideal being a welfare state which was envisioned by the framers of our Constitution can only be achieved if the government makes an effort to implement the directives with a high sense of moral duty.

a. Article 39 (e) and (f) of Indian Constitution:

The directive in Article 39(e) secures and ensures that the health of workers be it man or woman should not be abused. It also mandates that the health and strength of children is protected and they are not abused or exploited and that no one is on account of economic necessity made to enter or join professions which is unsuited to their age and strength.¹⁴ Right to health of worker was also a point of primary consideration in the *CERC case*¹⁵ where the issue of appalling conditions of workers, health hazards faced by them and dangers of asbestos exposure was taken into consideration by the Apex Court. It was held by the Supreme Court that right to health and medical care is a fundamental right and it includes the protection of health and strength of worker. Court further held that the State is enjoined to take all actions which promote health, strength and vigour of workmen not only during employment but also after retirement.

Further, Article 39(f) provides that children should be given facilities and adequate opportunities in a healthy manner and that they are protected against exploitation and against moral and material abandonment. Hence, this article directs the state to ensure that

important constitutional rights, each one of them W.P(Civil) No.193 of 2016 Page 22 being basic and fundamental. These rights articulated by the petitioner are the right to live with dignity, the right to shelter and the right to health. The State is obligated to ensure that these fundamental rights are not only protected but are enforced and made available to all citizens. *Ashwini Kumar v. Union of India* AIR 2018 SC (SUPP) 254.

¹⁴ 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 least, therefore, it must include protection of the health and strength of the 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 as humane conditions of work and maternity relief. *Bandhua Mukti Morcha v. Union of India*, [1984] 3 SCC 161

¹⁵ *C.E.R.C. v. Union of India* AIR 1995 SC 922

children being the future of country should grow in a healthy manner.

- b. Article 42 mandates provisions for just and humane conditions of work and maternity relief. It stands as the basis of laws on labor welfare. Evenly, Justice Bhagwati had observed in the landmark judgment of *Bandhua Mukti Morcha*¹⁶ that the right to live with dignity which is enshrined in Article 21 itself derives its breath from directive principles such as clause (e), (f) of Article 39, Article 41 and Article 42 of the Constitution.
- c. Article 47 lays down the duty on the state to raise the level of nutrition and standard of living and improving public health. It highlights the state's duty to promote public health as one of its primary responsibilities. By prioritizing public health, the state indirectly acknowledges the importance of ensuring access to healthcare services, clean water, sanitation, and other determinants of health that are essential for the well-being of its citizens.

It entails the importance of education on health and activities which raise awareness. By emphasizing the need to improve the standard of living and nutrition, the state implicitly recognizes the significance of educating citizens about healthy lifestyle choices, nutrition, and preventive healthcare practices.

III. Judicial approach towards right to health

In India, the right to health has been increasingly recognized and addressed by the judiciary over the years. The judiciary has played a significant role in expanding the scope of the right to health and holding the state accountable for ensuring access to healthcare services. It can be said that whenever the legislature has failed to make laws in order to expand and secure the right to health, the Courts have intervened in such matters and ensured complete justice to the victims.

Time and again the judiciary has used its extensive powers and intervened to ensure that healthcare services are accessible to marginalized and vulnerable populations, including women, children, the elderly, persons with disabilities, and disadvantaged communities. Certain landmark judgments associated with the right to health under constitution are as follows:

- a. In the *Pt. Parmanand Katara case*¹⁷ a Public interest litigation was filed before the Hon'ble Supreme Court requesting that the Union of India provide clear instructions for immediate medical assistance to any injured citizen seeking treatment to save lives,

¹⁶ *Bandhua Mukti Morcha v. Union of India*, [1984] 3 SCC 161

¹⁷ *Pt. Parmanand Katara v. Union of India* AIR 1989 SC 2039

followed by the appropriate application of criminal procedural law to prevent negligent deaths. In cases of non-compliance with such directives, in addition to any actions taken for negligence, suitable compensation should be granted.¹⁸

The Petitioner attached a report of Hindustan times titled 'Law helps the injured to die', which was published and was included and appended with the writ petition. The report recounted an incident where a speeding car collided with a scooter, injuring the rider. A passerby rushed the injured individual to the nearest hospital, but the medical staff refused treatment, instructing the passerby to take the patient to a different hospital authorized for medico-legal cases, situated 20 kilometers away. Despite the passerby's prompt efforts to reach the designated hospital, the victim tragically succumbed to their injuries en route.

The Supreme Court after noting the facts clarified that preserving life is of paramount importance and Article 21 casts an obligation upon the state to preserve life. The Court gave directions that it is the duty of those in charge of the health of community that life is preserved and every hospital regardless of whether it is a private or government one has the obligation to extend their services in such cases.

- b. In the case of *Vincent Panigurkala*¹⁹ the Petitioner who was an advocate by profession argued before the Supreme Court that there should be directions for prohibition and banning of the import, manufacture, sale etc. of such drugs which have been banned by western nations. The directions were sought to be made in view of achieving the object behind drugs and cosmetics act, 1940 and to protect and preserve the right to health of citizens.

While highlighting that the issue is an absolute obligation of the state, the Supreme Court noted that this issue of drugs and medicine has several complexities and facets to it and that this field of medicine and remedies is ever changing. It is the obligation of the state to enforce and ensure that only quality drugs are produced and the ones which may potentially cause injuries to the citizens should be eliminated. And such drugs which are found necessary should be manufactured in abundance and their availability and accessibility must be ensured so that the life and health of citizens is protected.

¹⁸ The patient whether he be an innocent person or be a criminal liable to punishment under the laws of the society, it is the obligation of those who are in-charge of the health of the community to preserve life so that the innocent may be protected and the guilty may be punished. Social laws do not contemplate death by negligence to tantamount to legal punishment. *Pt. Parmanand Katara v. Union of India* AIR 1989 SC 2039.

¹⁹ *Vincent Panikurlangara v. Union Of India & Ors.* 1987 AIR 990

- c. In *Paschim Banga khet Mazdoor Samity case*²⁰ a worker was seriously injured when he fell from a running train. He was sent from one government hospital to another and finally ended up at a private hospital where he was treated and incurred an expense of Rs. 17,000/-. He felt aggrieved on account of the response of government hospitals and approached the Hon'ble Apex Court.

The Court ruled that the Constitution has envisioned the establishment of a welfare state and the primary duty of government is to provide medical facilities for the people. Further that government hospitals who fail to provide timely medical treatment to a needy person violates Article 21 of that person. Therefore, on account of the aforesaid violation, the state was liable to pay Rs. 25,000/- as compensation.

- d. In *Consumer Education Research Centre case*²¹ a public interest litigation was filed seeking the court's intervention to address the issue of inadequate healthcare facilities, particularly in rural areas. The petitioner argued that the lack of access to healthcare services violated the fundamental right to life guaranteed under Article 21.

It was held that the state has a constitutional obligation to provide healthcare services and ensure access to medical facilities for all citizens, especially the marginalized and disadvantaged sections of society.²²

- e. In *State of Punjab v. Mohinder Singh Chawla*²³ The Hon'ble Apex Court underscored the importance of accountability in the healthcare sector and established legal precedents for addressing cases of compensation in medical cases and right to health in India. It served as a reminder to medical practitioners and healthcare institutions of their obligations to prioritize patient safety and quality of care.

The case also highlights the absolute duty of the state to provide for facilities of health to its citizens and that the government is under a constitutional obligation to provide the same²⁴. When the state fails to provide for the same, it shall be the duty of the state to

²⁰ *Paschim banga Khet Mazdoor Samity v. State of West Bengal* 1996 (4) SCC 37

²¹ *Consumer Education Research Centre v. Union of India* AIR 1995 SC 922.

²² The Constitution envisages the establishment of a welfare state at the federal level as well as at the state level. In a welfare state the primary duty of the Government is to secure the welfare of the people. Providing adequate medical facilities for the people is an essential part of the obligations undertaken by the Government in a welfare state. The Government discharges this obligation by running hospitals and health centres which provide medical care to the person seeking to avail those facilities. *Paschim Banga Khet Mazdoor Samity f Ors vs State Of West Bengal & Anr.* 1996 SCC (4) 37, JT 1996 (6) 43.

²³ AIR 1997 SUPREME COURT 1225

²⁴ Government has constitutional obligation to provide the health facilities. If the Government servant has suffered an ailment which requires treatment at a specialised approved hospital and on reference whereat the Government servant had undergone such treatment therein, it is but the duty of the State to bear the expenditure incurred by the Government servant. *State of Punjab v. Mohinder Singh Chawla* AIR 1997 SUPREME COURT 1225

remedy the violation

The Court held that failure to provide medical treatment to a person in need constitutes a violation of the right to life under Article 21. It emphasized the state's duty to ensure access to medical facilities, irrespective of the financial status of individuals.²⁵

- f. Another facet of right to health was discussed in *Ashwini Kumar v. Union of India*²⁶ whereby the broad issue of rights and welfare of the elderly was brought before the Court. The issues raised before the Apex Court related to the Right of dignity, of health, of adequate pension and the Right of shelter of the elderly.

It was held that the right to life under Article 21 encompasses and cover under it various rights of the elderly and that there is a need and necessity to continuously monitor the implementation and enforcement of these rights. The Court stated for alleviating the problems of abuse of rights of the elderly a continuous mandamus is needed to be issued in view of social justice.

The Apex Court held that there is a constitutional mandate upon the state to ensure and make available to the elderly, their right to live with dignity, provide them with shelter, medical and healthcare facilities and even geriatric care.

These landmark judgments underscore and emphasize that while India has made progress in recognizing the right to health, challenges remain in terms of equitable access, quality of healthcare, and implementation of policies. Efforts are needed to strengthen healthcare infrastructure, enhance public health services, and address socioeconomic determinants of health to realize the constitutional promise of the right to health for all citizens.

²⁵ It is now settled law that right to health is an integral to right to life. Government has constitutional obligation to provide the health facilities. *State Of Punjab & Ors v. Mohinder Singh Chawla Etc.* AIR 1997 SUPREME COURT 1225

²⁶ *Ashwini Kumar v. Union of India* AIR 2018 SC (SUPP) 2541