

Right to Health and Indian Constitution

Dr.S.Saravanakumar

Assistant Professor of Political Science, Gobi Arts and Science College, Gobichettipalayam (Tk) Erode District-638 453, Tamilnadu, India

INTRODUCTION

A lot of things have changed in the field of health since India became independent. Health is one of the basic requirements of human being. Nowadays India is facing problem of degradation of health. Health is the most important factor in national development. It is a condition of a person's physical and mental state and signifies freedom from any disease or pain. Right to health is a vital right without which none can exercise one's basic human rights. The Government is under obligation to protect the health of the people because there is close nexus between Health and the quality of life of a person. There are various provisions under the Constitution of India which deal with the Health of the Public at large. The Constitution of India is supreme law to govern the whole Nation. The condition of health is worsening day by day in spite of various health schemes and policies. The Supreme Court is performing Nobel function of interpretation of provisions of Constitution.

The framers of Indian Constitution have rightly inserted various provisions regarding health of public. Further the role of Indian Supreme Court is significant in protecting health of people at large with the help of various decisions. The effective implementation of Laws enacted based on Constitutional provisions will control the present problem. Every State in the modern era has its own Constitution to operate its organs according to some fundamental rules. The Constitution of India is the law of the land. The fundamental rule governs the relationship between State and its citizens. The very purpose behind Constitutional framework is to achieve goals set out in its Preamble. The Preamble to the Constitution of India confers rights on citizens, imposes duties on them and issues directives to State to protect the rights of its citizens. The Constitution of India is the basic law of India; it aims to secure

social, economic and political justice. Among the various rights under Indian Constitution, Right to Health is an important one. Development of the nation depends upon the healthy population. The basic law of the State safeguards individual rights and promotes national wellbeing. It is the duty of the State to provide an effective mechanism for the welfare of the public at large.

Health is the most important factor in national development. It is a condition of a person's physical and mental state and signifies freedom from any disease or pain. Right to health is a vital right without which none can exercise one's basic human rights. The Government is under obligation to protect the health of the people because there is close nexus between Health and the quality of life of a person. There are various provisions under the Constitution of India which deal with the Health of the Public at large. The founding fathers of the Indian Constitution rightly inserted Directive principles of State Policy (DPSP) with a view to protect the health of the public at large. Health is the most precious prerequisite for happiness.

MEANING OF HEALTH AND HEALTH CARE

The widely acceptable definition of health is that given by the WHO in the preamble of its constitution, according to World Health Organization, "Health is a state of complete physical, mental and social wellbeing and not merely the absence of disease".¹In recent years, this statement has been amplified to include the ability to lead a „socially and economically productive life“. Through this definition, WHO has helped to move health thinking beyond a limited, biomedical and pathology-based perspective to the more positive domain of "wellbeing". Also, by explicitly including the mental and social dimensions of wellbeing, WHO has radically expanded the scope of health and by

extension, the role and responsibility of health professionals and their relationship to the larger society.

According to World HEALTH organization, Health is a state of complete physical, mental and social wellbeing and not merely the absence of disease. From the definition itself, it is clearly indicated that condition of life of the individual should incorporate physical, mental & social well being & must be devoid of disease & infirmity. Thus, this pioneering institution (WHO) has played the best supportive role in guiding health policy development and action at the global and national levels, with an overall objective of ensuring & attaining the highest standards of health care to all the people around the world. WHO has not only given a wider definition to HEALTH but also brought the vision of HEALTH CARE.

The human right to health means that everyone has the right to the highest attainable standard of physical and mental health, which includes access to all medical services, sanitation, adequate food, decent housing, healthy working conditions, and a clean environment.

WHY RIGHT TO HEALTH?

Health and well-being are deeply personal matters. Nothing is more intimate than the experience of conceiving and bearing a child, and giving birth to a unique human being; none of us can live another's fear or pain; and death itself is something we cannot share, however real the grief we suffer. And yet, it is precisely when we or those close to us face illness or chronic suffering that we perceive that health is in reality a very public issue. Policies which dictate what level of health care provision is guaranteed, what kinds of service will be offered, how priorities are established between competing claims, where resources are concentrated, and what alternatives are available all become far more immediate when they affect us or our loved ones.

Disempowerment and exclusion are caused by a similar combination of personal experience and circumstances on the one hand and the social and political context on the other. At one end of the spectrum, we see the importance of the macroeconomic and ideological settings. Economic policies that result in the underfunding of public

services and the fragmentation of the regulatory role of government tend to reduce the threshold of what is considered an acceptable minimum standard of health-care provision for the population at large. Access to health care becomes dependent on the individual's capacity to pay; patients are turned from citizens who have rights and responsibilities into clients or consumers. The question of financing health care may thus be posed as a pseudo-technical one; what kinds of cost-recovery and insurance mechanisms "work", and in what circumstances? The goal of "Health for All by the Year 2000" is eroded into one of "health for those who can pay today".

RIGHT TO HEALTH UNDER INTERNATIONAL LAW

Under international law, there is a right not merely to health care but to the much broader concept of health. Because rights must be realized inherently within the social sphere, this formulation immediately suggests that determinants of health and ill health are not purely biological or "natural" but are also factors of societal relations.^{14,15} Thus, a rights perspective is entirely compatible with work in epidemiology that has established social determinants as fundamental causes of disease.

The first notion of a right to health under international law is found in the 1948 Universal Declaration of Human Rights (hereafter called Declaration), which was unanimously proclaimed by the UN General Assembly as a common standard for all humanity. The Declaration sets forth the right to a "standard of living adequate for the health and well-being of himself and his family, including medical care and the right to security in the event of sickness, disability or other lack of livelihood in circumstances beyond his control." The Declaration does not define the components of a right to health; however, they both include and transcend medical care. The Cold War polarized countries' positions on human rights. In 1966, instead of the indissoluble whole reflected in the Declaration, twin covenants on civil and political rights and economic, social, and cultural rights were promulgated. The right to health was included in the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 12 of the ICESCR explicitly sets out a right to health and defines steps that states should take to "realize progressively" "to

the maximum available resources” the “highest attainable standard of health,” including “the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child”; “the improvement of all aspects of environmental and industrial hygiene”; “the prevention, treatment and control of epidemic, endemic, occupational and other diseases”; and “the creation of conditions which would assure to all medical service and medical attention in the event of sickness.”

RIGHT TO HEALTH & PREAMBLE TO THE CONSTITUTION

The Preamble to the Constitution which gives a broad direction for the Indian Republic, refers to social, economic and political justice and also equality of status and of opportunity. The preamble of the Constitution of India, which strives to provide for welfare state with socialistic patterns of society under the Article 21 of the Constitution, guarantees the right to life & personal liberty. The concept of democratic socialism aims to improve the condition of health care of the people. The principle of socialism is also embodied in various provisions of part III & part IV of the Constitution. Socialist when the egalitarian principles are followed, rights are valued & the dignity of each individual is upheld.

HEALTH IN THE PREAMBLE TO THE CONSTITUTION

The Preamble to the Constitution which gives a broad direction for the Indian Republic refers to social, economic and political justice and also equality of status and of opportunity. Under the term Social Justice, one can bring in the question of access to healthcare facilities and the principle of justice involved in the equality of access to these facilities. In the same way, equality of status and of opportunity may be taken to refer to the equality of practice of the medical profession, access to the medical educational institutions etc. In order to improve the citizens’ socio-economic and health status.

DIRECTIVE PRINCIPLE OF STATE POLICY AND HEALTH

Article 38 of Indian Constitution imposes liability on State that states will secure a social order for the promotion of welfare of the people but without public health we cannot achieve it. It means without public health welfare of people is impossible.

Article 39(e) related with workers to protect their health.

Article 41 imposed duty on State to public assistance basically for those who are sick and disable. Article 42 makes provision to protect the health of infant and mother by maternity benefit. In the India the Directive Principle of State Policy under the Article 47 considers it the primary duty of the state to improve public health, securing of justice, human condition of works, extension of sickness, old age, disablement and maternity benefits and also contemplated. Further, State’s duty includes prohibition of consumption of intoxicating drinking and drugs are injurious to health. Article 48A ensures that State shall Endeavour to protect and impose the pollution free environment for good health. Article 47 makes improvement of public health a primary duty of State. Hence, the court should enforce this duty against a defaulting authority on pain of penalty prescribe by law, regardless of the financial resources of such authority.

Under Article 47, the State shall regard the raising of the level of nutrition and standard of living of its people and improvement of public health as among its primary duties. None of these lofty ideals can be achieved without controlling pollution inasmuch as our materialistic resources are limited and the claimants are many.

The Food Corporation of India being an agency of the State must conform to the letter and spirit of Article 47 to improve public health it should not allow sub-standard food grains to reach the public market. The State under Article 47 has to protect poverty stricken people who are consumer of sub-standard food from injurious effects. In a welfare State, it is the obligation of the State to ensure the creation and sustaining of conditions congenial to good health.

Article 41 provides right to assistance in case of sickness and disablement. It deals with “The state shall within the limits of its economic capacity and development, make effective provisions for securing the right to work, to education and to public assistance in case of unemployment, Old age,

sickness and disablement and in other cases of undeserved want” heir implications in relation to health are obvious. Article 42 give the power to State for make provision for securing just and humane conditions of work and for maternity relief and for the protection of environment same as given by Article 48A and same obligation impose to Indian citizen by Article 51A.(g).

CONCLUSION

The term Right to health is nowhere mentioned in the constitution yet the Supreme Court has interpreted it as a fundamental right under Right to life enshrined in Article 21. It is a significant view of the Supreme Court that first it interpreted Right to Health under part IV. i.e. Directive Till today no effective steps have been taken to implement the constitutional obligation upon the state to secure the health and strength of people. It has rightly been said that nutrition, health & education are the three inputs accepted as significant for the development of human resources. For achieving the Constitutional obligation and also objectives of Health care for all there is a need on the part of the government to mobilize nongovernmental organization and the general public towards their participation for monitoring and implementation of health care facilities. Right to health and right to education are similar. Right to education was not fundamental right at the time of Constitution rafting. It was also inform of DPSP because for education there is a need of schools and it will made by States itself. How in the State of Kerala before right to education there was 100% literacy, because State government of Kerala provides entitlements for education and realized its duty and achieved it by taking necessary steps in this regards

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- [3] People’s Union for Civil Liberties v. Union of India (1997) 1 SCC 301.

- [4] ESC Ltd v. Subhash Chandra Bose (1992) 1 SCC 441 at 462.
- [5] Chapter III, Section 12 (f) of The Protection of Human Rights Act, 1993.
- [6] Bandhua Mukti Morcha v. Union of India (AIR 1984 SC 802).