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RIGHT TO ATTAIN HEALTH PRIVILEGES IN INDIA

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Abstract: *Health is one of the basic requirements of human being. Nowadays India is facing problem of degradation of health. 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.*

Key words: *Right to Health, Fundamental Rights and Health, Directive Principles and Health.*

INTRODUCTION:

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.[1] Following are the important provisions in the Constitution of India for the protection of Right to Health.

PROBLEM OF THE STUDY:

The right to health is one of the basic human rights of human being. The various Constitutions have defined Right to Health in detail. Though there is universal recognition given to this Right but situation shows that there is ineffective rural health care system.

The issues of non-awareness and poverty are causes behind degradation of rural health. The various policies made by the Government for the protection of health of rural area. The analysis of statistical data will help for the betterment of rural population.

The people at large have Right to enjoy meaningful and dignified life which depends upon good health. With the developments in science and technology the health related issues are increasing day by day. It is true to say that unless and until there is sufficient improvement in the area of rural health; there will be no progress in national development.

The Right to Health have great concern with population of State. As there is population growth in all over the Globe, cases of violations are also increased.

OBJECTIVES OF THE STUDY:

In the light of above introduction researcher has following objectives namely:

1. To study the provisions of Indian Constitution regarding Health.
2. To focus responsibility of the State to protect health of the people.
3. To analyse various decisions of Indian Supreme Court.

SIGNIFICANCE OF THE STUDY:

The Indian Constitution has granted certain fundamental rights to its citizen under part III of it these rights play an important role with reference to the health and health care. It guarantees, Right to Life and personal liberty to all persons"[2] though it does not provides expressly for the healthcare however the liberal interpretation adopted by the Indian Supreme Court to the word life brought the

healthcare it the ambit of word life and declared it as a basic human right to every citizen of India.

Further Indian judiciary is playing significant role while interpreting the provisions of the Constitution. The decisions given by the judiciary shows that they are very much concerned about Health, public health, healthy environment, prevention of environment pollution, maintenance and improvement in nutrition value for the public at large.

SCOPE OF THE STUDY:

In this present research, researcher focused on the Constitutional provisions related with health and interpretation of these provisions by the Supreme Court. The fundamental rights, directive principles of state policy and fundamental duties are there to protect health of the people. The scope of the study was limited to the Constitutional Provisions and Judicial Decisions in the area of health. The Researcher has studied and analysed various decisions of the Supreme Court where the Court has given prime importance to the health.

HYPOTHESIS:

The Role of Indian Judiciary is Significant in Interpreting Constitutional Provisions Regarding Right to Health and Duty of the State.

MATERIALS AND METHODS:

Law is a normative science i.e. a science which lays down norms and standards for human behaviour in a specified situation. Doctrinal research involves analyses of case law, arranging, ordering and systemizing legal propositions and study of legal institutions.

The objective and philosophy of doctrinal researcher has to be the same as that of sociological jurisprudence that is social engineering through law. Doctrinal legal research has had the practical purposes of providing lawyers, judges and others with the tools needed to reach decisions on an immense variety of problems, usually with very limited time at disposal[3]. In this present research researcher has relied upon various research articles, Supreme Court Cases.

Methods which I going to adopt for doing research in the present subject:-

1. Study of laws, Provisions etc.
2. Analysis of Supreme Court Cases on Health
3. To make search through internet

Right to Health as understood under Directive Principles of State Policies (DPSP):

Part IV of the Indian Constitution deals with certain principles known as Directive Principles of State Policy. Although the Directive Principles are asserted to be "fundamental in the governance of the country", they are not legally enforceable. They are guidelines for creating a social order characterized by social, economic, and political justice, liberty, equality, and fraternity as enunciated in the Preamble.[4] These principles are fundamental in the governance of the country and the State is under the duty to apply these principles while exercising its law making power. The following directives are of relevance perspective of Right to Health.

1. **Article 39**: **Certain principles of policy to be followed by the State:** This Article secures health and strength of the workers, men and women. It also mandates that children be given the opportunities and facilities to develop in a healthy manner and in condition of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.[5] It is true to say that Article 39 (e) and (f) indicates that the Constitution makers were rather anxious to protect and safeguard the interests and welfare of workers and children. It enunciates that the working class is important in nation building and therefore state government shall provide protection to their health. In *Lakshami Kant Pandey v. Union of India*,[6] BHAGAWATI, J. while delivering the opinion of the court observed that:

   It is obvious that in civilised society the importance of child welfare cannot be overemphasised because the welfare of the entire community, its growth and development depends upon the health and well-being of its children. Children are a "supremely important national asset and the future well being of the nation depends on how its children grow and develop".

   Further, In *Sheela Barse v. Union of India*,[7] Supreme Court has held that "A child is a national asset and therefore, it is the duty of the State to look after the child with a view to ensuring full development of its Personality."

   Clause (f) was modified by the Constitution 42nd Amendment Act, 1976 with a view to emphasising the constructive role of the State with regard to children.[8]

2. **Article 42: Provision for just and humane conditions of work and maternity relief:** This Article necessitates that the State shall make provision for securing just and humane conditions of work and maternity relief.[9] In *U.P.S.C. Board v. Harishankar*,[10] Supreme Court has held that Article 42 provides the basis of the larger body of labour law in India. Further referring to Article 42 and 43, the Supreme Court has emphasised that the Constitution expresses a deep concern for the welfare of the workers. The Court may not enforce the Directive Principles as such, but they must interpret law so as

to further and not hinder the goal set out in the Directive Principles. In *Bandhua Mukti Morcha v. Union of India*,[11] BHAGWATI, J. observed: "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 Article 41 and 42." Since the Directive Principles of State Policy are not enforceable in a Court of law, it may not be possible to compel the State through judicial process to make provision by statutory enactment or executive fiat for ensuring these basic essentials which go on to ensure a life of human dignity.

In *P Sivaswamy v. State of Andhra Pradesh*,[12] the Supreme Court has held that Article 42 of the Constitution makes it the obligation of the State to make provisions for securing just and humane conditions of work. There are several Articles in Part IV of the Constitution which indicate that it is the State‟s obligation to create a social atmosphere befitting human dignity for citizens to live in.

The gist of Article 42 is that it stands as the basis of the body of labour law and welfare of the workers. The Court must interpret law to achieve the goals set out in the DPSP.

3. **Article 47: Duty of the State to raise the level of nutrition and the standard of living and to improve public health:** Article 47 enumerates that the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medical purposes of intoxicating drinks and of drugs which are injurious to health.[13]

   Art 47 is helpful for imposing stringent conditions on liquor trade with reference to Article 19(6). In *Vincent Panikurlangara v. Union of India*[14] 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 makers envisaged. Attending to public health, in our opinion, therefore is of high priority perhaps the one at the top".

   The Supreme Court while interpreting Article 47 has rightly stated that public health is to be protected for the betterment of the society. Further it has been held that, in this welfare era raising the level of nutrition and improvement in standard of living of the people are primary duties of the State.

4. **Article 48-A: Protection and improvement of environment and safeguarding of forests and wildlife:** Article 48-A requires that, the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.[15]
   This article was inserted by the 42nd amendment Act 1976. It obligates the State to endeavour to protect and improve the environment and to safeguard the forest and wild life of the country. In *M.C. Mehta V. Union of India,*[16] it was held that, "Art 39 (a), 47 and 48-A by themselves and collectively cast a duty on the State to secure the health of the people, improve public health and protect and improve the environment"

FUNDAMENTAL DUTIES:

PART-IV-A of Indian Constitution deals with fundamental duties of citizens.

Article 51- A: Fundamental duties:

It shall be the duty of every citizen of India-

(g) To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.

It shows that every citizen is under the fundamental duty to protect and improve natural environment since it is closely related to public health.

Right to Health under Fundamental Rights:

Part III of the Indian Constitution deals with fundamental rights. The fundamental rights are not absolute; they are subject to reasonable restrictions. The prime function of the Supreme Court is to interpret the law. The Constitution of India has not included right to health i. e. right to enjoy the highest attainable standard of physical and mental health under a specific provision. But it is the Indian judiciary who treat right to health an integral part of right to life which is fundamental for all human beings under Article 21 of the Constitution. The Supreme Court has given recognition to right to health vide different techniques of interpretation. "The government is under Constitutional obligation to provide health facilities."[17] Right to health is also one of the rights, which is implied under right to life and personal liberty as guaranteed by the Constitution of India.

1. **Article 19 (1) (g):** According to Article 19 (1) (g) all citizens shall have the right to practice any profession, or carry on any occupation, trade or business subject to restrictions imposed in the interest of general public under clause (6) of Article 19. In *Municipal Corporation v. Jan Mohammed*,[18] the Court held that the expression in the interest of the general public in clause (6) of Article 19 is of wide import comprehending public order, public health, public security , morals, economic welfare of the community and the objects mentioned in Part IV of

the Constitution. Further, In *Burrabazar Fire Works Dealers Association and Others v. Commissioner of Police, Calcutta*,[19] the Supreme Court has held that Article 19 (1) (g) does not guarantee the freedom which takes away that community's safety, health and peace.

It can be said that the reasonable restrictions as imposed on the freedoms are in wide in sense that Court has the power to interpret the same in the interest of general public. One must therefore consider Public health as pertinent while enjoying the freedoms under the Constitution. Also in recent times on many occasions the Supreme Court has highlighted the significance of public health while delivering many judgments.

2. **Article 21: Protection of Life and Personal Liberty:** The multi-dimensional view of Article 21 is an important development in Indian Constitutional jurisprudence. The Supreme Court has come to impose positive obligations upon the State to take steps for ensuring for the individual a better enjoyment of his life and dignity under its comprehensive interpretation of Article 21. The right to health as extended under Article 21 relates with maintenance and improvement of public health, improvement of the environment etc.

   The Supreme Court in *C.E.R.C. V. Union of India*,[20] held that right to health, medical aid to protect the health and vigour of a worker while in service or post- retirement is a fundamental right under Article 21. One other issue relating to medical care and health arose in *Mr. X. v. Hospital Z*,[21] in which the question before the court was can a doctor disclose to the would be wife (with whom the marriage is contracted) of a person that he is HIV positive or does it violate the right to privacy of the person concerned. The court answered both questions in negative. Further, the Court stated that the lady proposing to marry such a person is also entitled to all human rights which are available to any human being. Therefore it includes the right to be told that a person, with whom she was proposed to be married, was the victim of a deadly disease which is communicable. The Supreme Court in this instance gave primacy to the Right to Health over right to privacy.

   In *Parmanand Katara v. Union of India,*[22] the Supreme Court has considered a very serious problem existing in medico-legal field such as cases of accident in which the doctors usually refuse to give immediate medical aid to the victim till, legal formalities are completed. In some cases the injured die for want for medical aid pending the completion of legal formalities. The Court stated that preservation of health is of paramount importance. Once life is lost it cannot be restored. Hence, it is the duty of doctors to preserve life without any kind of discrimination.

   In *Paschim Banga Khet Mazoor Samity v. State of W.B.,*[23] the Court ruled that under welfare State policy, the primary duty of the government is to provide adequate medical facilities for its people. The Govt. discharges this application by running hospitals and health centres to provide medical care to those who need it. In *State of Punjab v. Ram Lubhaya Bagga,*[24] the Supreme Court has recognized that „provisions of health facilities cannot be unlimited." It has to be to the extent to which finance permit. No country has unlimited resources to spend on any of its projects.

   The above judgments are the extended view of Article 21 through which Supreme Court held that „Right to Health" is one of the fundamental rights. It is the liberal interpretation of the Article 21 that „Right to Life" means something more than mere survival and mere existence.

3. **Article 25 and Article 26: Freedom to Profess or Practice Religion and Freedom to manage Religious Affairs:** Article 25 guarantees to every person and not citizen of India the right to profess and practice religion and Article 26 gives special protection to religious denominations. Both can be enjoyed by any person subject to public order, morality and health and other provisions of the respective part of the Constitution.

   The person has the right to enjoy these freedoms but it should not adversely affect the right of others including that of not being disturbed in their activities.[25]

Responsibilities of Institutions of Local Self Government:

The Indian Constitution observes a federal political structure. There is a division of legislative powers between the union and the states and assigns certain matters are related to concurrent competence. In this scheme, the subject of Health has been left to the States to a large extent.

Article 243-W of the Constitution provides that the legislature of the State may by law, endow the municipalities with such powers and authorities as may be necessary to enable them to function as institutions of local self-government.[26] This power is connected with matters included in the Twelfth Schedule, item 6 i.e. Public health, sanitation conservancy and solid waste management. "There is, however, a significant difference between local government authorities and the State health authorities, the latter having enormous powers to make available financial resources and make key appointments. Healthy alliances between the two types of authorities are crucial, if health is to be effectively promoted."[27]

Similar provision is made for the Panchayats under Article 243-G in matters connected with Eleventh Schedule under item 23 i.e. health and sanitation, including hospitals, including primary health centres and dispensaries.

CONCLUSION:

The term "Right to Health" is nowhere mentioned in the Indian 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 Principles of State Policy and noted that it is the duty of the 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 positive obligations on authorities to maintain and improve public health.

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