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RIGHT TO HEALTH UNDER ARTICLE 21 OF THE INDIAN CONSTITUTION.

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I. ABSTRACT:

Nutrition, health and education are the supplements for the development of a country. Health is the quintessential factor for the development of a country as human development will lead to socio-economic development. The Indian Constitution, 1950 has recognised certain provisions for the right to health and even the Supreme Court has declared that the right to health is a fundamental right coming under Article 21. There are various provisions in the Constitution which certainly deals with the health of its citizens. Right to health and health care is the need to give better health conditions to human life. It is that important right which needs to be to exercise our other rights. Directive Principles of state policies even, do have certain provisions of right to health apart from Fundamental Right with a perspective to give protection to the citizens at large. The central advantage of health care system from right to health viewpoint is that to establish an equal right to health and oblige to the state to ensure and safeguard it. There are some drawbacks in the working of the state even that they are not giving recognition to right to health which is unfortunate for this developing country where the marginalised section of the society is suffering at a large. In this paper, a clear attempt is made to analyse right to health within the Constitution of India with some medico-legal cases with a complete doctrinal research method.

Keywords: Right to health, Constitution of India, Medico-legal cases, Fundamental Right, Health care.

II. INTRODUCTION:

According to Article 25 (1) of Universal Declaration of Human Rights: “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”¹ This is so because health is one of the many basic needs of a human being and therefore the right to health. Health is necessary for human development and this development will eventually lead to the socio-

¹ Universal Declaration of Human Rights. Art 25(1). Pg. 52.

economic development of a nation-leading a nation to have a better position in the world. As it is rightly said “health is wealth” and therefore a healthy body is the foundation of all the humanly activities. In our country, the right to health has been recognized since earlier times. As India is a part of the United Nations it has therefore ratified many conventions for securing health rights of the individuals. As India is a welfare State here, the state health and the health care of the individual is a prima facie.

Though the right to health has not been expressly identified in the Indian Constitution under Article 21 still the Supreme Court of India has declared the right to health as a constitutional right taking references with the International Law. Constitution of India is the supreme law of the land which advocates every other law of the country. Article 21 of the Indian Constitution guarantees the right to life and personal liberty. Here, the expression ‘life’ denotes the life with dignity and not only the mere survival with having a wider explanation to have everything to live a life of a better standard. Furthermore, it is not only the Fundamental right but even the Directive Principles of State Policy do have certain provisions for the better standard of health hence it is the duty of the state to implement the directives to give the citizens more benefits on the right to health. Article 21 of the Indian Constitution should not be interpreted alone it should be combined with more articles such that Article 38, 42, and 47 to have the clear understanding on the nature of the responsibility of the State to ensure better health condition in the ambit of the right to health.

III. MEANING OF HEALTH AND HEALTH CARE:

“According to the World Health Organization definition of Health is a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity.”² The definition itself is sufficient to explain that what health is? World Health Organization has not only given us the definition of health but also a wider aspect of health with health care. The right to health means that everyone has the right to attain the highest sustainable condition with the basic needs of sanitation, food, safe water, maternal and child health care, housing, healthy environment, medical assistance, family planning and better working conditions. The provision of health protection should also be included. Medical assistance means in the broader sense that hospitals, clinics, doctors and medical services should be

² Preamble to the Constitution of the World Health Organization as adopted by the International Health Conference. no. 2. Pg.10.

easily available and accessible to all whenever and wherever they need in a good condition and it should be guaranteed to every citizen. The State should ensure a proper infrastructure all around the area to make medical assistance easily accessible to all. Still, the quality should be focused on quantity and the State should give better health care without discrimination and on time when needed. Health care is all about preventing, treating and managing the ailments and preserving the mental and physical wellbeing of an individual. The basic health care should be economical so that it can be afforded by marginalized sections of the society. As the health of its citizens is a subject of the State it is, therefore, the State who will ensure the right to health to its citizens making it an asset of the nation.

The State is responsible for the promotion, protection, maintenance and restoration of the health status of its population legally, constitutionally and morally. Health creates a nexus between an individual and the nation as the better the health care provided by State, the better will be the development of the individual, which will result in the overall development of the nation. As India, is a developing country with a huge population it should primarily focus on its health care so that the poor sections should get the better assistance than before that will lead to the development of the country both socially and economically. There are certain provisions in the country to provide free health care to the people who cannot afford it but this is merely on practice as the State is not taking this matter to its prime importance. It is quite evident by the rural health of India which is still struggling to have better health care wherein in an urban area the people are assisted with the best indeed. The majority of India lies in the rural area; the State should actively participate and uplift the low standards of health care given in these areas. Even, the type of health care treatment that is provided in the rural area is dependent on the socio-economic status. The health education should also be an integral part of health care where the rural, as well as urban people, should get aware of the basic maintenance and hygiene of health.

IV. RIGHT TO HEALTH: THE COMPONENTS:

There can various components for the right to health which are summed up as follows:

1. The right to proper and correct health care:

It needs the establishment of proper and appropriate health care system with better facilities by the hospitals and doctors. The drugs should be available to all in good quality with any discrimination of the economic and social status. They must be affordable to all.

2. The right to sufficient supply of water, food, shelter and nutrition:

The right to health encompasses everything that is involved to have the better health such as pure and safe drinking water, hygienic food, proper shelter to live in and the perfect amount of nutrition needed for oneself.

3. The right to have a safe and healthy working environment:

The right to have a healthy environment condition involves that there should be the absence of harmful materials that can cause harm to the health of the workers. Preventive measures should be taken place in case of any accidents and disease caused to a person at work.

4. The right to have reproductive, mother and child health care:

There should be some provisions for the protection of the health of the child and the mother and even at the time of reproduction. It includes mental, sexual and reproductive health services.

5. The right to know every information about a better health:

It is the right of the citizens to have all the information and have access to all health-related problems, such as HIV AIDS, cancer and other diseases. They should know the side effects of the excessive use of cigarettes, drugs and alcohols. They should be aware of the laws regulating the child violence and domestic violence. They should be made aware of the new technical and safe medical practices in place of old traditional practices.

6. The right to have equal participation in decision making related to health:

It is the duty of the State as well as the people to get involved and make involvement from both the sides to have better health laws. They should make communities for such discussion and promote the viewpoints. They should involve the participation at both national and international levels. They should be encouraged in political decision making as well that are related to health.

**V. RIGHT TO HEALTH AND THE INDIAN CONSTITUTION WITH
SPECIAL REFERENCE TO ARTICLE 21:**

The Preamble of the Constitution of India talks about India being a Republic State with social, economic and political justice. It talks about equality both in status and opportunities.

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It even talks about welfare state with a socialistic manner of the society which clearly comes under the ambit of article 21 of the Indian Constitution which talks about the right to life and personal liberty. Socialistic principles are evident in both Part III and Part IV of the Constitution in which rights of the individual and dignity are protected. The term ‘Social Justice’ hereby, means that everyone should be given access to health care facilities equally. There should even be equality in the being the medical practitioner as well as having medical education so that the socio-economic conditions of the citizens can be improved.

Article 21 of the Indian Constitution clearly says that “no person shall be deprived of his life or personal liberty except according to the procedure established by law.”³ Right to life is one of the basic human rights and not even the State has the authority to violate that right.⁴ Right to health and proper health care is also a part of basic human right without health care there will be no living with dignity and the life will be just mere existence. “Life”, in the Article 21 is not merely the physical act of breathing.⁵ Right to life having a wider ambit includes right to good health care system as well as the right to have medical assistance when needed. No one should be deprived of these facilities in any situation. The citizens should have the benefit of medical insurance and aid. The Supreme Court relied on the international instruments and finally came to the conclusion that the right to health is a Fundamental Right.⁶ There are many cases in which the Supreme Court has said the right to health is Fundamental Right coming under article 21 with a proper medical care. Right to life includes the right to health.⁷

The government is under the constitutionally obliged to provide its citizens with proper health facilities and those who cannot afford it should get subsidized rates and some medical health care should be free of cost. The hospitals are under obligation to provide a casualty medical treatment on time so as the patient should not lose his life hence violating the right to life of the patient. Numerous Public Interest Litigations have been filed in the court of law for the violation of the right to health. They have been filed on the inhumane conditions that are at times provided in care homes, against the hazardous working conditions, against being the passive smokers in public places, by the person suffering from HIV to have the rights

³ Indian Constitution, 1950.

⁴ Siddharam Satlingappa Mhetre v.State of Maharashtra, A.I.R. 2011 1 S.C.C. 694.

⁵ P. M. Bakshi, The Constitution Of India 55 (Universal Law Publishing Co. 9th ed.2009).

⁶ CESC Ltd. vs. Subash Chandra Bose, A.I.R 1992 S.C. 573,585.

⁷ State of Punjab v. Mohinder Singh Chawala A.I.R 1997 S.C. 1225.

guaranteed for them, by the juvenile criminals to get proper treatment, by the mentally retarded patient, by the patient who is in need of medical treatment in emergency cases and so on. The Constitution has incorporated provisions which guarantee every individual right to attain the highest standard of mental as well as physical health which can be attained.

The court has given some directions even for the serious medical cases such that to provide the basic medical treatment at the public health care centres so that the present critical condition of the patient can be stabilized. Even, the hospitals in the district and lower level should be upgraded so that serious cases can be treated there and then and not referred to city hospitals. Medical specialist of different areas should be recruited in district-level hospitals so that the patients are getting specialized treatment. There should be a sufficient number of ambulances and proper arrangement should be there so that it is easily available to the needy and the ambulances should be well equipped with the specialized machinery so that it can stabilize the deteriorating condition of the casualty in the ambulance itself till it reaches the hospital.

Coming to the Part IV the Directive Principle of State Policy in the Indian Constitution which has incorporated many articles related to the right to health into it but the issues arising here is that they are non-justiciable. Article 38 of the Indian Constitution says that “State to secure a social order for the promotion of the welfare of the people” thereby meaning that for securing the welfare of the people the State has to provide proper healthcare. Therefore, the State needs to focus on the psychological and physical health of the people irrespective of their social, economical, and political status. Article 42 of the Indian Constitution says that “Provision for just and humane conditions of work and maternity relief” thereby meaning the State is obliged to provide a healthy and friendly environment at work, such conditions should be made available to all the citizens without any discrimination. The State has to intervene to provide and secure proper conditions at work as well as provide the mother with the maternity relief of some months which the government is doing in our country since years including anti-natal and post-natal.

The state should even look in the proper intake of nutrition to the born infants especially socially as well as economically underprivileged families. Article 47 of the Indian Constitution says 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 medicinal purposes of intoxicating drinks and of drugs which are injurious to health.” Here, it means that for the consumer sovereignty the State keeps a positive interference for the benefit of the people. Here, the public health is made at the prime importance and the State shall take care of it. Apart from raising the current standard of health of the people the Constitution has made it clear for the improvement of public health even that is being deteriorated by the consumption of intoxicating drinks and drugs. These drugs can be used if they are into medicinal value to the individual. It is necessary for the state to have conditions congenial for good health. The Food Corporation of India is an agency which clearly certifies the quality of the food reaching to the market for the human consumption. This agency should not allow substandard food to enter into the markets which will cause health problems to people.

Under article 51(a) it is a Fundamental Duties of every citizen to protect and upgrade the present conditions of the environment in all spheres which will help in better health conditions of the human.

The State is obliged to provide clean drinking water, health care facilities which include dispensaries, health care centres, hospitals and clinics, proper sanitation with cleanliness and hygienic environment, family welfare especially woman and child welfare, not excluding social welfare of the handicapped person.

VI. REMEDIES AVAILABLE UNDER INDIAN CONSTITUTION IN RESPECT OF BREACH OF RIGHT TO HEALTH:

As it has been already discussed above that there is no direct provision relating to Right to Health under the Indian Constitution. But, however, there are some provisions relating to Health under the Directive Principles of State Policy. In short words, it can be said that the Directive Principles of State Policy are certain directions issued to the States under the Indian Constitution but they are not enforceable in the Court of law. But, however, the Supreme Court of India in a series of cases has held that Right to Health is a fundamental right protected by Article 21 of the Indian Constitution.

The common remedies available to a citizen in respect of breach of Right to Health are articles 32 and 226 of the Indian Constitution.

Under article 32 and 226 the Supreme Court and the High Court has a power to issue orders and writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

VII. CONCLUSION AND SUGGESTIONS:

From the discussions, it is clear right to health is a part of right to life and falls under the ambit of right to life, there will be a part of health and health care, as Supreme Court of India has interpreted right to health as a part of right to life and made it fall under article 21 of the Indian Constitution. So, it becomes the obligation on the State to implement the laws and provide better health care services. As medical services are upgrading in India but still there is minimal effect being shown on the development of the country this is merely because of the poverty that exists in India in abundance which is making people deprived of the health care benefits, so it becomes the first duty of the State to eradicate poverty and then focus more on the health care part. Being a vast country, India has all the facilities but the correct implementation is missing, so it is the duty of public and private health care sectors to coordinate and work and even the non-governmental organizations should take part into it and uplift the current status of health care.

India can take help from international health care organizations like the Red Cross and World Health Organization who can fund India for health services and provide measures for the awareness about health among people. It is the need of the hour that the government should now focus on the amendment on the current legislations and laws so that the obsolete laws can be changed as per the present scenario. The right to health must include primary health care and health care to the person in emergency cases providing immediate aid to casualties. The present health care services should be reviewed and accordingly the new should be made with the involvement of the people demands. There are numerous cases of surrogacy in India and the government should have surrogacy laws which should primarily deal with the health of the surrogated mother.

This area totally needs legal involvement. Maternity benefits should be given at a larger scale. The government should try and spread awareness about health education and give them to people for free. Lack of awareness among the people leads to the violation of health rights. There should be minimum health standard set for all. The government should implement the

schemes they have on the ground level especially for below poverty line people. They should be privileged enough to get some free of cost health care medical benefits. It is the duty of the government to look into this matter seriously and make the right to health an integral part of the Constitution even if the right to health is secured under article 21 of the Indian Constitution.

Therefore, the validity of the right to health should be maintained and it is the obligation on the part of the State to keep the true essence of Right to Health.