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## **A Study of Right to health under the Constitution of India**

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### **Abstract**

*Right to health is an age-old phenomenon without which we cannot enjoy our human life. There is a close nexus between health and life. The Constitution of India in its preamble mulls that every citizen of India has to get a dignified life. Dignified life means Quality of life where everyone can be amused by their own basic rights. Constitution of India through its Part III provides the fundamental rights to its citizens and some to non-citizen also. Right to health is not expressly provided in the Constitution of India but it is implied under Article 21, DPSP and many other provisions of the Constitution. Right to life is meaningless without sound health and a healthy life is the basic foundation of all human activities. Through this paper, the Researcher mulls to discuss on right to health and its constitutional mandate.*

**Keywords:** *Right to health, Constitution of India, health.*

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**Introduction:** It is a modern era where every state is governed by its own constitution. A constitution is a legal document which articulates the relationship between the state and its citizens. A constitution may be written or unwritten. The Constitution of India is the longest written constitution of the World. The preamble of the Indian Constitution provides that India is a socialist country. It aims to provide social, economic and political justice. To sustain the welfare principle, health of the citizens has to be secured. Because only the healthy citizens can play a pivotal role in the decision and law-making process of a democratic country. The Constitution of India not only provides for the health care of the people but also directs the State to take measures to improve the condition of health care rights of the peoples. There are palpable provisions through which the Constitution of India is trying to secure a healthy life for its citizens. Public health is playing a great role in a country like India.

**Problem of Study:** After the 2<sup>nd</sup> world war human right has been developed all around. Right to health is one of the basic human rights. Right to health is such a universally recognised human right without which other basic human rights are absurd. Though under Article 21 right to life is a fundamental right but right to health is not expressly provided as fundamental rights even then the Indian Constitution through its palpable provisions

provide that health of every citizen is indispensable for the state. But still, the health infrastructure of India is not developed. Especially in the rural areas. In India, peoples who live in rural areas are not concerned about their health. They don't know how to live a sound life.

**Objectives of Study:** The objectives of the study are:

1. To study the Various provisions of the Constitution of India relating to Health.
2. To study the procrastination towards creating awareness about the Constitutional Provisions.
3. To study the reason for lagging behind of Health sector although sound health for the citizen is a Constitutional mandate.

**Significance of Study:** The Constitution of India is the best constitution in the world. Part III of the Constitution pledges Fundamental Rights. Article 21 of the Constitution of India provides right to life. Here Life does not comprise the life of animal being but a dignified life where the right to health is implicit in there. Part IV of the Constitution of India furnishes the Directive Principles of State policy where it is the responsibility of the state to secure public health. There are profuse Constitutional provisions associating to health.

Again, through the judicial interpretation, right to health is nowadays regarded as a mandatory right for every citizen irrespective of their age, birth, gender, cast, race etc.

**Hypothesis:** Various Constitutional Provision and role of Judiciary are ample to secure healthy life of each and every citizen of India.

**Materials and method:** The researcher have collected the materials from secondary sources. It is a doctrinal study. The doctrinal study involves analyses of case law, arranging, ordering and systematizing legal propositions and study of legal institutions.

**Health and Fundamental rights:** India is a Sovereign, Socialist, Secular, Democratic, Republic country of the world. Part III of the Indian Constitution provides for Fundamental Rights. The preamble of the Indian Constitution provides that India is a socialist country. The Constitution of India not only provides for the health care of the people but also directs the State to take measures to improve the condition of health care rights of the people. Though right to health is not directly recognised as fundamental Rights, it is implicit under Article 21 of the Constitution of India. *Article 21* of the Constitution lies down that “*No person shall be deprived of his life or personal liberty except according to procedure established by law*”. This Article has been interpreted in the widest possible manner so as to include a variety of fundamental rights including the right to health.

In *Paramananda Katara v. Union of India*<sup>1</sup>, it was held that to secure the health of one injured person is necessary whether it is private or public. So, health of that person must have to be secured without waiting for the legal formalities. The Supreme Court on the

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1. AIR 1986 SC 424

interpretation of Article 21 of the Constitution said that it is the responsibility of the state to secure life.

In *Vincent Parikurlagara v. Union of India*<sup>2</sup> the Supreme Court held that right to maintenance and improvement of public health is included in the right to live with human dignity as enshrined in Article 21. A healthy body is the very foundation of all human activities. In a welfare State, it is the obligation of the State to ensure the creation and sustaining of good health to each and every situation.

In *Shantisar builders v. Narayanan Khimalal Totame*<sup>3</sup>, the Supreme Court has laid down that the right to life under Article 21 would include the right of food, clothing, decent environment and reasonable accommodation to live in and suitable accommodation which allows him to grow in all aspects-physical, mental and intellectual. Hence the concept of life has been interpreted in a very expansive manner so as to include a number of rights. Life means a right to live a dignified life.

In *Pashim Bang Khet Mazdoor Samity v. the State of W.B.*<sup>4</sup>, it was held that denial of medical aid by government conditions congenial to good health hospitals to an injured person on the ground of non-availability of beds amounted to violation of the right to life under Article 21 of the Constitution. In this case, the petitioner, Hakim Singh, who was a member of an organisation of agricultural labourers, had fallen from a running train and had suffered serious injuries and had a brain haemorrhage. He was taken to various Government hospital but due to non-availability of bed his treatment was not provided. Finally, he was admitted to a private hospital where he had to incur an expenditure of Rs 17,000 which was very high for the petitioner. Finally, the Supreme Court directed the State to pay Rs 25,000 as compensation to the petitioner. The Supreme Court has also held that the health of the citizens should be a great concern in a welfare country.

In *Consumer Education and Research Centre v. Union of India*<sup>5</sup> the Supreme Court has held that the right to health and medical care is a fundamental right under Article 21 of the Constitution as it is essential for making the life of the workman meaningful and purposeful with dignity of the person. Right to health includes the protection of the health and strength of the worker. The expression 'life' in Art.21 does not connote mere animal existence. It has a much wider meaning which includes the right to livelihood, better standard of life, hygienic conditions in workplace and leisure.

**Right to health and Directive Principles of State Policy:** Article 36 to 51 contains the Directive Principles of State Policy. India is a welfare state, which seeks to promote the

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2. (1987) 2 SCC 165

3.(1990) 1 SCC 520

4.(1996) 4 SSC 37

5. (1995) 3 SCC 42

prosperity and security of the people. Directive principles are the direction to the State and obligate the State to take positive action in a certain direction in order to promote the welfare of the people and achieve economic democracy. It is not enforceable through the court of law.

Article 38(2) directs the State to strive “to minimize the inequalities in income,” and endeavour “to eliminate inequalities in status and opportunities, not only amongst individuals but also groups of residing in different areas or engaged in different vocations.” Poverty, as we have seen earlier, is one of the determinants of health. Hence if equal opportunities and facilities are given it will promote health and prevent diseases and illness. Article 39(a) lays down that citizens shall have the right to an adequate means of livelihood. Here the word citizens include both men and women. Article 39 (e) casts the duty on the State to protect health and strength of workers and tender age of children and to ensure that they are not forced by economic necessity to enter avocation unsuited to their age or strength. Working class is the main resource of a developing country like India because they have a great role in nation building. So, in the case *Lakshmi Kant Pandey vs. Union of India*<sup>6</sup> BHAGWATI, J delivering his opinion on the case observed that in a civilised society health of the children is a matter of concern because children are a supremely important national asset and future wellbeing of the nation depends on how its children grow and develop.

Article 41 requires the State within the limits of its economic capacity and development, to make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want. It has been held in the case of *Samir Das Gupta v. the State of Bihar*<sup>7</sup>, that education includes medical education. If medical education is provided to the people than the health of the country will be obviously good. The main hurdle in this Article is the words “within the limits of its economic capacity” by which the State Governments often get a course not to fulfil this obligation.

Article 42 requires the State to make provision for securing just and humane conditions of work and for maternity relief. India has a large number of populations working as labourers and several legislations have been passed in order to give effect to Article 42. The Maternity Benefit Act, 1961 is one of them, which give the women workers secured life during and after pregnancy.

Article 43 requires the State to endeavour to secure by suitable legislation, or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full employment of leisure and social and cultural opportunities. A living wage is a wage which enables the earner to provide for himself and his family not merely the bare essentials of food, clothing

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6.AIR.1984 SC 469

7. AIR 1982 Pat.66

and shelter, but a measure of prudent comfort including education for children, protection against ill-health, requirements of essential social needs, and a measure of insurance against the more important misfortune including old age. *The Minimum Wages Act, 1948* is a legislation put to force to give life to the words of Article 43.

The Supreme Court reading Articles 21 and 47 together in the case of *Vincent Panikurlangara v. Union of India*<sup>8</sup> held that maintenance and improvement of public health have to be ranked high as these are indispensable to the very physical existence of the community and on the betterment of these depends on the building of the society of which the Constitution makers envisaged.

Article 47 casts the duty that the state shall regard the raising level of nutrition and standard of living of its people and the improvement of public health. Public health is the prime importance of welfare country like India. So, being a welfare country India has to secure public health.

Article 48-A provides that, the state to endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country. This Article was inserted by the 42<sup>nd</sup> Constitutional Amendment Act 1976. Right to pollution free environment is a fundamental right under Article 21. An unpolluted environment is a basic right to all human being which is closely associated with health.

**Fundamental Duties and health:** Fundamental Duties are inserted in the Constitution of India by the 42<sup>nd</sup> Amendment Act 1976. All Fundamental Duties are provided under Article 51-A of the Constitution. Article 51-A (g) casts the duty to protect and improve the natural environment including forests, lakes, rivers, and wildlife, and to have compassion for a living creature. By the insertion of these duties, it was realised that only a healthy environment can procure the healthy citizen.

**Accountability of Municipalities:** 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. This power is connected with matters included in the Twelfth Schedule, item 6 i.e. Public health, sanitation conservancy and solid management. So Public Health should be secured at any cost.

A similar provision is made for the Panchayat 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:** Though the right to health is not expressly included as a fundamental right it is imbibed in Article 19, Article 21, DPSP, and various provisions of the Constitution. Again, the Welfare principles of our Constitution signifies that every law should be *pro bono publico*. The Government (Central and State) through the various laws, policies of

Central and State Government. But lack of cognizance about our rights and Constitutional norms still health sector of India is very poor. In our traditional India it was the concept that only the person who takes proper food in proper time in a proper way can lead a successful and healthy life and we should follow this concept. Unless and until a person creates a self-consciousness regarding his health no rules, no policy can give him a healthy life. Sound health leads to a healthy life and only a healthy person can contribute to a healthy society. So, the researcher also makes out that due to lack of knowledge we are not able to attain the Constitutional norms. Again, the unwillingness of Bureaucracy leads to failure of constitutional norms.

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