Constitutional protection in health law

Neha Singh
neha97570@gmail.com
Indore Institute of Law, Indore, Madhya Pradesh

ABSTRACT

This research work is related to “constitutional protection in health law” in which researcher want to drag your attention towards the provision given in constitution which protect health. In the constitution, there is no direct provision for the right to health but it is included with the right to life article 21 of the constitution. A directive principle of state policy also given in constitution which direct state to protect and secure the health. In health law, there is a huge role played by the Indian judiciary and many landmark judgment given to secure and protect the right to health which is included in the right to a dignified life.

Keywords—Right to health, Constitution and health, Relation of health law and Constitution, Right to life, Right to health

1. INTRODUCTION

Health is a most important factor which needs extra protection by the legislature. According to WHO health includes physical, health and social wellbeing not merely the absence of disease. Indian constitution has many provision regarding health. Fundamental right provides article 14 and article 21. State obligation is given under directive principle of state policy and for health, there is any provision given by constitution for health which includes Articles 38, 39 (e) (f), 42, 47 and 48 A in Part IV of the Constitution of India. Indian constitution is grand norms of the country which provide constitutional protection and oblige the state to take care of the health of people who is not able to maintain their health.

Mental and physical health is very basic for human personality. Health is a most important factor in everyone’s life but it is most ignorant fact also. No one actually cares for health so constitution given certain article for the state to do work in favor of the public. The directive principle of state policy contains any articles which talk about the security of health. State policy to secure health and strengthen the workers and weaker section of the society like women’s and children’s. Every sovereign has plenary power for health, food, education, peace and order in society. Legal responsibility of State to ensure every individual their right to health in the welfare state.

In the constitution, there is any other provision which works for the health law. Panchayat and municipality local governing body and have their article which is related to health like sanitation, drinking water etc. many others provision given under the constitution for securing health in every state of the governing body. These socio-economic goals to secure to all its citizens social, economic and political justice. Right to health is not directly related to the fundamental right but the directive principle of state policy is related to the health and declare this duty for the securing.

2. WHAT ARE HEALTH AND HEALTH CARE?

The broadly suitable 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 well-being and not merely the absence of disease. [1]

From the definition, it is totally clear that health includes physical mental and social condition and free from disease. WHO plays a wide role in the health law application worldwide and every country have their own health law related to the human wellbeing.

The human right to health means that everyone had the right to live a dignified life and healthy life and standard of life. Health is not a narrow topic it includes environment, water, food, and medical facility and easily accessible to hospital adequate working condition, sanitation facility and decent housing. In every hospital treated as the equal to all the person no one is discriminated on the ground of caste, sex, creed etc. the human right to health provide full facility to all and health care must be provided as a public good or every one equitably

The human right to health means doctor, hospital, medicines, clinic available and provided to all with equitable basis.

3. FOLLOWING KEY OF A HUMAN RIGHT STANDARD

Universal Access: human right to health to access to all over the universe without any discrimination.
Availability: Human care infrastructure (hospital) best goods and services provided to all geographical area and to all communities.
Quality: that everyone is able to access good health and everything provided with great quality
Non-Discrimination: Healthcare must be accessible and provided without discrimination.
Transparency: Health information must be easily accessible for everyone.

4. EVOLUTION OF HEALTH LAW
In ancient times, medicine was very much effective at that time but by the drastic change in society, the habit of people and in the environment. Old time there was no effective treatment and not any law which save people right. Influenza, AIDS, TB, Smallpox etc. and many more diseases but no cure for that disease. Then there is planning for change in the condition of health in the country in all emergency situation health provider provide proper care for every individual and after that, there is successful adaptation by state and local government body so great now huge change in health and medicines and facilities of health care and laws not only apply in medicines but also in the field of healthcare in general. It is not restricted to the courtroom but is active as well in legislatures, regulatory agencies, hospitals, workplaces.

The WHO Constitution (1946) envisages “…the highest achievable standard of health as a fundamental right of every human being.”
[2] Understanding health as a human right creates a legal responsibility on states to ensure access to timely, adequate, and reasonable health care of suitable quality as well as to providing for the fundamental causes of health, such as safe and drinkable water, cleanliness, food, housing, health-related data and education, and gender equality.

Right to health as Fundamental Rights
The Constitution guarantees the following fundamental rights having a bearing on health care:
Article 21. Protection of life and personal liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law.

Right to health which is not directly given in the constitution but it is totally related to the right to life. Article 21 says that everyone has the right to live a dignified life. Indian Judiciary very widely interpreted the article 21 right to life it had many things included in this. Every person has the right to get a standard life and protected by the government. Supreme Court in case of Bandua Mukti Morcha vs. UOI[3] has held that right to live with human dignity given in article 21 and directive principle of state policy includes protection to health. Right to life is the biggest article in the constitution and differently interpreted by the different case and circumstances. Further in case state of Punjab and others vs. Mahindra Singh Chawla it has been held that the right to health is integral to right to life. The government has a constitutional obligation to provide health facilities.” Similarly, the court has upheld the state’s obligation to maintain health service. [4]

Apart from recognizing the right to health is an integral part of the right to life but state obligation to secure the health of every individual in the society.

It is very landmark judgment in Consumer Education and Resource Centre vs. Union of India in this Supreme Court held that the right to health and medical care is a fundamental right under article 21 of the constitution and it is important to workers to make their life meaningful and purposeful with dignity of the person. Right to life in article 21 includes the protection of health and secure the health of the worker. Word life in article 21 does not denote only animal existence it has very wider meaning it includes right to livelihood, standard of life, medical care and hygienic condition in workplace etc. in it court held that state be it union and state industry, private and public should maintain health and strength of worker on the employment. Further in State of Punjab and Others vs. Mohinder Singh Chawal held by the supreme court that the right to health is an integral part of the right to life and government have a constitutional obligation to maintain health in the state.

In CESC Ltd. vs. Subhash Chandra Bose [5] the Supreme Court relied on that right to health is a fundamental right.

Medical emergency and right to health
A medical emergency is held in Parmanand Katara vs. UOI in this case Supreme Court held that it is the professional obligation of doctors, governmental and private without any delay treatment should be done in any accident cases all legal formalities done after the treatment. This would help to save the citizens live who die in an accident because of delay in the treatment. Let us hope or best that every doctor private or government follow this ruling given by supreme court because it is punishable in section 166-B of the Indian penal code 1860.

Right to health and the environment
Environment plays an important role to secure health and harm to the environment is very hazardous to health. In M.C. Mehta vs. UOI court held that environmental pollution is very hazardous o several ways and it violates right to life especially discharge of pollution in Ganga which causes harm to health and life. Held that victim effect by the pollution should be compensated.

The Supreme Court held in Paschim Banga Khet Mazdoor Samity & ors v. State of West Bengal & ors., that in every welfare state, the first duty of government to secure and protect the welfare of people and primary duty to provide medical facilities for people for the countries welfare. Article 21 imposes an obligation on the government to protect the right to life of every person. Government hospitals run by the government due to careless many people lost their life is causing a violation of the right to life by the government so in this case Supreme Court given some guidelines to solve serious medical cases.

1 Suitable facilities are given at the public health centers where the patient can be given simple treatment and his condition become stable.
2 The hospital should be upgraded in the district and sub-divisional level to solve emergency cases.
3 Services for given professional treatment should be increased and having regard to the rising needs, it must be made available at the district and sub-divisional level hospitals.
4 Proper organization of ambulance should be made for the conveyance of a patient from the public health center to the State hospital.
5 An ambulance should be adequately provided with necessary tools.
6 Right to life also include right to pollution free environment supreme court in Murli S Deora vs. UOI held to protect health of non-smokers and prohibit to smokers smoke in public place because it is indirectly violating right to life of non-smokers it is said that smoking in public place is injurious to those who don’t smoke so smoking in public place is ban.

5. DIRECTIVE PRINCIPLE OF STATE POLICY AND HEALTH

Indian constitution says that achieve every goal made in the laws and in the directive principle of state policy article 38 impose liability upon the state to secure social welfare, social peace and maintain order in the society but without securing public health we can’t achieve social welfare. It means without public health welfare state not able to achieve social welfare. Article 39(e) related with workers to safeguard their health. Article 41 imposed a duty on State to public help basically for those who are sick and disable. Article 42 makes provision to defend the health of infant and mother by maternity benefit.

In India, the Directive Principle of State Policy under the Article 47 provides that it is the important and primary duty of the state to recover public health, protection of justice, the human situation at works, and delay of sickness, old age, impairment, and maternity benefits and also contemplated. Further, State’s duty includes the prohibition of consumption of intoxicating drinking and drugs are injurious to health. Article 48A state duty to provide pollution free environment and pollution free environment plays a very important role in health.

The Food Corporation of India being an agency of the State must adapt to the letter and spirit of Article 47 to the development of public health it should not allow sub-standard food grains to reach the public market. The State under Article 47 has to defend poverty disturbed people who are a consumer of sub-standard food from harmful properties.

Public Interest Plea for maintenance of accepted standards for drugs in general and for the banning of import, trade, sale, and distribution of injurious drugs is maintainable. 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 conditions friendly to good health. [6] Article 51A. Fundamental duties: It shall be the duty of every citizen of India (g) to protect and improve the normal environment including forests. Lakes, rivers and wildlife, and to have compassion for living beings;

6. CONCLUSION AND SUGGESTION

- Even after 70 years of independent no effective steps taken and implemented by the government to provide a proper and secure life to every individual
- Indian judiciary had played a very strong role in improving the condition of health in the society and in landmark judgment decide that right to health is a most important part of the right to life and liberty
- In many cases, Indian judiciary has given guidelines for a state that they have to maintain and protect the health of individuals and do not violate their right to health because it is a fundamental right.
- Supreme Court had provided compensation in many case and right to health include in right to life
- Despite many guidelines provided by the Supreme Court not an effective measure taken for the emergency patient and no proper public as well as private hospitals condition of hospitals is so bad.
- Most of the hospitals/ dispensaries particularly in villages do not have an even minimum arrangement. In view of this, it is suggested. That the government should lay down and make accessible the minimum infrastructure at every hospital or dispensary.
- The government should follow their all policy and make all facility available in the remote area and try to make hospitals in the village and give proper medicines to the poor. Treatment is so costly poor people not able to take good care of their and their family so it government duty to provide proper care and facility to all member of the country.
- Not only government duty it is a duty of every individual that make pollution free environment which has lots of effect in the life of the people to take care of the environment and secure health.

7. REFERENCES
[1] https://www.legalindia.com/right-to-health/,10:10pm,19-6-2018