

Health Rights of Women- A Study about Constitutional Provisions and Judicial contributions

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Abstract

Health is the most important necessity to lead a good life. A healthy body is the very foundation of all human activities. The health rights of women are of paramount relevance as they perform multiple roles in the society and contribute immensely to social progress. In this context an awareness of the constitutional provisions and its timely implementations and claims in cases of denial is the need of the time. The inclusive definition adopted by WHO in the preamble of its constitution that “health is a state of complete physical, mental and social wellbeing and not merely the absence of disease¹” is extended in the Constitution of India as well through its various provisions. Though right to health is not included directly in the Constitution as a fundamental right, it casts a duty on State to ensure social and economic justice. The preamble to the Constitution of India is worded in such a way to secure for all its citizens justice-social and economic which is further amplified and elaborated in the Directive Principles of State policies which have direct or indirect connection on public health. For example, Article 38² of Indian Constitution imposes liability on State to secure a social order. Social order cannot be reached without public health and welfare of people. This paper is a study about these provisions, their impact on social life and how the judiciary has interpreted them in practical life.

“Sharirmadhyamkhaludharmasadhanam- First duty to care body, to reach dharma”

Introduction

An expression from Sanskrit drama-poem Kumarasambhavam by MahakaviKalidasa³says ‘the first duty is to care for the body, which is the means to pursuit of spiritual life.’It means that the body is the means of fulfillment of *dharma*. It is true that health is the most important necessity to lead a good life and a similar concept about health is

¹ Preamble to the Constitution of the World health Organization as adopted by the International Health Conference, New York, 19-22 June 1946

²A.38 (1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

³Sarga : 5:33, Sharirmadhyamkhaludharmasadhanam

seen in Constitutional provisions also. A healthy body is a necessity for all especially women because the health rights of women are of paramount relevance as they perform multiple roles in the society and contribute immensely to social progress. In this context this paper is based on the belief that an awareness of the constitutional provisions and its timely implementations and claims in cases of denial is the need of the time. This paper is a study about the various provisions, their impact on social life and how the judiciary has interpreted them in practical life.

Definition of health

It is true that health is better than wealth. A healthy body is the very foundation of all human activities. The word 'health' has been defined in various ways. WHO in the preamble of its constitution has defined it in the following words; 'Health is a state of complete physical, mental and social well-being and not merely the absence of disease.'⁴ This statement is inclusive and has been extended to include the ability to lead a 'socially and economically productive life'. In other words, it reaches out our understanding from a limited, biomedical and pathology-based perspective of thinking about health to a more positive domain of 'well-being.' This particular state of complete well-being is extended in the Constitution of India as well through its various provisions. Though right to health is not included directly in the Constitution as a fundamental right, it casts a duty on State to ensure social and economic justice and social order that cannot be reached without public health and welfare of people.

Constitutional provisions regarding right to health

Preamble

The preamble to the Constitution of India is worded in such a way to secure for all its citizens justice-social and economic which is further amplified and elaborated in the Directive Principles of State policy. Preamble embodies the Constitutional values and one important among them being social justice which cannot exist at all without providing right to health and it is towards this noble goal a commitment of a democratic government is ensured. Part four of Indian constitution, Directive Principles of State Policy includes some provisions which have direct or indirect connection on public health. Constitution of India is silent on the point whether the right to health is a fundamental right. Instead, it directs the state to take measures to improve the condition of health care of the people. A detailed picture of Part-IV is given below.

⁴ Preamble to the Constitution of the World health Organization as adopted by the International Health Conference, New York, 19-22 June 1946

Directive Principle of State Policy and Health

Article 38⁵ of Indian Constitution impose liability on State to secure a social order. Social order will be secured only with the welfare of the people which in turn depends upon the health of the society. It means without public health welfare of people is impossible. Article 39(e)⁶ is related with workers regarding protecting of their health. The wordings of A. 41 & 42 also show beyond doubt their link with health rights. Article 41⁷ imposed duty on State to public assistance basically for those who are sick and disabled. Article 42⁸ 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 47⁹ 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. As per A. 47, the duty to raise the level of nutrition and standard of living of people cannot be achieved without taking ancillary steps like controlling pollution as well as balancing of material resources.¹⁰ Further, State's duty includes prohibition of consumption of intoxicating drinking and drugs are injurious to health. In *State of Punjab v. Ram Lubhaya Bagga*,¹¹ it was observed that a right of one means a duty of another and in this sense A.47 reinforces this right on the Govt. by making Govt. to secure health of its people not by simply opening the hospitals but making it within the reach of its people because it is the most valuable rights of a citizen and it's a matter of top priority. This is not only for securing the rights of people, but also helps State to achieve its social, political and economic goals.

Moving ahead, A.48A ensures that State shall endeavor to protect and impose the pollution free environment for good health. Since it's a primary duty of the State to take care of public health, a defaulting authority can be brought on the pain of penalty of law whether such authority has the financial resources or not.¹² Using the same analogy it was held that the Food Corporation of India being a state agency of the State is under a duty not to provide

⁵INDIA CONST. art. 38.

⁶*Id* at A.39 (e)

⁷*Id* at A. 41

⁸*Id* at A.42

⁹*Id* at A. 47

¹⁰*Javed v. State of Haryana*, AIR 2003 SC 3057.

¹¹ (1998) 4 SCC 177.

¹²*RatlamMunicipal Council v. Vardichand*, AIR 1980 SC 1622.

sub-standard food grains to public market as the State is the custodian of the rights of the public and has to protect poor people who may consume these sub-standard food items due to their pathetic circumstances.¹³ Considering the importance of the right to health, Court has held that Public interest litigation is maintainable for maintenance of standards in drugs and to ban injurious drugs. In another case it was held that one of the basic duties of the welfare state is to ensure the creation and sustaining of conditions congenial to good health.¹⁴

After 73rd Amendment, Panchayat system has been formulated and it has important implications for preserving health sector. As per A.243 G 'State may endow the panchayats with necessary power regarding matters listed in eleventh Schedule wherein the entries clearly shows a direct nexus with health. The subjects under the Schedule are drinking, health and sanitation including hospitals, primary health centers and dispensaries, family welfares, women and child development, social welfare including welfare of the handicapped and mentally retarded and the very mentioning of subjects are enough to prove its link to right to health. Again, A.243- W in Part-IXA of the Constitution entrusts some subjects to the Municipalities like water supply for domestic, industrial and commercial purpose, Public health, sanitation conservancy and solid waste management, safeguarding the interest of weaker sections of society, statistics including registration of births and deaths, regulation of slaughter houses *etc.*,

Right to health V. Fundamental Rights

It is a basic principle that Part- IV is not justiciable and they are only directives to Government, and Part-III of Fundamental Rights being silent on this, it goes to the credit of the Supreme Court of India for bringing this valuable right under the purview of A.21. Since the ambit of one's life and personal liberty knows no limits except other than fixed by the law, now right to life is beautifully added under its wide umbrella now and we can claim our right to health.¹⁵ There is no doubt that right to live doesn't mean animal existence, but much more than that. Judicial decisions have elevated the right to health and medical care to the fundamental right since health is indispensable for making the life of workmen meaningful and purposeful. State owes a duty to preserve this right which is an unavoidable segment of right to life under A.21. This duty exists whether the patient is innocent one or

¹³Tapan Kumar v. FCI, (1996) 6 SSC 101.

¹⁴Vincent V. UOI, AIR 1987 SC990.

¹⁵SheerajiLatif Ahmad Khan, Right to health, (1995) 2 SCJ 29-34 at 30. _

criminal.¹⁶ A.23 (1) prohibits traffic in human beings. A major reason for spreading AIDS is this and thus this provision indirectly boosts right to health. In another case S.C opined to widen the scope of A.21 that government's responsibility to provide medical care is the primary duty in a welfare state.¹⁷ The Govt. hospitals are duty bound to extend medical assistance for preserving human life and has to provide timely medical treatment, if not, it amounts to violation of right to life. It was held in another case that right to health of a worker is an integral facet of the right to life and it is a fundamental right.¹⁸ In a case¹⁹ wherein people lost their eyesight due to unhealthy and non-hygienic conditions in the hospital, compensation was ordered. Thus Constitution has accommodated right to health through the provisions discussed above.

It went ahead by saying that health is not merely absence of sickness, instead implies stable manpower for economic development by providing health and medical to promote physically and mentally productive leading him to a successful economic, social and cultural life. Crossing the borders, the Supreme Court held that environmental pollution is a violation of right to health guaranteed by A.21 of the Constitution.²⁰ Hygienic environment is an integral facet of right to healthy life.

Conclusion

As correctly said in Vincent v. Union of India²¹ that a healthy body is the very foundation of all human activities, Constitution of India has meticulously accommodated provisions to strengthen it. Constitution makers were well aware of this and that was why it was intelligently put under Part IV making the Govt. accountable. Truly health is a state of complete harmony of the body, mind and spirit. The social order of every society will depend upon several instincts and out of those, two are not only powerful, rather make a lot of influence on the society. They are the knowledge and the presence of educated women in the society. For achieving the second object, every society on the earth must endeavor on the first one, *ie*; process of imparting of education. But even now women are falling behind the necessary education about their basic rights and health rights fall in that category. The purpose of this paper is to emphasize its relevance as a tool for empowerment.

¹⁶ParamanandKatra v. Union of India, AIR 1989 SC 2039.

¹⁷PachimBangaKhetMazdoorSamity&Ors v. State of West Bengal &Ors, (1996) 4 SCC 37.

¹⁸ CBSE Ltd v. Subhash Chandra Bose, AIR 1992 SC 573.

¹⁹A.S.Mittal V. State of Uttar Pradesh, (1989)3 SCC 233.

²⁰Virender Gaur v. State of Haryana, 1995 (2) SCC 577.

²¹ AIR 1987 SC 990.