

**Journey of Right to Health from Directive Principles to Fundamental Rights- Judicial Approach**

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**Introduction**

*“It is the health that is real wealth and not the pieces of gold and silver.”*

*- Mahtama Gandhi*

Health of the people of any country is one of the greatest assets for development. It is one of the basic human right and essential right. Indian Constitution provides bundles of rights to every citizen. Indian Constitution is the law of the land. It deals with the powers of the three organs of the executive. Preamble of the Constitution enshrines the goals that are to be achieved by the nation. justice. The framers of the Constitution tried to incorporate essential rights in the name of fundamental rights under Part III of the Constitution. In the case of Maneka Gandhi Vs. Union of India throwing light on the importance of fundamental rights the court held that they are important for over - all personality development of the Individual. Further Part IV of the Constitution includes directive principles of state Policy. These directive principles are responsible for ensuring the concept of Welfare state. The directive principles are although non-justiciable but they are fundamental in the governance of the country (Article 37). But these provisions were merely the directions given to the state that cannot be implemented. In the Constituent assembly debate Dr. Ambedkar said that the provisions mentioned under part IV of the Constitution is not merely a dead letter but in future legislators and executive must give importance to these directions while formulating any law. Judiciary tried hard to balance the provisions of fundamental rights and directive principles of state policy. The directive principles cast a duty towards state to take certain affirmative actions to create a welfare society. We can say that in our Constitution fundamental rights and Directive Principles of the State Policy shows a perfect example of the correlation between the concept of rights and duties given by Salmond. Health of the people of any nation is equally important for the development of the country along

with the growth in the economy. Health and sanitation is the subject of state list under seventh schedule of the Constitution. According to World Health Organisation health means a state of physical and mental wellbeing. In various international Conventions right to health is recognized as a basic human right. In Universal Declaration of Human Rights (1948) article 25(2) deals with right to good health and humane conditions. Similarly under International Convention on Economic Social and Cultural Rights (1966) also emphasis is given to right to health as a human right in article 7(b). India is a member state of these conventions and declaration. It is an irony that the country having second largest population invest minimum on health care. Under part IV there are numerous provisions related to right to health and all these provisions makes a duty of the state to secure health of the citizens. In Article 38 it is mentioned to make policies for affordable health care. The judiciary expanded the horizons of phrase right to life in article 21 by including right to health as a fundamental right in part III of the Constitution. The judicial approach is to create a harmony between fundamental rights and directive principles. The court held that phrase *right to life* in article 21 includes all the basic amenities of life and therefore it includes right to health or medical care in the umbrella of article 21.

### **Meaning and Concept of Health**

Proper and good health includes not only physical wellbeing of the individual but also mental wellness. Essence of appropriate health is now not only limited to outward appearance of the individual but it includes all over calmness in the person's behavior. According to Oxford Dictionary meaning of the term health is a state free from illness and injury whereas according to the definition given by Webster Dictionary health means the condition of being sound in body, mind, or spirit. According to me the definition given by Webster dictionary is more relevant in present scenario. The definition is not only giving importance to physical body but also to inner peace of the person. World Health Organisation one of the specialized agency of United Nations established on 7<sup>th</sup> April 1948 dedicated to provide access to health care without any discrimination.

According to World Health Organisation health means a state of complete physical, mental, and social well-being, not merely the absence of disease or infirmity.<sup>1</sup>The key objective of world

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<sup>1</sup> <https://www.medicinenet.com/script/main/art.asp?articlekey=3663>

health organization is to frame policies and infrastructure for providing better health care facilities by reducing health risks.

Huber et al. (2011) proposed a new definition of health as ‘the ability to adapt and to self-manage’, which includes the ability of people to adapt to their situation as key to health. It also acknowledges the subjective element of health; what health and wellbeing mean will differ from one person to the next, depending on the context and their needs. This is considered by many to be a limitation of broader definitions of health, on the grounds that wellbeing is neither objective nor measurable; this is discussed in more detail below (Mental health and wellbeing).<sup>2</sup>

A further limitation of this approach is that it is very individualistic and takes little account of the wider determinants of health. Responsibility for health is seen as individual rather than collective, with little scope to promote it as a human right. Thus the definition given by International institution makes it clear that adequate health means a state of adjustment made by the individual because of stress or changes in life style with its inner soul.<sup>3</sup>

The concept of health as a balance between a person and the environment, the unity of soul and body, and the natural origin of disease, was the backbone of the perception of health in ancient Greece. Similar concepts existed in ancient Indian and Chinese medicine (4,5). In the 5th century BC, Pindar defined health as “harmonious functioning of the organs”, emphasizing the physical dimension of health, the physical body and the overall functionality, accompanied by the feeling of comfort and absence of pain. All modern concepts of health recognize health as more than the absence of disease, implying a maximum capacity of the individual for self-realization and self-fulfillment. The holistic concept of health is contained in the expression of wholeness. Health is a relative state in which one is able to function well physically, mentally, socially, and spiritually to express the full range of one’s unique potentialities within the environment in which one lives. Both health and illness are dynamic processes and each person is located on a graduated scale or continuous spectrum (continuum) ranging from wellness and

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<sup>2</sup> <https://www.healthknowledge.org.uk/public-health-textbook/medical-sociology-policy-economics/4a-concepts-health-illness/section2/activity3>

<sup>3</sup> <https://www.healthknowledge.org.uk/public-health-textbook/medical-sociology-policy-economics/4a-concepts-health-illness/section2/activity3>

optimal functioning in every aspect of one's life, at one end, to illness culminating in death, at the other<sup>4</sup>

### **Emergence of Right to health as a Human Right**

Human rights are such rights that inalienable, indivisible and universal in nature. These rights are available to every human being since birth. Human rights are important to protect the dignity of the individual. The core principles on which human rights are based are accountability, equality and non-discrimination, participation and Universal. These rights are closely knitted or interdependent on each other like the rights related to food, education and health. There are three generations of human rights civil and political right, Social, economic and cultural right and group rights. Right to health is the example of second generation of human rights.

### **International Instruments and Right to Health**

The human rights to the highest attainable standards of health frequently evokes skeptical reactions.<sup>5</sup> But the importance of treaties and conventions cannot be neglected in present era because these treaties opens avenues for realizing right to health as a fundamental right. Few such treaties and organisations devoted to the task of proving good health care are as follows-

The *United Nations charter (1945)* reaffirmed faith in fundamental freedoms and human rights. UN Charter makes provision to promote higher standards of living and to provide effective measures for solving problems related to health and other social problems without any discrimination on the basis of various grounds.<sup>6</sup> Human rights International community through

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<sup>4</sup>Svalastog.; Anna Lydia, Donev, Doncho Kristoffersen, Nina Jahren Gajović Srećko Concepts and definitions of health and health-related values in the knowledge landscapes of the digital society

The Free Dictionary - Medical dictionary. Holistic health. Available at: <http://medical-dictionary.thefreedictionary.com/holistic+health>.

<sup>5</sup> Klotz Sabine Bielefeld Heiner Schmidhuber Martina Schmidhuber Frewer Andreas, Health care as a human right issue normative profile, conflicts and implementation (2017) Pg. no.9

<sup>6</sup> Article 55 of UN Charter -With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

a. higher standards of living, full employment, and conditions of economic and social progress and development;

various conventions and treaties. Further the same treaty makes provisions to for international cooperation for accomplishing the goals set by the previous provision of the charter.<sup>7</sup>

*Universal Declaration of Human Rights (1948)* a unique document in nature. This declaration contains both generations of human rights i.e. civil and political rights and social and economic rights also gives importance to adequate health as a basic human right. UDHR states that without any kind of discrimination every individual has a right to proper health and medical care and other necessary social services.<sup>8</sup>

*International Covenant on Social, Economic and Cultural Rights (1966)* also makes efforts for the attainment of highest standard of health, child care and medical care to everyone in its article 12. Further article 12(2) asks to takes measures for achieving the goals enshrined in the convention.

*CESCR General Comment No. 14* in context to ***The Right to the Highest Attainable Standard of Health which was adopted in 2000*** clearly says that health is a fundamental right and is important for utilizing other human rights<sup>9</sup>. It also targets vulnerable section of the society.

Additionally, the right to health is recognized, inter alia, in article 5 (e) (iv) of the International Convention on the Elimination of All Forms of Racial Discrimination of 1965, in articles 11.1 (f) and 12 of the Convention on the Elimination of All Forms of Discrimination against Women of 1979 and in article 24 of the Convention on the Rights of the Child of 1989. Several regional human rights instruments also recognize the right to health, such as the European Social Charter of 1961 as revised (art. 11), the African Charter on Human and Peoples' Rights of 1981 (art. 16) and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights of 1988 (art. 10). Similarly, the right to health has been

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b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and

c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion

<sup>7</sup> Article 56 requires members to "take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55

<sup>8</sup> Article 25 of UDHR

<sup>9</sup> Adopted at the Twenty-second Session of the Committee on Economic, Social and Cultural Rights, on 11 August 2000

proclaimed by the Commission on Human Rights, as well as in the Vienna Declaration and Programme of Action of 1993 and other international instruments.<sup>10</sup>

### **Impact of World Health Organisation-**

Keeping in view the objectives enshrined in UN charter and particularly in Article 55 and Article 56 WHO was established. All the states of the world are duty bound to provide maximum resources in the form proper nutrition, safe drinking water, Sanitation, health care benefits and all the basic amenities of life. As per the goals of WHO it is the goal of the states to formulate policies related to health care and also to disseminate it. WHO's constitution without any dilemma states to right to health is a fundamental right. Moreover it thrust a responsibility on the state to make periodic review of the situation related to health and this right should not be violated. At the same time it says to the member states to make changes in the constitution of their country so the right to health can be enjoyed to the fullest. Thus every country in the world has accepted human rights are universal and is bound by treaty related to right to health.

### **Components of The Right to Health**

#### **a) The Right to Appropriate Health Care**

The right to adequate health care includes good quality of hospitals, drugs and medicines.

#### **b) Right to An Adequate Supply Of Water, Food, Nutrition And Housing**

General Comment 14 of General Assembly gives importance to proper supply of quality food, nutrition and shelter so that a person can live a dignified life.

#### **c) The Right to Maternal, Child And Reproductive Health**

Right to health not only includes proper nutrition but it also includes mental health of child and reproductive health of woman.

#### **d) Right to Healthy Environment and Healthy Working Condition**

Healthy environment is the integral part of appropriate health. Healthy environment includes clean water and air.

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<sup>10</sup> Office of High Commissioner for Human Rights, CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12) <https://www.refworld.org/pdfid/4538838d0.pdf>

**e) The Right to Participate In Health-Related Decision Making**

Policies must be formulated regarding the needs and demands of the people. The schemes should be formulated in such a manner that it should give maximum benefit to the individuals.

**f) The Right to Access Health-Related Information**

In various international treaties and conventions importance has been given to access information related to health. Restriction or denial to access information in context to health is a violation of human rights of the people.

**Indian Constitution and Right to Health**

The Constitution of India is the law of the land. The Constitution of India is the lengthiest written Constitution. Our Constitution is divided into 22 parts, 12 schedules and 5 appendixes. The Constitution of India defines the powers of different organs of the government like legislature, executive and judiciary. The Constitution of India provides bundles of freedoms and liberties. The Constitution of India is unique in its structure. It not only deals with the freedoms of the individual but it also casts a duty towards the state to create a welfare society. Part III of the Constitution comprises of fundamental rights guaranteed to every citizen of the country. Subsequently there is part IV of document which comprises of Directive Principles of State Policy. Part IV cast a duty of the state to take some positive steps in order to promote welfare in the country. According to jurists Indian Constitution is based on the foundation of directive principles and fundamental rights. In the early phase of struggle between directive principles and fundamental rights Judiciary hold the view that directive principles are subordinate to fundamental rights but later on Indian judiciary tried hard to create a balance or harmony between fundamental rights and directive principles of state policy.

**Preamble & Health Care-**

The preamble of the Constitution sets the goals and aspirations of our Constitution makers. On the broad interpretation of the Constitution we can say that the entire philosophy of the Preamble is to provide social justice. The foundation of our Constitution is socialism. Socialism or social justice means that the state will take control and manage the things related to public welfare.

Secondly the resources must be distributed equally . Social justice is the signature tune of our Constitution. The preamble deals with three kinds of justice social, economic and political. In the purview of the term social justice access to medical care and assistance is covered.

### **Fundamental Rights and Directive Principles-**

Indian Constitution is first and foremost a social document and socio – economic justice is the signature tune of the Constitution. The Directive Principles enshrined in part IV and fundamental rights in part III of the Constitution epitomize the ideals, the aspirations, the sentiments, the percepts and the goals of our entire freedom movement. No doubt that Fundamental rights occupy a very important place in the Constitution but for a common man directive principles enshrined in Part IV comes first and fundamental rights later because excellence comes only after existence. According to Granville Austin fundamental rights and directive principles constitute the “Conscience of the Constitution” and they were included in the Constitution with the hope and expectation that One day the tree of true liberty world bloom in India<sup>11</sup>.”

### **Provisions in Directive Principles of State Policy in Context to Right to Health-**

The makers of Our Constitution opted from Irish Constitution. The Directive Principles of State Policy is based on the novel idea of welfare. These directions are although non- enforceable are equally important for legislature while enacting any law for the welfare of the country. They are fundamental in the governance of the country.<sup>12</sup>

Article 39- This article of the Constitution lays emphasis on the health and strength of workers without any distinction.

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<sup>11</sup> Tripathi; Suresh Mani, Fundamental Rights and Directive Principles in India, Hamburg Anchor Academic Publishing 2016

<sup>12</sup> Article 37 -The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.



Article 41- Article 41 cast a duty on the state for making provisions for aged, sick and disabled persons of the country. The state shall make provisions for the said persons in his economic capacity.<sup>13</sup>

Article 42 makes provision for maternity relief for women as well as just and humane conditions of work

Article 43- It is the direction to state to strive for provide decent life with proper working conditions.

Article 47- One of the important directive principle dedicated to good health is in article 47. This article states that it is the responsibility of the state to raise the standard of nutrition by improving public health.<sup>14</sup>

In *Bandhua Mukti Morcha vs. Union of India*<sup>15</sup> a case concerning the living and working conditions of stone quarry workers and whether these conditions deprived them of their right to life. The court held that humane working conditions are essential to the pursuit of the right life. It lay down that workers should be provided with medical facilities, clean drinking water and sanitation facilities so that they may live with dignity. In *Citizens and Inhabitants of Municipal Ward vs. Municipal Corporation, Gwalior*<sup>16</sup> the court deliberated on the question- Is the State machinery bound to assure adequate conditions necessary for health? The case involved the maintaining of sanitation and drainage facilities by municipal corporations. It was held that the State and its machineries (in the instant case, the Municipal Corporation) are bound to assure hygienic conditions of living and therefore, policies are to be made regarding health care.

#### **Fundamental Rights - Right to life- Article 21-**

Right to life is one of the most important fundamental right. Other fundamental rights cannot be fully enjoyed by the individual until unless right to life is not given. Indian Constitution in Article 21 deals with right to life. Art21 of the Indian Constitution is one of the article of the Constitution where maximum amount of judicial creativity has been done. The language of

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<sup>13</sup> The State shall, within the limits of its economic capacity and development, 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 (Article 41)

<sup>14</sup> 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. ( Article 47)

<sup>15</sup> A.I.R. 1984 S.C. 802, 808.

<sup>16</sup> 1993-(004)-SCC -0204 -SC.

Article simply says that “No person shall be deprived of his life or personal liberty except according to procedure established by law” but this single line has many folds. Although the article starts with the negative word no, but this word no is closely connected to the other word deprived. In the case of *Munn v. State of Illinois*, **94 U.S. 113 (1876)** the US Court referred to the observation of Justice Field, wherein he stated that by the term 'life' as here used something more is meant than a mere animal existence. Thus, it embraces within itself not only the physical existence but also the quality of life. It was the first case on the definition of word 'LIFE'.

Earlier the approach of judiciary was traditional. In the case of *A.K. Gopalan vs State of Madras*.<sup>17</sup> It was just stuck to the words of the Constitution as it is. But later on after the case of Maneka Gandhi the scope of article 21 was expanded.

This case<sup>18</sup> settled two major in points in relation to Art. 21. One, Arts. 19, 21 and 22 are mutually exclusive and independent of each other. Two, a law affecting life or personal liberty of a person could not be declared unconstitutional merely because it lacked natural justice or due process. *Maneka Gandhi v. UOI*<sup>19</sup> is a landmark case of the post- emergency period. This case shows how liberal tendencies have influenced the Supreme Court in the matter of interpreting Fundamental Rights, Particularly Art. 21. The reincarnation of Art.21 which Maneka Gandhi case brought has been exerting a deep impact on contemporary<sup>20</sup> constitutional jurisprudence. Maneka Gandhi case completely overrides the Gopalan's view which had held the field for nearly three decades. Since Maneka Gandhi case, the Supreme Court has again underlined the theme that Arts. 14, 19 and 21 are not mutually exclusive, but they sustain, strengthen and nourish each other. The sterile approach of Gopalan's case, the Supreme Court has found a potent tool to seek improve matters, and to fill the vacuum arising from governmental inaction and apathy to undertake reform, in the area of criminal justice. The law in its eternal youth grows to meet the demand of the society. Since *Maneka Gandhi case*, Art. 21 has proved to be multi-dimensional.<sup>21</sup>

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<sup>17</sup> 1950 AIR 27

<sup>18</sup> A.K. Gopalan Vs. State of Madras 1950 AIR 27

<sup>19</sup> 1978 AIR 597

<sup>20</sup> Judicial Interpretation in Right to Life and Personal Liberty Under Article 21 of Indian Constitution  
<http://www.legalservicesindia.com/law/article/1105/10/Judicial-Interpretation-in-Right-to-Life-and-Personal-Liberty-Under-Article-21-of-Indian-Constitution>

<sup>21</sup> ibid

**Role of Judiciary and Right to Health- Fundamental right-**

According to Bhagwati, J., Article 21 “embodies a constitutional value of supreme importance in a democratic society.” Iyer, J., has characterized Article 21 as “the procedural *magna carta* protective of life and liberty. This right has been held to be the heart of the Constitution, the most organic and progressive provision in our living constitution, the foundation of our laws.”<sup>22</sup>

In **Maneka Gandhi v. Union of India**,<sup>23</sup> the Supreme Court gave a new dimension to Art. 21 and held that the right to live the right to live is not merely a physical right but includes within its ambit the right to live with human dignity. Elaborating the same view, the Court in **Francis Coralie v. Union Territory of Delhi**,<sup>24</sup> observed that:

*“The right to live includes the right to live with human dignity and all that goes along with it, viz., the bare necessities of life such as adequate nutrition, clothing and shelter over the head....* Thus in the case of Francis Coralie court explored the different horizon of article 21.

The apex court said that right to life includes basic needs of life and right to get adequate nutrition is the part of article 21. The right to get quality nutrition is clearly associated with the health of the individual.

In **Vincent Panikulangara vs. Union of India**<sup>25</sup> the Supreme Court of India on the right to health care observed: “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”.

In a historic judgment in **Consumer Education and Resource Centre Vs Union of India**<sup>26</sup> the Supreme Court has held that the right to health and Medical care is a fundamental right under

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<sup>22</sup> Ghosh; Trambak, New dimensions of Right To Life,  
[https://www.academia.edu/32274176/NEW\\_DIMENSION\\_OF\\_RIGHT\\_TO\\_LIFE?auto\\_download=true&mail\\_work\\_card=view-paper](https://www.academia.edu/32274176/NEW_DIMENSION_OF_RIGHT_TO_LIFE?auto_download=true&mail_work_card=view-paper)

<sup>23</sup> 1978 AIR 597

<sup>24</sup> 1981 AIR 746,

<sup>25</sup> AIR 1987 SC 990: 995. p. 995.

<sup>26</sup> AIR (1995) 3 SSC, 42.

Article 21 of the constitution as it is essential for making the life of the workman meaningful and purposeful with dignity of person. “Right to life” in Article 21 includes protection of the health and strength of the worker. The expression ‘life’ in Article 21 does not connote mere animal existence. It has a much wider meaning which includes right to livelihood, better standard of life, hygienic conditions on workplace and leisure. The court held that the State, be it Union or State Government or an industry, public or private is enjoined to take all such action which will promote health

In *Kirloskar Brothers Ltd v. Employees’ State Insurance Corpn.*<sup>27</sup> The Supreme Court, following the Consumer Education and research Center’s case, has held that ‘right to health’ is a fundamental right of the workmen. The Court also held that this right is not only available against the State and its instrumentalities but even private industries. Further in the case of *State of Punjab and Others vs. Mohinder Singh Chawala*<sup>28</sup> “it has been held that right to health is integral to right to life. Government has a constitutional obligation to provide health facilities.” Similarly, the court has upheld the state’s obligation to maintain health services.<sup>29</sup>

The importance of adequate of medical health services was also addressed in *Paschim Banga Khet Mazdoor Samity vs. State of West Bengal*<sup>30</sup>, The question before the court was whether the non-availability of services in the government health centers amount to a violation of Article 21? It was held that that Article 21 imposes an obligation on the State to safeguard the right to life of every person. In *Mahendra Pratap Singh vs. State of Orissa*<sup>31</sup> a case pertaining to the failure of the government in opening a primary health care centre in a village, the court had held “In a country like ours, it may not be possible to have sophisticated hospitals but definitely villagers within their limitations can aspire to have a Primary Health Centre. The government is required to assist people get treatment and lead a healthy life.

Pt. *Parmananda Katara vs. Union of India*<sup>32</sup> It has been held that held that it is the professional obligation of all doctors, whether government or private, to extend medical aid to the injured

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<sup>27</sup> (1996) 2 SCC 682.

<sup>28</sup> AIR (1997) 2 SC 83.

<sup>29</sup> State of Punjab v Ram Lubhaya Bagga. (1998) 4 SCC 117.

<sup>30</sup> Agarwal SC (J), Nanawati GT (J). Paschim Banga Khet Mazdoor Samity of Ors. vs. State of West Bengal & Anr. 1996.

<sup>31</sup> AIR 1997 Ori 37.

<sup>32</sup> AIR 1989

immediately to preserve life without waiting legal formalities to be complied with by the police under Cr.P.C. Article 21 of the Constitution casts the obligation on the State to preserve life. No law or State action can intervene to delay the discharge of this paramount obligation of the members of the medical profession. In *Citizens and Inhabitants of Municipal Ward vs. Municipal Corporation, Gwalior*<sup>33</sup> the court deliberated on the question- Is the State machinery bound to assure adequate conditions necessary for health? The case involved the maintaining of sanitation and drainage facilities by municipal corporations. It was held that the State and its machineries (in the instant case, the Municipal Corporation) are bound to assure hygienic conditions of living and therefore, policies are to be made regarding health care. Occupational *Health & Safety ... vs Union Of India & Ors*<sup>34</sup> it was said by the court that it is the duty of the state to create a clean and healthy environment. The court asked thermal power plants to comply with the safety standards.

### **Role of Judiciary related to Health Care Facilities - Pandemic**

Presently as soon as the pandemic emerged ie COVID 19 or Novel Corona virus. The virus is also know as Wuhan virus because it was originated from Wuhan which is one of the market in China. Our country is not only facing the problem of this pandemic but at the same time the re problem of infrastructure. India is deficient in the matters of hospitals and medical staff. Thousands of people are suffering from the lethal and small virus everyday . The greater problem is till now no medicine has been mase At the same time there is a shortage of beds in the hospitals. The burden is shifted more on government hospitals rather than private hospitals. The private hospitals or labs are taking huge amount of money for testing.

Judiciary of our country tried to restrict the actions of the private labs for charging hefty amount of money from the patient of Corona virus. Initially when the petition was filed the apex court of the Supreme Court said that the private labs should provide medical test free of cost.Later on the Supreme Court modified the order. The Supreme Court Tuesday dismissed a plea seeking direction to the Centre, all states and Union territories to provide free of cost treatment for coronavirus infection till COVID-19 pandemic is contained, saying it is for the government to

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<sup>33</sup> 1993-(004)-SCC -0204 -SC.

<sup>34</sup> Occupational Health & Safety ... vs Union Of India & Ors on 31 January, 2014 Bench: J.K.S. Radhakrishnan, A.K. Sikri

take a call on it. The court said” Government has to decide on who to give free treatment. We do not have any funds with us,” a bench headed by Justice N V Ramana said. "Do not create publicity interest litigation," the bench, also comprising Justices S K Kaul and B R Gavai, said “The bench, which heard the matter through video-conferencing, observed that government hospitals across the country are giving free treatment to coronavirus infected patients.”<sup>35</sup>

The court said that only those can get the benefit of free test who are coming under government welfare schemes. The top court was hearing a plea filed by Delhi-based advocate Amit Dwivedi who had sought a direction to the authorities and others, including health care facilities, to "conduct tests, all subsequent tests, procedures and treatments in relation to COVID-19 disease free of cost for all citizens of India" till the pandemic is contained<sup>36</sup>

Another area of concern is the plight of migrant labours majorly from the metropolitan cities like Delhi and Mumbai. Due to lockdown situation the labours are without any work and money. The Supreme Court on various times issued guidelines to the state for making arrangements for the migrant labourers for their health care facilities.

In a report published in The Economic Times (12<sup>th</sup> April 2020) the Centre has asked all states and Union Territories to take welfare measures, including food, shelter, medicine, mobile and video call facilities, for migrant labourers living in various relief camps across the country. The Supreme Court has directed that adequate medical facilities besides proper arrangements for food, clean drinking water and sanitation be ensured for migrant workers at relief camps. Further, trained counselors or community group leaders belonging to all faiths should visit the

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<sup>35</sup> SC dismisses plea seeking free test, treatment for coronavirus infection , 21 April 2020  
<https://economictimes.indiatimes.com/news/politics-and-nation/sc-dismisses-plea-seeking-free-test-treatment-for-coronavirus-infection/articleshow/75269395.cms?from=mdr>

<sup>36</sup> [https://economictimes.indiatimes.com/news/politics-and-nation/sc-dismisses-plea-seeking-free-test-treatment-for-coronavirus-infection/articleshow/75269395.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](https://economictimes.indiatimes.com/news/politics-and-nation/sc-dismisses-plea-seeking-free-test-treatment-for-coronavirus-infection/articleshow/75269395.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)

relief camps and shelter homes and deal with any consternation that the migrants might be going through.<sup>37</sup>

The Supreme Court said that if large number of migrant labourers enter into village they will affect other people also. There will be risk of infection in rural India. It also ordered the Centre to create a website with healthcare professionals within 24 hours to answer queries regarding covid-19 and take action against people spreading fake news.<sup>38</sup>

Thus the judiciary tried to implement the provisions related to labour welfare like humane conditions of living for the labourers mentioned under directive principles of state policy.

### **Present Scenario – Emphasis on Mental Health –**

After the emergence of Corona Virus in our Country and around the world the people are suffering more on mental level. In our Constitution somewhere more importance is given to nutrition and medical aid. But this pandemic made us realise that human health is not limited to good quality of food and nutrition. We saw how the people of the country are more affected mentally. Whether it is an organized center or an unorganized sector people are removed from their jobs because of the pandemic. This has affected mental health of a person also.

### **WHO & Mental Health-**<sup>39</sup>

As per World Health Organisation Concepts of mental health include subjective well-being, perceived self-efficacy, autonomy, competence, intergenerational dependence and recognition of the ability to realize one's intellectual and emotional potential. It has also been defined as a state of well-being whereby individuals recognize their abilities, are able to cope with the normal stresses of life, work productively and fruitfully, and make a contribution to their communities.

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<sup>37</sup> [https://economictimes.indiatimes.com/news/politics-and-nation/mha-asks-states-uts-to-ensure-compliance-of-sc-order-on-welfare-of-migrant-labourers/articleshow/75111655.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](https://economictimes.indiatimes.com/news/politics-and-nation/mha-asks-states-uts-to-ensure-compliance-of-sc-order-on-welfare-of-migrant-labourers/articleshow/75111655.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)

<sup>38</sup> Coronavirus: Govt tells SC one-third of migrant workers could be infected, (1<sup>st</sup> April 2020)  
<https://www.livemint.com/news/india/covid-19-govt-tells-sc-one-third-of-migrant-workers-could-be-infected-11585643185390.html>

<sup>39</sup> investing in Mental Health Department of Mental Health and Substance Dependence, Noncommunicable Diseases and Mental Health, World Health Organization, Geneva. ( 2003)  
[https://www.who.int/mental\\_health/media/investing\\_mnh.pdf](https://www.who.int/mental_health/media/investing_mnh.pdf)

According a report by World Health Organistion on Investigating in Mental Health (2003) following points came into consideration-As many as 450 million people suffer from a mental or behavioural disorder.

- Nearly 1 million people commit suicide every year.
- Four of the six leading causes of years lived with disability are due to neuropsychiatric disorders (depression, alcohol-use disorders, schizophrenia and bipolar disorder).
- One in four families has at least one member with a mental disorder. Family members are often the primary caregivers of people with mental disorders. The extent of the burden of mental disorders on family members is difficult to assess and quantify, and is consequently often ignored. However, it does have a significant impact on the family's quality of life.
- In addition to the health and social costs, those suffering from mental illnesses are also victims of human rights violations, stigma and discrimination, both inside and outside psychiatric institutions.

In the report the World Health Organistion laid down a frame work to solve the problem of mental illness . The report asked for the cooperation on all levels so that the issues related to mental health can be curbed down. This cooperation must be on the international and national level. In response to the frame work and guidelines in order to ensure mental wellbeing of a person Indian government has legislated law.

### **Mental Illness :- Article 21-**

In view of the recommendations made by the international community Mental Health care Act 2017 came into existance. The act ensures that all persons shall have the right to access mental healthcare and treatment from mental health services run or funded by the Government. The law recognizes the vulnerability that persons with psychosocial disabilities face at home. If you are a person with a psychosocial disability and find yourself being forced out of your home, the Act provides that you will have access to support, including legal aid, to ensure that you have the right to live in the home.<sup>40</sup>

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<sup>40</sup> Salelkar; Amba , Reviewing the Mental Healthcare Act, 2017,  
<https://www.whiteswanfoundation.org/article/reviewing-the-the-mental-healthcare-act->



There are so many cases where the court gave importance to mental wellbeing of an accused. The court reiterated that a person has a right to live with dignity which includes physical and mental health as a part of Article 21. ***In the case of Accused X vs The State Of Maharashtra***<sup>41</sup> the court said Under Article 21 of the Constitution, right to life and liberty cannot be impaired unless taken by jus laws. In this case we are concerned with the death penalty, which inevitably affects right to life, and is subjected to a various substantive and procedural protections under our criminal justice system. An irreducible core of right to life is 'dignity' All human beings possess the capacities inherent in their nature even though, because of infancy, disability, or senility, they may not yet, not now, or no longer have the ability to exercise them. When such disability occurs, a person may not be in a position to understand the implications of his actions and the consequence it entails. In this situation, the execution of such a person would lower the majesty of law. The court referred the case of ***Navtej Singh Johar v. Union of India***,<sup>42</sup> and ***Common Cause v. Union of India***,<sup>43</sup>. The court said that the right to human dignity comes in different shades and colours

### **Conclusion-**

Thus through various judicial pronouncement right to have health is now not just limited to directive principles of state policy. The judiciary applied the principle of harmonious interpretation between directive principles of state policy and fundamental rights. Although health care and sanitation is the subject of state list but due to the continuous efforts of judiciary it has been recognized as fundamental right. The judiciary has taken a revolutionary approach in interpreting the words of article 21 and more specifically the phrase right to life. In the ambit of right to life judiciary has given plethora of rights.

A high-level group (HLG) on health sector constituted by the Fifteenth Finance Commission has recommended that 'Right to Health' be declared a fundamental right on the 75th Independence Day in 2022 and the Constitution be amended to shift the subject of health from the state list to

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2017/?gclid=CjwKCAjw88v3BRBFEiwApwLevSA3qjJzE5u7WMmlWKGkuly51O2JSuLjtno4DFGv0\_6-GWCe91vZbVhoC3XEQA vD\_BwE

<sup>41</sup> 12 April 2019

<sup>42</sup> AIR 2018 SC 4321

<sup>43</sup> AIR 2018 SC 1665

concurrent list. The committee also suggested to give adequate training will be given to medical teachers. The members of the committee are of the view that when health will become a right state and state cannot make excuses of their economic capacity. It is the right time to increase expenditure on health .This step by the government is actually the need of the hour because health is the greatest blessing. Thus we can say that due to the actions taken by judiciary to convert health care or medical assistance as the part of fundamental rights our legislature and executive is also keen to give special importance o health care of every individual of the country.

In the recent time we are witnessing an active role of judiciary in realizing the fact that health rights are under the sphere of fundamental rights. The judiciary is not only paying importance to physical health related to nutrition but also to mental wellbeing. In spite of judicial pronouncement and judgement lot more has to be done. As recently we can see large number of people are struggling from depression and committing suicide. Judiciary should give some strict guidelines in order to stop such cases. Because it was rightly said that

*“It is health that is real wealth and not pieces of gold and silver.”*