



RIGHT TO HEALTH AND MEDICAL CARE – LEGAL PERSPECTIVE

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Abstract: “Shathamnam Bhavathi” – which means a blessing given by elders in Sanskrit, “let you live for hundred years, i.e. a full span of life. To begin with the right to life in Art.21 would include livelihood. Right to health and medical right is fundamental right which merges in Art.21 by way of delivering Supreme Court Judgements in various landmark cases. The Supreme Court has emphasized that a healthy body is the very foundation of all human activities. Art.47, a Directive Principle, lays stress on improvement of public health and prohibition of drugs injurious to health as one of the primary duties of the state. The professional obligation of all doctors, whether government or private, to extend medical aid to the injured immediately to preserve life without waiting legal formalities to be complied with by the police under Cr.P.C. Art.21 of the constitution casts the obligation on the state to preserve life. It is the obligation of those who are in charge of the health of the community to preserve life so that the innocent may be punished. Social laws do not contemplate death by negligence which amounts legal punishment. No law or state action can intervene to delay the discharge of this paramount obligation of the members of the medical profession. The right to health and medical care is a fundamental right under Art.21 of the workman meaningful and purposeful with dignity of person. Right to life in Art.21 does not connote mere animal existence. It has a much wider meaning which includes right to livelihood, better standard of life, hygienic conditions in works place and leisure. A close look at the text of the constitution that the right to health has not been directly incorporates as a fundamental right. Therefore some legislations made for the protection of environment which leads to live in a healthy environment. Some Directive principles of state policy i.e. Art.39 which speaks about the protection of health of workers and Art.41 to providing public assistance by the state in special circumstances such as sickness, disability, oblage etc. Art.42 protects the health of the infant and the mothers, i.e. in a way, it pertains to maternity benefit. For the very reason of Directive Principles holding only persuasive value, the state used this is a weapon to escape. Therefore rescue and brought the right under the purview of Art.21. The scope of Art.21 has, thus been widened, it ensures right to health and medical care along with right to life.

Introduction:

“Shathamnam Bhavathi” – which means a blessing given by elders in Sanskrit, “let you live for hundred years, i.e. a full span of life. To begin with the right to life in Art.21 would include livelihood. Right to health and medical

right is fundamental right which merges in Art.21 by way of delivering Supreme Court Judgements in various landmark cases. The Supreme Court has emphasized that a healthy body is the very foundation of all human activities. Art.47, a Directive Principle, lays stress



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A detailed Analysis:

The Supreme Court has considered a very serious problem existing at present in a Medico- Legal Case (such as an accident) the doctors usually refuse to give immediate medical aid to the victim till legal formalities are completed. In some cases, the injured die for want of medical aid pending the completion of legal formalities.¹ The Supreme Court has now very specifically clarified that preservation of life is of paramount importance. Once life is lost, states quo ante can't be restored. It is the duty of the doctors to preserve life whether the concerned person be a criminal or an innocent person. Art.21 casts on the state on obligation to preserve life. The court has made the following pithy observation in the connection. The patient whether he be an innocent or be a criminal liable to punishable under the laws of the society. It is the responsibility of those who are in-charge of the health of the community to preserve life so that the innocent may be protected and the guilty may be punished.² Social laws do not contemplate death by negligence to be tantamount to be legal punishment. Every doctor whether at a government hospital or otherwise has the professional obligation to extend his services with due expertise for protecting life. The matter has been takes one step forward in Paschim Banga Khet Mazdoor Samity v. State of West

¹ Parmanand Katara v. Union of India AIR 1983 SC 2039

² Rakesh Chandra v. State of Bihar, AIR 1989 SC 348



Bengal.³ A Mazdoor fell from a running train and was seriously injured. He was sent from one government hospital to another and finally he had to be admitted in a private hospital where he had to incur an expenditure of Rs.17,000/- on his treatment feeling aggrieved at the collous attitude shows by the various government hospitals, he filed a writ petition in the Supreme Court under Art.32. The Court has ruled that the Constitution envisages establishment of Welfare State, and in a Welfare State, the primary duty of the government is to provide adequate medical facilities for the people. The government discharges his obligation by running hospitals and health centres to provide medical care to those who need them. Art.21 imposes and obligation on the State to safeguard the right of life of every person. Preservation of human life is paramount importance.⁴

The right to health and medical care is a fundamental right under Art.21 of the Constitution as it is essential for making the life of the workmen meaningful and purposeful with dignity of person. Right of life in Art.21 includes protection of the health and strength of the worker. Worker the expression "Life" in Art.21 does not cannote near animal existence. It has a much wider meaning which includes right to livelihood, better standard of life, hygienic conditions in work place and leisure.⁵ The right to life in Art.21 includes the right to health and, therefore, the State Employees are entitled to Medical Reimburse of expenses for treatment and rent charges both in approved specialized hospitals

outside the government hospitals. In this case Supreme Court held that right to health is an integral part of the right to life and the government has Constitutional obligation to provide the health facilities, consequently the State has to bear the expenses for the government servants treatment while in service or after retirement of service.

When the origin of right to health dates as 1946- First International Organisation, World Health Organisation (WHO) came into existence to formulate health terms as human right even prior to WHO, there were several countries that have been in the phase of granting of health as a fundamental right, the demand for health grew to the extent that it came to be treated to one of the basic human right.⁶ The Universal Declaration of Human Rights (1948) acknowledgement of health as a fundamental human right. At present, more than half of the world's population is not receiving proper medical care, therefore, the organizers of World Health Summit see their mission has improving health care worldwide and promoting equitable access to medication and prevention. The achievement of this mission seen as threatened by unsolved and newly emerging problem such as, the demographic shift to an ageing society, climate change and its health consequences that are already being felt, new types of epidemics, such as obesity, mental ill- health, and violence and injury, in developed and developing countries, it is eradicating the disease of HIV,, TB, Malaria. The rising costs of health care, and worldwide health crisis and its serious threats to the health of the populations across the globe. The

³ AIR 1996 SC 2426 : (1995) 6 SCC 213

⁴ Katri v. State of Bihar, AIR 1981 SC 928

⁵ Consumer Education & Research Center v. Union of India AIR (1995) 3 SCC 42.

⁶ International Health Conference, July 22, 1948



WHO seeks to actively to address these challenges by bringing together state holders from research, education, clinical care and many other disciplines to jointly develop strategies to tackle these major health care issues. The outcome of each multi-sectoral Summit is inform and influence decision maker such as governmental agencies, as recommendations for meeting future health care challenges.⁷ A global forum did not exist for medical practice, research and health care systems. Global reference has been list out so many health indicators in 2015, let us see what are there in the list as follows... Life expectancy at Birth, Adult Mortality Rate between 15 and 60 years of age, under 5 mortality rate, infant mortality rate, suicide rate, road traffic mortality rate, total fertility rate, sexually transmitted diseases mortality rate, these rates are health status indicators which are suggested by the Global Reference list of Health Indicators, 2015. The enjoyment of highest attainable standard of health is one of the fundamental rights of every human-being without distinction of race, religion, political, belief, economic or social condition. Almost 70 years after these words were adopted in the Constitution of the World Health Organisation, they are more powerful and relevant than ever. Since day-one, the right of health has been central to World Health Organisation's identity and mandate. It is at the heart of the topic priority, Universal health coverage.⁸ The right of health for all people means that everyone should have access to the health services they need, when and where they need them, without suffering financial

hardship. No one should get sick and die just because they are poor, or because they cannot access the health service they need. Good health is also clearly determined by other basic human rights including access to safe drinking water and sanitation, nutritious foods, adequate housing, education and safe working conditions. The right to health and medical care also means that everyone should be entitled to control their own health and body, including having access to sexual reproductive information and services, free from violence and discrimination. Everyone has to right to privacy and to be treated with respect and dignity.⁹ Nobody should be subjected to medical experimentation, forced medical examination, or given treatment without informed consent. That's why WHO promotes the idea of the people centered care, it is the embodiment of human rights in the practice of care. When people are marginalized or face stigma or discrimination, their physical and mental health suffers. Discrimination in health care is unacceptable and is a major barrier to development. But one people are given the opportunity to be active participants in their own care, instead of passive recipients, their human rights respected, the outcomes are better and health systems became more efficient.¹⁰

Conclusion:

So many legislations made for the right to health and medical care, there are some Constitutional Rights and Legal Rights (which are by the way of making Legislations by the Parliament of India). What about the duty of the population, why don't be have to do duties to protect our health as well

⁷ Shaping future health – Evolution of Medical Summit by Adi; Klienernt, Sabine

⁸ World Health Summit 2009 - Presentation

⁹ www – centrenews/today.com

¹⁰ www.Wikipedia.com



as others health, if someone right is injured by me I am liable for 'injuria sine damnum' and damnum sine injuria i.e. injury without damage and damage without injury. We are injured because of absence of our duty that is to make our environment healthy, our habits makes environment polluted. Our inventions make our air and water polluted, because of polluted water and air, weather consequences of that we are sick. We were injured and get illness, everyone has awared about their rights but forget to do their moral duties. Whenever we follow rules regarding to keep environment pollution free then only we have less chances to sickness. We are using pesticides produce large amount of crops against the natural cultivating system. Pesticides are poisoned and unfortunately they can harm more than just the pests at which they are targeted. They can cause number of health effects. They are linked to range of serious illnesses and diseases. For ex: Respiratory tract irritation, sore throat, allergic sensitisation, Eye and skin irritation, parkinson's, asthma, depression and anxiety, cancer including leukaemia etc. Though it has advantages but it can cause illness to the population. We are invented for the cause of good production but subsequently the essence is different. Where we adopt new technology and uses high most technological method it have a disadvantages too. We are moderate, we are advanced in all technological fields along with development we have to keep on an eye on healthy environment, it is a good gift given by our generation to future generations. Please use dustbins while you go to outings, avoid plastics, and avoid private transport to reduce air pollution. We are proud to say we are Indians, we are proud to say our country is democratic and secular and we have to

proud to say that our country is environmental and pollution friendly country i.e. India.