

Constitutional Protection of Health in India

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Abstract

Good health is very much important for us because day to day life depends upon our good health. Our constitution is very much attentive towards good health of the people this is reason why it has number of provisions regarding protection of health of the people. Not only health is protected under part-III but under directive principles of state policy also state is directed to work in this direction

Right of health is not directly provided under any provision of the constitution of India but health comes under 21 of the Constitution of India because this article includes each and every thing which makes life good. Obviously good health also. Besides article 21 other articles like 23, 24, and 32 are also directly protecting health. Apart from this directive principle of state policy also instructs state to promote health of the people. Our judiciary also has shown great keenness in protecting health.

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Introduction

It is very hard to define Health. World Health Organization defines health as a state of complete physical, mental and social well being and not merely the absence of disease or infirmity.² This definition is very vast which include complete physical, mental and social wellbeing rather than absence of disease and infirmity only. This definition is has been criticized on the ground that it defines health an ideal, static state but how many people can claim complete physical, mental and social well being.³ Good health is very much important for us because day to day life depends upon our good health. Our constitution is very much attentive towards good health of

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² http://www.pnf.org/Definitions_of_Health_C.pdf(accessed on 24th August, 2018).

³ http://www.osteopathie-schule.de/pdfs/ori/publikationen/what_is_health_what_is_disease.pdf (accessed on 24th August,2018)

the people this is reason why it has number of provisions regarding protection of health of the people. Not only health is protected under part-III but under directive principles of state policy also state is directed to work in this direction.

Fundamental Rights and Health

Article 21 of The Constitution of India, 1949 gives us right to life and personal liberty subject to procedure established by law. Right to life is guaranteed as fundamental right under Constitution of India, 1949. Here right to life is very broad meaning it includes every aspect of life making it dignified. It is more than mere animal existence. Good health is also part of life.

In **CESC Limited V Subhash Chandra Bose**⁴ Case our Apex court accepted that right of health is a fundamental right. In **state of Punjab V Mohinder Singh Chawla Case**⁵ Supreme Court held that government has obligation to provide health facilities. In **Subhash Kumar V State of Bihar case**⁶ Supreme Court held that pollution free air and water is our fundamental right.

Article 23 of The Constitution of India, 1949 dealing with Prohibition of traffic in human beings and forced labor related with health. It prohibits Traffic in human beings and beggar including other similar forms of forced labor. This article declares any contravention of this provision an offence punishable as per law. Right to life and health is closely related to each other. But State can imposing compulsory service for public purpose without any discrimination on grounds only of merely religion, race, caste or class or any of them. It is well known fact that traffic in women ultimately leads in prostitution which results in their poor health and other problems like AIDS.⁷

Article 24 of The Constitution of India, 1949 provides for Prohibition of employment of children in factories, etc below the age of fourteen years in any factory or mine or in any other hazardous employment. This article relates to (i) international Convention on Economic, Social and Cultural Rights, 1969 (ii) The European Social Charter.⁸

⁴ AIR 1992 SC573, 585.

⁵ (1997)2SCC 83.

⁶ AIR 1991 SC 420.

⁷ Gupta, M.C, *Health and the Law* (New Delhi: Kanishka Publishers, Distributors, 2002)32.

⁸ Saharay H. K, *The Constitution Of India* (New Delhi: Eastern Law House, 2002)291.

This Article directly deals about health of the child from their physical, mental exploitation in the form of child labour and bonded labour etc. Obviously this provision is in interest of health and strength of young persons and is in keeping with provisions in article 39(e) and (f) but in view of our socio-economic realities the constitution makers could not prohibit the employment of children generally.⁹

Article 32 of The Constitution of India, 1949 is the most important article of Part III which gives us right to approach Supreme Court for enforcement of fundamental rights. It provides for various writs like habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever is suitable for the enforcement of fundamental rights.

Directive principles of state policy and health

Article 38 of The Constitution of India, 1949 imposes duty upon State to secure a social order for the promoting welfare of the people. The State shall strive to minimize the inequalities in income, and endeavor for eliminating inequalities in status, facilities and opportunities, amongst individuals as well as amongst groups of people of different areas or engaged in different vocations. This article would naturally cover facilities and opportunities for preventing disease, promoting health and curing illness.¹⁰

Article 39 of The Constitution of India, 1949 enumerates certain principles of policy to be followed by the State. The State shall make policy for securing- Equality in men and women, right to an adequate means to livelihood,¹¹ that there is equal pay for equal work for both men and women; the health and strength of workers, men and women¹², state shall also ensure abuse against age of children and that citizens are not forced due to financial or economic necessity to adopt avocations not suitable to their age or strength¹³, state shall provide children opportunities and facilities to develop in a healthy manner. Besides this childhood and youth will be protected against exploitation, against moral and material abandonment¹⁴.

⁹ Shukla V.N, *Constitution Of India* (Lucknow: Easter Book Company, 2008) 237

¹⁰ Gupta, M.C, *Health and the Law* (New Delhi: Kanishka Publishers, Distributors, 2002) 33.

¹¹ Article 39(a) of the Constitution Of India, 1949.

¹² Article 39(e) of the Constitution Of India, 1949.

¹³ Ibid.

¹⁴ Article 39(f) of the Constitution Of India, 1949.

Panchayats have very much important. **Article 40 of The Constitution of India, 1949** provides for organization of village panchayats. This article says that the State shall make efforts to organize village panchayats and empower them with such powers and authority which are necessary to function them as units of self-government. This directive principle has been converted in to law through 73rd amendment act, 1992 and The Panchayat has been inserted in Chapter IX of The Constitution of India. Panchayats are authorized to do a lot regarding health and they doing good also.

Article 41 of The Constitution of India, 1949 deals directly with health. This article directs state 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 within the limits of its economic capacity and development.

Article 42 of The Constitution of India, 1949 provides for just and humane conditions of work and maternity relief by saying that the State shall make provision for securing just and humane conditions of work and for maternity relief. Numbers of legislations have been passed in pursuance of this article. Laws such As Industrial Dispute Act, The Minimum Wages Act, The Maternity Relief Act, The Workmen Compensation Act etc are implementation of this article.¹⁵

Article 48A of The Constitution of India, 1949 is related with protection and improvement of environment and safeguarding of forests and wild life. Under this article state is given direction to protect and improve the environment, forests and wild life of the country. This article is concerned with environment which has direct impact on health.

Fundamental Duties and Health

Article 51A of The Constitution of India, 1949 imposes some duties upon citizens of india. **Article 51A (g)** imposes duty to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures, upon citizens of India. Fundamental duties are added by 42nd amendment, 1976.

¹⁵ Shukla V.N, *Constitution of India* (Lucknow: Eastern Book Company, 2008)352.

Panchayat, Municipalities and Health

Besides state panchants and municipalities are also liable to protect health of the people. **Article 243G of The Constitution of India, 1949** describes powers, authority and responsibilities of Panchayats subject to the limits given in the Constitution. State may give Panchayats powers and authority be necessary to function them to self-government. Panchayats can work on Drinking water (entry11), Health and sanitation, including hospitals, primary health centers and dispensaries(entry23), Family welfare(entry24), Women and child development(entry25), and Social welfare, including welfare of the handicapped and mentally retarded(entry26) of eleventh schedule regarding health. Panchayats are doing their work regarding health very good.

Article 243W of The Constitution of India, 1949 provides with powers, authority and a responsibility of Municipalities, etc. this article enables State legislatures to make law empowering the Municipalities to enable them to function as self-government institution. Municipalities can work on Water supply for domestic, industrial and, commercial purposes (entry5), Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded(entry 9), Vital statistics including registration of births and deaths(entry 16) and Public amenities including street lighting, parking lots, bus stops and public conveniences(entry 17) of twelfth schedule regarding health;

Legislative Scheme and Health

Article 246 of The Constitution of India, 1949 gives us legislative scheme of centre and state. According to this article parliament is empowered to make law items given under the union list and state legislature is empowered to make law regarding items of state list. Parliament also can make law on the entries which are not given under state list. Parliament and state both can make law regarding entries of concurrent list. This article provide scheme of distribution of legislation between centre and state.

Health related entries of **List-1: Union List** is given are;

28. Port quarantine, including hospitals connected therewith; seamen's and marine hospitals.
55. Regulation of labor and safety in mines and oilfields.
58. Manufacture, supply and distribution of salt by Union agencies, regulation and control of manufacture, supply and distribution of salt by other agencies.
64. Institutions for scientific or technical education financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance.
65. Union agencies and institutions for—
- (a) professional, vocational or technical training, including the training of police officers;
or
 - (b) the promotion of special studies or research; or
 - (c) scientific or technical assistance in the investigation or detection of crime.
66. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.
69. Census.
71. Union pensions, that is to say, pensions payable by the Government of India or out of the Consolidated Fund of India.
84. Duties of excise on tobacco and other goods manufactured or produced in India except—
- (a) alcoholic liquors for human consumption.
 - (b) opium, Indian hemp and other narcotic drugs and narcotics, but including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.

Health related entries of **List-II:State List** are;

6. Public health and sanitation; hospitals and dispensaries.
8. Intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors.
9. Relief of the disabled and unemployable.
10. Burials and burial grounds; cremations and cremation grounds.
15. Preservation, protection and improvement of stock and prevention of animal diseases; veterinary training and practice.
17. Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of entry 56 of List I.

Health related entries **Concurrent list are;**

16. Lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental deficient.
18. Adulteration of foodstuffs and other goods.
19. Drugs and poisons, subject to the provisions of entry 59 of List I with respect to opium.
- 20A. Population control and family planning.
24. Welfare of labor including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits.
25. Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labor.
26. Legal, medical and other professions.
30. Vital statistics including registration of births and deaths.

Article 263 of The Constitution of India, 1949 provides for formation of an inter-State Council if it appears to President that a council should be established for public interest. President can establish at any time when he thinks fit. Such council may be established for inquiring into and advising upon disputes which may have arisen between States, investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States, have a common interest; or making recommendations upon any such subject and recommendations for the better co-ordination of policy and action with respect to that subject. It shall be lawful for the President by order to establish such a Council, and to define the nature of the duties to be performed by it and its organization and procedure.

An example of such council is the Central Council of Health and Family¹⁶. Co ordination in matters related to health is achieved through a Central Health Council.¹⁷ All State Health Ministries are its members and the Union Minister of Health is the chairman.¹⁸

Conclusion

Right of health is not directly provided under any provision of the constitution of India but health comes under 21 of the Constitution of India because this article includes each and every thing which makes life good. Obviously good health also. Besides article 21 other articles like 23, 24, and 32 are also directly protecting health. Apart from this directive principle of state policy also instructs state to promote health of the people. Our judiciary also has shown great keenness in protecting health. Although a lot of provisions are made to protect health but condition of health of Indians is not satisfactory in comparison to developed countries. Government is not taking proper interest in health sector. More than crores babies are facing problem of malnutrition and ill health problem. A large time has been passed since independence but still people dies from starving and facing curable diseases. We will not able to achieve our constitutional object if improvement in health sector will be in present speed. Our government has to accelerate in this direction.

¹⁶ Gupta, M.C., *Health and the Law* (New Delhi: Kanishka Publishers, Distributors, 2002)38.

¹⁷ Id.

¹⁸ Id.