

The role of Judicial Activism in Bringing Societal Transformation: Right to Health Perspective

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Abstracts

Judicial activism has always been a source of heated debate, especially in the light of recent developments in this regard. Origin and growth of judicial activism lies in failure of existing legislations to cope up with the problems of our society. Ultimately the judiciary responded to the knock of the poor and the oppressed for justice. Due to inaction or laziness of any organ, a power vacuum is created and the remaining organs of the Government start filling that vacuum by expanding their horizon, because power vacuum may cause disaster to the fabric of democracy and rule of law..

In the estimation of an ordinary Indian citizen the legislature and the executive have failed miserably in their cherished duties towards the general public. Their nearness to the people generates high expectations from the public and attracts sharp criticism whenever their actions do not follow the expected lines. The common citizen feels that the administration has become so apathetic and non-performing that they have no other option except to approach the judiciary to redress their grievances. It is under this situation that the judiciary has taken an activist approach. During the past decade, many instances of judicial activism have gained prominence. The areas in which judiciary has become active are health, sexual harassment of woman at work place, child labour, political corruption, environment, education, adoption, problems of undertrials, etc.

The paper attempts to elaborate the concept of judicial activism and judicial intervention into above mentioned political questions in India. It contends that how courts played dynamic role in safeguarding Fundamental Right *vis-a vis* Right to Health of the citizen in the absence of explicit legislations in India. For this purpose, various constitutional provisions and judicial decisions are examined.

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Introduction:

The Indian Constitution provides a framework for welfare/socialist pattern of development. While civil and political rights are enshrined as Fundamental Rights that are justiciable, social and economic rights like health, education, livelihoods etc. are provided for as Directive Principles for the State and hence not justiciable. The latter comes under the domain of planned development, which the State steers through the Five Year Plans and other development policy initiatives.¹

The state agencies are in such areas better equipped to prevent the causes and deal with the ailments in a more regulatory, effective and authoritative manner. The legal responsibility of the state agencies to take care of the individual's health and ensure his physical and mental well-being will therefore be a measure of the individual's right to health in a welfare state. Every sovereign state has plenary power to do all things which promote the health, peace, morals, education and good order of the people and tend to increase the wealth and prosperity of the State. 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 which the Constitution makers envisaged.²

Majority of the population of the country is excluded from any statutory recognition of right to health. Constitutional recognition can, at the highest, only provide the framework for further statutory inroads. Judicial activism, then, acquire significance. With the advent of public interest litigation, a large number of issues concerning the poor and marginalized are being agitated in courts across the land. It is important to follow the thinking of the courts on these issues. Even though judicial pronouncements may not have the same breadth as statutory laws, they constitute the law as applicable in given situations. Besides, these pronouncements give legitimacy, recognition and social acceptance to various ideas and constructs which can be used for strengthening rights based campaigns around issues.

¹ Ravi Duggal, "Right to Health and Health Care Theoretical Perspectives," Healthcare Case Law in India, August 2007, p.1.

² Justice R. K. Abichandani, Judge, High Court of Gujarat, "Health as Human Right - - - Role of Courts in Realization of the Right". <http://gujarathc-casestatus.nic.in/>

Judicial Activism: Setting out the Concept

Today 'judicial activism' has touched almost each and every aspect of life ranges from human rights issues to maintenance of public roads! Judicial activism means the power of the Supreme Court and the high court but not the sub-ordinate courts to declare the laws as unconstitutional and void. If it infringes or if the law is inconsistent with one or more provisions of the constitution. To the extent of such inconsistency while declaring a law as constitutional and void the courts do not suggest any alternative measures.

The term judicial activism despites its popularity to amongst legal experts, judges, scholars and politicians has not until recently been given an appropriate definition of what the term should mean so that it will not be subject to abuse. The effect of this has been a misconception about what the term is all about. This therefore creates series of definitions about the concept. Although definitions are usually products of individual idiosyncrasies and it's often influenced by the individual perception or world view, a combination of various definitions gives a description of the concept.³ Courts of today are not remaining passive, with the negative attitude of merely striking down a law or preventing something being done. The new attitude is towards positive affirmative actions, and issuing orders and decrees directing remedial actions.⁴

The Judicial Activism as innovative, dynamic and law making role of the Court with a forward looking attitude discarding reliance on old cases, and also mechanical, conservative and static views. It is the creative thought process through which the court displays vigour, enter- prize, initiative pulsating with the urge of creating new and refined principles of law. It means when the Court plays a positive role the court is said to be exhibiting the "Judicial Activism".⁵

The proactive role thus played by judiciary is termed as 'judicial activism' and the judgments delivered constitute what are called judge made laws. Judges displaying 'judicial activism' are powered by ideals they believe and ideals they cherish. Therefore while the affected parties may label them pro-labour or pro-capital, the judgments per se cannot normally be faulted. In labour law, judges are

³ Vipin Kumar, "*The Role of Judicial Activism in the Implementation and Promotion of Constitutional Laws and Influence of Judicial Overactivism*" IOSR Journal Of Humanities And Social Science (IOSR-JHSS) Volume 19, Issue 2, Ver. IV (Feb. 2014),p.20.

⁴ R Shunmugasundaram, "*Judicial activism and overreach in India*" Amicus Curiae Issue 72 Winter 2007.p23.

⁵ *Supra note 3*

not bound by the precedent effect even though employers/managers are. Judicial activism is the product of liberal mind set. The secular religion of socialism, now deceptively called as liberalism is driving to-days' judicial activism.⁶

The powers of the Supreme Court for the protection of the constitutional rights of citizens are of the widest amplitude and there is no reason why the court should not adopt *activist approach* similar to courts in America and issue to the state which may involve taking of positive action with a view to securing enforcement of the fundamental right. The judiciary has been assigned this active role under the constitution. They are not expected to sit in an ivory tower like an Olympian closing their eyes uncaring for the problems faced by the society. They have to exercise their judicial powers for protecting fundamental rights and liberties of the citizens of the country.⁷

Judicial activism is nothing more and nothing less than the activity to bring justice to the doorsteps of people particularly in areas not covered by any statute made by legislature. It is not recent discovery, and not an expression invented by judges. It is an expression invented by jurists and lawyers to describe the creative activity of judges in fields not covered by existing law.⁸ It is true that on some occasions, courts have overstepped their limits. But, by and large, judicial activism has done a great service to society.⁹

Health: Constitutional obligation to the State

Health is the most significant factor in national development. It is a condition of a person's physical and mental state and signifies freedom from any disease or pain. Right to health is a vital right without which none can exercise one's basic human rights. The Government is under obligation to protect the health of the people because there is close nexus between Health and the quality of life of a person. Health is the most precious prerequisite for happiness.

The Constitution of India has provisions regarding the right to health. The obligation of the State to ensure the creation and the sustaining of conditions

⁶ Dr. Srigrouri Kosuri, "*Social Activism as Judicial Activism*" GRA - Global Research Analysis, Volume: 1 Issue: 4, (Sep 2012) p.38.

⁷ Dr.J.N. Pandey, Constitutional Law of India, Central Law Agency, Allahabad-2 IV Edn. (2003) p.332.

⁸ O.Chinnappa, The Court and the Constitution of India: Summits and Shallows, Oxford University Press, New Delhi, (2010) Pp. 256-257.

⁹ Justice B. P. Jeevan Reddy, former Judge of the Supreme Court of India and a former Chairman of the Law Commission of India. <http://www.thehindu.com/todays-paper/tp-opinion/> April 30, 2008

congenial to good health is cast by the Constitutional directives.¹⁰ The state has to direct its policy towards securing that health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.¹¹ And the children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and maternal abandonment.¹² The State legislature is empowered to make laws with respect to public health and sanitation, hospitals and dispensaries.¹³ Both the Centre and the States have power to legislate in the matters of social security and social insurance,¹⁴ medical professions,¹⁵ and, prevention of the extension from one State to another of infections or contagious diseases or pests affecting man, animals or plants, by entries 23, 26 and 29 respectively contained in the concurrent list of the Seventh Schedule.¹⁶ Although the DPSP (Directive Principles of State Policy) and various entries quoted above are compelling arguments for the right to health, this alone is not a guarantee. There must be a clearly defined right to health so that individuals can have this right enforced and violations can be redressed.

Article 21 of the Constitution and Right to Health

The Indian Constitution guarantees protection of life and personal liberty.¹⁷ As a result of liberal interpretation of the words 'life' and 'liberty', enumerated in Article 21 it has now come to be invoked almost as a residuary right. A positive thrust is given to the nature and content of this right by the Apex Court imposing a positive obligation upon the State to take effective steps for ensuring to the individual a better enjoyment of his life. The Supreme Court has held that the right to live with human dignity enshrined in Article 21 derives its life and breath from the directive principles of State policy particularly Article 39(e) & (f), 41 and 42 and would therefore include protection of health as envisaged in the directives.

¹⁰ Articles 38, 39 (e) (f), 42, 47 and 48- A in Part IV of the Constitution of India.

¹¹ Article 39 (e)

¹² Article 39 (f)

¹³ Entry 6 of the State List Seventh Schedule to the Constitution of India 1950.

¹⁴ Entry 23 of the Concurrent List.

¹⁵ Entry 26 of the Concurrent List.

¹⁶ Entry 29 of the Concurrent List.

¹⁷ Article 21 of the constitution reads as: *No person shall be deprived of his life or personal liberty except according to the procedure established by law.*

The expanded meaning of right to life is wholly justified, for, without health of a person being protected and his well-being looked after, it would be impossible for him to enjoy other fundamental rights such as rights to freedom of speech and expression, to move freely throughout the territory of India, to practice any profession or carrying on any trade, occupation or business, to form associations, Guaranteed by Article 19 in a positive manner. To make other rights meaningful and effective right to a healthy life is the basis underlying the constitutional guarantees.

In a welfare State the primary duty of the government is to secure the welfare of the people. Providing adequate medical facilities for the people is an essential part of the obligations undertaken by the government in a welfare state. The government discharges this obligation by running hospitals and health centers which provide medical care to the person seeking to avail of those facilities. The government hospitals run by the State and Medical Officers engaged therein are duty bound to extend medical assistance for preserving human life. Failure on the part of a government hospital to provide timely medical treatment to a person in need of such treatment results in violation of the injured victim's right to life guaranteed by Article 21.¹⁸

In India, the theory of the inter-relatedness between rights was famously articulated in the *Maneka Gandhi*¹⁹ decision. This became the basis for the subsequent expansion of the understanding of the 'protection of life and liberty' under Article 21 of the Constitution of India. The Supreme Court of India further went on to adopt an approach of harmonization between fundamental rights and directive principles in several cases.

In *CESC Ltd. vs. Subash Chandra Bose*,²⁰ the Supreme Court relied on international instruments and concluded that right to health is a fundamental right. It went further and observed that health is not merely absence of sickness: "The term health implies more than an absence of sickness. Medical care and health facilities not only protect against sickness but also ensure stable manpower for economic development. Facilities of health and medical care generate devotion and dedication to give the workers' best, physically as well as mentally, in productivity. It enables the

¹⁸ *Supra Note 2.*

¹⁹ AIR 1978 SC 597.

²⁰ AIR 1992 SC 573,585.

worker to enjoy the fruit of his labour, to keep him physically fit and mentally alert for leading a successful economic, social and cultural life.

The 'Right to Health' cannot be conceived of as a traditional right enforceable against the state. Instead, it has to be formulated and acknowledged as a positive right at a global level – one which all of us have an interest in protecting and advancing.²¹

Judicial activism and Right to Health

An outstanding step was taken by the hon'ble Supreme Court in expanding the horizon of Article 21 of the Constitution. It said that, 'life' in Article 21 does not mean merely 'animal existence' but living with 'human dignity'. The court thus given very extensive parameters to Art.21.

In *State of Punjab v. Mohinder Singh Chawla*,²² the Court has held that the right to life in Article 21 of the Constitution includes the right to health. However we can't get a precise definition of Right to Health. But recently the Bill²³ was drafted wherein it has been attempted to define the same. With regard to health, a prominent decision was delivered in *Parmanand Katara v. Union of India*²⁴. In this case, the court was confronted with a situation where hospitals were refusing to admit accident victims and were directing them to specific hospitals designated to admit 'medico-legal cases'. The court ruled that while the medical authorities were free to draw up administrative rules to tackle cases based on practical considerations, no medical authority could refuse immediate medical attention to a patient in need. The court relied on various medical sources to conclude that such a refusal amounted to a violation of universally accepted notions of medical ethics. It observed that such measures violated the 'protection of life and liberty' guaranteed under Article 21 and hence created a right to emergency medical treatment.

The Supreme Court in *Bandhua Mukti Morcha v. Union of India*²⁵ has held that the right to live with human dignity, enshrined in art 21, is derived from the

²¹ Address by Justice K.G. Balakrishnan, Chief Justice of India, National seminar on the 'Human Right to Health'

Organized by the Madhya Pradesh State Human Rights Commission (At Bhopal) - September 14, 2008.

²² AIR 1997 SC 1225.

²³ Section 2 (hh) of THE NATIONAL HEALTH BILL, 2009, "right to health" means right of everyone to a standard of physical and mental health conducive to living a life in dignity.

²⁴ AIR 1989 SC 2039.

²⁵ AIR 1984 SC 802.

directive principles of state policy and therefore includes protection to health. In *Vincent Panikulangara v. Union of India*,²⁶ 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". It is again in PIL that the court has had occasion to examine the quality of drugs and medicines being marketed in the country and even ask that some of them be banned.²⁷

In a historic judgment in *Consumer Education and Resource Centre v. Union of India*,²⁸ the Supreme Court has held that the right to health and Medical care is a fundamental right under 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, strength and vigour of the workman during period of employment and leisure and health even after retirement as basic essentials to life with health and happiness. The right to life with human dignity encompasses within its fold, some of the finer facets of human civilization which makes life worth living.

The right to health has been perhaps the least difficult area for the court in terms of justiciability, but not in terms of enforceability. Article 47 of DPSP provides for the duty of the state to improve public health. However, the court has always recognized the right to health as being an integral part of the right to life.²⁹ The principle got tested in the case of an agricultural laborer whose condition, after a fall from a running train, worsened considerably when as many as seven government hospitals in Calcutta refused to admit him as they did not have beds vacant. The Supreme Court did not stop at declaring the right to health to be a fundamental right

²⁶ AIR 1987 SC 990: 995.

²⁷ *Drug Action Forum v. Union of India* (1997) 6 SCC 609; *All India Democratic Women Association v. Union of India* 1998 (2) SCALE 360.

²⁸ (1987) 2 SCC 165.

²⁹ *Parmanand Katara v. Union of India* (1989) 4 SCC 286.

and at enforcing that right of the laborer by asking the Government of West Bengal to pay Rs.25,000 to him as compensation of for the loss suffered. It directed the government to formulate a blue print for primary health care with particular reference to treatment of patients during an emergency.³⁰

*Kirloskar Brothers Ltd v. Employees' State Insurance Corpn.*³¹The 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 to ensure to the workmen to provide facilities and opportunities for health and vigour of the workman assured in the provision of Part IV of the Constitution which are 'integral part of right to equality under Art 14 and right to invigorated life under Article 21 which are fundamental rights to the workmen.

Another significant decision which strengthened the recognition of the 'right to health' was that in *Indian Medical Association v. V.P. Shantha*.³² In that case, it was ruled that the provision of a medical service (whether diagnosis or treatment) in return for monetary consideration amounted to a 'service' for the purpose of the Consumer Protection Act, 1986. The consequence of the same was that medical practitioners could be held liable under the act for deficiency in service in addition to negligence. This ruling has gone a long way towards protecting the interests of patients. However, medical services offered free of cost were considered to be beyond the purview of the said Act.

Environment Pollution and Right to Health

The Andhra Pradesh High Court observed:³³ Protection of the environment is not only the duty of the citizens but also the obligation of the State and it's all other organs including the Courts. The enjoyment of life and its attainment and fulfillment guaranteed by Article 21 of the Constitution embraces the protection and preservation of nature's gift without which life cannot be enjoyed fruitfully. The slow poisoning of the atmosphere caused by the environmental pollution and spoliation should be regarded as amounting to violation of Article 21 of the Constitution of India.

³⁰ *Paschim Banga Khet Majoor Samity v. State of West Bengal* (1996) 4 SCC 37.

³¹ (1996) 2 SCC 682.

³² AIR 1996 SC 550.

³³ *T. Ramakrishna Rao v. Hyderabad Development Authority*, Writ Petition 36929/1998 decided on 20.7.2001.

Certain directions regarding hazards chemicals were given by the Supreme Court in *M.C. Mehta v. Union of India*,³⁴ relying partly on Article 21. In the above judgment, there are dicta that life, public health and ecology have priority over unemployment and loss of revenue. In *Subhash Kumar v. State of Bihar*,³⁵ the Supreme Court held that right to pollution-free water and air is an enforceable fundamental right guaranteed under Article 21. Further, the Supreme Court imposed a positive obligation upon the State to take steps for ensuring to the individual a better enjoyment of life and dignity and for elimination of water and air pollution.³⁶

In *State of U.P v. Kedia Leather & Liquor Ltd*,³⁷ it was pointed by the Supreme Court, environmental, ecological, air and water pollution amount to violation of the Right to Life assured by Article 21 of the Constitution. Hygienic environment is a facet of healthy life. Right to live with human dignity becomes illusory in the absence of humane and healthy environment.

In *Virender Gaur v. State of Haryana*,³⁸ the Supreme Court held that environmental, ecological, air and water pollution, etc., should be regarded as amounting to violation of right to health guaranteed by Article 21 of the Constitution. It is right to state that hygienic environment is an integral facet of the right to healthy life and it would not be possible to live with human dignity without a humane and healthy environment. So also the maintenance and improvement of public health is the duty of the State to fulfill its constitutional obligations cast on it under Article 21 of the Constitution.

Adequate and Quality medical care is part of Right to Health

The Allahabad High Court in *S.K. Garg vs. State of U.P*³⁹. was dealing with conditions of public hospitals. The Petition had been filed raising concerns about the pitiable nature of services available in public hospitals in Allahabad. Complaints were made concerning inadequacy of blood banks, worn down X- ray equipment,

³⁴ (1987) Suop. SCC 131: AIR 1987 SC 1086.

³⁵ (1991) I SCC 598, AIR 1991 SC 420.

³⁶ *M.C. Mehta v. Union of India*, (1987) 4 SCC 463 = AIR 1988 SC 1037, *Rural Litigation and Entitlement Kendra*

v. State of U.P., AIR 1987 SC 359,

³⁷ (2003) 7 SCC 389.

³⁸ 1995 (2) SCC 577.

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unavailability of essential drugs and unhygienic conditions. The Court appointed a Committee to go into these aspects and report back to the Court.

Medical Examination of rape victim and Right to health

It was a common practice among the doctors to refuse to examine the rape victim unless she is not referred by the police. However, the Supreme Court has recognized the right of the rape victim's medical examination and disapproved the refusal of some government hospital doctors, particularly in rural areas, where hospitals are few and far between, to conduct any medical examination of a rape victim unless the case of rape is referred to them by the police. Such refusal to conduct the medical examination necessarily results in a delay in the ultimate examination of the victim by which time the evidence of the rape may have been washed away by the complainant herself or be otherwise lost.⁴⁰

Working of Blood Banks and Right to Health

The instrument of Public Interest Litigation used by Common Cause, addresses the issue of the working of commercial blood banks. The court in *Common Cause vs. Union of India and Ors*⁴¹. While recognizing that blood donation is considered as a great lifesaving service to humanity, it must be ensured that the blood that is available with the blood banks for use is healthy and free from infection. The Supreme Court in this case laid down a system of licensing of blood banks.

The Hon'ble Supreme Court made it clear that, if there was a breach of fundamental rights then the high courts and Supreme Court were empowered to order the State to compensate the victim not in the realm of private law payment of damages for breach of civil rights but in the public law realm of payment of compensation for violation of fundamental rights. Thus, whether the State was or was not liable in torts for actions of its servants it would be still liable if such actions amounted to violation of fundamental rights. Once it was held that right to health and

⁴⁰ *State of Karnataka v Manjanna*. (2001) 4 LRI 731, (2000) 6 SCC 188.

⁴¹ *Common Cause v. Union of India and Ors*. AIR 1996 SC 929.

health care is a fundamental right then a breach of such a right by a state functionary would also make the State liable for payment of compensation.⁴²

Ban on Smoking in public places and Right to Health

In a public interest litigation, the Supreme Court prohibited smoking in public places in the entire country on the grounds that smoking is injurious to health of passive smokers and issued directions to the Union of India, State Governments as well as the Union Territories to take effective steps to ensure prohibiting smoking in all public places such as auditoriums, hospital buildings, health institutions, educational institutions, libraries, courts, public offices and public conveyances, including railways.⁴³

HIV /AIDS and Right to Health

Despite a steady rise in the rate of HIV infection, prior to 2004, the government of India only had an AIDS prevention policy. Treatment was not part of its duty. In 2003, HRLN filed a petition on behalf of the Voluntary Health Association of Punjab (VHAP) calling upon the government to provide free ARV drugs to HIV positive persons.

Soon after the petition was filed, the Government announced free ARV drugs for 100,000 people in six high prevalence States: Maharashtra, Andhra Pradesh, Nagaland, Manipur, Tamil Nadu and Karnataka, with the objective of providing free anti-retroviral treatment to 100,000 PLHAs by the end of 2005, and to provide treatment to an additional 15-20 percent of AIDS cases each year, thereafter, for a period of five years.⁴⁴

Medical confidentiality and Right to Health

In *Mr. 'X' v. Hospital 'Z'*⁴⁵ the Supreme Court held that right to life includes right to lead a healthy life so as to enjoy all faculties of the human body in their prime condition. Moreover, where there is a clash of two fundamental rights as in the instant case, namely the patient's right to privacy as part of right to life and his

⁴² Adv. Mihir Desai and Adv. Dipati Chand, "*Fundamental Right to Health and Public Health Care*" *Healthcare Case Law in India, August 2007 p.24.*

⁴³ *Murli Deora v. Union of India and Ors*, (2001)8 SCC 765

⁴⁴ *VHAP v. Union of India No. 349/2003.*

⁴⁵ AIR 1995 SC 495.

proposed wife's right to lead healthy life which is her fundamental right under Article 21 the right which would advance the public morality or public interest would alone be enforced through the process of the Court. The court further said that moral considerations cannot be kept at bay and the judges are not expected to sit as a mute structure of clay in the hall, known as Court Room, but have to be sensitive, "in the sense that they must keep their fingers firmly upon the pulse of the accepted morality of the day."⁴⁶

The Supreme Court has held that if a prospective spouse has an apprehension that the other (prospective) spouse is suffering from AIDS, the former has a right to seek information about the latter's disease from the hospital where blood reports of the latter are available. This right is part of the right to life.⁴⁷

Undertrials and their Right to Health

In *Marri Yadamma vs. State of Andhra Pradesh*⁴⁸ the deceased was an under trial who died of 'congestive cardiac failure'. The Court held that under trials have the rights to adequate medical care. The high court stated that on arrest a prisoner merely loses his right to free movement. All other rights, including the right to medical treatment remains intact and it cannot be violated. The jail authorities had infringed a fundamental right of the deceased therefore the State was liable to compensate his widow as a public law remedy for an amount of Rs.2 lakh.

Medical negligence and Right to Health

In *Dr. L.B.Joshi V. Dr. T.B. Godbole*,⁴⁹ the Supreme Court held that a person who holds himself out ready to give medical advice and treatment impliedly undertakes that he is possessed of skill and knowledge for the purpose. He owes a duty of care to the patient in deciding whether to undertake the case and what treatment to give. A breach of such duty gives a right of action to the patient for negligence of the doctor.

In *A.S.Mittal V. State of UP*,⁵⁰ the Supreme Court was confronted with a case where the eyes of 84 out to 108 patients who were operated (88 for cataract), in an

⁴⁶ *Ibid*

⁴⁷ *Tokugha Yephthomo (Dr) v. Apollo Hospital*, JT (1998) 7 SC 626

⁴⁸ AIR 2002 AP 164

⁴⁹ AIR 1969 SC 128.

⁵⁰ AIR 1989 SC 1570

'eye camp' were irreversibly damaged owing to a post-operative E-coli infection of the intra-ocular cavities of the operated eyes, which mishap was undisputedly due to a common contaminating source being the 'normal saline' used in the eyes at the time of surgery. The Court examined whether the existing guidelines prescribing norms and conditions for conducting 'eye camps' laid down by the government were sufficiently comprehensive to ensure the protection of patients, who were generally drawn in such eye camps from the poorer and the less affluent section of the society and issued directions to the government.

In a landmark order ⁵¹, the Supreme Court on Thursday directed Kolkata's AMRI Hospital and three of its doctors to pay an amount of Rs 5.96 crore as compensation to Saha, around 15 years after his wife died owing to faulty medical treatment. Saha will get a total of Rs 11.41 crore as the court ordered that he was entitled to six per cent interest on the compensation amount from 1999.

The SC verdict is a warning to black sheep in the fraternity to desist from medical malpractices and a nudge to the government to evolve an effective legal mechanism to discourage it.⁵²

The substantive recognition of the right to health as essential to living with human dignity has thus allowed the judiciary to directly address human suffering by guaranteeing the social entitlements and conditions necessary for good health.

Conclusion

The term 'Right to Health' is nowhere mentioned in the Indian Constitution yet the Supreme Court has interpreted it as a fundamental right under 'Right to Life' enshrined in Article 21. It is a significant view of the Supreme Court that first it interpreted 'Right to Health' under Part IV i.e. Directive Principles of State Policy and noted that it is the duty of the State to look after the health of the people at large. In its wider interpretation of Article 21, it was held by the Supreme Court that, the 'Right to Health' is a part and parcel of 'Right to Life' and therefore one of Fundamental Right provided under Indian Constitution.

⁵¹Read More: <http://www.dailymail.co.uk/indiahome/indianews/article-2475431/>

⁵² New Indian Express 28/10/13

Health as a basic human right should be viewed holistically and its positive aspect, that is, well being should be acknowledged which would lead to achievement of a socially and economically productive life. The right to equality encompasses within itself the right of a poor patient to get adequate treatment and medicines from the State irrespective of their costs. The citizens have a right to quality health care, treatment and medication regardless of race, religion, social status and ability to pay.

The duties of the State and Municipal authorities can be enforced through the Courts whenever a breach occurs. It is in the enforcement of these obligations of the State and local authorities that the Courts can play an effective role in safeguarding the rights of the citizens to prevent and cure diseases. The standards of cleanliness and hygiene in public hospitals leave greatly to be desired. The maintenance of sterile aseptic conditions in hospitals to prevent cross-infections should be ordinary, routine and minimal incidents of maintenance of hospitals. The remedy lies in the awareness and enforcement of the Health rights of the citizens through Courts, but it more lies in the cure of improper and corrupt approaches in the seemingly healthy ones whose obligation is to provide for adequate health care. In the real sense, the court has played a pivotal role in imposing positive obligations on authorities to maintain and improve public health.