

“HUMAN RIGHT AND RIGHT TO HEALTH”: AN INDIAN OVERVIEW¹

“Health and intellect are the two blessings of life².”

INTRODUCTION

Beautiful life cannot survive without proper health. A healthy body is the very foundation of all human activities. Health is a fundamental human right, indispensable for the exercise of many other human rights, and necessary for living a life with dignity. The right to the highest attainable standard of health as a normative standard was first enunciated in 1946 in the Constitution of the World Health Organization (WHO). Right to health is essential for the human existence. Right to health implies the absence of pollution and protection against natural hazards and includes the right to access clean water, air as well as safe and healthy working conditions. The right to health has been recognized and affirmed at the international as well as national level on many occasions as a basic human right for the fullest development of the personality.

According to World Health Organization, *“Health is a state of complete physical, mental and social wellbeing and not merely the absence of disease³.”*

RIGHT TO HEALTH

Every woman, man, youth and child has the human right to the highest attainable standard of physical and mental health, irrespective of his or her caste, class, religion, nationality and color. Enjoyment of the human right to health is vital to all aspects of a person's life and well-being, and is essential to the recognition of many other fundamental human rights and freedoms.

The right to health means that everyone has the right to the highest attainable standard of physical and mental health, which includes access to all medical services, sanitation, adequate food, decent housing, healthy working conditions, and a clean environment.

¹ APEKSHA CHOUDHRY

² Menander (ca. 342–291 BC) – Greek dramatist,

³ Preamble of the Constitution of the World Health Organization(1946) as adopted by the International Health Conference, New York, 19–22 June 1946; signed on 22 July 1947 by the representatives of 61 States (Official Records of the World Health Organization, no. 2, p. 100); and entered into force on 7 April 1948.

The right to health care means that hospitals, clinics, medicines, and doctors services must be accessible, available, acceptable, and of good quality for everyone, on an equitable basis, where and when needed. The health care system must be guided by the following human rights standards:

- 1. Universal Accessibility** - Access to health care must be universal, guaranteed for all without any kind of discrimination. Health care must be affordable for everyone, and physically accessible where and when needed.
- 2. Universal Availability**- Adequate health care infrastructure (hospitals, community health facilities, trained health care professionals), goods (drugs, equipment), and services (primary care, mental health) must be available in all geographical areas and to all over the world.
- 3. Acceptability and Dignity**- Health care institutions and providers must respect dignity, provide culturally appropriate care, be responsive to needs based on gender, age, culture, language, and different ways of life and abilities. They must respect medical ethics and protect confidentiality.
- 4. Quality**- All health care must be medically appropriate and of good quality, guided by quality standards and control mechanisms, and provided in a timely, safe, and patient-centered manner.

The human right to health also entails the following *procedural principles*, which apply to all human rights:

- 1. Non-Discrimination**- Health care must be accessible and provided without discrimination based on health status, race, ethnicity, age, sex, sexuality, disability, language, religion, national origin, income, or social status and color.
- 2. Transparency**- Health information must be easily accessible for everyone, enabling people to protect their health and claim quality health services. Institutions that organize, finance or deliver health care must operate in a transparent way, so that everyone can enjoy basic right to health.

3. **Participation-** Individuals and communities must be able to take an active role in decisions that affect their health, including in the organization and implementation of health care services.
4. **Accountability-** Private hospitals and public agencies must be held accountable for protecting the right to health care through enforceable standards, regulations, and independent compliance monitoring.

RIGHT TO HEALTH AND INDIAN CONSTITUTION

The preamble to the Constitution of India, seeks to secure for all its citizens justice-social and economic⁴. The preamble has been amplified and elaborated in the Directive Principles of State policy. Right to health is not directly included in fundamental right in the Indian Constitution. The Constitution maker imposed this duty on State (Central and State Government) to ensure social and economic justice under the DPSP⁵. It provides a framework for the achievement of the objectives laid down in the preamble.

FUNDAMENTAL RIGHTS (PART III) AND HEALTH

Fundamental Rights are the charter of rights contained in the Part III of the Constitution of India. It guarantees civil liberties such that all Indians can lead their lives in peace and harmony as citizens of India.

RIGHT TO LIFE VIS-À-VIS RIGHT TO HEALTH

Article 21 of the Indian Constitution provides “*No person shall be deprived of his life or personal liberty except according to procedure established by law.*” Right to life means the right to live a meaningful, complete and dignified life. It does not have restricted meaning. In *Maneka Gandhi v. Union of India*⁶ **Justice Krishna Iyer** define life something more than surviving or animal existence. It has a much wider meaning which includes right to live with human dignity. So there is a need of quality life for everyone.

⁴ For details see the preamble of the Indian Constitution.

⁵ Directive Principles of State Policy are guidelines to the central and state governments of India, to be kept in mind while framing laws and policies. These provisions, contained in Part IV of the Constitution of India, are not enforceable by any court.

⁶ AIR 1978 SC

In *Consumer Education and Resource Centre v Union of India*⁷ it was held that right to health is essential for human existence and is, therefore an integral part of the right to life. Fundamental Right under Article 21 read with Articles 39(c), 41 and 43 of the Constitution and makes the life of the workman meaningful and purposeful with dignity of person.

Similarly in *Bandhua Mukti Morcha v. Union of India*⁸, the Supreme Court has held that the right to life includes the right to live with dignity and further added that the right to health includes the health care and right to determinants of health such as food security, water supply, housing and sanitation etc. It reflected the importance of health as a prerequisite for right to life whereby it can be inferred that right to health is an important human right and its denial can be detrimental to the existence of human life. The Apex court in *Paschim Baga Khet Mazoor Samiti v. State of West Bengal*⁶ held that Article 21 imposes an obligation on the State to safeguard the right to life of every person therefore 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 his right to life guaranteed under Article 21.

The Right to Life has been given a wider perceptive to include environment pollution affecting health of the citizens in the land mark case of *M.C Mehta v. Union of India*¹⁰ the Supreme Court has held that environmental pollution causes several health hazards, and therefore violates right to life. Specifically, this case dealt with the pollution discharged by industries into the Ganges. It was held that victims, affected by the pollution caused, were liable to be compensated.

Similarly, in *Subhash Kumar v. State of Bihar*¹¹, the Court observed “*The right to live is a fundamental right under Article 21 of the Constitution, and it includes the right of enjoyment of pollution-free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has the right to have recourse to Article 32 of the Constitution.*”

The Supreme Court has used the right to life as a basis for emphasizing the need to take drastic steps to combat air and water pollution.¹² It has directed the closure or relocation of industries and ordered that evacuated land be used for the needs of the community.¹³

⁷ AIR 1995 SC 636

⁸ AIR 1996 SC 2426

The first health related Public Interest Litigation was filed in the Supreme Court in the *Workmen of State Pencil Manufacturing Industries of Madhya Pradesh Case*¹⁴ concerning the death of workers at young age in the slate pencil manufacturing industries, due to the accumulation of soot in their lungs. The Court required the State to ensure installation of safety measures in the concerned factories, failing that it could close down the industries.

In 1995, the Supreme Court held that right to health and medical care is a fundamental right covered by Article 21 since health is essential for making the life meaningful and purposeful and compatible with personal dignity. The State has an obligation under Article 21 to safeguard the right to life of every person, preservation of human life being of paramount importance. The Supreme Court in the case of *Parmanand Katra v. Union of India*⁹, held that whether the patient be an innocent person or be a criminal liable to punishment under the law, it is the obligation of those who are in charge of the health of the community to preserve life so that innocent may be protected and the guilty may be punished.

*CESC Ltd. v. Subash Chandra Bose*¹⁰ 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.

The government hospitals are under obligation for preserving human life, as the State is the guardian of every individual. 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 his right to life guaranteed under Article 21. The Court made certain additional direction¹¹ in respect of serious medical cases:

- Adequate facilities provided at the public health centers where the patient can be given basic treatment and his condition stabilized.

⁹ AIR 1989 SC 2039

¹⁰ AIR 1992 SC 573,585

¹¹ (1996) 4 SCC 37 Paschim Banga Khet Mazdoor Samity & Ors. v. state of West Bengal

- Hospitals at the district and sub divisional level should be used latest technologies so that serious cases are treated there.
- Facilities for given specialist treatment should be increased and having regard to the growing needs, it must be made available at the district and sub divisional level hospitals.
- In order to ensure availability of bed in any emergency at State level hospitals, there should be a centralized communication system so that the patient can be sent immediately to the hospital where bed is available in respect of the treatment, which is required.
- Proper arrangement of ambulance should be made for transport of a patient from the public health center to the State hospital.
- Ambulance should be adequately provided with necessary equipments and medical personnel.

ENVIRONMENT POLLUTION AND RIGHT TO HEALTH:-

In *T. Ramakrishna Rao v. Hyderabad Development Authority*¹², the Andhra Pradesh High Court observed that 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.

In *Virender Gaur v. State of Haryana*¹³, 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. Again in 2005, *K.P. Singh v. Union of India*¹⁴ was a case filed by retired government employees against the procedural difficulties in the Central Government Health Scheme (CGHS) for pensioners to receiving timely treatment and reimbursement of expenditure incurred on such treatment.

¹² 2002 (2) ALT 193

¹³ 1995 (2) SCC 577.

¹⁴ (2001) 10 SCC 167

Further in *Consumer Education and Research Centre v. Union of India*¹⁵ and *Kirloskar Brothers Ltd. v. Employees' State Insurance Corporation*¹⁶, the Supreme Court held that right to health and medical care is a fundamental right under Article 21 read with Article 39(e), 41 and 43.

DIRECTIVE PRINCIPLE OF STATE POLICY (PART IV) AND HEALTH

The Directive Principles of State Policy are guidelines to the central and state Governments of India, to be kept in mind while framing laws and policies. These provisions, contained in Part IV of the Constitution of India, are not enforceable by any court, but the principles laid down therein are considered fundamental in the governance of the country, making it the duty of the State to apply these principles in making laws to establish a just society in the country.

States will secure a social order for the promotion of welfare of the people but without public health we cannot achieve it. In *Paschim Banga Khet mazdoor Samity & ors v. State of West Bengal & ors*¹⁷, while widening the scope of Article 21 and the government's responsibility to provide medical aid to every person in the country, held that 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 obligation undertaken by the government in a welfare state.

In *Court on its own motion v. State of Himachal Pradesh and others (2015)* the Himachal Pradesh High Court ruled that right to health is a human right and directed the Centre to provide full post-retirement medical benefits, including emergency reimbursement to government employee. Denial of reimbursements of medical expenses amounts to violation of rights of the employee, Court observed that "a socialist state, as the Preamble depicts, is the basic structure of the Constitution of India." Similarly, the welfare state is the basic feature of the Constitution. Therefore, action of the Union of India not to reimburse the medical bills to the respondent (Shankar Lal Sharma) and also not giving option to him and similarly situate persons residing in a city not covered under CGHS is illegal, arbitrary, capricious, discriminatory, thus, violative of Articles 14, 16 and 21 of the Constitution of India.

¹⁵ (1995) 3 SCC 42.

¹⁶ AIR 1996 SC 3261

¹⁷ (1996) 4 SCC 37.

The court further held that it was the prime responsibility of the state to protect the health and vigour of retired government officials, this being their fundamental right under Article 21, read with Articles 39(e), 41, 43, 48-A of the Constitution.

- **Article 39 (e)** - That the 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.
- **Article 39(f)** - That 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 material abandonment.
- **Article 42**-The State shall make provision for securing just and humane conditions of work and for maternity relief.
- **Article 47**- 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 purpose of intoxicating drinks and of drugs which are injurious to health.

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 life¹⁸. Reference can also be made to Article 47 which inter alia provides that 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 duties¹⁹.

Further in, *State of Punjab and Others v. Mohinder Singh*²⁰ the Supreme Court held that “It is now a settled law that right to health is integral to right to life. Government has a constitutional obligation to provide health facilities.”

It is evident that the main problematic issue in the evolution of the ‘right to health’ in international human rights norms is its non-justifiable character. This problem pervades into domestic enforcement as well since states are reluctant to assume liability in respect of the

¹⁸ Francis Coralie Mullin, note 3 above; Parmanand Katara v. Union of India (1989) 4 SCC 286.

¹⁹ PUCL versus Union of India and others, Writ Petition (Civil) No. 196 of 2001.

²⁰ AIR 1997 SC 1225

failure to provide adequate healthcare facilities. However, some developments in recent years have not only expanded the scope of the 'right to health' but have also called on state parties to the ICESCR to 'respect, protect and fulfill' their citizens' right to the same. 'Respecting' the right to health means that the government must refrain from taking actions that inhibit or interfere with people's ability to enjoy their right.

Now, by the help of 73rd Amendment Act, 1992 State impose his duties on Panchayats , Municipality to provide the health care facility at grass root level

1. Panchayat²¹, Municipality and Health: –

Not only the State also Panchayat and Municipalities are also liable to improve and protect public health care. Article 243G²² says "State that the legislature of a state may endow the Panchayat with necessary power and authority in relation to matters listed in the eleventh Schedule". The entries in this schedule having direct relevance to health are as follows:

- Drinking²³
- Health and sanitation including hospitals, primary health centers and dispensaries²⁴.
- Family welfare²⁵
- Women and Child development²⁶
- Social welfare including welfare of the handicapped and mentally retarded²⁷.

Article 243-W finds place in part IX A²⁸ of the constitution titled "The Municipalities":

- Water supply for domestic industrial and commercial purpose²⁹.
- Public health, sanitation conservancy and solid waste management³⁰.

²¹ 73rd Amendment Act, 1992

²² Inserted by the 73rd Constitution (Amendment) Act, 1992.

²³ Entry 11 of Schedule 11, Constitution of India

²⁴ Entry 23 of Schedule 11, Constitution of India

²⁵ Entry 24 of Schedule 11, Constitution of India

²⁶ Entry 25 of Schedule 11, Constitution of India

²⁷ Entry 26 of Schedule 11, Constitution of India

²⁸ Inserted by the 74th Constitution (Amendment) Act, 1992.

²⁹ Entry 5 of Schedule 12, Constitution of India

³⁰ Entry 6 of Schedule 12, Constitution of India

- Safeguarding the interest of weaker sections of society, including the handicapped and mentally retarded³¹.
- Vital statistics including registration of births and deaths³²
- Regulation of slaughter – houses and tanneries³³.

2. INTERNATIONAL LEGAL FRAMEWORK AND HEALTH

“It is my aspiration that health finally will be seen not as a blessing to be wished for, but as a human right to be fought for³⁴.”

There are so many international treaties and conventions which treated rights to health as basic human rights.

Universal Declaration on Human Rights, 1948

The Universal Declaration of Human Rights (UDHR) is a milestone in the history of human rights. The Universal Declaration of Human Rights is a declaration adopted by the United Nations General Assembly on 10 December 1948 in Paris. It consists of a preamble and 30 articles setting forth the human rights and fundamental freedoms to which all men and women, everywhere in the world, are entitled without any discrimination.

Article 25 of the Declaration establish that everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

And Clause (2) of the Article 25 provides that motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

³¹ Entry 9 of Schedule 12, Constitution of India

³² Entry 16 of Schedule 12, Constitution of India

³³ Entry 18 of Schedule 12, Constitution of India

³⁴ Kofi Annan, (U N Secretary-General)

Though, UDHR is not legally binding force. But many Constitution are influenced by the UDHR, 1948. It has also served as the foundation for a growing number of national laws, international laws, and treaties, as well as regional, national, and sub-national institutions protecting and promoting human rights.

International Covenant on Economic, Social and Cultural Rights, 1966

International Covenant on Economic, Social and Cultural Rights (ICESCR) is a multilateral treaty adopted by the United Nations General Assembly on 16 December 1966, and came in force on 3 January 1976. It commits its parties to work towards the granting of economic, social, and cultural rights³⁵ (ESCR) to individuals, including labour rights and the right to health, the right to education, and the right to an adequate standard of living.

The International Covenant on Economic, Social and Cultural Rights is monitored by the Committee on Economic, Social and Cultural Rights, established in 1987.

According to Article 12 of the ICESCR provides '*the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*'. The article lists some of the steps to be taken by States parties such as:

1. The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
2. The improvement of all aspects of environmental and industrial hygiene;
3. The prevention, treatment and control of epidemic, endemic occupational and other diseases.
4. The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

According to the General Comment 14³⁶ the Committee for Economic, Social and Cultural Rights states that the right to health requires *availability, accessibility, acceptability, and quality* with regard to both health care and underlying preconditions of health. The Committee interprets the right to health, as defined in article 12.1, *as an inclusive right extending not only to timely*

³⁵ Economic, Social, Cultural Rights are mention in Part IV (DPSP) of the Indian Constitution.

³⁶ General Comment 14,- The right to the highest attainable standard of health, UN Doc. E/C.12/2000/4, 11 August 2000. It is available in English on:
[www.unhcr.ch/tbs/doc.nsf/\(Symbol\)40d009901358b0e2c1256915005090be?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)40d009901358b0e2c1256915005090be?Opendocument)

and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health.

Convention on the Elimination of All Forms of Discrimination against Women, 1979 (CEDAW)

CEDAW is a landmark international agreement that affirms principles of fundamental human rights and equality for women around the world.

Article 12 of the Convention provides that States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning. Clause 2 of the this article further stated that, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Convention on the Rights of Child, 1989

Article 2 of the Convention make provisions for the Health and health services of a Child and provides that Children have the right to good quality health care & the best health care possible to safe drinking water, nutritious food, a clean and safe environment, and information to help them stay healthy. Rich countries should help poorer countries achieve this.

The UN Millennium Declaration of 8 December 2000, adopted by the UN General Assembly, also stresses the importance of health care and prevention of disease by committing states to the improvement of maternal and child health, and the combat against HIV/AIDS, malaria, and other major diseases. Of the eight UN Development Goals (MDGs), three have a direct healthcare dimension.

World health Organization, 1948

The basic aim of the Organization is to improve equity in health reduces health risks, promote healthy lifestyles and settings, and respond to the underlying determinants of health.

Objectives: To develop and implement multispectral public policies for health, integrated gender- and age-sensitive approaches that facilitate community empowerment together with action for health promotion, self-care and health protection throughout the life course in cooperation with the relevant national and international partners.

The four main objectives in support of this aim are:

- To strengthen and support the capabilities and effectiveness of Member States for assessing and addressing nutrition, malnutrition, and diet-related problems, primarily through the development and implementation of national nutrition policies, programmes and plans of action.
- To develop through consultation, research and collaboration, the scientific knowledge base, methodologies, authoritative standards, norms and criteria, and guidelines and strategies for detecting, preventing and managing all major forms of malnutrition, whether of deficiency or excess, for application by Member States.
- To promote optimal sustainable health and nutrition benefits of food-assisted development projects targeted to the vulnerable food-insecure, particularly by ensuring the relevance and effectiveness of WFP food aid policies and programmes, in both emergency and development contexts.
- To maintain global databases for monitoring, evaluating, and reporting on the world's major forms of malnutrition, the effectiveness of nutrition programmes, and progress towards achieving targets at national, regional and global levels

HUMAN RIGHTS AND HEALTH

The Constitution of WHO was the first international instrument to enshrine the enjoyment of the highest attainable standard of health as a fundamental right of every human being. The right to health in international human rights law is a claim to a set of social arrangements - norms, institutions, laws, and an enabling environment, that can best secure the enjoyment of this right. It is an inclusive right extending not only to timely and appropriate health care but also to the

underlying determinants of health, for example access to health information, access to water and food, housing, etc. The right to life guaranteed under Article 21 includes within its ambit the right to health and medical care³⁷.

The right to health is subject to progressive realization and acknowledges resource constraints. However, it also imposes on states various obligations which are of immediate effect, such as the guarantee that the right will be exercised without discrimination of any kind and the obligation to take deliberate, concrete and targeted steps towards its full realization.

Human Rights

Human rights are commonly known as "*inalienable fundamental rights to which a person is inherently entitled simply because she or he is a human being*".

In terms of section 2 (d) of the Act, "*human rights*" means the rights relating to the life, liberty, equality and dignity of the individual, guaranteed by the Constitution or embodied in the International Covenants³⁸ and enforceable by the courts in India.

This definition may be divided in four parts- (1) right to life, (2) right to liberty (3) right to equality (4) right to dignity.

- Right to life include right to live a human life with dignity.
- Right to liberty includes freedom of speech and expression, freedom of movement, freedom of trade and business etc.
- Right to equality means everyone is equal before the law irrespective of his caste, color, creed, sex and nationality etc.
- Right to dignity means a person has a right to life a with self- respect and the full development of his personality without any distraction.

Therefore, right to health is associated directly associated with right to life and denial of this rights is a violation of fundamental right.

³⁷ State of Punjab v. M.S. Chawla AIR 1997 SC 1225.

³⁸ "International Covenants" means the International Covenant on Civil and Political Right and the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on 16th December, 1966.

NATIONAL HEALTH POLICY, 2015: STATE INITIATIVE

This National Health Policy addresses the urgent need to improve the performance of health systems and also declare whether India should pass a Bill to make health a fundamental right as was done for education.

Provisions of Draft National Health Policy³⁹, 2015

- The draft National Health Policy, 2015 has proposed a target of raising public health expenditure to 2.5 % from the present 1.2% of GDP. It also notes that 40% of this would need to come from central expenditure.
- The draft policy suggests making health a fundamental right similar to education and denial of the same could be punishable. The Centre shall enact, after due discussion and on the request of three or more states a National Health Rights Act, which will ensure health as a fundamental right, whose denial will be justifiable.
- The draft policy has been placed in the public domain until 28 February, 2015 for public consultation. The new policy is being introduced almost 13 years after the last health policy was drafted.
- As per the draft document, government plans to rely mostly on general taxation for financing health care expenditure. With the projection of a promising economic growth, the fiscal capacity to provide this level of financing should become available.
- The government is also keen to explore the creation of a health cess on the lines of education cess for raising money needed to fund the expenditure it would entail. Other than general taxation, this cess could mobilize contributions from specific commodity taxes such as the taxes on tobacco, and alcohol, from specific industries and innovative forms of resource mobilization.
- While the public sector is to focus on preventive and secondary care services, the document recommends contracting out services like ambulatory care, imaging and diagnostics, tertiary care down to non-medical services such as catering and laundry to the private sector.
- The draft document highlights the urgent need to improve the performance of health systems-

³⁹ Ministry of Health & Family Welfare-Government of India : <http://www.mohfw.nic.in/showfile.php?lid=3014>

- with focus on improving maternal mortality rate,
- controlling infectious diseases,
- tackling the growing burden of non-communicable diseases,
- Bringing down medical expenses among other things.
- Maternal mortality currently accounts for 0.55% of all deaths and 4% of all female deaths in the 15 to 49 year age group.
- The policy statement also assures universal access to free drugs and diagnostics in government-run hospitals. However, it proposes to pose public health system as pre-paid services instead of social service.
- Health Policy, 2015, suggests making denial of health an offence.

CONCLUSION

Article 21 of the Indian Constitution provide right to life without any barriers. And it's an integral part of the right to life decided by Judiciary on so many occasions. The right to health is a basic human right, so it's the duty of the state to recognize this right for the realization of a dignified life.

Thus, in order to achieve the most comprehensive and effective framework, the right to health must be spelled out concretely in terms of availability, accessibility, acceptability, and quality, taking into consideration the specific needs of the people. As such, the right to health or healthcare⁴⁰ or health protection should encompass a State's duty to provide both healthcare and healthy conditions, irrespective of gender, class, race, religion, sexual orientation, or other status. It is in such an understanding of the right to health framework that we envision that the age old proverb "*health is wealth*" will not remain a fancy idea confined to our thoughts, but can become a concrete reality.

Many states now accept that the right to health is a fundamental human right, and are now beginning to take a rights-based approach in their national law implementation measures. But much still remains to be done to get the greatest possible attention to this human right at the domestic level, so that in particular, the marginalized and disadvantaged groups of society will

⁴⁰ The Right to Healthcare - Moving from Idea to Reality by Abhay Shukla, CEHAT 2001.

be able to realize their elementary health needs, necessary for survival and for leading a dignified life.

“To keep the body in good health is a duty, otherwise we shall not be able to keep our mind strong and clear”⁴¹.

SUGGESSTIONS

For the establishment of right to health with the above scenario certain essential steps will be compulsory-

- Equating directive principles with fundamental rights through a constitutional amendment.
- Incorporating a National Health Act (similar to Canada Health Act) which will organize the present healthcare system under a common umbrella organization as a public-private mix governed by an autonomous national health authority.
- Generating a political commitment through consensus building on right to healthcare in civil society

Amicus
your intellectual friend...

⁴¹ Buddha (c. 563 BC to 483 BC) – a spiritual teacher from ancient India who founded Buddhism