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RIGHT TO HEALTH AS A BASIC HUMAN RIGHT- INTERNATIONAL AND NATIONAL PERSPECTIVES

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INTRODUCTION:

As the whole world now coming closer due to globalization, consequently majority of the state are the members of United Nations as well as the other relevant treaties adopted at the International level. Therefore, from the right to heath point of view number of International treaties has been adopted by the several countries. World health Organization as it established in the year 1948 to work as a agency of United States for health and it ensures that "all people attain the highest possible level of health"[1] Similarly, right to enjoyment of the highest attainable standard of health is enshrined in numerous international human rights treaties, such as Universal Declaration of Human Rights adopted in 1948, it provides that "The right to standard of living adequate for the health and well-being, including medical care and necessary social services, and the right to security in the event of sickness & disability"[2].

The International Covenant on Economic, Social and Cultural Rights provides the cornerstone protection of the right to health[3].This includes an obligation on the part of all States parties to ensure that health facilities, goods and services are accessible to everyone, especially the most vulnerable or marginalized sections of the population, without discrimination. The Convention on the Rights of the Child also refers to right to the highest attainable standard of health of children[4]. In the context of non-discrimination in health and access to health care, references can be found in the Convention on the Elimination of Discrimination against Women Art.12(1) and the Convention on the Elimination of all forms of racial Discrimination Art 5 (e)(iv). Furthermore, the World Health Organization Constitution adopted in 1946 states: "The enjoyment of the 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"

The 1948 Universal Declaration of Human Rights also mentioned health as part of the right to an adequate standard of living (art. 25). The right to health was again recognized as a human right in the 1966 International Covenant on Economic, Social and Cultural Rights. Since then, other international human rights treaties have recognized or referred to the right to health or to elements of it, such as the right to medical care. The right to health is relevant to all States: every State has ratified at least one international human rights treaty recognizing the right to health. Moreover, States have committed themselves to protecting this right through international declarations, domestic legislation and policies, and at international conferences.

[1] www.healthcare.org/globe_health/essential_medicines.shtm
[2] Article 25(1) of The Universal Declaration on Human Right 1948
[3] Article 12(1) of The International Covenant on Economic, Social and Cultural Rights 1966
[4] Article 24(2) of The Convention on the Rights of the Child 1989

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This Researcher aims to enlighten on the right to health in international human rights law as it currently stands, amidst the plethora of initiatives and proposals as to what the right to health *may* or *should be*. Consequently, it does not purport to provide an exhaustive list of relevant issues or to identify specific standards in relation to them.

APPROACHES TO RIGHT TO HEALTH:

As part of a 'Right to Health' in international human rights instruments and under Article 25 of the *Universal Declaration of Human Rights, 1948* (UDHR) say the 'right to health' in the following words:

"1. 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.

2. 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."

While this declaration articulated the core elements of public health concerns, it did not create any binding obligations on the members of the United Nations. In subsequent years, the right to health came to be incorporated in the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) which was presented before the UN General Assembly in 1966 and adopted in 1976. While Article 12(1) of the ICESCR referred to the 'right to health' in terms, Article 12(2) mandated specific measures on part of the state parties to the covenant. Its language reads as follows:

> *"1.The State Parties to the present Covenant recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.*
>
> *2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:*
>
> *(a) The provision for the reduction of the still-birth rate and of infant mortality and for the healthy development of the child;*
>
> *(b)The improvement of all aspects of environmental and industrial hygiene;*
>
> *(c)The prevention, treatment and control of epidemic, endemic, occupational and other diseases;*
>
> *(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness."*[5]

Right to life is considered one of the fundamental rights, and health is one of the vital indicators reflecting quality of human life. In this context, it becomes one of the primary responsibilities of the state to provide health care services to all its citizens. India, despite being a signatory to the Alma Ata Declaration of 1978, which promised 'Health for All' by 2000, is far from realising this objective. In India has required an excellent health care structure that has the potential to reach a large section of the population.

[5] Address by Hon'ble Justice K.G. Balakrishnan, Chief Justice of India At Bhopal in National seminar on the *'Human right to health'* Organized by the Madhya Pradesh State Human Rights Commission - September 14, 2008

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Declaration of Alma-Ata on Primary Health Care, 1978 Governments at Alma-Ata reiterated Health for All by 2000 and committed to ensuring comprehensive, primary health care. This Declaration is not binding on governments but it reiterated the commitment of the governments/states towards achieving the right to health. The Declaration highlighted that:

- Health is a fundamental right and its realisation requires the action of many other social and economic sectors. The current gross inequality in health status is politically, socially and economically unacceptable.
- People have a right and duty to participate individually and collectively in the planning and implementation of their health care.
- Primary Health Care includes in the least, health education, promotion of food supply and proper nutrition, an adequate supply of safe water and basic sanitation, maternal and child health care, including family planning, immunisation against the major infectious diseases, prevention and control of locally endemic diseases, appropriate treatment of common diseases and injuries and provision of essential drugs.

RIGHT TO HEALTH: INTERNATIONAL PERSPECTIVES: SPECIFIC REFERENCE INTERNATIONAL CONVENTION AND DECLARATIONS-

1) **Convention on the Elimination of all forms of Discrimination Against Women-(CEDAW)** The Right to Health is interdependent on the Right to Food. In Article 24(2) (c) of the Convention on the Rights of the Child (CRC)[6] and Article 12(2) of Convention on the Elimination of Discrimination against Women (CEDAW)[7], the right to food is considered part of the right to health of both women and children. Therefore, when considering the Right to Health, the above-mentioned Articles should also be taken into account. This is true of all other rights connected to the determinants of health – environment, exclusion, prohibition on the basis of sex, caste, class, education, etc. CEDAW's Article 12 establishes the obligation to adopt adequate measures to guarantee women access to health and medical care, with no discrimination whatsoever, including access to family planning services. It also establishes the commitment to guarantee adequate maternal and child health care[8]. Article 12 (1) states that governments shall take all appropriate measures to eliminate discrimination against women in the field of health care to ensure, access to health-care services, including those related to family planning. Article 12 (2) 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. States Parties[9] are encouraged to address the issue of women's health throughout the woman's lifespan. The articles of the convention are applicable to women, including girls and adolescents

[6] Children's Convention (adopted 1989; entered into force 1990): Convention setting forth a full spectrum of civil, cultural, economic, social, and political rights for children, http://www1.umn.edu/humanrts.

[7] Women's Convention (adopted 1979; entered into force 1981): The first legally binding international document prohibiting discrimination against women and obligating governments to take affirmative steps to advance the equality of women, http://www1.umn.edu/humanrts

[8] Ibid.

[9] Those countries that have Ratified a Covenant or a Convention and are thereby bound to conform to its provisions, http://www1.umn.edu/humanrts.

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2) **The World Health Organisation (WHO)** issues the *International Health Regulations* from time to time as a guiding framework for domestic policies. There regulations have further strengthened the link between human rights and health. For instance, **Article 3(1)** of the same states: *"The new International Health Regulations shall be implemented with full respect for the dignity, human rights and fundamental freedoms of persons."*[10]

(WHO)'s Commission on the Social Determinants of Health released its final report in 2008, marking a watershed event in the history of public health and human development[11]. The WHO Commission's report was ground-breaking in its unequivocal endorsement by the health sector of the importance of addressing inequalities in social conditions in order to address inequalities in health. Backed up by massive collections of evidence and examples of promising interventions in economically, politically, and culturally diverse settings, the WHO Commission report called for action, while also acknowledging the need for further investment in research to guide future action on the social determinants of health[12].

3) **The Child Rights Convention (CRC), 1989** Articles 23 and 24 of the CRC recognise the right to health for all children and identify several steps for its realisation. Article 23[13] ensures the rights of a mentally or physically disabled child to dignity; to enjoy a 'full and decent life'; to special care and encourages the promotion of self-reliance so that the child may actively participate in the community.

4) **Vienna Declaration and Programme of Action (1993)** had emphasized the fundamental inter-relatedness between civil and political rights on one hand and economic, social and cultural rights on the other hand. The said Declaration specifically provides:

"All human rights are universal, indivisible and interdepedent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms."[14]

5) **Other Instruments that guarantee Right to Health are**:

- The International Convention on the Elimination of All Forms of Racial Discrimination;
- The Convention relating to the Status of Refugees;
- The International Convention on the Protection of the Rights of All Migrant Workers and members of Their Families;

[10] World Health Assembly, *Revision of the International Health Regulations*, WHA58.3 (May 23, 2005).

[11] Commission on Social Determinants of Health (see note 4).

[12] By Paula Braveman, in "Social conditions, health equity, and human rights" Health and Human rights, volume 12, no. 2

[13] http://www.ohchr.org

[14] Cited from: *1993 Vienna Declaration and Programme of Action*, U.N. GAOR, World Conference on Human Rights, 78th Session, UN Doc. A/CONF 157/23 (1993)

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- ❖ The Declaration on the Protection of Women and Children in Emergency and Armed Conflict;
- ❖ The Standard Minimum Rules for the Treatment of Prisoners;
- ❖ The Declaration on the Rights of Mentally Retarded Persons;
- ❖ The Declaration on the Rights of Disabled Persons;
- ❖ The Declaration on the Rights of AIDS Patients.[15]

6) Constitution of South Africa (1996): **Chapter II, Section 27**: Health care, food, water and social security:

"(1) Everyone has the right to have access to

a. health-care services, including reproductive health care;

b. sufficient food and water;

(2) The State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of each of these rights.

(3) No one may be refused emergency medical treatment."

RIGHT TO HEALTH IN INDIAN SCENARIO

A) In the **Bhore Committee (1946)**[16] that was also greatly inspired by the aspirations of the national movement. Some of the key recommendations of the Bhore Committee were:

I) Integration of preventive and curative health services at all administrative levels;
II) Development of primary health centers in two stages;
III) Major change in medical education;
IV) Formation of district health board for each district;
V) Laid emphasis on preventive health services;
VI) Inter-sectored approach to health service development.

B) Indian Constitutional Law

Part III and IV of our Constitution which deals with Directive principles of State policy has several provisions that touch on the subject of health and one can refer to the text of Articles 39(e), 39(f), 42 and 47 is as follows:

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."* The State must try to ensure that its policies are based on people's (men and women equally) right to an adequate means of livelihood; ensure equitable distribution of wealth and prevent the concentration of wealth and means of production; equal remuneration regardless of sex; ensure that the existing system do not abuse the health and strength of men and women, and children and that they are not pushed by economic necessity to work in occupations that is detrimental to their age. And also

[15] International Human Rights Internship Program (IHRIP) and Forum Asia, Circle of Rights, Module 14, http://www1.umn.edu

[16] The Bhore Committee was constituted by the government in 1940 to prepare a comprehensive proposal for the development of national programme of health services. They submitted the same in 1946. Several National Programmes were developed based on their recommendations.

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provide opportunities and facilities to children to develop in a healthy manner, in the absence of exploitation[17]

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[18].

Articles 41: under the Directive Principles states as follows: "The state shall, within the limits of its economic capacity and development make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement and in other cases of un-deserved want."

Article 42: *"The State shall make provision for securing just and humane conditions of work and for maternity relief."* Under Art- 42 of the Directive Principles, there is a reference to the provision for just and human conditions of work and maternity relief. This implies that it is not simply the sickness or disablement which requires the state to intervene but it is also under the normal situations of work and the normal experiences of the citizens under certain circumstances that the state should provide the needed assistance. Thus, the state has to intervene to secure for these citizens, proper conditions in the place of work. Such conditions of work should be available to all citizens irrespective of their gender, region, language, community, race etc.

Articles 43, 43(A): provide just and humane conditions of work and maternity relief, secure wages by ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities, including participation in the management of organizations

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."* Under Art-47 in the chapter on Directive Principles, it is said that the state shall record the raising of the level of nutrition and standard of living of its people and the improvement of public health as one of its primary duties. It is, in this context that the state is required to take steps to bring about 'Prohibition' of the consumption except for medical purposes of intoxicating drinks and of drugs, excessive doses of which are injurious to health. This indeed is a clear-cut articulation of the fraternal role of the state in protecting the health of the citizens according to the Indian Constitution. This implies a positive interference of the state with the consumer sovereignty.

Right to health, a prominent decision was delivered in *Parmanand Katara* v. *Union of India*[19]. In that 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

[17] The constitution of India-Article 39
[18]Constitution of India, as of 2006 (source: Ministry of Law and Justice, http://indiacode.nic.in/coiweb/welcome.html).
[19] AIR 1989 SC 2039

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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[20].

Under Fundamental Duties **Article- 51A** of the section on Fundamental Duties states that every citizen of India has the duty to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures. In this sense, there is a joint responsibility from the state as well as the citizens towards the maintenance of human and animal health and also the long term issues relating to the improvement in the health conditions of the human beings and the animals.

Panchayat, Municipality and Health:

Not only the state but also panchayat, Municipalities are liable to improve and protect public health. "The legislature of a state may endow the panchayats with necessary power and authority in relation to matters listed in the eleventh schedule."[21] The entries in this schedule having direct relevance to health are as follows;

- Drinking
- Health and sanitation including hospitals, primary health centers & dispensaries
- Family welfare
- Women and child development
- Social welfare including welfare of the handicapped and mentally retarded
- Water supply for domestic industrial and commercial purpose
- Public health, sanitation conservancy and solid waste management
- Regulation of slaughter – houses and tanneries.

SCHEDULE 7 OF INDIAN CONSTITUTION UNDER ARTICLE 246, THE UNION LIST-I-28: Hospitals connected therewith, seamens and marine hospitals are legitimately put under the Union List implying the responsibilities of the Union Government towards this function. Also the maintenance and development of the quality of goods to be exported out of India or transported from one state to another even within India are mentioned as the concern of the Union Government.

SCHEDULE 7 OF INDIAN CONSTITUTION UNDER ARTICLE 246, THE UNION LIST-II-THE STATE LIST-6 to 10, 14 to 16: Under the State List, there are direct references to the provisions of health care facilities. For example, Clause No.6 under the State List refers to public health and sanitation, hospitals and dispensaries. Clause No.7 refers to the pilgrimages within India in which case, the provision of health care facilities comes under the state responsibilities. Clause No.8 refers to the intoxicating liquors, the production, manufacture, possession, transport, purchase and sale etc. of which will have to be overseen by the State Government in the federal framework. Clause No. 10 refers to the burials and burial grounds, cremation and cremation grounds, proper maintenance of which is very crucial for human animal health. This also is put under the State List.

[20] Commentary cited from: Arun Thiruvengadam, 'The global dialogue among Courts: Social rights jurisprudence of the Supreme Court of India from a comparative perspective' in C. Raj Kumar & K. Chockalingam (eds.), *Human Rights, Justice and Constitutional Empowerment* (New Delhi: Oxford University Press, 2007) at p. 283

[21] Article 243G

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SCHEDULE 7 OF INDIAN CONSTITUTION UNDER ARTICLE 246, THE UNION LIST-III-CONCURRENT LIST-3, 17 to 19, 26 to 27: The following items are included under a Concurrent List – List III of the Indian Constitution. These items refer to the various aspects of physical, mental and social health care policy, the policy with regard to drugs and medicines etc.

RIGHT TO HEALTH POLICIES IN INDIA

A) National Mental Health Programme-1982

A National Mental Health Programme (NMHP) was launched in 1982, keeping in view the heavy burden of mental illness in the country and the inadequacy of the health system to meet the specific mental health needs. This programme aimed to shift the basis of practice from the traditional (psychiatric) services to community care.

B) National Health Policy-1983

The **National Health Policy (NHP) comes** in the year of 1983. Its talked about comprehensive primary health care services linked to extension and health education; large scale transfer of knowledge, skills and requisite technologies to 'health volunteers'; intersectional cooperation and better utilisation and strengthening of traditional systems of medicine.[22]

C) The National Nutrition Policy-1993

The National Nutrition Policy (1993) advocates a comprehensive inter-sectoral strategy for alleviating all the multi-faceted problems related to nutritional deficiencies, so as to achieve an optimal state of nutrition for all sections of society, but with emphasis on women and children. The strategies adopted include – screening of all pregnant women and lactating mothers for **Chronic Energy Deficiency (CED)**; identifying women with weight below 40 kg and providing adequate ante-natal, intra-partum and neo-natal care under the RCH programme, and ensuring they receive food supplementation through the **Integrated Child Development Services (ICDS)** Scheme. The ICDS, launched in 1975, provides supplementary feeding to bridge the nutritional gaps that exist in respect of children below 6 years and expectant and nursing mothers. However, the ICDS programme has not been able to reach the nutritional need of children below three years.

D) Reproductive and Child Health (RCH)

The Mother and Child Health (MCH), nutrition and immunization programmes were brought under the umbrella of the Family Welfare Programme and was finally transformed into the Reproductive Child Health (RCH) programme[23]. The national RCH programme was launched in 1997 to provide integrated health and family welfare services for women and children. The programme aimed at improving the quality, distribution and accessibility of services and to meet the health care needs of women in the reproductive ages and children more effectively. The components included:

- prevention and management of unwanted pregnancy;
- services to promote safe motherhood and child survival;
- nutritional services for vulnerable groups;

[22] See NHP 2002, 1.2 www.nic.in
[23] Qadeer, Imrana (1999) 'Policy on Women's Health' for National Consultation towards Comprehensive Women's Health Policy and Programmes Feb 18-19.

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- prevention and treatment of reproductive tract infections (RTIs) and sexually transmitted infections (STIs);
- reproductive health services for adolescents;
- health, sexuality and gender information, education and counselling;
- establishment of effective referral systems;

E) The National Health Policy-2002

The National Health Policy 2002 is a continuation of the earlier indicated trends. The new policy deliberates on the need to improve access to health services among all social groups and in all areas, and proposes to do so by establishing new facilities in deficient areas and improving those existing. Recognizing that women and other underprivileged groups are most affected by poor access to health care, it aims at improving such groups' access to basic services. Most importantly, the central government is to give top funding priority to programmes promoting women's health. The policy sets forth several time bound objectives including reduction of MMR, IMR, mortality due to TB and malaria by 2010, and zero growth of HIV/AIDS by 2007.

F) National Rural Health Mission-2005

NRHM 2005: launched in 18 states that were identified as having poor health indicators emphasizes on comprehensive primary health care for the rural poor. The main goal of the mission is to provide for effective health care facilities and universal access to rural population. The principle thrust areas as identified in the document are:

- Strengthening the three levels of rural health care- sub-centre, PHC and the CHC. It also states that all 'assured services' including routine and emergency care in Surgery, Medicine, Obstetrics and Gynaecology and Paediatrics in addition to all the National Health programmes; and all support services to fulfil these should be available and strengthened at the CHC level[24].
- New health financing mechanisms for additional resource allocation and upgradation of facilities.
- Appointing ASHA (Accredited Social Health Activist) at the village level as the link worker for the rest of the rural public health system.
- Private public partnerships and regulation of private sector. The programme document identifies all these as attempts to establish the horizontal linkages of various health programmes and provide comprehensive primary health care rather than promoting the vertical programmes, which has till now failed to provide health for all.

CONCLUSION

In today scenario, we share several fundamental Right, all of which center on the equal dignity and value of all human beings in universe. In case of human rights and health equity efforts can be strong by growing awareness and understanding of the person in importance of social conditions for Right to health. And right to health is promoting social conditions are an essential prerequisite for right to health.

In particular, the global CONVENTION AND DECLARATIONS like *Universal Declaration of Human Rights-1948, International Covenant on Economic, Social and*

[24] Dasgupta, Rajib (2006) 'Quality Assurance in the National Rural Health Mission (NRHM): Provisions and Debates' in Background Papers for MFC Annual Meet

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Cultural Rights-(ICESCR), Alma-Ata on Primary Health Care-1978, Convention on the Elimination of all forms of Discrimination Against Women-(CEDAW), The World Health Organisation-(WHO) Convention on the Rights of the Child-(CRC), The Child Rights Convention-1989, Bhore Committee-(1946), Indian Constitutional Law which on values reflected by human rights agreements and norms represents a potentially influential promotion tool in struggles for greater Health equity. Human rights frameworks and principles can be used to support the conceptual basis for health equity and Care, notably by providing a rationale for the specification of vulnerable groups whose rights require special protection and promotion for social welfare, and thus informing analytic approaches to understanding right to health and its determinants.

Come within reach of from the field of Right to health can strengthen efforts to protect and promote the right to health with the highest attainable level of health and care, by extension activity of the government at large, the right to health is the social conditions essential for health public at large, by indicating how to operational these concepts for the purpose of quantity, which is essential for accountability by Government Authority.

In the end, battles for human rights and right to health will not be won or lost fully based on the conceptual clarity and coherence of the arguments, the living soundness of measurement methods we required, or the great quantity of supporting data. These are, however, important resources for building society harmony and arming advocates among and on behalf of the undelivered and marginal Society.

The Right to health is not mentioned in the 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 & noted that it is the duty of the state to look after health of the people at large. In its wider interpretation of Article 21 it was held by the Supreme Court that, the rights to Health is a part and parcel of right to life & therefore are of fundamental right provided under Indian Constitution. In the real sense Honorable court has played a pivotal role in imposing positive obligations as authorities to maintain & improve public Health[25].

Now a day effective steps have been taken to implement the constitutional obligation upon the state to secure the health and strength of people. It has rightly been said that nutrition, health & education are the three inputs accepted as significant for the development of human resources. For achieving the Constitutional obligation and also objectives of Health care for all there is a need on the part of the government to mobilize non-governmental organization and the general public towards their participation for monitoring and implementation of health care facilities to needy person of the society.

[25] By Deepu. P, " Right To Health As A Constitutional Mandate In India", ISSN 2321-4171