

Chapter II

Right to Health: Conceptual Framework

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2.1 Introduction

Mental and physical health is the very basis of human personality. Since human life has come into existence, human beings have been subject to diseases and mishaps. The various sources which have caused agonies in human life include both external and internal forces. External forces would include nature's wrath like earthquake and cyclone etc. Certain internal forces leading to the disablement, disfigurement and loss of life may be prevented by taking precautionary measures.

Health depends on a variety of factors. In order to establish a nexus between health and human rights, it is very significant to know certain concepts. The researcher has made an attempt to discuss the concepts like health, right, human right and right to health in this chapter which leads to a clear understanding of establishing of health as a human right.

Health at the same time is very important for the human race to survive and progress. When we consider health under the human rights realm a question arises whether it is the main responsibility of the government to provide for adequate health care services to all free of charge in a democratic country like ours.

2.2 Concept of Life

2.2.1 Meaning of life

Life, in its most generic definition, is a quality of matter. Matter that is 'alive' forms organisms of vast variety. Properties common to the known organisms found on Earth (plants, animals, fungi, protists, archaea and bacteria) are that they are carbon-and-water-based, are cellular with complex organization, undergo metabolism, possess a capacity to grow, respond

to stimuli, reproduce and, through natural selection, adapt in succeeding generations¹.

The concept of life is one of the most difficult concepts to define². In fact there is no general agreement in life science about its definition of life. Let us see some of the definitions of life.

2.2.2 Definitions of life

Although there is no universal agreement on the definition of life, scientists generally accept that the biological manifestation of life exhibits the following phenomena³:

Homeostasis: Regulation of the internal environment to maintain a constant state; for example, sweating to reduce temperature.

Organization: Being composed of one or more cells, which are the basic units of life.

Metabolism: Consumption of energy by converting nonliving material into cellular components (anabolism) and decomposing organic matter (catabolism). Living things require energy to maintain internal organization (homeostasis) and to produce the other phenomena associated with life.

Growth: Maintenance of a higher rate of synthesis than catalysis. A growing organism increases in size in all of its parts, rather than simply accumulating matter. The particular species begins to multiply and expand as the evolution continues to flourish.

Adaptation: The ability to change over a period of time in response to the environment. This ability is fundamental to the process of evolution and is determined by the organism's heredity as well as the composition of metabolized substances, and external factors present.

¹ www.wikipedia.org

² www.faithoflife.net

³ Davison PG. How to Define Life. The University of North Alabama. www2.una.edu⁴
www.en.allexperts.com/e/li/li/life.htm

Response to stimuli: A response can take many forms, from the contraction of a unicellular organism when touched to complex reactions involving all the senses of higher animals. A response is often expressed by motion, for example, the leaves of a plant turning toward the sun or an animal chasing its prey.

Reproduction: The ability to produce new organisms. Reproduction can be the division of one cell to form two new cells. Usually the term is applied to the production of a new individual (asexually, from a single parent organism, or sexually, from at least two differing parent organisms), although strictly speaking it also describes the production of new cells in the process of growth.

It is important to note that life is a definition that applies primarily at the level of species, so even though many individuals of any given species do not reproduce, possibly because they belong to specialized sterile castes (such as ant workers), these are still considered forms of life. One could say that the property of life is inherited; hence, sterile hybrid species such as the mule are considered life although not they capable of reproduction. It is also worth noting that non-reproducing individuals may still help the spread of their genes through such mechanisms as kin selection⁴.

The systemic definition is that living things are self-organizing and antipoetic (self-producing). These objects are not to be confused with dissipative structures (e.g. fire). Variations of this definition include Stuart Kauffman's definition of life as an autonomous agent or a multi-agent system capable of reproducing itself or themselves, and of completing at least one thermodynamic work cycle⁵.

⁴ www.en.allexperts.com/e/1/li/life.htm

⁵ Kauffman S. The Adjacent Possible: A Talk with Stuart Kauffman.

Another definition is: "Living things are systems that tend to respond to changes in their environment, and inside themselves, in such a way as to promote their own continuation." Yet another definition: "Life is a self-organizing, cannibalistic system consisting of a population of replicators that are capable of mutation, around most of which homeostatic, metabolizing organisms evolve." This definition does not include flames, but does include worker ants, viruses and mules. Without 'most of', it does not include viruses. Another attempt at defining the general features and properties of life: "type of organization of matter producing various interacting forms of variable complexity, whose main property is to replicate almost perfectly by using matter and energy available in their environment to which they may adapt." In this definition "almost perfectly" relates to mutations happening during replication of organisms that may have adaptative benefits⁶.

2.2.3 Characteristics of life

Life is the whole process which exists from birth to death and we have the result in us through what happened in ourselves⁷. When we know life we can see the real value of life and when we know life the real love can come out of ourselves. Unless the world of human beings cannot open their eyes to life the value of life will disappear forever. When your life cannot bless yourself the life is not yours anymore.

Life is an opportunity to choose which has been given to you and your life and your future can change through things in life. No matter what anyone says if you live your life without knowing life then you will deceive yourself. Knowing life is the way to understand the world⁸. If you recognize life correctly you can understand the world correctly. In the

⁶ Schrodinger E. What is Life? (1944 to 2000). Cambridge University Press

⁷ www.molwick.com

⁸ www.snasc.com

same way, knowing life is the way to gain oneself. That is to say, knowing life is the way to peace, happiness, eternal life, resurrection and the heaven.

In order to achieve all that is stated above it is very important to know the characteristic of life. The main characteristic of life is Freedom. All life has an intrinsic tendency to widen the sphere of freedom. The concept of freedom is used in its widest sense and means the possibility of overcoming or freeing oneself so that a human being can lead a dignified life. It is very truly said life with no freedom does not seem to be possible. Freedom implies that human being must be endowed with certain rights in order to enjoy the freedom. These rights should be gifted to all individuals in order to enjoy life without any hurdles right from the time an individual is born till his death⁹.

To conclude we can say that Life is a multi-faceted concept. Life may refer to the ongoing process of which living things are a part; the period between the birth (or a point at which the entity can be considered to be living) and death of an organism; and that which makes a living thing alive¹⁰. Hence all that is included in life is rights and freedom without which it is not possible to understand and realize the true meaning of life.

2.2.4 Judicial interpretation of the expression 'life'

The Indian Judiciary has been playing a very active role in recognizing and enforcing the human rights. It has given various facets of Article 21 i.e. right to life and has interpreted in the broadest possible manner. The expression 'life' has been defined very broadly and liberally. It was only

⁹ Chapter 5 Definition and Theory of Life, General Theory of Conditional Evolution of Life, www.molwick.com

¹⁰ www.fact-archive.com/encyclopedia/Life

after 1970 that the courts tried to expand the meaning of term 'right to life'. Before that the courts interpreted life literally as right to exist, this interpretation was very narrow as it did not include all basic necessities which support life. Over the years a broader meaning of life was attributed which meant not only animal existence but a dignified life with all its concomitant attributes like right to healthy environment, proper health and so on.

A very expansive interpretation was made in the case of *Munn v. Illinois*¹¹, an American case while dealing with the concept of life:

“by the term ‘life’ as here used something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by the amputation of an arm or leg.....”

Justice Haverhill has observed in the case of *Francis Coralie v. Delhi*¹²:

“We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings.” The Court further held that “the expression ‘life’ in Article 21 does not connote merely physical or animal existence but embraces something more.

In *P.Rathinam v. Union of India*¹³, the Supreme Court has defined ‘life’ as follows:

¹¹ 94 U.S. 113(1877)

¹² AIR 1981 SC 746

¹³ (1994) 3 SCC 394; AIR 1994 SC 1844

“The right to live with human dignity and the same does not connote continued drudgery. It takes within its fold some of the fine graces of civilization which makes life worth living and that the expanded concept of life would mean the tradition, culture and heritage of the person concerned.”

In *Shantisar Builders v. Narayanan Khimalal Totame*¹⁴, the Supreme Court has observed:

“The right to life under Article 21 would include the right to food, clothing, decent environment and reasonable accommodation to live in. The difference between the need of an animal and a human being for shelter has to be kept in view. For the animal, it is the bare protection of the body, for a human being, it has to be suitable accommodation which allows him to grow in all aspects-physical, mental and intellectual.”

In *Olga Tellis v. Bombay Municipal Corporation*¹⁵, the Supreme Court has emphasized that the term ‘life’ in Article 21 is not only restricted to the mere animal existence of a person. It means something more and the “inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed. The ambit and sweep of the ‘right to life’ embodied in Article 21 is wide and far reaching. It does not mean only that life cannot be extinguished as taken away but much more than that.

In *D.B.M.Patnaik v. State of Andhra Pradesh* ¹⁶, some prisoners challenged some restrictions as violating their right under Article 21. The Supreme Court stated that a convict is not denuded of all his fundamental rights. Imprisonment after conviction is bound to curtail some of his rights, e.g. freedom of speech or movement, but certain other

¹⁴ AIR 1990 SC 630

¹⁵ AIR 1986 SC 180

¹⁶ AIR 1974 SC 2092

rights e.g. right to hold property, could still be enjoyed by a prisoner. A convict could also claim that he should not be deprived of his life or personal liberty except according to the procedure established by law.

The expansive interpretation of life has led to the development of environment jurisprudence in India. The Supreme Court has taken cognizance of number of cases relating to environment problems and has given necessary directions. The court while expanding the wings of Article 21 has connoted life to the 'quality of life', and in this respect has held in a number of cases that a person has a right to the enjoyment of pollution free water and air to enjoy life fully¹⁷.

It further elaborated that any disturbance of the basic environment elements, namely, air, water, and soil which are necessary for 'life' would be hazardous to 'life' within the meaning of Article 21 of the Constitution. The Supreme Court has accepted the doctrine of public trust. It means natural resources are a gift of nature and the State, as a trustee thereof, is duty bound to protect them. The State is the trustee, and general public the beneficiary, of such natural resources such as sea, running waters, air, forests, and ecologically fragile lands. Therefore anything which endangers or impairs the quality of life in derogation of laws could be challenged under Article 32 or 226.

In *Subhash Kumar v. Bihar*¹⁸, the Apex court has held that enjoyment of pollution free environment is included in the right to life under Article 21. The court has observed:

"Right to live is a fundamental right under Article 21 of the Constitution and it includes the right to enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or impairs that

¹⁷ *M.C.Mehta v. UOI* AIR 1998 SC 2663

¹⁸ AIR 1991 SC 420

quality of life in derogation of laws, a citizen has right to have recourse to Article 32 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life.”

The Supreme Court has also explained the inter-relation between ecological issues and Fundamental rights as follows:¹⁹

“Environment concerns arising in this Court under Article 32 or under Article 136 or under Article 226 in the High Court is, in our view, of equal importance as human rights concerns. In fact both are to be traced to Article 21 which deals with fundamental rights to life and liberty. While environmental aspects concern ‘life’, human rights aspects concern ‘liberty’.

Further more in a series of M.C.Mehta’s case the court has given several guidelines and directions for maintaining the health and life of the people. In order to protect the rapidly deteriorating quality of air so as to protect the health of the people in Delhi; the Supreme Court directed that the entire fleet of public transport buses be run on CNG and not diesel. The court has put a ban on running of diesel buses in Delhi²⁰.

Various Supreme Court decisions has made it very clear that right to life means right to live a dignified life. Another complicating question rose before the Supreme Court was whether right to live includes right not to live if the person chooses to end his life? If it is so then Section 309 of the Indian Penal Code has to be held as unconstitutional as it penalizes ‘Attempt to Commit Suicide’.

¹⁹ A.P. Pollution Control Board v. M.V.Nayudu, AIR 1999 SC at 825

²⁰ See also M.C.Mehta v. UOI AIR 1998 SC 2663; AIR 2001 SC 1948 ;(2002)4 SCC 356; (2002)4 SCC 378; (2002)5 SCALE 538.

In *P.Rathinam v. Union of India*,²¹ the two bench judge of the Supreme Court ruled out that right to life embodied in Article 21 confers 'right not to live' a forced life, to his detriment, disadvantage or disliking. The bench even called for the deletion of Section 309 of the Indian Penal Code as it violates Article 21. But the view expressed in this case did not hold good for a long time as the ruling was reversed in the case of *Gian Kaur v. State of Punjab*,²² where the court ruled that Article 21 is a provision guaranteeing protection to life and personal liberty and by no stretch of imagination can extinction of life be included in 'protection of life'. The court further observed:

"..... 'Right to life' is a natural right embodied in Article 21 but suicide is an unnatural termination or extinction of life and, therefore, incompatible and inconsistent with the concept of "right to life."

Constitutionality of Section 309 was again upheld in the case of *Lokendra Singh v. State of Madhya Pradesh*²³ by the Supreme Court.

Hence we find that the expression 'life' has been well construed by the judiciary so as to confer a very expansive meaning of life

2.3 Concept of health

Different cultures have their own concept of health. The most ancient definition of health is the 'absence of disease'. In some cultures, health and harmony are considered equivalent, harmony being defined as "being at peace with the self, the community, God and cosmos." The ancient Indians and Greeks shared this concept and attributed disease to disturbances in bodily equilibrium of what they called "humours".

Though health is considered in most cultures but is seldom given priority and is not considered to be as important as other needs like wealth, power. At the international level, health was forgotten when the covenant

²¹ AIR 1994 SC 1844

²² AIR 1996 SC 946

²³ AIR 1997 SC 411

of the League of Nations was drafted after the First World War. Only at the last moment, was World Health brought in. Health was again forgotten when the charter of the United Nations was drafted at the end of the Second World War, the matter of health had to be introduced ad hoc at the United Nations Conference at San Francisco in 1945.

However during the past few decades, there has been a reawakening that health is a human right and a world-wide social goal; that it is essential to the satisfaction of basic human needs and to an improved quality of life; and that is to be attained by all people.

2.3.1 Definitions of health

There have been many definitions of health depending upon the change in time and development.

- a) "The condition of being sound in body, mind or spirit, especially freedom from physical disease or pain²⁴."
- b) "soundness of body or mind; that condition in which its functions are duly and efficiently discharged"²⁵
- c) "A condition or quality of the human organism expressing the adequate functioning of the organism in given conditions, genetic or environmental²⁶."
- d) "A modus vivendi enabling imperfect men to achieve a rewarding and not too painful existence which they cope with an imperfect world²⁷."
- e) "A state of relative equilibrium of body forms and function which results from its successful dynamic adjustment to forces tending to disturb it. It is not passive interplay between body substance and

²⁴ Webster

²⁵ Oxford English Dictionary

²⁶ Operational definition of Health by WHO: www.similima.com

²⁷ Dubos, R. Man, Med and Environment. 1968

forces impinging upon it but an active response of body forces working toward readjustment²⁸.”

2.3.1.1 WHO definition

The World Health Organization, 1948 has in its Constitution defined health as follows:

“Health is a state of complete physical, mental and social wellbeing and not merely an absence of disease or infirmity.”

This statement is amplified to include the ability to lead a “socially and economically productive life²⁹” The definition of health has been criticized as being too broad. Some argue that health cannot be defined as a “state” at all, but must be seen as a process of continuous adjustment to the changing demands of living and of the changing meanings we give to life. It is a dynamic concept. It helps people live well, work well and enjoy themselves. The WHO definition of health is therefore considered by many as an idealistic goal than a realistic proposition. It refers to a situation that may exist in some individuals but not in everyone all the time; it is not usually observed in groups of human beings and in communities³⁰. Some consider it irrelevant to everyday demands, as nobody qualifies as healthy, i.e. perfect biological, psychological and social functioning. Hence the definition has been criticized in many ways.

2.3.2 Varying concepts

Various concepts of health have been perceived by different professional groups. New concepts on health evolved and new patterns of the concept of health were developed on the basis of new thoughts and ideas. The concept evolved as the time passed by and there was a shift from individual concern to a world wide social goal which included the whole

²⁸ Perkins

²⁹ WHO (1978). Health for all, Sr. No. 1

³⁰ WHO (1981) Techn.Rep. Sr. No. 137

quality of life. The development of various concepts of health has been discussed below.

2.3.2.1 Biomedical concept

Traditionally, health has been viewed as an “absence of disease”. It was believed that if one was free from disease, then he was considered healthy. This concept, known as the “biomedical concept” has the basis in the “germ theory of disease” which dominated medical thought at the run of the 20th century. The medical profession viewed the human body as a machine and one of the doctor’s tasks as repair of the machine.³¹ Thus health in this narrow view, become the ultimate goal of medicine.

There were many criticisms laid down against biomedical concept like it has minimized the role of environmental, social, psychological and cultural determinants of health. At the same time it was considered inadequate to solve major problems of mankind like malnutrition, accidents, drug abuse, mental illness, environment pollution etc.

2.3.2.2 Ecological concept

Deficiencies in biomedical concept gave rise to other concepts. The ecologists viewed that there is a dynamic equilibrium between man and his environment. Dubos³² defined health saying: “Health implies the relative absence of pain and discomfort and a continuous adaptation and adjustment to the environment to ensure optimal function.” Human ecological and cultural adaptations do determine not only the occurrence of disease but also the availability of food and the population explosion. The ecological concept raises two issues, viz. imperfect man and imperfect environment. History argues strongly that improvement in human adaptation to natural environments can lead a longer life

³¹ Ahmed and Coelho. Toward a New Definition of health. 1979

³² Dubos R. Man Adapting. 1965

expectancies and a better quality of life-even in the absence of modern health delivery services³³.

2.3.2.3 Psychosocial concepts

Recent developments show that health is not only a biomedical concept but is also influenced by social, psychological, cultural, economic and political factors of the people concerned³⁴.

2.3.2.4 Holistic concept

The holistic model is a synthesis of all the above concepts. It recognizes the strength of social, economic, political and environmental influences on health. It has been variously described as a unified or multidimensional process involving the well being of the whole person in the context of his environment. This view corresponds to the view held by the ancients that health implies a “sound mind, in a sound body, in a sound family, in sound environment”. The holistic approach implies that all sectors of society have a direct effect on health³⁵. Hence the emphasis is on the promotion, protection and prevention of health.

2.3.3 Contemporary ideology of health

Due to revolutionary changes in the concept of human rights an incredible importance has been given to health as a human right. There has been a novel change in the idea of health. Previously it was considered as mere absence of disease but now the concept has changed.

It is now conceived and follows:

- Health is a fundamental human right
- Health is the essence of productive life and not the result of ever increasing expenditure in medical care
- Health is intersectoral

³³ WHO (1986). Concepts of Health Behaviour Research, Reg. Health paper No. 13, SEARO, New Delhi

³⁴ WHO (1986). Concepts of Health Behaviour Research, Reg. Health paper No. 13, SEARO, New Delhi

³⁵ WHO (1978). Health for all, Sr. No. 1

- Health is central to the concept of quality of life
- Health is an integral part of development
- Health involves individuals, state and international responsibility
- Health and its maintenance is a major social investment
- Health is world-wide social goal.

2.3.4 Various aspects of health

The definition of WHO specifies three dimensions:

2.3.4.1 Physical aspect

The state of physical health implies the notion of “perfect functioning” of the body. It means a body to be biologically fit where every cell and every organ of the body is functioning at optimal capacity and in perfect harmony with the rest of the body. It means the all the organs of the body are of unexceptionally size and function normally in accordance to an individual’s age and sex.

2.3.4.2 Mental aspect

Mental health is defined as “a state of balance between the individual and the surrounding world, a state of harmony between oneself and others, coexistence between the realities of the self and that of other people and that of the environment. Psychologists have mentioned the following characteristics as attributes of a mentally healthy person

- A mentally healthy person is free from internal conflicts; he is not at “war” with himself.
- He is well-adjusted and accepts criticism and is not easily upset.
- He searches for identity.
- He has a strong sense of self-esteem
- He knows himself, his needs, problems and goals

- He has good self-control –balances rationality and emotionality
- He faces problems and tries to solve them with intelligence.

2.3.4.3 Social aspect

Social well being implies harmony and integration within the individual, between each individual and other members of society and between individuals and in the world they live. It has been defined as the quantity and quality of individual's interpersonal ties and the extent of involvement with the community.

2.3.4.4 Spiritual aspect

Spirituality also plays a part in health and disease. It refers to that part of the individual which reaches out and strives for the meaning and purpose in life. It is the intangible something that transcends physiology and psychology. It includes integrity, principles and ethics, the purpose in life, commitment to some higher being and belief in concepts that are not subject to "state of the art" explanation.

2.3.4.5 Emotional aspect

Mental health can be seen as "knowing or cognition" while emotional health realties to "feeling". Mental and emotional aspects of humanness may have to be viewed as two separate dimensions of human health.

2.3.4.6 Vocational aspect

The vocational aspect of life is a new dimension. It is part of human existence. When work is fully adapted to human goals, capacities and limitation, work often plays a role in promoting both physical and mental health. The importance of this aspect is known when an individual loses his job or is faced with mandatory retirement. We have several labour

laws which regulate the working conditions so that the health is not deteriorated due to an individual's vocation.

2.3.4.7 Other aspects

A few other dimensions have also been suggested such as: Philosophical, cultural, socio-economic, environmental, educational nutritional, curative, preventive aspects which determine health.

Hence it is seen that there are many "non-medical" dimensions of health, e.g. social, cultural, educational etc. these symbolize a huge range of factors to which other sectors besides health must contribute if all people are indeed to attain a level of health that will permit them to lead a socially and economically productive life.

2.3.5 Different phases of public health

The history of public health has passed through four distinct phases.

2.3.5.1 Disease control phase (1880-1920)

Public health during the 19th century was largely a matter of sanitary legislation and sanitary reforms aimed at the control of man's physical environment, e.g. water supply, sewage disposal, etc. clearly these measures were not aimed at the control of any specific disease, for want of the needed technical knowledge. However, these, measures vastly improved the health of the people due to disease and death control.³⁶

2.3.5.2 Health promotional phase (1920-1960)

At the beginning of the 20th century, a new concept, the concept of "health promotion" began to take shape. It was realized that public health had neglected the citizen as an individual, and the State had a direct responsibility of the health of the individual. C.E.A. Winslow³⁷, in

³⁶ Park K. Preventive and Social Medicine. 2005

³⁷ One of the leading figures in the history of public health

1920, defined public health as “the science and art of preventing disease, prolonging life and promoting health and efficiency through organized community effort.” This definition summarizes the philosophy of public health which remains largely true even today.

Since the State has assumed direct responsibility for the health of the individual, two great movements were initiated for human development during the first half of the present century, namely (a) provision of “basic health services” through the medium of primary health centers and sub centers for rural and urban areas. The evolution of health centers is an important development in the history of public health.³⁸ The concept of the health centre was first mooted in 1920 by Lord Dawson in England. In 1931, the League of Nations Health Organization called for the establishment of health centers. The Bhore Committee (1946) in India had also recommended the establishment of health centers for providing integrated curative and preventive services. (b) The second great movement was the Community Development Programme to promote village development through the active participation of the whole community and on the initiative of the community. This programme tried to do too much too quickly with inadequate resources. It was a great opportunity lost, because it failed to survive. However, the establishment of primary health centres provided the much-needed infrastructure of health services, especially in the rural areas.³⁹

³⁸Roemer MI. Public Health Papers, No. 48 Geneva, WHO; 1972.

³⁹ Fendall R. World Health Forum; 1984.

2.3.5.3 Social engineering phase (1960-1980)

The pattern of diseases changed with the advancement of medicine and public health. Though the old problems were solved, new problems in the form of chronic diseases began to change in the developed world. These were chronic diseases like cancer, diabetes, cardiovascular etc which could not be tackled by the traditional approaches like isolation, immunization and disinfection. A new concept, the concept of “risk factors” as determinants of these diseases came into existence. The consequences of these diseases, unlike the swift death brought by the acute infectious diseases, were to place a chronic burden on the society that created them. These problems brought new challenges to public health which needed reorientation more towards social objectives. Public health entered a new phase in 1960s described as the “social engineering” phase⁴⁰. Social and engineering aspects of disease; and health were given a new priority. Public health moved into the preventive and rehabilitative aspects of chronic diseases and behavioral overlapping became identical, namely prevention of disease, promotion of health and prolongation of life.

2.3.5.4 Health for all phase (1981-2000)

As the centuries have unfolded, the glaring contrasts in the picture of health in the developed and developing countries came into a sharper focus, despite advances in medicine. Most people in the developed countries, and in the elite of the developing countries, enjoy all the determinants of good health-adequate income, nutrition, education, sanitation, safe drinking water and comprehensive health care. John Bryant in the introduction to his book: “Health and the Developing World” presented a gloomy picture and a challenge of inequalities in health by saying: “large numbers of the world’s people, perhaps more

⁴⁰Anderson CL. Community Health, C.V. Mosby; 1978

than half, have no access to health care at all, and for many of the rest the care they receive does not answer the problems they have.” The global conscience was stirred to a new awakening that the health gap between rich and poor within countries and between countries should be narrowed and ultimately eliminated. It is conceded that the neglected 80 percent of the world’s population too have an equal claim to health care, to protection from the killer diseases of childhood, to primary health care for mothers and children, to treat for those ills that mankind has long ago learnt to control, if not to cure.⁴¹ Against this background, in 1981, the members of the WHO pledged themselves to an ambitious target to provide Health for all by the year 2000 that lead a socially and economically productive life.”⁴²

The goal of Health for All had two perspectives. Viewed in the long-term context, it simply means the realization of the WHO’s objective of “attainment by all peoples of the highest possible level of health”. But what is of immediate relevance is the meaning that, as minimum, all people in all countries should have at least such a level of health that they are capable of working productively and of participating actively in the social life of the community in which they live. Health for All means that health is to be brought within the reach of every one in a given community. It implies the removal of obstacles to health- that is to say, the elimination of malnutrition, ignorance, disease, contaminated water supply, unhygienic housing etc. it depends on continued progress in medicine and public health.

Health of all is a holistic concept calling for efforts in agriculture, industry, education, housing and communications just as much as in medicine and public health. The attainment of Health for All by 2000 AD

⁴¹ Mahler H. World Health; Nov. 1977.

⁴² WHO=UNICEF (1978). Health for All. Sr. No. 1

was the central issue and official target of WHO and its Member Countries. It symbolized the determination of the countries of the world to provide an acceptable level of health to all people. Health for All has been described as a revolutionary concept and a historic movement- a movement in terms of its own evolutionary process.

Based on this the Alma-Ata conference was called for the acceptance of the WHO goal of 'Health for all by 2000 AD' and proclaimed primary health care as way to achieving Health for all. Primary health presupposes services that are both simple and efficient with regard to cost, techniques and organization that are readily accessible to those concerned, and that contribute to improving the living conditions of individuals, families and the community as a whole. The Alma-Ata declaration, called on all governments to formulate national policies, strategies and plans of action to launch and sustain primary health care as part of a national health system. It was left to each country to innovate, according to its own circumstances to provide primary health care. This was followed by the formulation and adoption of Global Strategy for Health for All by the 34th World Health Assembly in 1981. Primary Health care got off to a good start in many countries with the theme "Health for All by 2000 AD".

To sum up it can be said that WHO principles of Health for All are based on the notions of:

- Equity: All human beings have an equal right to health and there is an urgent need to redress existing inequalities between countries, areas and groups of people.
- Community Participation: An informed, motivated and participating community, involved in decisions about

their health at all stages of policy planning and implementation

- Inter-Sectoral Collaboration: The range of factors affecting health necessitates active co-operation between and with statutory and voluntary – at local, regional, and international levels: health must be on the agenda of all public policy making

2.4 Concept of Right and Legal Rights

The development of human civilization started taking place when human beings started to live in groups. When they were all living together all of them had certain corresponding duties and rights towards each other. Gradually this created the relationship of right and duty with the establishment of society. These duties and rights are important to be observed in order to protect human interests and regulating the conduct of individuals in the society.

With the establishment of welfare state the duty of protecting the rights of the individual shifted on to the government and hence the concept of legal rights developed which were considered fundamental to the existence of human personality. The concept of legal rights thus developed and defined by various jurists has been discussed herewith. The claim that someone has a right also plays an important role in the sense that the right must be honored.

2.4.1 Definitions of Right

According to Hibbert, a right is “one person’s capacity of obliging others to do or forbear by means not of his own strength but by the strength of a third party. If such third party is God, the right is Divine. If such third party is the public generally acting through opinion, the right is moral. If

such third party is the State acting directly or indirectly, the right is legal.”

A moral right depends on the readiness of the public opinion to express itself upon his side and legal right depends upon the readiness of the state to exert its force on its behalf. Hence both are not identical and are opposed to one another. Legal rights have a physical force of the State.

Salmond defines: “A right is an interest recognized and protected by a rule of rights. It is any interest, respect for which is a duty, and disregard of which is a wrong.”

Vinogradoff says “we can hardly define a right better than by saying that it is the range of action assigned to a particular will within the social order established by law...a right, therefore, supposes a potential exercise of power in regard to things or persons. It enables the subject endowed with it to bring, with the approval of organized society, certain things or persons within the sphere of action of his will. When a man claims something as his right, he claims it as his own or as due to him.”

According to Pollock “right is freedom allowed and power conferred by law.” T.H.Green defines “rights are powers which it is for general well-being that the individual should possess.” K.R.R. Shastri says “a right may be defined as an interest recognized and protected or guaranteed by the State since it is conducive to social well-being.”

For a right to be enforced there must be person who is the owner of the rights. At the same time a right accrues against another person or persons a corresponding duty to respect that right. Say if an individual owes a duty towards society at large, an indeterminate body is the owner of such right. The owner of a right is said a person of inherence and the

person or persons on whom the duty is cast is called a person of incidence or subject of the duty. The person of incidence is bound to do or it may be forbearance on his part.

Rights may be

- ❖ Over material things like car, house, land etc.
- ❖ Rights in respect of one's own person like not to physically injured or assaulted.
- ❖ Right of reputation like not to be defamed.
- ❖ Right in respect of domestic relations like guardianship rights.
- ❖ Right in respect of other rights like easement rights over property
- ❖ Rights over immaterial property like copyrights, trade-marks etc.
- ❖ Rights to services like services of physician, employee etc.

Hence considering right in a wider sense it includes any legally recognized interest whether it corresponds to a legal duty or not. It is also said to be an addition or benefit which is conferred upon a person by a rule of law. Here we are concerned with rights in the strict sense. It means legally protected interests corresponding to legal duties imposed upon others. These are also called as a perfect right which corresponds to a perfect duty and which can be enforced by law. So far as enforcement of rights is concerned we may talk about fundamental rights which are guaranteed by the Constitution like right to life, equality, freedom etc.

Hence Rights require for their justification an existing system of law. Our legal rights are, roughly, what the law says they are, at least insofar as the law is enforced. Legal rights gain their force first of all through legislation or decree by a legally authorized authority. It is an entitlement or justified claim to a certain kind of positive and/or negative treatment from others, to assistance from others or non-interference from others.

The Supreme Court has also defined legal right in the State of Rajasthan v. Union of India⁴³, wherein it observed:

“In a strict sense, legal rights are co-relative of legal duties and are defined as interests which the law protects by imposing corresponding duties on others. But in a generic sense, the word ‘right’ is used to mean immunity from the legal power of another. Immunity is exemption from the power of another in the same way as liberty is exemption from the right of another. Immunity, in short is no subjection.”

Hence it can be concluded that different kinds of legal rights have been established and recognized. Rights and duties are the two sides of the same coin. Where there is a right of an individual there is always a corresponding duty towards the State in order to fulfill the right of individual. ⁴⁴

2.5 Concept of Human Rights

Human rights refer to the concept of human beings as having universal rights or status, regardless of legal jurisdiction or other localizing factors such as ethnicity and nationality. It refers to safeguards provided by the State to the individual against arbitrary use of power by the government or by any private individual. It gives special regards to the well being of the individuals, their freedom and autonomy and the representation of the human interest in government. Hence it includes rights like right to life, equality, education, religion and freedom of association, assembly, thought and expression etc. A question may be generally asked as to why human rights and fundamental freedoms are so important and what part do they play to an individual?

⁴³ AIR 1977 SC 1361

⁴⁴ Discussed in detail in Chapter III 3.5

The answer is very simple because these rights allow us to develop fully and use our human qualities, our intelligence, our talents and our conscience and to satisfy our spiritual and other needs. They are based on mankind's increasing demand for life in which the inherent dignity and worth of each human being will receive respect and protection.

Human rights are interrelated, interdependent and indivisible. Each right depends on and connects with, others and each human right gives added meaning to the other. The right to life for example, cannot be conceived without right to food, shelter, clean water, freedom from torture, etc. this 'interconnectedness' reflects the complex variety of overlapping needs and situations that people all over the world face throughout their lives. All human rights are essential to preserve the dignity, security and survival of individuals and to ensure that every person is treated with decency and basic elements of respect. Human rights belong to all and must never be regarded as a favor, gift or privilege conferred by the State or by any organization or individual.

In the language of United Nations Centre for Human Rights—"Human rights could be generally defined as those rights which are inherent in our nature and without which we cannot live as human beings."

Govind Mukhoty described that human rights cannot be evaluated in isolation. They have been read in their social context. The theory of human rights incorporates following three maxims: (1) "the God who gave us life, gave us liberty at the same time" by Thomas Jefferson, (2) "freedoms come from human beings, rather than from laws and institutions" by Clarence Darrow" (3) "the history of liberty is the history of resistance...history of the limitations of governmental powers" by Woodrow Wilson.

Nani Palkhivala's viewpoint that the case for human rights is so strong that it almost argues for itself. It is an instance of what lawyers call *res ipsa loquitur*-the thing speaks for itself. To attempt to define Human rights definitively, would be merely to illustrate how the human mind tries, and tries in vain, to give a more precise definition than the subject-matter warrants. Human rights may be summed up in one word- LIBERTY.

Paul Sieghart states that the distinction between human rights and other rights has given rise to three consequences. The human rights are not acquired, nor can they be transferred, disposed of or extinguished by any act or event because those rights are inherent universally in all human beings. The primary co-relation of duties in connection with human rights falls upon the State and their public authorities. Because of these two distinctions, says Sieghart, three consequences follow: - one is non-discrimination between individuals belonging to different groups; second is the rule of law whereby people are governed by law and not by men; and thirdly there are remedies available for the violation of human rights. If these three tests are applied, one must say that nation has come a long way towards the realization of human rights. But there is still a long distance to be covered, before we can say that we have done all that is possible.

Justice Venkatachaliya, Former Chairperson, Human Rights Commission is of the opinion that human rights are rights in own nature and without which we cannot live as human beings. This protection can be accorded with the co-ordinated efforts of all nations by implementing the international instruments focused on human rights. Collective wisdom of all the nations is needed in order to pursue intended objectives. Basic policies should be framed on a uniform pattern so as to jointly recognize, adopt and enforce them in the form of human rights in their own

nations. A common consensus is to be arrived at for the purpose of upliftment of mankind in general and improving the downtrodden masses in particular.

Hence any concept of human rights which can be acceptable to the modern liberal democratic societies must fulfill two basic assumptions. First, the rights must be equal in an effective manner. Second, these rights must create an obligation on others.

2.5.1 History of human rights

Ex-chief Justice of India Mr. R.S. Pathak has described about human rights in these words: "the human rights movement represents the historical journey traveled by man ever since the beginning of an institutionalized political and social order. It was a response to that order, when the importance of the development and expression of individual personality began to acquire material significance in relation to the community.

2.5.1.1 Human rights in ancient times

In India human rights are given place even in the ancient religious books. The Vedas, puranas and the famous epics of Mahabharata and Ramayana have also given due regard to the human rights. The following verse from the Mahabharata is notable:

Sarva Bhaventu-Sukhina Sarve Santu Nirmaya, Sarve Bhadrani Pashyant Ma Kashchid Dukhbhag Bhavet.

The Holy Quran also illustrates the concept of human rights as follows:

"All men are brothers and that non-muslims should be treated with no less dignity and respect for their personality than Muslims. No discrimination against all persons whether black or white or whatsoever."



The Holy Bible of the Christian religion preaches as follows:

*“Don’t sow unto others what is hateful to you, The God will know.
Do unto others as you would have them do unto you.”*

The concept of human rights has its history from the early civilization. The concept has constantly evolved and depending upon the laws, customs and religions it has developed through ages. Earliest rulers like Menes, Hammurabi, Draco, Solon and Manu in their codes have set out the conduct for their societies, but they existed within limited territorial jurisdiction. The Mauryan Empire of ancient India established unprecedented principles of civil rights in the 3rd century BC under the reign of Ashoka the great. After his brutal conquest of Kalinga in Circa 265 BC, he felt remorse for what he had done, and as a result, he adopted Buddhism and came to be known as “the Pious Ashoka” in stead of “the Cruel Ashoka”.

The tablet of Hammurabi, which is the first example of codification of law, outlines punishment based on “an eye for an eye”. The tablet was created by the Sumerian King Hammurabi about 4000 years ago. The legally binding document protected the people from arbitrary prosecution and punishment.

The scriptures found from 1200-300 BCE of the ancient Israelis which forms the basis of Christian and Muslim thinking outlines Ten Commandments for respect of life and property of others. The principle that a person is innocent until proven guilty and the tradition of granting asylum originated in Jewish law. For some authors the origins of Human rights go back in Greek antiquity. In Greece the concept began to take a greater meaning than the prevention of arbitrary prosecution. They considered human rights as synonyms of Natural law. According to the Greek tradition of Socrates and Plato, natural law is law that reflects the

natural order of universe, essentially the will of the Gods, who control nature. A classic example of this occurs in the Greek literature when Creon reproaches Antigone for having buried her brother despite her having been forbidden to do so, Antigone replies that she has acted in accordance with the “unwritten and unchanging laws of heaven which even the King could not override”⁴⁵.

Natural law philosophy was contributed by the Stoic philosophers. The nature of human rights was explained on the basis of natural law theory. They formulated the theory of Natural law after the breakdown of the Greek City States. The main theme of the Stoic philosophy was that the principles of natural law were universal in their nature. Their application was not limited to any class of persons or certain state, rather it applied to everybody everywhere in the world. The natural rights of man were “not particular privileges of citizens of certain state but something to which every human being, everywhere, was entitled in virtue of the simple fact of being a human being and rational.”⁴⁶ They set forth further that men “could comprehend and obey the law of nature because of their common possession of reason and capacity to develop and attain virtue. Hence the Stoic philosophers preached the idea of universal brotherhood of mankind and laid stress upon the equality and freedom for all.

Romans applied the Stoic conception of natural law in the formation of body of legal rules for the administration of justice. They developed their body of rules on the basis of custom as well as by the application of reason. They modernised their old laws and incorporated high ethical standards in legal procedure. Roman law was divided into two categories of rules: - *jus civile* or civil law dealing with citizens, things and actions;

⁴⁵ Sophocles: *Antigone*, “The unwritten, unchanging laws of the gods”

⁴⁶ Cranston M. *Human Rights Today*, 1962

and 'jus gentium' the law of non-citizens, i.e. such rights to which men is entitled wherever they go.

According to Ulpian, natural law is that law which nature teaches to all living beings. It also signifies that this natural is kindled to the jus gentium.

Though the present significance of Human Rights is traced from Graeco-Roman world but there have been fundamental differences between the present and the ancient human rights. E.g. Aristotle recognised the legitimacy of slavery, which in today's world goes counter to the ideas of freedom and equality.

2.5.1.2 Human rights in the middle ages

During the 40-100 CE the Christian New Testament taught equality before God. Followers were urged to feed the hungry, clothe the naked and forgive their enemies. A number of Acts were enacted to show the superiority of Natural law like The Magna Carta Libertatum of 1215 was the document asserting individual rights. It was imposed on King John by the Prelates, Earls and Barons of his realm after his defeat by the King of France in 1214.

The Medieval Christian theology during 476-1453 held that infidels and barbarians were not entitled to humanistic considerations.

In the middle ages philosophers like Abelard(1079-1142) and Thomas Aquinas(1224-1274) laid stress upon the concept of natural law as the higher principles of law to be derived from reason. But they did not go in quest of making the human personality as the main concern of law and social life. Thomas Aquinas like Aristotle justified the existence of practice of slavery. Thus greater attention was given on the development of principle of the sovereignty of State rather than on the development of

respects for human qualities. Hence in the middle ages Human rights were not observed in the real sense.

2.5.1.3 Human rights in 16th, 17th and 18th century

But during the 16th century the concept of natural rights was again revitalised for the reason that there was a rise of reformation which challenged the sole authority commanded by the church, one of the most powerful institution of medieval period. People demanded for natural rights of freedom of conscience and religion beliefs.

The theory of social contract was introduced based upon the natural law theory. Thomas Hobbes (1558-1679), John Locke (1632-1704) and Jean Jacques Rousseau (1719-1778) set forth the notion of the natural rights of life, liberty and property. They considered human rights as the natural rights because they believed that Human Rights are based upon the contract between the people and the State. They stated that when men formed a society they renounced certain rights, which they formerly enjoyed, but they preserved certain basic rights which are necessary for the human existence like right to life, freedom and equality. These rights were “natural and inalienable rights” that they were recognised by the State also. Hence even the State did not interfere which these rights of the people.

During 1583-1645, Hugo Grotius, a Dutch jurist who is considered to be the Father of International law, spoke of brotherhood of humankind and the need to treat all people fairly. In the year 1628 for the very first time British Petition of Rights was adopted and in 1689 the British Bill of Rights was adopted ensuring that royalty cannot override laws created by Parliament.

American Revolution

Americans also started their revolt against the imperial tyrannical government. They claimed independence on the basis of inalienable rights of man. One of the factors which contributed towards rise in this revolt was the British Bill of Rights 1689. Their firm determination to overthrow the unjust authority led them to make the Declaration of Independence on July 4, 1776. The U.S. Declaration of Independence proclaimed "all men are created equal" and endowed with inalienable rights.

They drafted their Constitution in 1787 but did not include the Bill of Rights, so in 1791 they made an amendment to the U.S. Bill of Rights and incorporated the notions of freedom of speech, press and fair trial in the new U.S Constitution.

French Revolution

The French revolution was based upon the principle which was set in motion by the English and American Revolution. It was because of the result of economic and social inequalities and injustices of the French ancient regime. The French Estate General proclaimed on 17th June 1789 in defiance of Louis XVI, the National Assembly and then they took the Famous Tennis Court Oath "never to separate.....until the Constitution of the kingdom shall be established." The National Assembly thus established was not free in all respects. They were dependent on the consent of the common people for its authority and worked under strains and restrictions. They fulfilled their goal and this achievement was of great importance when in 1791, a list of inalienable rights of free citizens was prepared which was proclaimed as the "Declaration of the Rights of Man and of the Citizen."

2.5.1.4 Human rights in 19th century

In 1815 the Congress of Vienna held by States that defeated Napoleon. International concern for human rights was demonstrated for the first time in modern history, wherein freedom of religion was proclaimed, civil and political rights were discussed and slave trade was condemned. From 1815 to 1900 in countries like Great Britain, Russia, France Austria and Africa passed Antislavery Act and signed treaties abolishing slavery. In 1863, U.S. President Abraham Lincoln issued the Emancipation Proclamation, declaring that "all persons held as slaves within any state, or designated part of a State, the people whereof shall be in rebellion against of U.S. are "FOREVER FREE".

2.5.1.5 Human rights in the 20th century

A significant change took place in 1914 when First World War began. Civilian population became victims of expanded warfare. As a reaction a new sense of international morality began. At the end of First World War in 1919 Nations seriously considered imposing criminal penalties on heads of State for violations of fundamental Human Rights. They started measures to study and formulate the human rights provisions.

In 1929 League of Nations covenant required members to endeavor to secure and maintain fair and humane conditions of labour for men, women and children, secure just treatment of the native inhabitants of territories under control and take measures for the prevention and control of disease.

There was a serious outbreak in the development of the Human Rights realm when during 1933-1939 a series of discriminatory laws were passed in Germany which excluded people with Jewish ancestry from employment, education, housing, healthcare, marriages of their choice

etc. Physically and mentally people were murdered by gas, lethal injection and forced starvation.

In 1939, when Germany invaded Poland the Second World War started. Several people were exterminated by Hitler's Nazi regime. The Second World War made States to think seriously about Human Rights. U.S. President Roosevelt took the lead in the matter and he sent his message to Congress on 6th January 1941. He identified four freedoms as essential for all people:-freedom of speech and religion and freedom from want and fear. President Roosevelt and British Prime Minister Winston Churchill were equally convinced and they met in 1941 and adopted the Atlantic Charter in which they stated "that all men in all the lands may live out their lives in freedom from want and fear"

This joint declaration signed by the heads of two most powerful states had a profound effect on the development of human rights. The principles of Atlantic charter were solemnly reaffirmed in the Declaration of United Nations on 1st January 1942, which was signed by 26 nations. In 1942, "Rene Cassin" of France urged that an International Court be created to punish those guilty of war crimes. In 1945 the United Nations was established where in one main purpose was "to respect for human rights and for fundamental freedoms for all without distinctions to race, sex, language and religion." In 1946 Commission on Human Rights was established by UN Economic and Social Council (ECOSOC). Human rights were established as those rights which could be claimed by individuals. Several conventions were passed later on establishing various rights on Human Beings.

In 1948 the Universal Declaration of Human Rights was adopted and proclaimed by the General Assembly of United Nations. It laid down certain basic human rights which each and every individual possess right from the date of birth. It recognised the inherent dignity and of the

equal and inalienable rights of all members of the human family to be the foundation of freedom, justice and peace in the world. The declaration aimed to promote the development of friendly relations between nations.

A number of Conventions and Declarations were been made, signed and ratified by several countries. In 1966, two international conventions were made to protect the civil, political, cultural, economic and social rights of the individuals. The International Convention on Civil and Political Rights, 1966 was signed and ratified by most of the countries to recognize the rights which are derived from the inherent dignity of the human person. The International Convention of Economic, Social and Cultural Rights, 1966 was proclaimed to ensure more rights of individuals. Hence it was recognized that in all these three documents that the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights.

A large number of organizations, pacifist, church and Jewish raised their voices for the international recognition and protection of human rights. Thus there emerged an overwhelming consensus of world community favoring the establishment of international organization in the post war years with the main task to formulate and implement of human rights.

A more number of conventions and declarations were formed in the areas like prevention of discrimination; rights of women; rights of child; slavery, servitude, forced labour; administration of justice; freedom of information; employment; marriage; family and youth; social welfare, progress and development; nationality; statelessness, asylum and refugees; war crimes and crimes against humanity including genocide humanitarian law.

Hence we have seen that human rights has been considered as an important part of international law. They serve as guiding principles for domestic policies and international relations and a powerful tool of advocacy. They are accorded to every human being and even if they are not always honored in fact (in facto); everyone is entitled by international law (de jure) to enjoy benefits of human rights. They are an important tool for protecting human dignity and integrity. Based on generally accepted principles of equality and justice they protect individuals from elementary forms of injustice.

To sum up we can say that Human Rights⁴⁷:

- Are guaranteed by international standards;
- Are legally protected;
- Focus on the dignity of the human being;
- Protect individuals and groups;
- Oblige states and state actors;
- Cannot be waived or taken away;
- Are interdependent and interrelated;
- Are universal.
- They are for all.

2.6 Concept of right to health

Human right to health is a powerful and modern approach which aims at the protection of health and the well being of all individuals. This modern approach i.e. to give the impression of health as a human right has developed very rapidly at the international level by various international

⁴⁷ Administrative Committee on Coordination (ACC); The United Nations System and Human Rights: Guidelines and Information for the Resident Coordinator System; approved on behalf of the ACC by the Consultative Committee on Programme and Operational Questions (CCPOQ) at its 16th Session, Geneva, March 2000.

convention and declarations whereby the State parties are made to view health as a human right.

The general concept of the right to health made its first appearance in Article 25.1 of the Universal Declaration of Human Rights stating 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.”

The concept was defined laying down certain determinants which would fulfill the right to health. It was not a comprehensive definition as it laid down health facilities only in certain events specified. Hence the idea was isolated and not well defined.

A more precise definition of right to health was then given in Article 12 of the International Covenant on Economic, Social and Cultural Rights, adopted in 1966 recognizing the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. This articulation still remains the fundamental expression of the right to health in international law and has been implemented in the member states with the same force.

The World Health Organization, in the Preamble to its Constitution, declares that “Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.”

It further elaborates that the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, political belief, economic or social condition. Governments have a responsibility for the health of their peoples which

can be fulfilled only by the provision of adequate health and social measures.

The right to health, as a matter of international law, is a broad and complex concept, subject to interpretation, and interdependent with many other established rights. Interestingly, the modern human rights movement was born partly as a result of the health-related human rights abuses perpetrated under the Nazi regime, namely the acts of physicians who performed terrible medical experiments on human subjects and then defended their actions as necessary, among other things, for the advancement of public health. The right to be free from such abuse at the hands of the medical establishment, and the obligation of governments to protect people from such actions, is perhaps the most straightforward and uncontested element of human rights as they relate to the subject of medicine and health.

The right to health is now internationally recognized and protected. It has been recognized and reaffirmed in a body of internationally accepted norms, standards and principles. Approximately 75 % of the countries have ratified the International Covenant on Economic, Social and Cultural rights which has comprehensive provisions on the right to health.

The World Conference on Human Rights (WCHR) held in Vienna, Austria in 1993 emphasized that it is the duty of all States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.

Health is based on a broad definition of health that encompasses medical and public health perspectives. It accords priority to the needs of the poor and otherwise vulnerable and disadvantaged groups. It entails specific government obligations regarding health care and the underlying

determinants of health, as well as obligations to ensure non-discriminations and people's right to participate in relevant decision making processes.

The right to health is conceived in broad terms so as to include a right to a standard of living adequate for basic health. This means that the health status is influenced by a number of socio-economic factors that are generally accepted as falling outside the confines of clinical curative medicine.

The right to the highest attainable standard of health takes account of both health care and social conditions as being important determinants of health status. These include comprehensive health care, adequate, accessible, acceptable, affordable, appropriate and equitable health care services; basic immunization; adequate nutrition, adequate housing; sexual and reproductive health information and services, including family planning; safe drinking water, adequate sanitation, health related education and information, clean and safe environment as well as others such as equitable health-related resource distribution, gender differences, and social well-being. They also include socially related events that are damaging to health, such as violence and armed conflict.

The General comment on the right to health adopted by the Committee on Economic Social and Cultural Rights (CESCR) elaborates in detail on the content of ICESCR Article 12 and emphasizes that:

...the right to health must be understood as a right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of health.

...[it is] an inclusive right extending to timely 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. A further important aspect is the participation of the population in all health-related decision-making at the community, national and international levels.⁴⁸

The right to health, therefore, contains both freedom and entitlements. The freedoms include the right to have control over one's own health and body as well as the right to be free from non-consensual medical treatment and experimentation. The entitlements, on the other hand, include the right to access to an equitable system of health protection.

Moreover, the right to health is interrelated with other human rights, such as those to food, housing, education and safe working conditions which illustrate how human rights are interrelated, as well as being indivisible and interdependent. Because health status reflects a wide range of socio-economic factors, the right to health is clearly linked to other basic rights including civil and political rights as well as economic, social and cultural rights-and it cannot be conceived of as separate from the, conversely, the right to health is essential to the exercise of other rights⁴⁹.

India being a signatory of all the important convention has implemented right to health in its letter and spirit. Right from the time our Constitution came into force we had Article 47 which provides for the raising of the level of nutrition and the improvement of public health among the primary duties of State. We have a number of legislations and

⁴⁸ CESCR General Comment 14, paras 9 and 11

⁴⁹ Link established in Chapter III 3.2

policies implementing and protecting the right to health⁵⁰. The Supreme Court has also in various cases recognized right to health as a fundamental right to be included under Article 21⁵¹.

In 1991, in *C.E.S.C. Ltd. v. Subhash Chandra*⁵² the Supreme Court placed reliance on international instruments and declared that right to health is a fundamental right. It went further saying that health is not merely absence of sickness and observed:

“In the light of Articles 22 to 25 of the Universal Declaration of Human Rights, International Convention on Economic, Social and Cultural Rights and in the light of socio-economic justice assured in our Constitution, right to health is a fundamental human right to workmen employed in industries. The maintenance of health is a most imperative Constitutional goal whose realization requires interaction by many social and economic factors.”

But at the same time assuring the “highest attainable standard of health” for people with disabilities depends largely on the available resources and the allocation mechanisms of each country’s healthcare system. But this could not be raised as a defense in non-implementing the right to health. Though the State may not be able to provide latest and the most modern treatments which include a huge expenditure but they should always try to provide the minimum health facilities within its economic capacity.

⁵⁰ Discussed in detail in Chapters IV and V

⁵¹ Cases discussed in Chapter V

⁵² (1992) 1 SCC 441

2.7 Conclusion

Hence, the health of all people should be viewed as a precious public commodity, necessary for the prosperity, security and development of societies. If health of all people is maintained then only the human resource is able to contribute in the country's development.

We can say that that right to health does not by itself require that the State commit more of its resources to the health sector. Moreover, it does not demand that everything that some people regard as medical care be provided. Only that care which is directed to health is a matter of entitlement. To demand more is to demand what might not be part of the common good of the community and what might even be opposed to this good, or what might render impossible a common agreement about what constitutes this good. Nor does this right absolve individuals from responsibility for their own health; on the contrary, it presupposes this responsibility. The right to health care requires that the members of a community committed to health be provided on an equal basis with the medical care they need.

It is very rightly said by Mary Robinson,⁵³ that "The right to health does not mean the right to be healthy, nor does it mean that poor governments must put in place expensive health services for which they have no resources. But it does require governments and public authorities to put in place policies and action plans which will lead to available and accessible health care for all in the shortest possible time. To ensure that this happens is the challenge facing both the human rights community and public health professionals."

⁵³ United Nations High Commissioner for Human Rights,