This study aims at exploring the question of Right to Health in the context of Indian law and practice. It attempts to answer the basic question as to whether the Right to Health in India does exist. Although there is no direct recognition of right to health under Indian constitution however there do exist host of laws which includes health safeguards for various categories of people. Supreme Court of India has also inferred from fundamental rights particularly from right to life- a derivative Right to Health. It has also used the directive principles of state policy to highlight the Right to Health in India. Besides that the government of India has also come out with various policy directives regarding Right to Health.

The main question that is addressed in this study includes what is right to health? What is the protection available in Constitution of India regarding Right to Health? What are the different constitutional provisions, policies and laws in this regard? This study not only endeavor to give a broader outlook for the right to health in India by highlighting that to what extend these provisions has been implemented in practice?

The introductory part of my thesis deals with the question what is right to health? I have tried to explain that the right to health is a right to the enjoyment of a variety of facilities, goods and services and conditions necessary for the realisation of the highest attainable standard of health. It elaborates with the various definitions as Health can mean different things to different people and the linkage of right to health with human rights. When we pair right to health with human rights it becomes a powerful concept because when we take them separately they are goals which the majority of population agrees to be complied with in high priority and when taken together they work to promote each other. WHO has attempted to construct a positive definition of health as a state of complete physical, mental and social well being and not merely the absence of disease and infirmity. This is an all encompassing definition and clearly places Health on higher platform. This definition illustrates the indivisibility and interdependence of rights as they relate to health, by recognizing
that the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being and that governments have a responsibility for the health of their peoples which can be fulfilled only through the provisions of adequate health and social measures.

The right to health here goes beyond health care to encompass the underlying determinants of health such as safe drinking water, adequate sanitation and access to health related information. The right includes freedoms such as right to be free from discrimination, and involuntary medical treatment. It also includes entitlements such as right to essential primary health care. The right has numerous elements such as child health, maternal health and access to essential drugs. Like other Human Rights it has a particular concern for the disadvantaged, the vulnerable and those living in poverty. The right to health contains both general freedoms and entitlements, including: freedom to control one’s health and body; freedom from non-consensual medical treatment and experimentation; and an entitlement to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health. This Right to Health cannot be seen as right to be healthy. The state cannot be expected to provide people with protection against every possible cause of ill health or disability. Instead the Right to Health should be understood as a right to the enjoyment of variety of facilities and conditions which the state is responsible for providing as being necessary for the attainment and maintenance of good health.

The next portion of my research deals with Right to Health at international level. It specially includes Universal Declaration of Human Rights where right to life is an inalienable right of all human beings which apparently includes Right to Health. International Covenants on Economic, Social and Cultural Rights 1966 also talks about right to health. Then the General Comment 14 of Article 12 of International Covenant on Economic, Social and Cultural Rights, Convention on Rights of Child 1989 which entitles the child to grow and develop in healthy environment and means. Non-discrimination and equal treatment are among the most critical components of the right to health at the international level. International human rights law proscribes
any discrimination in access to health care and the underlying determinants of health on the internationally prohibited grounds, such as sex, ethnicity and health status.

The right to health extends to international assistance and cooperation, in other words. This means that developed states have some responsibilities towards the realisation of the right to health in developing countries. The International organizations like World Health Organization, UNICEF, ILO, UNHCR, as well as non governmental organizations and agencies have played a very important role in formulating and implementing the provisions of right to health at the international level. The most satisfactory thing which can be noted here is that because of the effort of these international agencies every country in the world is now party to at least one human rights treaty that addresses health-related rights. This includes the right to health as well as other rights that relate to conditions necessary for health. The promotion of this type of harmonizing efforts of the international organizations clears the way for the strengthening of the health system all over the world.

Now coming to India it is pointed out that in India at different points of time, shifting interests of the ruling classes have resulted in adjustments and reconstructing of the health services. In the 19th century and the early 20th century it suited the government of England to let the colonial government of India neglect public health till the early forties, when they were forced to set up the BHORE committee to propose a blue print for the health care. In India we have a wide range of socio economic settings and rational health programmes are mostly designed with enough flexibility to permit the state health administration to craft their own programme package according to their needs. The panchayati raj system in India had played a very important role in the improvement of health services as these have been the center for social life. It has been the primary focus of the government of India to improve the variety of factors like lack of health consciousness, low per capita income, lack of adequate education, non availability of proper sanitary conditions and safe drinking water an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including sexual and reproductive health, and for this a National Health
Policy (NHP) was first time adopted in 1983 and this aimed at securing a healthy life for all Indians.

Healthcare in India is the responsibility of constituent Indian states. The Constitution charges every state with raising the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties. The National Health Policy 1983 is an important landmark in the history of India, because for the first time since the Bhore Committee recommendations the government was talking in terms of primary healthcare. The five year plans made by the government of India were a planned economic development for the implementation of various facilities announced by the government, right to health is not the exception in this case. The five year plans address the health care needs of the people not leaving those who are elderly, economically and socially vulnerable.

Under article 21 of the constitution of India the right to life has been construed as the right to life with dignity which implies a healthy mind and body. The right to life under Indian constitution is further broken down into more specific entitlements, one of which is the rights to health facilities which also includes prevention, treatment and control of diseases; maternal, child and reproductive health; and healthy natural and workplace environments. The linkage of health and human rights is essential here to promote human well being. The right to health therefore becomes integral to the mandate of human rights. The Directive Principle of the State Policy in the constitution of India makes it compulsory for the state to raise the level of nutrition as well as the standard of level of the people to improve public health.

Apart from constitutional provisions the next portion of my thesis deals with various Indian legislations, some of the provisions of which relating to health protection and makes the way for promotion and implementation of health related rights. Understanding the legal language of the constitution is not easy for any agency or institution including health care. Also most of the information provided under the constitution is scattered in the number of acts, and the language of the law provisions provided is very difficult as well as complicated to be interpreted and understood by the common person. It is also seen that the health segment in India is mostly unseen
and unaware of the various laws governing it. This chapter is an effort to level and cover the gap and to provide with all the necessary information relating to right to health in India. In India we have various legislations like- the Indian penal code 1960, the epidemic act 1987, the cigarette regulation act 1975, the dangerous drugs act 1930, the drugs and medical remedies act, vaccination act 1980, mental health act 1987 etc. are some of the legislations covered under this chapter. This chapter provides an understanding of the various health legislations in India whose overall mission is to promote and provide good health for all.

The situation of health rights in India is a complex one, because of the country’s large size and tremendous diversity, its status as a developing country and a sovereign, secular, democratic, republic, and its history as a formal colonial territory. The Constitution of India provides for fundamental rights, which includes right to life. Clauses to right to life also provide for right to health. It is often held particularly by Indian human rights groups and activists that members of dalits and untouchables castes have suffered and continue to suffer substantial discrimination. Although problems of health rights do exist in India, that may be because of the implementation of the rights available to the people of India.

The Indian judiciary has tried to implement right to health in many ways. The next part of my thesis covers the judicial response to the right to health in India. The Supreme Court has been giving a positive direction to the nature and content of right to health firstly by imposing a positive obligation upon the state to take effective steps for ensuring the individual a better enjoyment of his/her life. The Supreme Court has envisaged that the right to live with human dignity enshrined in Article 21 derives its life and breadth from the directive principles of state policy particularly article 39(e) and (f), 41 and 42 and would, therefore include a protection of health as given in the directives. The expanded meaning of the right to life is wholly justified as without health of a person being protected and his well being looked after, it would be impossible for him/her to enjoy other fundamental rights. Without a guarantee of health and well being, most of the fundamental rights cannot be exercised fully. For making other rights meaningful and effective, right to a healthy life is the basis underlying all the constitutional guarantees made by the state. The courts have
provided redressal by meaningful and just interpretation to the right to life and commanding enforcement of the duties of a welfare state.

The Supreme Court of India has interpreted right to health in many ways. Through public interest litigation as well as litigation arising out of claims that individuals have made on the state with respect to health. As a result there is substantial case laws in India which shows issues which are related to health. In *Bandhua Mukti Morcha v Union of India*, the Supreme Court has held that the right to life includes right to live with human dignity. The recognition that the right to health is essential for human existence and is therefore an integral part of right life, is laid down clearly in *Consumer Education and Resource Center v Union of India*. Further in *State of Punjab v Mohinder Singh*, it was well settled that right to health is integral to right to life. Government has constitutional obligation to provide health facilities. In the landmark decision *M.C. Mehta v Union of India*, the Supreme Court held that environmental pollution causes several health hazards and therefore violates right to life. From the judicial response it is evident that the judiciary has clearly read into article 21, right to life- right to health. Infact it has gone deeper into the meaning of health and by doing so it has substantiated the meaning of right to life.

In the end I would like to state that the right to health is a concomitant to right to life, as a fundamental right and is a major breakthrough in India. The recent practice of activists and judges to treat the directive principles of state policy as fundamental right will go a long way in dispensing socio economic justice to Indian population. The development of specific goals and measurable targets at various scales is widely recognizes as an effective way to channel effort into achieving certain health outcomes. Promotion and protection of human rights can be as powerful as a vaccine. Human rights and health act in synergy when people can confide in a health system that listens to them and responds to their needs, without prejudice or arbitrary judgment. Health and human rights are progressing in parallel, towards a common goal. They project a vision and an approach that may fundamentally and positively improve the lives of people everywhere in the world.
The concept of a ‘right to health’ has much to offer in the protection and preservation of the health of the world’s citizens. The fundamental reciprocity between health and human rights is well established and the need of the hour is to put in place a proper regulatory framework to aid and nurture this synergy. So the right to health can only be protected by extending the protective legislation to over all the people under unified health laws. The universality of human rights, their focus on human dignity and their concern for accountability make them uniquely appropriate for reshaping development cooperation, fostering good governance and combating discrimination, disease and despair to achieve a just and peaceful world.

Since health is a prerequisite for the realization of any of the Human Right. So every member of the community is entitled to the protection of his health. Like many other rights of the individual, the right to health is a composite right. The right to health includes the active and informed participation of individuals and communities in decision-making that bears upon their health. In other words, the right not only attaches importance to health outcomes, but also to the processes by which they are achieved. To ensure the realization of this right a single act of government is hardly sufficient. It has to initiate simultaneously a number of action oriented programmes/measures in this direction-

1. Respect human rights, by refraining from interfering directly or indirectly with the enjoyment of human rights. No health practice, policy, programme, or legal measure should violate human rights.

2. Fulfill human rights by adopting appropriate legislative, administrative, judicial and other measures towards the full realization of health and human rights.

3. Health and human rights experts have a collective responsibility to conceptualize and carry forward the agenda for better and healthier society. Accountability is a vital element of the right to health. Like all human rights, the right to health grants entitlements to some (i.e. individuals and communities) and places legal obligations on others (i.e. primarily states). By
emphasising obligations, it requires that all duty-holders be held to account for their conduct.

4. A national health advisory body should be established in India to regulate health practices and monitor the implementation of health and human rights programs.

5. Opportunities should be made available to the people in the development of health care systems in violations of human rights. The right of the people to access correct information related to health and human rights should be promoted through programmes of information, education and communication.

6. Health care policies need to be about the right to health of the people.

7. Health care system need to be simplified so that the common man can understand and may enjoy the benefits.

8. Health care must be universally available and accessible to all the people.

Our work on Right to Health in India: Law and Practice focused issues related to policy matters in this relation and the extent of their practice in India. An increasing number of countries are trying to realise the legislations pertaining right to health as an important means of achieving the objective of ‘health for all’ in the past few decades. Moreover awareness is increasing among the health activists and the urgency to reach to this goal has led to global movements like ‘people’s health assembly’, which has been replicated in India. Also right to health care should also become a political agenda. To ensure this we need to create a pressure from below which requires awareness and participation of people on a large scale. Synergies have to be created for these efforts to multiply so that people of India can enjoy right to health. Concrete health rights need a sound legal framework for effective implementation. This framework is based on a combination of many international instruments that impart health rights and national laws and Supreme Court judgements that serve as a basis for the realization of human right to health.