

Stipulating citizen's fundamental right to healthcare: Inference from the Constitution of Federal Republic of Nepal 2015

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For the first time in the history of Nepal, it promulgated the Constitution on 20th September 2015. It was a rigorous exercise for Nepal which took the Constituent Assembly over eight years to complete. From the signing of a Comprehensive Peace Accord (CPA) on 21st November 2006 which ended the decade-long armed internal conflict. This constitution has replaced the 'interim' constitution, which was introduced after Nepal declared itself as a Federal Republic in 2007. The interim constitution of Nepal established a number of fundamental rights and guaranteed the full-fledged citizen-sovereignty. Among the major changes of this 2015 constitution is the introduction of a federal structure, although it is also social experiment for Nepal. Nepal has embarked on a bold new direction with its new Constitution covering socioeconomic, health, political and many other aspects of life of the people.

The new Constitution [1] has guaranteed health as a 'fundamental right.' The Article 35 states that: 1) every citizen shall have right to get basic health care free of cost from the state; 2) no one will be restricted from emergency health care; 3) everyone shall have right to get information about his/her health care; 4) every citizen shall have equal access to health care; 4) every citizen shall have right to access to pure drinking water and sanitation. Several articles of the constitution, for example, Articles 17, 18, 28, 30, 35, 38, 39, 40, 42, 51, cover health-related issues from the perspective of

'fundamental rights' to individuals. This constitution has also enshrined health rights of many socially and culturally disadvantaged groups of people such as *Dalits*, people with disability, indigenous communities, and sexual and gender minority population. Similarly, families of martyrs, economically-disadvantaged people have been highlighted to be provided health care, education, having social security rights with priority. This indicates that the constitution aims to end inequalities in health outcomes as it emphasizes equity, which helps close gender and ethnic inequality gaps, and will have a significant impact on access to health care services. Interestingly, Nepal's constitution includes much more on health and health care than for example the Constitution of the United States of America which has no mention of health whatsoever [2] or the Netherlands which mentions health only three times. Of the mentions to health two are legal clauses relating to law enforcement the protection of health, and setting rules for the protection of health, and the third mention in the Dutch constitution of health is about the Government taking measures to promote public health [3].

The fundamental rights and the directive principles in the 2015 constitution constitute a conscience of the nation. Article 51 which is about state policies focuses on the investments in the public health sector, access to quality health care services, promoting traditional medicine, increasing the health institutions and health care professions and insurance policy.

Although the new constitution of Nepal has signaled that there will be a central health policy, the specific responsibilities of different layers of governments in a federal framework towards accessing and providing health care services are yet to be detailed. The leading Nepali political parties are yet to reach a consensus on many federal structures related issues, including demarcation despite having spent the last eight years on discussing federal systems. This has implications for the development of state-level federal health structures, particularly when there is little experience and knowledge about developing and running federal-level health service delivery systems in Nepal. This is an opportune time for us to consider how health structures and health care delivery system in the federal structure of Nepal could effectively be implemented. Above all, 2015 Constitution needs to be accompanied by numerous *orders, directives, acts, laws, by-laws* and *statutes* to address and regulate different legal and practical aspects. From the past experience, it is almost certain that this will take a considerable amount of time.

There are also several challenges to meet the Constitution's commitments towards health and health care; for example, the implementation of its commitment to provide free health care services will require an enormous on-the-ground effort and investment, especially in the rural areas. Similarly, to deal with a very dynamic population structure and epidemiologic transition will be another challenge to meet all the commitments made in the Constitution. The existing health system of Nepal already facing daunting challenges in terms of availability, accessibility and quality care of services along with resource management, particularly in rural areas. Ministry of Health and Population (MOHP) needs to develop a strategic plan of action encompass upgrade the health infrastructures at every level of the federal structure of the nation.

Nepal's health policy has been influenced and/or driven by international declarations and interest of non-governmental organizations and bilateral originations rather than its constitution. For example, the Health Policy 1991 was profoundly influenced by the 1978 Alma Ata declaration emphasizing the provision of community-oriented preventive, promotive, and curative health services [4]. Unlike the previous focus on rural health, the National Health Policy 2014, specifically emphasize on health promotion, creating healthy environments, and service users' participation [5]. The new constitution also reaffirms Nepal's commitment to providing a high quality universal health service grounded in equity and social justice, which is very much compatible with post-2015 Sustainable Development Goals (SDGs). Nepal's free health services initiated in 2008, and has now expanded it to primary health care centers [6], Nepal should grasp the opportunity to make a progressive commitment to universal health coverage [7]. Nepal has a great opportunity to learn

from, and collaborate with, non-governmental development partners and private sectors, and from other governments and organizations around the world, but we must move promptly.

Conflict of interest:

The authors declare that they have no financial or non-financial potential conflicts of interest.

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