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Right to Health pertaining to Scheduled Tribes: An Exposition

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ABSTRACT

The widely accepted definition of health is that given by the WHO in the preamble of its constitution, according to World Health Organization, "Health is a state of complete physical, mental and social wellbeing and not merely the absence of disease. And this Right to health is not included directly in as a fundamental right in the Indian Constitution. The Constitution maker imposed this duty on the state to ensure social and economic justice. The Constitutional directives contained in Articles 38, 39 (e) (f), 42, 47, and 48 A in Part IV of the Constitution of India ensure the obligation on the state to create and to sustain the conditions congenial to good health. If we only see those provisions then we find that some provisions of them have directly or indirectly related to public health. Thus the preamble to the Constitution of India, inter alia, seeks to secure for all its citizens justice-social and economic. It provides a framework for the achievement of the objectives laid down in the preamble. The preamble has been amplified and elaborated in the Directive Principles of State policy. But the question is whether these policies, schemes, and plans of government with regard to health care, reaching the lower sections of people especially scheduled tribes. Further, this paper will focus on aspects like health care policies, problems in implementing, center and states participation, aspects of healthcare, drawbacks in government policies, strategies to improve the approach of providing health care in tribal areas, etc.

Keywords: *Right to health, Directive principles of state policies, social and economic justice, scheduled tribes, health care policies.*

I. INTRODUCTION

According to the census of 2011, in the Indian subcontinent, there are 104 million tribal people who can be grouped into 698 sets of tribes,[2] considering socio-cultural aspects and keeping in mind, their way of life, for the development and protection of tribal's Indian government has made some cornerstone implications in policies like the constitution of India, The Panchayatiraj

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[2] Draft national policy on tribal's, published by government of India

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Extension to Scheduled Areas Act, 1996 shortly known as PESA Act and the Panchsheel agreement.[3]

Even after having allotted policies and direction by the central government the health condition of scheduled tribes is falling and failing. The concept of vulnerable groups is existing even in tribal's.. i.e., women and children, there are numerous deaths caused in these communities because of poor health services, malnutrition, etc. After 72 years of independence, we still lack in providing them education, minimum health care, and Nutritional food which are three main problems. One of the reasons to mention as to depriving tribal's of their natural rights such as health, food, etc. land grabbing by corporate and by the government in some cases is depleting the natural resources which in turn-taking of their livelihood (for example in the borders of Andhrapradesh and Odisha there are some regions under Vishakhapatnam district where there is a good number of the tribal population living and their only source of income is the agriculture of commercial crops like spices, coffee, turmeric, and paddy. If there is any land grabbing in this particular area tribals might lose their livelihood completely). And the unemployment caused due to this sort of act is pushing them into more poverty which is an intern creating a condition where they can't afford health care services.

Many government policies were crafted, to put it in number there are more than 300 policies made by the government, to help and uplift these tribes like Forest Rights Act 2006, Mahatma Gandhi national rural employment guarantee Act 2005, etc. and the budget for these plans is allocated based on the proportion of the population and reports show that fund which is being allocated under tribal sub-plan(TSP) on average is less than 50 percent of what is due. [4] And the situations like heavy militarization in the northeastern parts of India gave rise to many instances of human rights violations and limited access to health care for tribal's etc..

Now the main questions are:

- Nearly after seven decades of independence, do the tribal people still suffer from inequity in health and healthcare compared to others? If yes, why?
- How can this gap be bridged rapidly?

II. PRESENT HEALTH STATUS OF TRIBALS IN INDIA:

The diseases prevalent in tribal areas can be broadly classified into the following categories:

Malnutrition, maternal health, child health, respiratory infections and diarrhea, communicable

[3] Tribal development policy in India by harsh mander
[4] http://www.aptribes.gov.in/budget.html, Last Accessed on 11/11/2019.

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diseases, STD's, typhoid, cholera, hepatitis, viral fevers, TB, leprosy, alcohol consumptions (health issues caused due to alcohol and tobacco usage), hemoglobinopathies (the sickle cell that too mostly in the north-eastern region of India), mental health, orthopedic problems, and gynecological problems

(A) Malnutrition

In the search conducted by the National Nutrition Monitoring Bureau (NNMB), a part of the India Council of Medical Research, found that Recommended Dietary Allowance (RDA) was in overall consumption of various food is less, and except for thiamine and vitamin C of all the nutrients intake were also less. The consumption of protective food as green vegetables, Milk and Milk Products, fats, and oils were well below the recommended levels, this can be inadequacy among most of the younger age group. The indigenous communities of India were a curse to the malnutrition, Anaemia, Malaria. The inadequately was more evident in dietary energy and proteins was due to the food gap resulting in inadequate consumption of vitamin A, iron, riboflavin, and folic acid.[5]

In other studies, it was observed the prevalence of undernutrition was higher among 1-3 years children as compared to 3-5 years children and chronic energy deficiency has reduced by about 9 percent in adult men and by 6 percent in adult women during 1998-1999 to 2007-2008 while the obesity (BMI ≥23) had raised from 3.6 percent to 7 percent among men and 4 to percent in women.[6]

In Kerala a case of Attapady:

In the state of Kerala from the Attapadi region, the statistics with nearly 88 tribal hamlets have over 100 infants death and miscarriages which was due to the lack of nutritious food and proper health care during pregnancy and most of the tribal infants were underweight according to the report of NRHM. The root cause for the malnutrition and lack of essential health care facilities was due to the failure of welfare schemes and land alienation of thousands of hectares of agriculture land by the nontribal people where possession is displaced in further no effort has been taken to restore.[7]

(B) Consumption of Tobacco and Alcohol:

Diseases like Cancer and Tuberculoses were caused due to the consumption of tobacco and

[5] 3rd report by national nutrition monitoring bureau
[6] *ibid*
[7] The Starving Tribals Of Kerala's Attappady: A Shocking Case Of Government Apathy by swarajya staff feb, 26th 2018

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alcohol and according to the Data and XAXA committee report, 2014 shows that in the age group of 15-25 years were consuming tobacco through smoking and chewing of 72 percent Scheduled Tribe and 56 percent non-ST. A study by SEARCH foundation found that consumption of tobacco was high in West Bengal, Bihar, Mizoram, Odisha, and 60 percent, and Gadichrol Distract, Maharashtra in the tribal population and nontribal. The estimated annual expenditure on purchasing tobacco products was more than the expenditure on health and nutrition schemes by the government which is leading to poverty and impedes the development of the tribal population.

(C) Alcoholism, Smoking, and Drug Addiction

Consumption of alcohol is considered to be social rituals and many tribal communities, such a pattern of drinking alcohol among tribal men is a negative effect on their health. At the National level, it is noted that about half of tribal men consume alcohol and lesser then nontribal men. Northeastern states found higher consumption of alcohol and are common tribal youth were Drug abusing and addiction.

(D) Unsafe drinking water and poor sanitation

India census of 2004 show that just of 11 percent of tribal households in the country access to the tap water and 3 percent household tap water from the treated source and 17 percent of scheduled tribe household has access to improved sanitary facilities as compared with 44 percent among nonscheduled tribe households [8]

(E) Poor Public health infrastructure and human resource

Most of the tribal population prefer treatment from gravamen-funded health facilities and depend upon the public health system as the private hospital provides expensive and do not show interest in serving to the tribal people. Therefore it is a great need in improving the public health system there is a lack of Physicians, pediatricians, other facilities, and doctors at the primary health center.

(F) Maternal and Child Health care

There is a gap between scheduled tribal and nonscheduled tribal in institutional delivery due to accessibly terms of economic and social resources. The care for a newborn is about 34 percent for tribal children and 50 percent in Nontribal children. The Condon in rural areas was worse.

Case death due to medical negligence and illegal clinical trials on tribal girls:

[8] http://www.nhm.gov.in/nrhm-components/health-systems-strengthening/tribal-health.html.

Many pharmaceutical companies were been using poor and rural tribal people as "Guinea Pig". The Vaccination which was carried out in Andhra Pradesh and Gujarat in 2007-2012 on as many as 25,000 girls who were recruited for cervical cancer vaccines clinical trials, of where several tribal girls and boys died in a week, which was without the consent of the parents and them, which was a breach of guidelines of ethical norms led by Medical research council of India. [9]

Case: Death of tribal women due to forceful sterilization :

In a policy by the government, women were targeted in the name of population control for which they have to pay the heavy price while their men too are reasonable of family planning, there has been reported dead and casualties of tribal women who have gone through sterilization, where 14 tribal women died, including 2 women from Bagia community which comes under particular vulnerable tribal group and has been adopted by the President of India for protection. The Chhattisgarh private hospital within 30 months nearly 7000 women were subjected to forced operations to remove uteruses where they benefited from the RSBY National Health Insurance Scheme Package money.[10]

This is against the constitutional provisions which show the negligence by the government.

III. PUBLIC POLICIES AND THE HEALTH OF SCHEDULE TRIBES: THE CURRENT SITUATIONS

The Constitution of India is and always had been playing a vital role in encompassing significant provisions to improve the welfare of STs and other tribes. India is known for its discrimination mechanism which we have inculcated within our set of groups of people. In order to overcome these past discriminations, which happens to be one of the oldest problems, a notable approach to positive discrimination is considered.

The Constitution of India deals with this condition through the constitutional provisions which include providing reservations of seats in parliament and state legislatures, jobs, and various other educational institutions.

However, there had been very little focus on public policies and interventions, let it be within the health sector or outside the health sector. A little focus is being given to that part that explicitly aims to improve the health of backward tribal groups, mainly STs and further, reduce

[9] Trial and error : ethical violations of HPV vaccination trials in india.
[10] *Indian mass sterilization : women were forced into camps, says relative* published in "The guardian" news letter

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the inequalities in health between STs and Non-STs.

Further, the earlier thrust of the public policy was to focus on few elements to improve access to care for STs, notably implementing primary health camps and providing additional health funds for purchasing medicines/drugs, for any transportation facility provided for patients, for the fuel in the vehicle use, also for any other such investment as necessary to provide proper health care.

In 1992, the Tribal health plan had come into the picture which consisted of hiring 250 physicians to fill up vacancies. But this goal was implemented and had come into force after four years.

A draft of National Policy on tribals was released in the year 2006 by the Government of India with an intent to address the welfare of STs more generally.[11] This policy had been inspired by Nehruvian Panchasheel, which recognized the multiple facets and challenges faced by the STs, while they attempt to preserve and promote their culture, which in turn have certain limitations to its effectiveness since it has been consistently in the state revisions.

It had been in the news and the report of the Ministry of Tribal Affairs that they are moving towards finalizing the draft of the National Tribal Policy in an integrated manner by 2013, if not then by late 2014.[12] The lacuna is that all the policies that are being drafted with respect to advancing the current universal health debate and acre, quite a lot have been criticized. In addition to recommending increases in resources for health infrastructure, the HLEG report stated that "*a responsive health care system should acknowledge the need to create health HR from within tribal communities, build functional health infrastructure within tribal areas and establish administrative and technical protocols that are compatible with the social framework of these communities.*"[13] Giving out an opinion here, I strongly think that these policies cumulative can form a strong policy in order to develop the health and other welfare in the backward, especially focusing on the STs.

Furthermore, the policies must tend to focus on the health sector that determines the existence of a person, thereby not neglecting access to sanitation, poverty, and also social discrimination. Focusing on this can help one to eliminate the discrimination and various other factors associated with it. STs are held up with extra barriers, and I believe that these policies by implementing them can help them to overcome those additional barriers to access health care and other social

[11] *Draft national policy on tribals,* published by government of India
[12] *Draft national policy on tribals,* published by government of inida
[13] *High level expert group report on universal health coverage for* India instituted by planning commission of India

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determinants of health.

Lastly, the health condition of the ST can be improved and can eliminate social discrimination focusing on three major things.

First, there is a lack of political will and social pressure to address the general welfare of ST's have not reached the level of integration envisioned in the constitution, especially compared to advances made by Scheduled Castes. Moreover, the State is always displacing and disposing of them, which needs to be stopped. If this can be implanted that ST communities can have a resource-rich environment with food health care facilities, eliminating those factors that hamper their socio-economic growth. Their lack of voice must be the media's weapon to fight against all of these discrepancies.

Second, ST specific development programs, which in turn can help their voices to be heard and further, protecting and can make them protect their culture, viewpoints, traditions, values, beliefs, and priorities. Moreover, such an approach exacerbates marginalization experienced by STs, thereby preventing them from resenting their perspectives of their situation and shape public policy accordingly.

Third, there is large internal diversity among ST groups both within states and across the state; therefore, a single universal approach for STs will not be effective. Around 700 different ST groups are living across India. Some STs possess greater resources and yield more power, thereby are better able to articulate demands and benefit from available schemes and benefits. In addition, while there are some local movements such as the struggles for land ownership by the STs in Kerala, there is no real ST movement or initiative to identity ST issues across India that would be able to contribute to or shape public policy at the national level.

IV. DIRECTIVE PRINCIPLES OF STATE POLICY AND THE RIGHT TO HEALTH

The right to health is not explicitly a fundamental right but important to the same is given in the directive principles of the state policy. Most of the provisions enumerated in part IV of the Indian Constitution directly or indirectly gives utmost importance to public health. DPSP directs the state to take measures to improve public health conditions. Article 38 enumerates that the state will secure a social order for the promotion of the welfare of the people. One of the best ways to promote welfare is by providing affordable healthcare. Article 39(e) states that the state should ensure that the health conditions of workers are not abused. Article 41 states that duty is imposed on the state to provide assistance to unemployed, sickness, disablement, and old age. Article 42 protects infants' and mother's health through the maternity benefit scheme. Article 47 imposes a duty on the state to improve public health and mostly includes

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the above stated provisions. Article 48 A provides that the state shall endeavor to protect and impose a pollution-free environment for good health.

Apart from these, some other provisions related to health fall in the 11th schedule and 12th schedule as subjects of panchayats and municipalities, and they include all necessities of health such as drinking water, sanitation, woman and child development, social welfare, etc. Most of the provisions related to health fall in DPSP and they are non-justifiable since they are only directive to the state and no person can raise a claim for non-fulfillment of such duty. To avoid complications in the matter, the judiciary has widely interpreted the concept of the right to health in Article 21 of the Indian Constitution.

V. FUNDAMENTAL RIGHTS AND RIGHT TO HEALTH:

Article 21 states the right to life includes the right to health which makes it implied fundamental right along with this other articles in part III of the Indian Constitution deals with the right to health. In numerous cases, the Supreme Court held that the right to health & medical care is a fundamental right covered by Article 21 since health is essential for making the life of workmen meaningful & purposeful & compatible with personal dignity. Article 23(1) prohibits human trafficking, since most of the women trafficking results in prostitution which leads to the spread of HIV/AIDS. Article 24 deals with child labor in a hazardous environment that aims at protecting their health. Supreme Court in Paramanand Katara v. Union of India[14] held that every doctor, at a government hospital or otherwise has a professional obligation to extend his services with due expertise to protect the life of and patient.

VI. JUDICIAL INTERPRETATIONS IN THE PURVIEW OF THE RIGHT TO HEALTH UNDER THE INDIAN CONSTITUTION

Paschim Banga Khet mazdoor Samity & Ors v. State of West Bengal & Ors,[15] while widening the scope of art 21 and the government's responsibility to provide medical aid to every person in the country, held that in a welfare state, the primary duty of the government is to secure the welfare of the people. Providing adequate medical facilities for the people is an obligation undertaken by the government in a welfare state. The government discharges this obligation by providing medical care to the persons seeking to avail of those facilities. Article 21 imposes an obligation on the state to safeguard the right to life of every person. Preservation of human life is thus of paramount importance. The government hospitals run by the state are duty-bound to extend medical assistance for preserving human life. Failure on the part of a government

[14] Paramanand katara v. Union of India AIR 1989 SC 2039.
[15] *Paschim Banga Khet mazdoor Samity & ors v. State of West Bengal & ors* (1996) 4 SCC 37.

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hospital to provide timely medical treatment to a person in need of such treatment results in a violation of his right to life guaranteed under Article21. The Court made a certain additional direction in respect of serious medical cases:

- Adequate facilities are provided at the public health centers where the patient can be given basic treatment and his condition stabilized.
- Hospitals at the district and sub-divisional levels should be upgraded so that serious cases be treated there.
- Facilities for given specialist treatment should be increased and having regard to the growing needs, it must be made available at the district and sub-divisional level hospitals.
- In order to ensure the availability of a bed in an emergency at State level hospitals, there should be a centralized communication system so that the patient can be sent immediately to the hospital where the bed is available in respect of the treatment, which is required.
- The proper arrangement of the ambulance should be made for the transport of a patient from the public health center to the State hospital.
- Ambulance should be adequately provided with necessary equipment and medical staff

Paramanand Katara v Union of India[16] ruled that every doctor whether at a Government hospital or otherwise has the professional obligation to extend his services with due expertise for protecting life. No law or State action can intervene to avoid delay, the discharge of the paramount obligation cast upon members of the medical profession. The obligation being total, absolute, and paramount, laws of procedure whether in statutes or otherwise which would interfere with the discharge of this obligation cannot be sustained, and must, therefore, give way. The Court laid down the following guidelines for doctors when an injured person approaches them:

1. Duty of a doctor when an injured person approaches him: Whenever, on such occasions, a man of the medical profession is approached by an injured person, and if he finds that whatever assistance he could give is not really sufficient to save the life of the person, but some better assistance is necessary, it is the duty of the man in the medical

[16] *Paramanand Katara v Union of India* AIR 1989 SC 2039

profession so approached to render all the help which he could, and also see that the person reaches the proper expert as early as possible.

2. Legal protection to doctors treating injured persons: A doctor does not contravene the law of the land by proceeding to treat an injured victim on his appearance before him, either by himself or with others. Zonal regulations and classifications cannot operate as fetters in the discharge of the obligation, even if the victim is sent elsewhere under local rules, and regardless of the involvement of the police. The 1985 decision of the Standing Committee on Forensic Medicine is an effective guideline.
3. No legal bar on doctors from attending to the injured persons: There is no legal impediment for a medical professional when he is called upon or requested to attend to an injured person needing his medical assistance immediately. The effort to save the person should be the top priority, not only of the medical professional, but even if the police or any other citizen who happens to be connected with the matter, or who happens to notice such an incident or a situation

Bandhua Mukti Morcha v Union of India[17], the court delineated the scope of art 21 of the Constitution and held that it is the fundamental right of everyone in this country, assured under the interpretation given to art 21 by this court in Francis Mullin's Case to live with human dignity, free from exploitation. This right to live with human dignity enshrined in art 21 derives its life breath from the directive principles of state policy and particularly clause (e) and (f) of art 39 and arts 41 and 42. It must include protection of the health and strength of workers, men, and women; and children of tender age against abuse; opportunities and facilities for children to develop in a healthy manner and conditions of freedom and dignity; educational facilities; just and humane conditions of work and maternity relief. These are the minimum requirements, which must exist in order to enable a person to live with human dignity. No state, neither the central government nor any state government, has the right to take any action which will deprive a person of the enjoyment of these essentials.

In *CESC Ltd. vs. Subash Chandra Bose*[18], the Supreme Court relied on international instruments and concluded that the right to health is a fundamental right. It went further and observed that health is not merely the absence of sickness: "The term health implies more than an absence of sickness. Medical care and health facilities not only protect against sickness but also ensure stable manpower for economic development. Facilities of health and medical care

[17] *Bandhua Mukti Morcha v Union of India* AIR 1997 10 SCC 549
[18] *CESC Ltd. vs. Subash Chandra Bose* AIR 1992 SC 573,585

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generate devotion and dedication to give the workers' best, physically as well as mentally, in productivity. It enables the worker to enjoy the fruit of his labor, to keep him physically fit and mentally alert for leading a successful economic, social, and cultural life. The medical facilities are, therefore, part of social security and like gilt-edged security, it would yield immediate return in the increased production or at any rate reduce absenteeism on grounds of sickness, etc.

T. Damodar Rao and others vs. Special Officer, Municipal Corporation of Hyderabad[19], the legitimate duty of the Courts as the enforcing organs of the constitutional objectives to forbid all actions of the State and the citizens from upsetting the ecological and environmental balance and also In *Virender Gaur vs. the State of Haryana*[20], the Supreme Court held that environmental, ecological, air and water pollution, etc., should be regarded as amounting to a violation of the right to health guaranteed by Article 21 of the Constitution. It is right to state that a hygienic environment is an integral facet of the right to a healthy life and it would not be possible to live with human dignity without a humane and healthy environment.

VII. RECOMMENDATIONS

1. **Protection and Promotion of indigenous health system and traditional herbal medicines**: Government should take up measures to protect and promote the traditional herbal medicines of indigenous peoples and ensures the ownership of the community over their herbal treatment practices. Training must be provided to traditional healers with improved technology to ensure better health care in remote villages.

2. **Ensure equal access to health care and services for indigenous communities**: For indigenous communities to have access to health care and services, the government must provide adequate health care infrastructure, quality services, and functional establishments, emergency drugs and essential drugs available at all times to the indigenous people suffering from peculiar disease and for sickle cell disease, this disease is prevalent mostly in Bhil belt from Rajasthan, Maharashtra, Gujarat, and Madhya Pradesh. Care must be taken to ensure that paramedic staff is made available to all the Indigenous Communities. Similarly, a labour room, functional Operation Theatre (OT), and newborn care corner are necessary. It must also provide take up special measures such as regular health check-up and monitoring for education to arrest malnutrition and child marriages, Institutional rehabilitation of physically and mentally challenged tribal children, and regular mobile health services for remotely located

[19] *T. Damodar Rao and others vs. Special Officer, Municipal Corporation of Hyderabad* AIR 1987 AP 171.
[20] *Virender Gaur vs. State of Haryana* 1995 (2) SCC 577.

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PVTG/MVTs who are on the verge of extinction.

3. **Indigenous women's right to health must be considered from a gender perspective**: Today's healthy adolescent girls are the future mother of healthy children. Therefore, indigenous women's right to health must be considered from a gender perspective.

4. **Information, Education, and Communication**: activities addressing the issue of hypertension need to be strengthened in these areas. Increased awareness about the condition through health education like Malnutrition, Anemia, and there should be a program for tribal women and children for Malaria Nutrition and early diagnosis and prompt treatment will prevent consequences. And the state should ensure that tribal people should avail three times meal and safe drinking water.

5. **Immediate and serious corrective policy measures**: Corrective policy measures and intervention to address the issues of alcoholism, drugs abuse and consumption of tobacco among indigenous/tribal population is necessary.

6. **Implementation of the provisions of UNDRIP**: Government must take cognition of indigenous peoples' right to health as enshrined in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and take necessary measures to realize the rights to health of indigenous people.

7. **Decentralization of healthcare:** Healthcare governance through administrative and political reforms through active participation of public and health workers.

VIII. CONCLUSION

While there is an increasing body of research highlighting the high burden of health needs faced by STs, we continue to lag in developing a solid evidence base on how to improve the health of STs. There are currently programs already in place, such as medical camps, yet we have little knowledge to the extent that these camps are effective and potential options to improve or build upon these camps to meet the health needs of ST communities. And although there is a range of Towards Better Health of Scheduled Tribes. factors that are affecting ST health, there has been little research on the social determinants of health. We, therefore, conclude this chapter with recommendations for two main avenues of research. First, we recommend undertaking evaluative research on medical camps to understand the extent that they can effectively target and meet the needs of STs. Such work could identify how medical camps might be scaled-up and better adapted to service the diverse ST communities across the country. Second, there should be efforts to undertake a body of work on the social determinants

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of ST health, including both theoretical and empirical studies. This work should include an analysis of the full range of social determinants of health, as well as intervention and policy options. Any research that is undertaken, however, should be pursued adopting the highest ethical standards possible and integrating STs views and priorities into both the research and policy process.

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