CHAPTER - III

RIGHT TO HEALTH: AN INTERNATIONAL SCENARIO

The right to health is one of the economic, social, and cultural Human Right that requires affirmative government action to create better conditions for people rather than just government restraints vis-à-vis citizens. Historically speaking, Internationally, the right to health has roots in the 19th century public health movement in Europe, and in the United States, which produced sanitation reforms in the middle of 19th century that were designed to reduce the burden of infectious diseases.

Early efforts to control infectious disease dates back to the 14th century when the city states of Europe undertook measures to protect their citizens from epidemics caused by diseases brought by trading ships. Venice, a powerful city state of that time, was credited with having been the first to have passed laws-called “Quarantine Laws”- requiring all ships to anchor outside the city for a period of 40 days before being allowed into the port to unload its passengers and cargo. These efforts of the government were done in self-interest to protect its own citizens.1 But infectious disease control measures had never been kind to individuals.

The notion that individuals had rights in the context of government efforts to control diseases did not, however, exist until later, even after the development of civil and political rights in countries such as the US and Britain. The prevailing attitude throughout the history of public health efforts was that individuals had obligations, not rights, when government attempted to control

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the spread of disease. These actions could not be interpreted as a human right approach to public health, but they contained following two ideas important to the later Human Rights movement in public health.

First, in Britain much opposition to quarantines came from persons of liberal principles who believed that they were used by the state for purposes other than those of protection against epidemic disease. In such opposition, was the notion that the government’s legitimate interest in disease control had to be tailored narrowly to public health needs so as not to interfere arbitrarily with individual freedom.

Second, the British sanitary reforms in 1842, carried with them the idea that government had positive duties to provide for public health. Prior to these reforms, hygiene and health were viewed as personal responsibilities and ill health and disease as the consequence of wrongful behaviour. Government public health activities were limited to quarantine practices, trying to keep diseases out, rather than improving conditions domestically, that would reduce disease problems. The success of the British sanitary reforms led to the position that protecting the public health was the responsibility of the government.

But it would be wrong to see these notions as clear antecedents for modern International Human Rights thinking on public health. Even under the strong protection for individual liberty provided by the US Constitution, Individual liberty was subordinated to compulsory public health measures. In *Jacobson v. Massachusetts*, the US Supreme Court for the first time considered

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an individual's claim that a compulsory government health measure—smallpox vaccination, violated his constitutional right to liberty and security of person. The Court held that compulsory vaccination did not violate Jacobson's liberty because constitutionally protected liberty was not absolute and there were manifold restraints to which every person was necessarily subject for common good. The decision of this case indicated a recognition that individual rights were not completely irrelevant in the field of public health, which echoed the liberal sentiments in British opposition to quarantine.

Nonetheless, these reform efforts helped to solidify the belief that governments had a fundamental duty to provide for and protect the public health. In the Human Rights revolution, the government's duty in the health field was translated into the right to health. The first expression of this right in an international legal instrument, came in the Constitution of the WHO in 1946.5

The first declaration of right to health was followed by many declarations and treaties that proclaimed the existence of the right to health, such as Article 25 of the UDHR (Universal Declaration of Human Rights; Article 12 of the (ICESCR) International Covenant on Economic, Social and Cultural Rights; Declaration of Alma Ata (1978); and World Health Declaration (1998) adopted by the World Health Assembly.6

In the Human Rights context, infectious disease control implicates the right to life, liberty and security of person, privacy, health, an adequate standard of living, food, housing, education, development and other rights. Infectious diseases cut across both civil and political rights, and economic, social and cultural rights. In

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addition, the Human Rights dimension is expansive because virtually every measure of disease control has Human Rights implications.

(A) **World Health Organization’s Conception of Health**

As seen in the previous chapter, in WHO’s Constitution, ‘health’ was defined, not negatively or narrowly as the absence of disease or infirmity, but positively and broadly as “a state of complete physical, mental and social well being”, the enjoyment of which should be part of the rightful heritage of “every human being without distinction of race, religion, political belief, economic or social condition”.7 In the same spirit as the UN charter, the Preamble of the WHO asserted that the principles it states are basic to the happiness, harmonious relations and security of all people, thus expressing a modern set of universal aspirations. Health, it says, is an essential condition for their attainment, and the highest possible attainment of health is a fundamental right of every human being without distinction of any kind.8

The Preamble went on to analyse the obligation of nations to contribute to the health of their people. This obligation is not imposed from the outside, but followed from the fundamental rights of every human being, and therefore, of humanity as a whole.

From the fundamental right to health of every human being, the Preamble moves to the health of all people, observing that this is fundamental to their attainment of peace and security, and depends on the fullest cooperation of individuals. It also states the connection between health, peace and security which is self-evident when diseases coupled with poverty and other social ills destabilize

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7 *supra* note 5.
8 Certain rights such as to health, or to life, liberty and the pursuit of happiness-can not be granted or denied by any government because they are fundamental, inalienable human rights which all the human beings possess. Frank P. Grad, “The Preamble of the Constitution Of the World Health Organisation.” (2002) 80:12 Bulletin of WHO 981-982, at 981. 
governments and societies. The Preamble notes that the achievement of any state in the promotion and protection of health is of value to all. For the fullest attainment of health, the benefits of medical, psychological, and related knowledge must be extended to all people. This principle serves as a reminder that the availability of essential knowledge, and medicines must not be stopped at any national border9, and that such interference must not be tolerated for any political or economic reasons. The Preamble further acknowledges another precondition for accomplishing WHO's task, that is, the responsibility of government for the health of their people can be met only by the provision of adequate health and social measures. This means that not only government action but also social and economic measures are needed if the responsibility of states for the health of their people is to be fulfilled. The very mention of this suggests awareness of need for flexibility in the development of health policies. Affirming the principles of the Preamble to the WHO's Constitution, it sought to achieve a more equitable distribution of health resources so as to attain a level of health for the people of the world to live "socially and economically productive lives".10 The vision was not achieved but health for all remains a sound target.

The Preamble of the WHO requires the acceptance of its principles by the member states. It asserts that this is needed for cooperation among countries to promote and protect the health of not only their own people but of all people. Health is understood to be a fundamental human right, it may well be judged to overcome narrow constraints of nationality and sovereignty and to argue for an even more active WHO role in the future.11

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9 Id at 982.
10 supra note 4 at 5.
11 Ibid.
Dimensions of Health

The concept of health is multidimensional. The WHO definition envisages three specific dimensions—the physical, the mental and the social. Many more dimensions may be added, such as spiritual, emotional, vocational and political. As the knowledge base grows, the list may be expanding, although these dimensions function and interact with one another, each has its distinct nature.

The physical dimension of health or the state of physical health implies the notion of “Perfect functioning of the body. It conceptualizes health biologically as a state in which every cell and every organ is functioning at optimum capacity and in perfect harmony with the rest of the body. At the community level, the state of health may be assessed by such indicators as death rate, infant mortality rate and expectation of life. Ideally, each piece of information should be individually useful and when combined should permit a more complete health profile of individuals and communities.\(^\text{12}\)

The dimension of mental health does not mean mere absence of mental illness. Good mental health is ability to respond to the many varied experiences of life with flexibility and a sense of purpose. More recently, mental health has been defined as:

“a state of balance between individual and the surrounding world, a state of harmony between oneself and others, a coexistence between the realities of the self and that of other people and that of the environment.”\(^\text{13}\)

Mental health is an essential component of health; the scientific foundations of mental health are not yet clear. Therefore,

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\(^{12}\) supra note 4 at 22.

there are no precise tools to assess the state of mental health unlike physical health.¹⁴

The social dimensions of health implies harmony and integration within the individual, between each individual and other members of society and between individuals and the world in which they live. It has been defined as the ‘quantity and quality of an individual’s interpersonal ties and the extent of involvement with the community.’¹⁵ It includes the levels of social skills one possesses, social functioning and the ability to see oneself as a member of a larger society. In general, social health takes into account that every individual is part of a family and of wider community and focuses on social and economic conditions and well being of the “whole person” in the context of his social network. Social health is rooted in “positive material environmental” and “positive human environment” which is concerned with social network.¹⁶

WHO’s 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.¹⁷ 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 communities. Some consider it irrelevant to everyone demands, as nobody qualifies as healthy, i.e. perfect biological, psychological and social functioning. Inspite of these limitations, the

¹⁴ supra note 4 at 23.
¹⁵ Ibid.
¹⁶ Ibid.
¹⁷ In more recent years this statement has been amplified to include the ability to lead a “Socially and Economically Productive Life”. http://www.women-fitness.org (accessed on August 3, 2009).
concept of health, as defined by WHO is broad and positive in its implications, it sets out the standard of “positive” health. It symbolizes the aspirations of people and represents an overall objective or goal towards which nations should strive.18

The WHO definition of health is not operational definition, i.e. it does not lend itself to direct measurement. Studies of epidemiology of health have been hampered because of our inability to measure health and well being directly. In this connection an operational definition has been devised by a WHO study group.19 In this definition, the concept of health is viewed as being of two orders. In a broad sense, health can be seen as “a condition of quality of the human organism expressing the adequate functioning of the organism in given conditions, genetic or environmental.” In the narrow sense health means: (a) no obvious evidence of disease, and that a person is functioning normally, i.e. conforming within normal limits of variation to the standards of health criteria generally accepted for one’s age, sex community, and geographic region, and (b) the several organs of the body functioning adequately in themselves and in relation to one another, which implies a kind of equilibrium or homeostasis a condition relatively by stable but which may vary as human being adapt to internal or external stimuli.20

(C) Universal Declaration of Human Rights (UDHR), 1948

To give further impetus to the health of people, the Universal Declaration of Human Rights, 1948 (UDHR) in its preamble proposes or affirms everyone’s “right to a standard of living adequate for the health and well being of himself and his family, including food, clothing housing and medical care and necessary social

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19 Ibid.
20 Ibid.
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.\textsuperscript{21}

\textbf{Article 25 of the UDHR} laid down the foundations for the international legal framework for the right to health,\textsuperscript{22} which is precondition for enjoyment of all other Human Rights.

The objective of Article 25(1) is to recognize that persons entitled to rights should have a sufficiency of the necessary means for the right to life, liberty and security of persons, as explicitly recognized in article 3 of the Declaration to be fully exercised and for the person entitled to the right to have control over the destiny of his person and that of his family.\textsuperscript{23} However, the declaration does not make the holder of rights alone responsible for the quality of his life, since it explicitly recognizes in Article 22 the right to social security, thereby constituting a debt vis-à-vis the society of which the holder of rights is a member.\textsuperscript{24}

A state’s failure to recognize or acknowledge health problems that preferentially affect a marginalized or stigmatized group may violate the right to non-discrimination by leading to neglect of necessary services, and in so doing, may adversely affect the

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\item \textsuperscript{21} \url{http://www.pubmedcentral.nih.gov/articlerender.fcgi?artid=1446905} (accessed on May 15, 2009).
\item \textsuperscript{22} Article 25 UDHR reads as (1) Everyone has the right to a standard of living adequate for the health and well being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection. \url{http://www.un.org/en/documents/udhr/} (accessed on May 23, 2009).
\item \textsuperscript{23} Article 3 of UDHR says “Everyone has the right to life, liberty and security of person. Article 22 reads as everyone, as a member of society, has the right to social security and is entitled to realization, national effort and international co-operation and in accordance with the organization and resources of each state, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.” \url{http://www.un.org/en/documents/udhr/} (accessed on May 23, 2009).
\item \textsuperscript{24} H.O. Aggarwal ‘Human Rights’ at 38 (2007).
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realization of other rights, including the rights to “security in the event of sickness or disability” or to the “special care and assistance” to which mothers and children are entitled.

Although the UDHR is not a legally binding document, yet nations have endowed it with a tremendous legitimacy through their actions, including invoking it legally and politically at the national and international levels. The key international Human Rights treaties, i.e. the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) further elaborated the contents of the rights set out in the Universal Declaration of Human rights, and contained legally binding obligations for the governments that become parties to them.

(D) **INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS 1966 (ICESCR):**

Economic, social and cultural Rights as embodied in the text of the ICESCR (which includes inter alia the right to work, to fair condition of employment, to join and form trade unions, to social security, housing, health, education and culture) have formed an integral part of the internationally recognized catalogue of Human Rights as developed since 1945.

The rights to the highest attainable standard of health in international Human Rights law is a claim to a set of social arrangements norms, institutions, laws and enabling environment, that can best secure the enjoyment of this right. And, the most authoritative interpretation of the right to health is outlined in Article 12 of the ICESCR 1966. Article 12(1) states as follows:

“The state Parties to the present covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
(2) The steps to be taken by state parties to the present covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
(b) The improvement of all aspects of environmental and industrial hygiene;
(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.\(^\text{25}\)

ICESCR definition of ‘health’ differentiates the two attributes of health—physical and mental well-being, and is specifically concerned with assigning particular responsibilities to the governmental health sector; it assigns obligations relevant to social well being to the same governments under other articles of the treaty.\(^\text{26}\)

The multiform nature of the right of health forms a coherent whole in the text of the Covenant, a means of attaining the full development of the right to life and integrity of the human person, a means of recognizing the right of each individual to what the community owes him, and a means of creating duties under state responsibility to contribute to the satisfaction of the individual aspirations of citizens.

Both aspects of the right to health care (the “protective” part and the “facilitating” part) are included in the ICESCR. The steps to be taken to achieve the realization of this right are to include both “protective” elements (reduction of the stillbirth-rate, and the prevention, treatment and control of epidemic, endemic, occupational and other diseases), as well as “facilitative” elements the creation of conditions which would assure to all medical services and medical


attention in the event of sickness. Both aspects taken in conjunction could be termed as a “right to care for human health”.

(E) **The International Covenant on Civil and Political Rights, 1966 (ICCPR):** Article 21 of ICCPR merely talks about placing various reasonable restrictions on the right to peaceful assembly, including the restriction for the protection of public health.27

(F) **Declaration of Alma.Atta 1978, and Riga 1988**

The vital need for greater social justice in order to improve health was first brought sharply, into focus at 30th World Health Assembly held at Geneva in May 1977, when it was decided, that the main social goal of governments and the WHO in the coming decades should be the attainment by all the people of the world by the year 2000, a level of health that would permit them to lead a socially and economically productive life. This is known as “Health for All by the year 2000.”28

The following year in 1978 WHO and the United Nation International Children Emergency Fund (UNICEF) jointly convened an international conference on Primary Health Care at Alma-Ata, in Soviet Kazakhstan (the USSR) which was attended by delegates from 134 member states, and by 67 representatives of UNO specialized agencies and NGOs. The Declaration affirmed health as Human Rights in its first Principle. This declaration of 1978 emerged as a

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27 "The right to peaceful assembly shall be recognized. No restrictions may be placed on this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (Ordre public), the protection of public health, or morals or the protection of the rights and freedoms of others. Article 21 of ICCPR 1966 visit http://www2.ohchr.org/English/Law/ccpr.htm (accessed on May 20, 2009).

major milestone of twentieth century in the field of public health. Following are excerpts from the declaration:\(^{29}\)

- The conference strongly reaffirms that health, is a fundamental human right and that the attainment of the highest possible level of health is a most important worldwide social goal whose realization requires the action of many other social and economic sectors in addition to the health sector.
- The existing gross inequality in the health status of the people, particularly between developed and developing countries as well as within countries, is politically, socially and economically unacceptable and is, therefore, of common concern to all countries.
- The people have a right and duty to participate individually and collectively in the planning and implementation of their health care.
- Primary health care is essential health care based on practical; scientifically sound, and socially acceptable methods and technology, made universally accessible to individuals and families in the community through their full participation and at a cost that the community and country can afford to maintain at every stage of their development in the spirit of self reliance and self determination. It forms an integral part both of the country’s health system, of which it is the central function and main focus is all over social and economic development of the community. It is the first level of contact of individuals, the family and community with the national health system bringing health care as close as possible to where

people live and work, and constitutes the first elements of a continuing health care process.

- An acceptable level of health for all the people of the world by the year 2000 can be attained through a fuller and better use of the world’s resources, a considerable part of which is now spent on armaments and military conflicts. A genuine policy could well be devoted to peaceful aims and to the primary health care, as an essential part, should be allotted its proper share.

It is useful to quote Dr. Halfdan Mahler, Director General Emeritus of WHO (1973-1988) Who at that time of declaration stated:

“Health is not a commodity that is given. It must be generated from within. Health action should not be imposed from the outside, foreign to the people; it must be a response of the communities to problems they perceive, supported by an adequate infrastructure. This is the essence of the filtering inwards process of primary health care.”30

A decade later, another meeting was convened at the Riga city in Latvia (Russia) in 1988 attended by experts from all regions as well as by representative of the WHO, UNDP & NGOs.31 The contribution from Riga proved to be very important. It arose from the opportunity to bring together people who were widely experienced in grappling with the most serious of the world health problems, so that they could undertake a careful analysis of the impact of Alma Ata and WHO’s strategy for health for all through primary health care. The result of that analysis as “Alma Ata Reaffirmed at Riga”- helped to shape the decisions of the 41st World Health Assembly in 1988.32

30 Ibid
32 Id. at 13.
WHO’s World Health Declaration 1998

The World Health Organisation’s lead in focusing on health rights at the series of UN World Conferences of the 1990’s, has stimulated an enhanced awareness and activity among WHO programmes and policy documents, especially “Health For All” in the 21st century. The WHO for the first time, in the “Informal Consultation on Health and Human Rights” in 1997, brought together experts in Human Rights, international law and public health, representatives of the office of the High Commissioner for Human Rights (OHCHR) and other United Nations bodies as well as WHO staff from Head Quarter and Regional offices. The objectives of the consultation were to advise the WHO on (i) mainstreaming a health and Human Right approach, and (ii) Partnerships with entities concerned with Human Rights.\textsuperscript{33}

Participants paid tribute to the key landmarks in endeavours to promote health as Human Rights from the 1946 constitution via the pivotal primary health care strategy, with its emphasis on equity and justice in health care systems to the recent draft World Health Declaration. Despite these milestones, and the recognition of health concerns at all, the UN global conferences, the concept of the right to health still needs to be carefully defined. In underscoring the links between health and Human Rights, it was noted that not only the enjoyment of health is a pre-condition for the enjoyment of all other Human Right, but the promotion and protection of other rights were indispensable for the full realization of the right to health. Nevertheless, it was agreed that in the implementation of these rights, a sanction based approach should be avoided.

It was also observed that there are signs of a widening gap between rich and the poor, which precludes the achievement of

\textsuperscript{33} supra note 4, at 12.
sustainable health for all, and special attention here was given to particularly vulnerable population groups. Human Rights standards must, therefore, be integrated into health and development theory and practice. In this respect, health status indicators were considered an excellent tool to detect, monitor and redress the denial of Human Rights.34

Thus the report of the ‘Informal Consultation on Health and Human Rights’ (December 1997) provided a template for further work in this area. In a resolution adopted on 27 January 1998, the Executive Board of the World Health Organisation recommended that the 51st World Health Assembly should adopt the World Health Declaration. Following the resolution, the 51st World Health Assembly in its 10th plenary meeting on 16 May 1998, adopted the World Health Declaration.35

This 1998 Declaration intended to ensure the availability of the essentials of primary health care as defined in the Declaration of Alma Ata and developed a new policy. It ensures to develop health systems to respond to the current and anticipated health conditions, socio-economic circumstances and need of people, communities and countries concerned, through appropriately managed public and private actions and investment for health.

Health is not perceived in the same way by biomedical scientists, social science specialists, health administrators and ecologists and this gives rise to confusion about the concept of health. The medical profession viewed the human body as a machine, disease as a consequence of the breakdown of the machine and one of the doctor’s task as repair of the machine.36

35 Ibid.
36 supra note 18 at 27.
Contemporary developments in social sciences revealed that health is not only a biomedical phenomenon, but one which is influenced by social, psychological, cultural, economic and political factors of the people concerned. These factors must be taken into consideration in defining and measuring health. While considering the importance of psycho-social factors, the 29th World Health Assembly of the WHO took note of psychological and social health and setup a 'WHO Centre on Research and Training on Psychological Factors' in Stockholm. The holistic approach implies that all sectors of society have an effects on health, in particular, agriculture, animal husbandry, food, industry education, housing, public works, communications and other sectors. The emphasis is on the promotion and protection of health.

(H) Human Genetics as a Health Matter

Human genetics is also becoming a predominant health matter in our society and an individual’s genetic composition, a progressively more important determinant of his health. Now a days, medical genetics offers hope for prevention and treatment of a wide spectrum of diseases, thus the prospect of better medicine and longer, healthier life. This knowledge will help the people to achieve better health; the individual has the opportunity to assert greater control over his life and long lasting suffering can be reduced and sometimes avoided. The benefits and disadvantages of screening programmes for individuals, families and societies will need to be carefully assessed. These advances will only be acceptable if applied in an ethical manner. One understands the difficulty of the community to grasp the real significance of genetic problems, and its concern about the achievements of the Human Genome Project, which in reality does not raise any new problem but contain, and

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37 Id, at 12.
38 Ibid.
magnifies the complexity of many basic ethical, legal, and social issue.

In order to regulate human genetics research for the well being of mankind the first international legal instrument that specifically prohibits any discrimination against a person on the basis of his genetic heritage and only authorizes predictive testing for genitive disease with a medical objective was signed by 22 member states of the Council of Europe on 4 April 1997 known as the **European Convention on Human Rights and Biomedicine**.\(^\text{39}\) The successful cloning of an adult sheep by a team of scientists in Scotland in March 1997, although offering interesting opportunities to advance biomedical research on diagnosis and treatment of diseases affecting human beings, raised great concern the world over, because of the potential implications of cloning procedure is human reproduction. The same year, the World Health Assembly adopted by consensus resolution **WHA 50.37** affirming that: “the use of cloning for the replication of human individuals is ethically unacceptable and contrary to human integrity and morality”.\(^\text{40}\)

Further, **Universal Declaration on the Human Genome and Human Rights** was adopted unanimously by the General Conference of UNESCO on 11 November 1997, striking a balance between safeguarding respect for human dignity freedom and Human Rights and the need to ensure freedom of research, while emphasizing the

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prohibition of all forms of discrimination based on genetic characteristics.41

Human rights, including the right to health, are often said to be “Interdependent.” Clearly, the right to the highest attainable standard of health rests on the right to safe and healthy working conditions, clean water, and freedom from environmental toxins, but it depends in equal measure on the recognition of the dignity of the individual and the right to education, free speech, and participation in political process. Conversely, the ability to fully exercise other fundamental human rights depends on the rights to health. Violation of any human right, including the right to health, contributes to the infringement of other rights.42

I Health vis-à-vis Life Style of Individuals

Behaviour is of importance to health, either directly through learned lifestyles or indirectly in the environmental and socio-economic context. Health requires the promotion of healthy life style.

In the last 20 years, a considerable evidence has accumulated which indicates that there is an association between health and lifestyle of individuals.43 Many current day health problems especially in the developed countries (e.g.-coronary heart disease, obesity,

41 Article 10 prohibits research or research application concerning the human genome, in particular in the field of biology, genetics and medicine as such research should not over respect for the human rights, fundamental freedoms and human dignity of individuals or, where applicable, of groups of people. Article 11 bans practices which are contrary to human dignity such as reproductive cloning of human beings.

Article 12 provides that:
(a) Benefits from advances in biology, genetics and medicine, concerning the human genome, shall be made available to all, with due regard for the dignity and human rights of each individual.
(b) The applications of research, including applications in biology, genetics and medicine concerning the human genome, shall seek to offer relief from suffering and improve the health of individuals and human kind as a whole. See for more details, http://www2.ohchr.org/english/law/genome.htm (accessed on August 3, 2009).


43 Supra note 4 at 17.
depression, anxiety disorders lung cancer, drug addiction) are associated with life style changes. In developing countries such as India where traditional lifestyles still persist, risks of illness and death are connected with lack of sanitation, poor nutrition, personal hygiene, elementary human habits, customs and cultural patterns.

World Health Organisation’s, World Health Report 1995 corroborates these findings, stating that lifestyle-related diseases and conditions are responsible for 70-80% of deaths in developed countries and about 40% in the developing world. Even in developing countries, the situation is expected to worsen in the future with a growing number of life style related diseases, attributed to the rapid emergence in the middle class of unhealthy dietary and behavioural changes.44

All the lifestyle factors are not harmful, but there are many that can actually promote health, such as adequate nutrition, enough sleep, sufficient physical activity etc. thus the achievement of optimum health demands adoption of health styles because health is both a consequence of an individual lifestyle and a factor of determining it. That is why World Health Organisation has adopted some priority areas for International action. WHO’s World Health Report 1997 indicates six priority areas for international action,45

Six priority areas for international action in health should be:
1. Integration of disease-specific interventions in both physical and mental health into a comprehensive chronic disease control package that incorporates prevention, diagnosis, treatment and rehabilitation and improved training of health professionals.
2. Fuller application of existing cost effective methods of disease detection and management, including improved screening, taking into account the genetic diversity of individuals.
3. A major intensified but sustained global campaign to encourage healthy lifestyles, with an emphasis on the healthy development of children and adolescents in relation to risk factors such as diet, exercise and smoking.
4. Healthy public policies, including sustainable financing, and legislation on pricing and taxation, in support of disease prevention programmes.

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(J) Environment and Health

Moreover, the environment is usually defined as the aggregate of all the external conditions and influences affecting the life and the development of an organism. It can be divided into physical, biological and psycho-social components, any or all of which can affect the health of man and his susceptibility to illness. It is an established fact that environment has a direct impact on the physical, mental and social well being of those living in it. As lifestyle changes, some health hazards are controlled or eliminated, while new ones are generated. Some epidemiologists have used the term microenvironment (or domestic environment) to personal environment which includes the individual’s way of living and lifestyle e.g. eating habits, other personal habits (e.g. smoking or drinking) use of drugs etc.

In the poor and least developed countries the domestic environment remains a major factor of ill health, linked with lack of access to safe water supplies and adequate basic sanitation, upon which the control of many infectious diseases largely depend. If the environment is favourable to the individual, he can make full use of his physical and mental capabilities. But in the industrialized countries there is considerable concern about the adverse health effects of continuing environmental degradation : notably, pollution,

(5) Acceleration of research into new drugs and vaccines, and into the genetic determinants of chronic diseases.
(6) Alleviation of pain, reduction of suffering and provision of palliative care for those who cannot be cured.

the uncontrolled dumping of chemical wastes, and the transport and storage of potentially dangerous substances, especially nuclear wastes. Another environmental threat is the depletion of the ozone layer, predicted to result in global climate changes. Changes in climatic conditions may have an impact on public health,\textsuperscript{47} W.H.O has studied the impact of the depletion of the ozone layer on health and analysed the potential impact of global climate change on health.

In the 21\textsuperscript{st} century, developing countries will still be coping, possibly even more intensively, with the environmental health consequences of the lack of basic sanitation, unsafe water, uncontrolled industrial developments and haphazard urbanization. In June 1992, the \textit{Earth summit} held in Rio de Janeiro, Brazil heralded a new approach to development and environmental planning. By adopting the principles of the \textit{Rio Declaration} and \textbf{Agenda 21 (U.N. 1993)} as the route to sustainable development in the 21\textsuperscript{st} century, the world’s leaders stressed that development is about meeting the needs of people, their health, their well being, their lives, and the environment upon which they depend. In environmental policies, the protection of health occupies an important place but is not necessarily a predominant concern.\textsuperscript{48} So there is a need to strike a balance between the protection of environment and the public health.

\textbf{(K) Women and Health}

The gender concept was first used in 1970’s to describe those characteristics of men and women which are socially constructed in contrast to those which are biologically determined\textsuperscript{49}. A gender


\textsuperscript{48} Supra note 46, at 141-42.

perspective leads to a better understanding of the factors that influence the health of women and men. The 1990’s have witnessed an increased concentration on women’s issue, the role of women in development and women’s health; however, in many countries of the world, women’s health is still not a priority for policy makers and when on their agenda this is usually in the context of maternal and child health.

As per the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) adopted by UN at Copenhagen in 1979, a Committee was established in 1982.\textsuperscript{50} It consisted of 23 members with expertise in international women’s human rights as representatives of their governments. Article 21 of the convention empowers the committee to make General Recommendations about specific provisions of the convention and on the relation between the articles and issues that the committee has described as “cross-cutting”. As of January 2004, the CEDAW committee had adopted 25 General Recommendations. The most relevant to health is General Recommendation 24 on women and health (1999). It might be particularly useful for World Health Organisation in working with governments on improving women’s health. Recommendation on women and health requires government to eliminate discrimination against women in their access to health care services, throughout the life cycle/particularly in the areas of family planning, pregnancy, confinement and during post natal

\textsuperscript{50} CEDAW emerged as the comprehensive treaty on women’s rights. The process of compiling on overall treaty was facilitated by the first global conference on women, in 1975 International Women’s Year Conference in Mexico City, and was by this occasion elevated to on of the priority areas on the UN agenda. The CEDAW was signed by 64 states. Since 1st January 2008 responsibility for serving the committee on the elimination of discrimination against women has been transferred to the office of the High Commissioner for Human Rights in Geneva. For details visit. \texttt{http://www2.unhabitat.org/programme/genderpolicy/CEDAW.asp}. \texttt{http://www.un.org/womenwatch/daw/cedaw/history.htm}. \texttt{http://www.un.org/womenwatch/daw/cedaw}. (accessed on August 3, 2009).
period. The health status of vulnerable groups of women—rural, minority, older and disabled was also of interest to the CEDAW. The CEDAW requested that governments should report on health legislation, plans and policies for women with reliable data, desaggregated by sex, on the incidence and severity of diseases and conditions hazardous to women’s health and nutrition and on the availability and cost effectiveness of preventive and curative measures. Other General Recommendations that addressed issues of women’s health include: 51

- **General Recommendation No. 14, on Female Circumcision, 1990**

  The Committee on the Elimination of Discrimination against women showed concern about the continuation of the practice of female circumcision and other traditional practices harmful to the health of women. The committee recommended that state parties should take appropriate and effective measures with a view to eradicating the practice of female circumcision and must include in their national health policies appropriate strategies aimed at eradicating this practice, and could include in this special responsibility to health personnel.52

- **General Recommendation No. 15 on Women and AIDS 1990**

  This suggested avoidance of discrimination against women in national strategies for the prevention and control of acquired immunodeficiency syndrome (AIDS). It also recommended that the state parties would intensify efforts in disseminating information to increase public awareness of the risk of HIV infection and AIDS,

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52 Ibid.
especially in women and children, ensuring active participation of women in primary health care.\textsuperscript{53}

- **General Recommendation No. 18, on Disabled Women, 1991**

  The committee on the elimination of discrimination against women taking into consideration, the situation of disabled women, who suffer a double discrimination linked to their special living conditions, showed concern that disabled women are vulnerable group and it recommended that state parties would provide information on disabled women in their periodic reports relating to access to education and employment, health services and social security and they should participate in all areas of social and cultural life.\textsuperscript{54}

- **General Recommendation No. 19, On Violence Against Women, 1992.**

  The committee recommended that the state parties should take appropriate and effective measures to overcome all forms of gender based violence, whether by public or private act. Effective measures should be taken to ensure that the media respect and promote respect for women. Specific preventive and punitive measures to overcome trafficking and sexual exploitation. Measures that are necessary to overcome family violence. Rehabilitation programmes for perpetrators of domestic violence. Effective legal measures including penal sanctions, compensatory provisions.\textsuperscript{55}

- **General Recommendation No. 21, On Equality In Marriage And Family Relation, 1994.**

  The committee stressed that the provision of General recommendation 19 concerning violence against women have great

\textsuperscript{53} Ibid.  
\textsuperscript{54} Ibid.  
\textsuperscript{55} Ibid.
significance for women’s abilities to enjoy rights and freedoms on an equal basis with men. States parties are urged to comply with that general recommendation to ensure that, in both public and family life, women will be free of the gender based violence that so seriously impedes their rights and freedoms as individuals.\footnote{ Ibid.}

- \textbf{General Recommendation No. 25, 1995, on Article 4(1) temporary special measures, 2004.}

The convention recommended that state parties make more use of temporary special measures such as positive action, preferential treatment or quota systems to advance women’s integration into education, the economy, politics and employment.

The committee’s interpretation of non-discrimination in the context of women’s health is based on the programme of action elaborated at the 1994 \textit{International Conference on Population and Development (Cairo)} and the platform of action adopted at the 1995 \textit{Fourth World Conference on Women (Beijing)}. These international agreements provided information to the CEDAW committee on international and national political commitments to women’s sexual and reproductive health and rights.\footnote{World Health Organization 2007. Women’s Health and Human Rights : Monitoring the implementation of CEDAW http://www.un.org/womenwatch/daw/cedawrecomendations/index.html and http://WHO2006.wwwWho.int/reproductive-health/ (accessed on May 19, 2009).}

Thus, rights relating to reproductive and sexual health care of women are found in a variety of International sources. Human Rights that are set forth in treaties like the ICCPR, the ICESCR, the Convention on the rights of the child, CEDAW, etc include:\footnote{Ashok K. Jain, “Socio legal off shoots – the Saga of female foeticide in India” at 78 (2006).}

(i) Right to life, survival, security and sexuality.
(ii) Right to reproductive self determination and free choice of maternity.

(iii) Right to health and the benefits of scientific progress

(iv) Right to education, information and decision making. In addition, certain legal principles have been identified as fundamental to the provision of reproductive health services.

(v) Informed decision making

(vi) Decision making free from any form of coercion.

(vii) Privacy

(viii) Confidentiality

(ix) Competent delivery of services, and

(x) Safety and efficacy of products

In addition to these treaties, there are a number of key International Policy documents that set norms on International human rights relating to health.

The UN held a series of international human rights and population conferences that also dealt directly with women's reproductive rights. In a number of due process cases, the US Supreme Court has protected the right of reproductive autonomy by carving out a sphere of personal family life that is immune from government intrusion. The US Supreme Court has long recognized that freedom of personal choice in matters of marriage and family life is one of the liberties protected by due process.59

59 In Roe v. Wade, 410 US 113 (1973) The court struck down a texas law that made abortion a criminal offence, on the ground that the law violated a woman's constitutional right of privacy under the due process of the fourteenth Amendment. Justice Blackmun's majority opinion stipulated that in the first and second trimesters of pregnancy the states power to regulate abortion was either non-existent or subordinate to the women's right to decide the question of birth or abortion. Only in the third trimester might the state prohibit abortion outright, and
Similarly, with regard to children’s health, the world declaration and plan of action, adopted at the 1990 World Summit for children included the targeted reductions in infant and child mortality as well as targeted increases in access to basic services for health to be achieved in children’s health by the year 2000.

The UN Convention On The Rights Of The Child 1989 held at New York proclaimed in article 6 that every child has the inherent right to life and that the state parties should ensure to the maximum extent possible the survival and development of the child. Article 24 of the Convention of Rights of Child (1989) has directed states to ensure access to essential health services for the child and his or her family, including the advantages of breast feeding, pre and post natal care for mothers. Art. 27 of the said convention states that the State parties in case of need, shall provide

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60 The said Convention 1989 was adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 on 20 November 1989, entry into force on 2 September, 1990. The preamble to the present convention considers, childhood is entitled to special care and assistance, the child by reason of his physical and mental immaturity needs special safeguards and care, including appropriate legal protection, before as well as after birth. For details visit http://www2.ohchr.org/english/law/pdf/crc.pdf (accessed on September 27, 2009).

61 Art. 24(1) of the convention reads as, “State parties recognize the right of the child to the enjoyment of highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. State parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.” And the said article also talks about to take appropriate measures to combat disease and malnutrition through the provision of adequate nutritious food, clean drinking water and health care.”
material assistance and support programmes, particularly with regard to nutrition, clothing, and housing.

Again, Article 32 of the convention mandates the states parties to recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.\(^{62}\)

Certain Conventions developed under the auspices of the International Labour Organisation (ILO) relate to the protection of children from harmful work and prohibit the worst form of child

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\(^{62}\) Art. 27 of the convention reads as:

1. States Parties recognize the right of every child to standard of living adequate for the child’s physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the condition of living necessary for the child’s development.
3. States parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.
4. States parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate agreements.

Article 32 states that:

1. States parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.
2. States parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, State parties shall in particular:
   (a) Provide for a minimum age or minimum ages for admission to employment.
   (b) Provide for appropriate regulation of the hours and conditions of employment.
   (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

\(\text{http://www.cirp.org/library/ethics/UN-convention/}\) (accessed on August 3, 2009)
labour, including slavery and similar practices such as the compulsory recruitment of children into armed forces.63

An increasing number of countries have succeeded in improving the health and well-being of mothers, babies and children in recent years, with noticeable results. However, despite much good work over the years, 10.6 million children and 529000 mothers are still dying each year, mostly from avoidable causes. Progress has, therefore, been patchy and unless it is accelerated significantly, there is little hope of reducing maternal mortality by three quarters and child mortality by two thirds by the target date of 2015—the targets set by the Millennium Declaration.64

Several provisions have also been made at the regional and non-governmental level relevant to children’s health rights.

According to World Health Report 2007, the need to provide sanitation both for drinking water and hygiene remains a huge challenge today in developing countries. As per its estimate 1.1 billion people lack access to safe water and 2.6 billion people lack access to proper sanitation. As a result, more than 4500 children under five years of age die every day from easily preventable diseases such as diarrhoea. Many others, including older children and adults, especially women, suffer from poor health, diminished productivity and missed opportunities for education.65

(M) Various Declarations/Conventions in Relation to Health: International and Regional

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Unlike many other international rights the right to adequate health is not contained in a single specific treaty, but is subsumed under other treaties and resolutions. The right to adequate health operates directly or indirectly as a prerequisite to all other human rights recognized in treaties, to deny someone health care is to deny or damage all that individual’s rights.

Various declarations both at international and regional levels have been made from time to time to tackle different health related issues. Few important of these are discussed as under:66

M(i) Declaration on the Rights of Mentally Retarded Persons, UN (1971)

This convention reaffirms the universal protection of the right to adequate health and mandates proper care be provided for the mentally retarded. They should receive aid that allows them to reach their full potential as human beings.

“The mentally retarded person has a right to proper medical care and physical therapy and to such education training, rehabilitation and guidance as will enable him to develop his ability and maximum potential.”67

M(ii) Universal Declaration on the Eradication of Hunger and Malnutrition (1974)

This declaration establishes the right of all people to nutrition and sustenance sufficient to ensure their well being. It states that:

“Every man, woman and child has the inalienable right to be free from hunger and malnutrition in order to develop fully and maintain their physical and mental faculties. It is a fundamental responsibility of Governments to work together for higher food production and a more equitable and efficient distribution of food between countries and within countries.

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Governments should initiate immediately a greater concerted attack on chronic malnutrition and deficiency diseases among the vulnerable and lower income groups. All state should strive to the utmost to readjust, where appropriate, their agricultural policies to give priority to food production, recognizing, in this connection the interrelationship between the world food problem and international trade.68

M(iii) Declaration on the Right of Disabled Persons (1975)

This declaration reaffirms the universal protection of the right to adequate health and establishes that the disabled have the right to receive the special care they need. It states that:

“Disabled persons have the right to medical, psychological and functional treatment, including prosthetic and Orthotic appliances, to medical and social rehabilitation, education, vocational training and rehabilitation, aid counseling, placement services and other services which will enable them to develop their capabilities and skills to the maximum and will hasten the processes of their social integration or reintegration.”69

Regional Declarations/Charters

M(iv) American Declaration of the Rights and Duties of Man (1948)

This Declaration serves as the basic guidance documents concerning human rights within each member nation. It establishes the rights of all citizens to adequate care and gives special consideration to the needs of women and children.

Article 7 of the Declaration states that, “All women, during pregnancy and the nursing period, and all children have the right to special protection, care and aid.”


Article 11 further says that, “Every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources.”


This charter is the basic human rights guidance document of the African Union and establishes the right to adequate health of all Africans and the protection of all Africans from conditions and treatment deleterious to their health.

Article 4 of this charter reads as that, “Every human being shall be entitled to respect for his life and the integrity of his person.”

Article 5 further states that, “All forms of exploitation and degradation of man particularly slavery, slave trade, torture cruel, inhuman or degrading punishment and treatment shall be prohibited.”

Article 16 directly speaks about individual’s right to enjoy physical and mental health by saying that, “Every individual shall have the right to enjoy the best attainable state of physical and mental health states parties to the present charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.”

Article 18 further directs that, “The state shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions. The aged and the disabled shall also have the right to special protection in keeping with their physical or moral needs.”

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70 This Declaration was the world’s first international human rights instrument of a general nature, predating the Universal Declaration of Human Rights by more than six months. This Declaration was adopted by the nations of the Americas at the Ninth International Conference of American States in Bogota, Colombia in April 1948. The terms of the Declaration are still enforced with respect to those states that have not ratified the convention; such as Cuba and the United States. http://en.wikipedia.org/wiki/American-Declaration-of-the-rights-and-duties-of-man (accessed on August 3, 2009)

71 African Charter on Human and Peoples’ Rights was adopted by the Assembly of Heads of State and Government at its sixteenth Ordinary Session held in Monrovia, Liberia, from 17 to 20 July, 1979. Which came into effect on 21 October 1986 – in
M(vi) African Charter on the Rights and Welfare of the Child
(1990)

This charter outlined the basic rights of the African child, including provisions describing the health care and health care protection needed by children.72

Article 5 of this charter explains that every child has an inherent right to life. This right shall be protected by law. The state parties to the present charter shall ensure to the maximum extent possible, the survival, protection and development of the child. Death sentence shall not be pronounced for crimes committed by children.

Article 11 talks about the promotion of the child’s understanding of primary health care.

Article 13 describes that every child who is mentally or physically disabled shall have the right to special measures of protection in keeping with his physical and moral needs and under conditions which ensure his dignity, promote his self-reliance and active participation in the community.

Article 14 gives every child the right to enjoy the best attainable state of physical, mental and spiritual health. It directs States parties to the present charter to undertake to pursue the full implementation of this right and in particular should take measures: to reduce infant and child mortality rate, to ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care; to ensure the provision of adequate nutrition and safe drinking water; to combat disease and malnutrition within the framework of primary health

72 honour of which 21 October was declared “African Human Rights day”. As of 15 June 2009, 53 countries have ratified the charter. The interpretation of the charter is the task of the African Commission on Human and Peoples’ Rights, which was set up in 1987 and is now headquartered in Banjul, Gambia. http://en.wikipedia.org/wiki/African-charter-on-human-and-peoples'-rights.

http://www.achpr.Org/english/-info/charter-en.html. (accessed on August 3, 2009). The charter was adopted by the organization of African Unity (OAU) in 1990 and was entered into force in 1999. Till, (2004), 35 countries have ratified the African Charter on Rights and Welfare of Child. As on October 2008, ACRWC has been ratified by 43 of the 53 countries in the continent. The children’s charter originated because the member states of the A.U. believed that the CRC missed important socio-cultural and economic realities particular to Africa.

care through the application of appropriate technology; to ensure appropriate health care for expectant and nursing mothers, to develop preventive health care and family life education and provision of service to integrate basic health services programmes in national development plans, the advantages of breastfeeding; hygiene and environmental sanitation and prevention of domestic and other accidents. The mobilization of local community resources in the development of primary health care for children.

**Article 15** promotes the dissemination of information on hazards of child labour to all sectors of the community.

**Article 27** directs the state parties to the present charter to undertake to protect the child from all forms of sexual exploitation and sexual abuse and should in particular take measures to prevent, the inducement, coercion, or encouragement of a child to engage in any sexual activity, the use of children in prostitution or other sexual practices, the use of children in pornographic activities, performances and material.

**Article 28** further mandates that the State Parties to the present charter should take all appropriate measures to protect the child from the use of narcotics and illicit use of psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the production and trafficking of such substances.


This convention is a guidance document that establishes the basic rights of all European citizens including protection from actions and conditions deleterious to good health.73

**Article 3** of the said convention states that, “no one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

**Article 4** reads as “no one shall be held in slavery or servitude.”

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73 This convention was opened for signature in 1950 in Rome. It was ratified and entered into force on 3 September, 1953. All Council of Europe member states are party to the convention. [http://en.wikipedia.org/wiki/European-Convention_on_Human-Rights](http://en.wikipedia.org/wiki/European-Convention_on_Human-Rights) (accessed on August 3, 2009).
Role of International and Regional Organizations/Non-Profit Organizations in Relation to Health

Besides these, the following international and regional organisations aimed at determining and solving health problems of the developing world and the poor in the developed world.

N(i) International Committee of the Red Cross and Red Crescent (ICRC)

ICRC was established in 1863 at Geneva (Switzerland) directs the action of the international Red Cross and Red crescent Movements. The organization owes its legitimacy from the ratifying parties of the 1864 Geneva convention. ICRC functions in the war time to give aid and care to soldiers and civilians. ICRC also participates in efforts to relieve the suffering of peoples outside of war whether through sending food to starving peoples or by providing medical care, equipment and drugs to those who need them.74

N(ii) Food and Agriculture Organization of the United Nations (FAO)

The FAO was established by the United Nations in 1945 at Rome (Italy) to improve and increase agricultural production and help to alleviate the problems of famine and malnutrition. The FAO provides assistance grants to states to help them increase their food production and gives advice to states on efforts that can improve the productivity of their land and help to relieve the pressure of starvation in their country.75

N(iii) United Nations Children’s Fund (UNICEF)

The UNICEF was established in 1946 and its headquarter is in New York in US. UNICEF works to improve the welfare of children

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75 FAO is specialized agency of the UN to defeat hunger. It has 191 members States. FAO was established in Canada, but in 1951 its headquarter were shifted to Rome (Italy). [http://en.wikipedia.org/wiki/food-and-agriculture-organization](http://en.wikipedia.org/wiki/food-and-agriculture-organization) (accessed on August 3, 2009)
throughout the world. It promotes educational initiatives for children and helps to reduce child and infant mortality through direct intervention in countries where children suffer from disease, malnutrition and war. It also funds and collaborates with government and non-profit groups to shape nations policies in favour of the welfare and health of children.76

N(iv) United Nations High Commissioner for Refugees (UNHCR)

The UNHCR was established by UN mandate in 1950 its headquarters is in Geneva, Switzerland to serve as the UN’s instrument for refugee protection. Refugees health care is compromised because they are not citizens of the country in which they are forced to reside. Therefore, it falls upon the UNHCR to guarantee that needs of displaced peoples are met regardless of their nation of origin or status within their nation or residence.77

N(v) The Global Fund to Fight AIDS, Tuberculosis and Malaria

This was established in 2001 by Untied Nations to Fight AIDS, Tuberculosis and Malaria. It serves to distribute funding to nation­wide projects in countries with a high disease burden. Public, private, and governmental groups may apply for funding to facilitate the development and improvement of the health infrastructure within their country.78

N(vi) Oxfam International

Oxfam international was originally founded in England in 1942 and focuses its efforts on relieving famine injustice and poverty, through grassroots organization in over 100 countries. Oxfam’s

76 www.tagd.org.uk/Beinformed/About US/History UNICEF.as-Px (accessed on August 3, 2009)
78 It is the largest international funder of programs to combat Malaria and tuberculosis providing two-thirds of all financing. Monitoring of programs is supported by a Secretariat in Genava. http://en.wikipedia.org/wiki/The-Global-Fund-to-fight-AIDS-Tuberculosis-and-Malaria. (accessed on August 3, 2009)
efforts is not specifically related as a health organization, but also to reduce famine, poverty, and war. Thus, it makes substantial contributions towards improving international health.\textsuperscript{79}

**N(vii) Project Hope (Health Opportunities for People Everywhere)**

Project Hope was established in 1958 in USA by William B. Walsh M.D. He created HOPE after observing poor health conditions in the South Pacific, in particular deaths of young children that could have been prevented via administration of simple medical knowledge and care. HOPE’s mission is to achieve sustainable advances in health care around the world by implementing health education programs, conducting health policy research, and programs, conducting health policy research, women’s and children’s health and providing humanitarian assistance in areas of need.\textsuperscript{80}

**N(viii) Global Health Council**

The Global Health Council is also the world’s largest membership alliance dedicated to saving lives by improving health throughout the world. Its headquarters is in Washington, DC. The Global Health Council, formerly the National Council of International Health, is a US based, non profit membership organization that was created in 1972 to identify priority world health problems and to report on them to the U.S public, legislators, international and domestic government agencies, academic institutions and global health community. Global Health community has a diverse membership comprised of health care professionals and organizations that include NGOs, foundations, corporations,

\textsuperscript{79} It was founded by a group of Quakers, social activist, and Oxford Academics, this is now Oxfam Great Britain, Still based in Oxford, U.K. It is a confederation of 13 organizations working with over 3,000 partners in more than 100 countries. http://en.wikipedia.org/wiki/oxfam (accessed on August 3, 2009)

\textsuperscript{80} http://en.wikipedia.org/wiki/project-Hope-%28USA%29 (accessed on August 3, 2009)
government agencies and academic institutions that work to ensure global health for all.\textsuperscript{81}

**N(ix) Soros Foundations Network**

The soros foundation, was founded by George Soros in 1991.\textsuperscript{82} It is a subgroup of the open society initiative. Its headquarter is in New York. The soros foundation promotes a variety of social justice initiatives that aim to improve health infrastructure, access to medicines, maternal and prenatal care as well as care for terminal patients and the elderly.\textsuperscript{83}

**N(x) Bill and Melinda Gates Foundation**

The Gates foundation, established by Bill and Melinda Gates in 2000, provides grants for a diverse array of public service projects, including global health initiatives such as the development of cheap and effective drugs. The foundation also provides grants to organization’s both public and private, for the improvement of health care system infrastructure, development of educational material regarding health, and development of novel and effective disease prevention methods.\textsuperscript{84}

The above discussion shows that the “right to health” all over the world extends to all things which promote health and well being and prevents illness and diseases, not just access to medical care. This includes among many others, the right to education, food and shelter; freedom from discrimination and persecution; and right to information and to the benefits of science. The complex linkage between health and human rights is mainly based on a three part framework, all of which are inter-connected and has substantial practical consequences. First is the positive and negative impact of

\textsuperscript{81} \url{http://en.wikipedia.org/wiki/global-health-council} (accessed on August 3, 2009)
\textsuperscript{82} \url{http://www.soros.org/about/overview} (accessed on May 18, 2009).
\textsuperscript{83} \url{http://www1.umn.edu/humanrts/edumat/studyguides/right_to_health} (accessed on August 3, 2009)
\textsuperscript{84} \textit{Ibid}
health policies, programs and practices on Human Rights, which focuses on the use of state power in the context of public health. The second relationship is based on the understanding that Human Rights violations have health impact. This process engages health expertise and methodologies in helping to understand how well being is affected by Human rights violations. The third is based on the proposition that promotion and protection of Human Rights and promotion and protection of health are fundamentally linked. This intrinsic linkage has strategic implications and potentially dramatic practical consequences for work in each domain. The examples of the linkages between health and human rights is shown in the chart below.

**Linkages between health and Human Rights**

The former secretary general of the United Nations, Kofi Annan, in his report to the *Millennium Summit*, in 2000 in the United States, called on the international community at the highest level, the

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85 supra note 4 at 41.
Heads of States and Governments to adopt the target of halving the proportion of people living in extreme poverty, and so lifting more than 1 billion people out of it, by 2015. He further urged that no effort be spared to reach this target by that date in every region, and in every country.86

The health agenda is very much in evidence in the Millennium Development Goals. This emphasis on health reflects a global consensus that ill health is an important dimension of poverty in its own right. Improving health is a condition for poverty alleviation and reduction of inequalities. Mother and child health is clearly on the International agenda even in the absence of universal access to reproductive health services as a special Millennium Development Goal. Globally, we are making progress towards the Millennium Development Goals in maternal and child health.87

Health is a common theme in most cultures. In fact, all communities have their concepts of health, as part of their culture. An understanding of health is the basis of all health care.

In brief, health as a social system is, perhaps, the widest conception of health in traditional sociology of health. Health is an important cog in the social machine. There has to be equilibrium in the social system. Poor health becomes dysfunctional and a cost to the society. Therefore, the society should take care of the sick.

There is a need to pay attention to the intersection of health and Human Rights, which would help in reorienting thoughts about major global health challenges, and would thus contribute in broadening Human Rights thought and practice relating to health worldwide.

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87 supra note 64 at 7