CHAPTER – VIII

CONCLUSION AND SUGGESTIONS

Health has been declared as a fundamental human right. This implies that the State has a responsibility for the health of its people. National governments all over the world are striving to expand and improve their health care services. Health care system of any State must have certain institutional characteristics to realize the right to health. This includes the availability, accessibility, acceptability and quality of needed health care services and facilities. “Availability” means that the State party has sufficient facilities and services for the population given the country’s State of development. Services include those that affect the underlying determinants of health, such as safe and potable drinking water. “Accessibility” to health care facilities and services include the four dimensions: non-discrimination, physical accessibility, economic accessibility and information accessibility. “Acceptability” means that services and facilities must be respectful of medical ethics and culturally appropriate as well as being designed to respect confidentiality and improve the health status of those served. “Quality” means that services must also be scientifically and medically appropriate and of good quality.¹

Thus, by including these rights the Indian Supreme Court has not only taken the right to life to new horizons but transform negative duties of the State into positive and affirmative obligations.

Justice Ramaswami has made unique and valuable contribution to declare the right to health as a human right and fundamental right under the Constitution. He took assistance from the provisions of the

Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights and Constitution of India. Justice Bhagwati and Justice Krishna Iyer are called champions to recognize Civil and Political Rights in Part III of the Constitution. Justice Ramaswami may be called as champion to recognize economic, social and cultural rights as human right and fundamental right under the Constitution. He stated that the right to health is the most important aspect of social justice. It is obligation of the State to improve public health. The contribution of the learned Judge was recognized by the Government and other bodies. The National Human Rights Commission (NHRC) has made important recommendations regarding human right to health in its Annual Reports. In its Annual Report 2001-2002, the Commission has stated that intrinsic to the dignity and worth of human person is the enjoyment of the right to health. The right to health is a fundamental right under Article 21 of the Constitution. The Commission has made important recommendations regarding access to health care, tobacco control and nutrition and HIV/AIDS. The Government of India, the National Human Rights Commission (NHRC) and Non-Government Organizations initiate a movement to enrich and strengthen the human right to health and prevent the dangers affecting public health. For the proper and effective implementation of the human right to health, it should be made a compulsory subject in competitive examinations. The Union Public Service Commission (UPSC) should recognize health as a compulsory subject in its examinations. In modern times, physical education and health has been recognized as a subject of teaching in Universities and higher education. Several states have recognized physical education as a subject in secondary education. To build a strong and powerful nation, the human right to health should be recognized and implemented.
properly and effectively and health education must be made compulsory.\textsuperscript{2}

In India the vastness of the land area, huge population and shortage of resources constitute immense drawbacks in making available a quality health care service for all. Even the basic health care is denied to a large population for reasons of their poverty and illiteracy. Lack of infrastructure and lack of initiative are the major stumbling blocks in the way of putting in place quality health care services thereby depriving a large population in general and the rural masses in particular of a reasonable health care. In India sixty seven million children under the age of five years (over 53% children in India in that age) live without basic health care facilities. This means that India alone accounts for about one-third of all children in the world aged below five who don’t have basic health care.\textsuperscript{3} According to the latest global report, which examined 55 countries that together account for 59 per cent of the world’s under-five population and 83 per cent of the deaths among these children, India ranks 27\textsuperscript{th} along with Ghana Eritrea when it comes to providing basic health care to its children, which includes life-saving interventions like prenatal care, skilled child birth, immunization and treatment for diarrhea and pneumonia. The report – ‘state of the World’s Mothers’ – brought out by global humanitarian organization ‘Save the Children’, says that India is seeing alarming inequalities with respect to health services reaching the poorest child and the wealthiest. The report says that while 66 per cent of the poorest children in India receive no or minimal healthcare, the number stands at 31 per cent of well-off children, who are not covered.\textsuperscript{4}


\textsuperscript{4} Cf Sama Char. Com. 08 May 2008, quoting The Time of India.
Huge amounts of money are spent on defense sector compared to social service sector. In the 2007-2008 budget Rs. 96,000 crore (US$ 22 million) was allocated for defense while only Rs. 9,321 crore (about US$ 2 billion) was allocated for social services (which includes education, health care and broadcasting out of the allocation of about US$ 2 billion for social services health care receives an insignificant amount. The sharp rise in the defense budget and the relatively low allocation for social services in India is evident from the budgetary allocation for the two sectors for the past few years as shown in the table below. India is the world's No. 2 arms importer after China, shelling out more than $ 10 billion on arms imports between 2002 and 2006.5

<table>
<thead>
<tr>
<th>Year</th>
<th>Welfare</th>
<th>Defense</th>
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<tbody>
<tr>
<td>2001-02</td>
<td>57,000</td>
<td>67,000</td>
</tr>
<tr>
<td>2002-03</td>
<td>67,000</td>
<td>59,200</td>
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<td>2003-04</td>
<td>59,200</td>
<td>77,000</td>
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<td>2004-05</td>
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<td>2005-06</td>
<td>83,000</td>
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<tr>
<td>2006-07</td>
<td>89,000</td>
<td>96,000</td>
</tr>
<tr>
<td>2007-08</td>
<td>96,000</td>
<td>9,321</td>
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Source: Indian Budget for the Relevant Years.

In a recent report the Federation of Indian Chambers of Commerce and Industry (FICCI) has viewed that access to quality health care in India is gradually diminishing. In order to arrest the trend and solve the crisis the sector would need an investment of about $202.75 billion. India's health care situation requires much faster growth rate as it would require 2.2 million beds. FICCI has suggested PPP (Public-Private Partnership) model to bridge this huge deficit. At present there is lack of regular framework and the sector attracts substandard private health care providers and quacks. There is slow implementation of the accreditation process that impacts the quality of

health care. The larger population does not have health insurance. There is shortage of adequately trained health care professionals leading to poor quality of service delivery. Absence of infrastructure status and appropriate incentive restrict private sector entry to rural and semi-urban area where 72.2 per cent of Indian population lives. The urban areas attract better professionals and larger investment. These areas have 60 per cent of the hospitals 80 per cent of the doctors and 755 dispensaries, which leave little for the rural areas making it nearly impossible for the rural people especially poor to avail a quality health care service. FICCI has suggested ways to attract private investment in health sector including Foreign Direct Investment (FDI), following PPP route and expanding medical education and training. It has suggested for the government to grant industrial status to the sector, government to grant industrial status to the sector, making provision for soft loans from public sector banks and reducing custom duty on medical equipments. It has also suggested bilateral initiative like Joint Economic Trade Committee (JETCO) between Britain and India, business to business facilitation for British and Indian companies for medical equipment.\(^6\)

The innovative judicial strategy is most needed in the field of health care. In India it is a national imperative to transform the non-justiciable state’s duty to improve public health into a statutorily enforceable basic human right or need.\(^7\)

Although process has been made in the provision of better health care services for the people, much remains to be desired. Even in new millennium there are countries where proper and affordable health care

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remains a distant dream for the people. Many governments, even in
developed countries, have failed to pay an adequate, effective and
responsible role in the management of health care services in public
sector which is not in good order. The infrastructure, the facilities, the
medical and the supportive manpower are inadequate and the
equipment is either worn out or in sufficient to cater to actual needs,
the insufficient funds that are made available for the health care sector
in most countries render it ineffective and inequitable. The private
sector health care facilities are certainly better but unaffordable for the
poor. The political prerogative gives the governments an absolute
direction discretion in fixing the priorities for various sectors of national
development. In the process of prioritization the health care services
have suffered especially in the developing and the underdeveloped
countries. The targets fixed by international and regional institutions for
investment in the health care sector have not been met. Corruption is
eating up much of the resources that are supposed to be used for
various developmental and welfare activities including health care.
Surely, this is not a satisfactory situation. Health care deserves high
priority, as good health is necessary for a good mind, which produces
good thinking and good thinking in turn generates better policies and
planning. Denial of proper and reasonable health care may tantamount
to a denial of human right. In the premise ‘law’ cannot afford to remain
a silent spectator. Rather than being responsive, it has to play a more
proactive role. Judicial activism may serve a good cause in helping
humanity. Let it be made mandatory for the governments to allocate a
minimum of 20 per cent of their budget for social services, 50 per cent
of which should be reserved for the health care. That would help
improve medical services and put doctors in a better position to
observe their duty to care to their patients.
The judgment of *State of Punjab v. Lubhaya Bagga*\(^8\) shows a clear change in the policy of the Court with regard to the right to health. In this case the Court observed that the right of one person correlates to a duty upon another, individual, employer, government or authority. Hence, the right of a citizen to live under Article 21 casts an obligation on the State. This obligation is further reinforced under Article 47; it is for the State to secure health to its citizens as its primary duty. No doubt the government is rendering this obligation by opening governmental hospitals and health centres, but to be meaningful, they must be within the reach of its people and of sufficient liquid quality. This bitter reality has been experienced by the legal systems of many developing nations. For example in the case of Vietnam, the Constitution of 1980, included the right to health care and the State guaranteed free medical examination and treatment but upon the country facing an economic crunch, this right was deleted and a narrower right which provides that “the citizen is entitled to a regime of health population” was accorded. The tragic choice of resources seems to be a reality, which may be seriously contemplated while according the right to health. This is not only the case with developing nations like India but is also true for developed and resource laden countries like the U.K. and the U.S.\(^9\) The choice that has to be made is between having a narrow, resource based, right to health accorded to the citizens or to having a wide and idealistic right of health which has no connection with the amount of resources available. The argument in favour of having the former is that only through such a system can be accorded rights, which can realistically availed. One can avoid a situation where there is “loss of faith” in the judiciary and the legal system as a whole. This would bring a great amount of certainty in the

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rights available to the citizens and would make them more concrete while in favour of the latter, it can argue that only when a wide right of health is granted, can the bounds of the rights that can be realistically be availed be increased when one would consider the resources before considering the extent of rights available, one would not be able to increase the resources made available for such purposes.\textsuperscript{10}

The other major argument in support of this is that the real problem is not one of “lack of resources” but of “improper allocation of resources”. Corruption, undersized budgets allocated to the health sector, are some of the examples of such improper allocation. In the face of such a situation a resource – based system of rights would not be correct solution. Keeping in view the situation in India, where the courts have not followed a resource based system of rights for the last decade or so, it is submitted that the best solution would be to try out this system of rights (as the courts have already started doing), while trying to tackle the problem of “improper allocation of resources” through other channels.

The goal of extending the benefits of sustainable health over an expanding life span to all members of the human family is the cardinal tenet of public health and medicine. Prevention of disease and good health, instead of cure of illness alone, has to be the emphasis. Considerable progress in that direction has been made and yet the goal remains a distant dream in the developing nations. While the average life expectancy in India has risen to 62.9 years (1998), the threat posed by the rise in incidence in India has risen of diseases like cancer, cardio-vascular disease and HIV/AIDS, etc. pose greater threat to more people. The need, therefore, is to prevent the higher incidence of these diseases and ensure availability of life saving drugs at

\textsuperscript{10} As Michael Freedman puts it, “The existence of the right to a good ensures that some of it will be available to any right bearer, M., Rights, Buckingham Open up, p.192.
affordable price to those afflicted inspite of the impact of the TRIPS regime. The role of research in medical sciences hardly needs any emphasis. Population explosion in the country needs urgent attention. The figure of 1.02 billion has already been crossed. It is another area of concern. Steps which are affective in controlling the population growth by means which are acceptable to the people need to be devised, developed and popularized. Here again, the medical men have a significant role to play. Lack of health care and malnutrition in addition to illiteracy are identified by Dr. Amartya Sen as the continuing unfreedom in our country even after half a century of political freedom. True freedom envisages freedom from want of any kind and a healthy body and mind for all. That remains to be achieved. These areas are your serious concerns.¹¹

The Universal Declaration of Human Rights upholds the ‘right to life’ as an inalienable entitlement of all human beings and this is a special guarantee in Article 21 of the Constitution of India. Right to life has been construed by the Supreme Court of India as ‘right to life with dignity’ which includes a healthy body and mind. Human development index is now an acknowledged indicator of a nation’s ranking and progress. There is a definite linkage between human rights and human development. Protection of health being, ‘Right to Development’ is a basic right of every child. Protection of health is integral to the mandate of human rights. The Directive Principles in Article 47 of the Constitution of India mandates the State to raise the level of nutrition and the standard of living and to improve public health.

There has thus to be shared vision and shared mission to pave the way for natural alliance between the advocates of public health and the defenders of human rights. Purposeful partnership between the two

¹¹ Ibid
groups, catalyzed by a conjoint consultation, would be very productive in improving public health.

One of the fundamental duties of every citizen in Article 51A of the Constitution is to develop the scientific temper, humanism and the spirit of inquiry and reform. Every citizen is, therefore, duty bound to join in this effort so that the optimum results are achieved and the State is enabled to perform its duty as required by Article 47 of the Constitution. These are broad parameters to indicate the need for a conjoint exercise by institutions like the National Academy of Medical Sciences and all instruments of governance as well as every citizen.

It is because of this perception in the National Human Rights Commission that we have accorded a pivotal position to the promotion of public health in our plan of action. A core group on public health to assist the Commission with technical advice on matters related to health has been constituted a year back. The National Human Rights Commission in collaboration with the Ministry of Health and UN agencies has already organized two national workshops on Maternal Anemia and HIV/AIDS to consider issues related to their control. It is to hold another similar exercise to consider issues related to access to health care and nutritional deficiencies. The recent debate relating to iodized Salt needs an informed expert opinion about its need to allay the uncertainty in public mind. The NHRC would welcome the benefit of expert advice from the National Academy of Medical Sciences in the performance of its task of sharing in the State's effort to improve public health. To reiterate, this is an Herculean task which must be the concern of every citizen and every institution who must join hands so that the desired results be achieved. Eili Wilsel, the Noble Peace Prize Laureate, has said "one cannot, one must not approach public health today without looking for its human rights component."
The late Jonathan Mann, a crusader in the fight against HIV/AIDS believed that health and human rights movement has a collective responsibility to move forward the work of earlier giants in health and human rights as 'equal partners in the work of earlier giants in the belief that can change'. Protecting and promoting health requires and concrete efforts to promote and protect human rights and dignity and greater fulfillment of human rights necessitates sound attention to health and its social determination. The goal of linking health and human rights is to contribute to advancing human well-being beyond what could be achieved though an isolated health – or human rights – based approach. The need and efficacy of joint venture is beyond controversy.

The Supreme Court of India in *Pt. Parmanand Katra v. Union of India*\(^\text{12}\) held that “preservation of human life is of paramount importance. That is soon account of the fact that once life is lost, the status quo ante cannot be restored as resurrection is beyond the capacity of men. The patient whether he be an innocent person or be a criminal liable to treatment under the laws of the society. It is the obligation of those who are inchrage of the health of the community to preserve life...” Thus, the Court ruled that it is the obligation of the State to preserve life by virtue of Article 21 of the Constitution and indicated that it is the duty by the medical professional to help an injured person and to do all that is within its power to save life. This is equally true for every doctor, whether in public service or private practice. This obligation arises merely from the fact of being a medical professional. The high ethical component places medicine on the highest pedestal amongst all profession.

\(^\text{12}\) AIR 1989 SC 2039.
One of the greatest humanists Albert Schweitzer, was a medical man whose contribution to human welfare is too well known. It is the path shown by such noble men which is the true inspiration for research in medical sciences to help alleviate suffering of the humanity. The distinguished members of the National Academy of Medical Sciences deserve acclaim and gratitude of the people for the zeal with which they are engaged in the performance of their task. There is no dearth of medical men who have spurned lucrative assignments at considerable personal cost and inconvenience and continue to retain the inherent professionalism to serve the humanity. The people of this country are grateful to all for their services to the humanity. It is necessary that the medical education includes ethics as essential component to arrest the trend of growing commercialization of Medicare and to retain professionalism of the medical man. In a country where the common man suffers from want in many ways, provision for health care for everyone must be a reality.

The disturbing trend of mushroom growth of medical institutions indulging in commercialization of medical education must be arrested. The moot question is that how far the decision of the Supreme Court of India in *J.P. Unikrishnan v. State of Andhra Pradesh*\(^3\) has helped to control this trend in medical education. If it has not, to the desired extent, should be one of the areas of concern so that one can highlight the loopholes and suggest the required modification to prevent commercialization of medical education. The quality of medical education imparted in the medical colleges will determine the quality of medical professionals of the future. Advancement in the medical sciences in the future will depend on their caliber and ethical values.

\(^3\) AIR 1993 SC 2173.
Medical research in our country must also focus attention on alternate systems of medicine such as the indigenous systems like *Ayurveda*, *Unani* and *Homeopathy*, etc. Recent experience has shown the efficacy of these systems in certain areas of medical and public health. The lack of greater public confidence to these systems is attributable to the want of an authentic machinery to control its practice and research. The need is to combine modern scientific methods with the practical experience of the utility of the alternative systems. India is a rich source of medicinal herbs, the utility of which is being realized in the west. Dean Orish's research in the field of reversing heart disease through methods of Indian origin has received worldwide recognition. We must make the best possible use of our natural sources. Properly focused and well directed search in this sphere is needed.

Mental health is an area of considerable neglect inspite of the Mental Health Act, 1987. Even how mentally ill persons are kept in prisons inspite of National Human Rights Commission's direction to the States that this practice must be stopped without any delay. The emphasis need be on treatment of mentally ill while the approach continues to be on custodial care rather than therapeutic. Multidimensional actions are required to deal with mental health problems. Most of the mental hospitals are not even maintained properly and the conditions therein are deplorable. Research should be conducted on the prevalence, pattern, course, treatment and response of different interventions. There is an urgent need to understand the impact of social change and development on the mental health of the people, especially the vulnerable sections of society like children, woman and elderly persons. This continues to be a neglected area and results in greater deprivation of the already deprived.
The World Health Day in 2001 proclaims the theme of Mental health and gives the slogan: Stop Exclusion, Dare to Care. Message of UN Secretary General, Kofi Annan on this day was as under:

"Mental illness ravages the hippen landscape of the human mind, after with no outward physical signs to betray its debilitating effects. In turn, many who suffer from such disorders suffer in silence, trapped by the shame for stigma of their often very treatable disease. To draw global attention to this problem, the World Health Organization (WHO) has dedicated this years World Health Day to addressing the medical research, care police and ethical issues related to mental health. The Day's Slogan Stop exclusion, Dare to Care, captures the need for the world community to address mental health concerns the openly and honestly. And let there be no doubt concerns are urgent."

"Yet despite the enormous social and economic conditions posed by mental health problems, more than 40 per cent of the World's countries have no articulated mental health policy and over 30 per cent have no mental health programmes. A global crisis is needed one which will incorporate both prevention and care........ "It is time for governments to allocate resource and establish public policy to meet mental health needs. It is time for us individually to face our fears and overcome our misconception about mental disorders. Through honesty and understanding, we can break down the walls of social stigma that surrounded mental illness. On this, World Health Day let us commit ourselves to these tasks to ensure that those who suffer from mental illness no longer suffer in silence."

Another matter which requires your urgent attention is the rights of the persons with disability to have equal opportunity for development including that in medical education.
Disability is defined in Section 2(1) of the Act and it also includes blindness. The right of a person suffering from disability to medical education has come up for consideration in some High Courts. The High Courts have helped that the provision applies even to medical colleges which are required to comply with the statute.

The linkages between medicine, public health, ethics and human rights are evolving rapidly. This is also because of the shock of worldwide pandemic of HIV/AIDS, Women’s health, etc. Common strategies must be developed to move from thought to action and the focus must be on the partners who need to join in the common strategies, the points of entry and resources that can be marshaled. The points of entry are: policy making process, service delivery area, research agenda and education etc. The National Academy of Medical Sciences must be an important partners in the development of common strategies and the means for its implementation.

Delivery of proper health care to people is basic task before the nation. In a country like India where three-fourth of the population still live in the villages, providing universal access for health care has become even more difficult. The empirical study by the researcher has been carried out to make an assessment of the ground reality amongst different categories of people in the Shimla town. The objective of the study was to make an evaluation of the perception, awareness and standards of right to health as right to health. Though the field study was limited to Shimla town yet it is representative of a fair cross section of people in general. The empirical research reveals that majority of population in Himachal Pradesh lives in rural areas and there is a need to open more health centres; to provide health related education; to give wide publicity in order to promote health laws; to provide sufficient budget to health department so that National Rural Health Mission can achieve the goal. The study reveals that a large
amount of budget of NHRM lapsed due to poor implementation on this scheme. It is also revealed that the scheme is falling flat on the bed rock of bureaucratic indifference. The people have suggested that there is a need to provide sufficient doctors and other supporting staff to avoid rush in the hospitals situated in the town. The government has framed so many policies, programmes, plans, health laws etc. for the betterment of public and the need of the hour is to organize more and more awareness camps amongst the ignorant people of the State.

In view of this, it is suggested that the legislature should take immediate and necessary steps to incorporate the obligations imposed upon the State and accordingly amend the relevant statutes.\textsuperscript{14}

1. It is suggested that in order to make judicial intervention in the field of health care more effective, it is necessary to elevate the right to health to the position of a fundamental right. Right to Health Care should be made fundamental right by suitable constitutional amendment so that it becomes easier for the Supreme Court to compel the State to transform the right to health care into basic human needs and to promote a viable health development strategy in the country. Public Health Law should act as an umbrella legislation to regulate, implement, monitor various health legislation. 'Right to Health' should be given the status of fundamental right in the chapter of fundamental rights through amendment in the Constitution.

2. Despite the Supreme Court's directives that the denial of medical assistance to emergency patients by the State hospitals on the ground of non-availability of beds amounts to a violation of the right to life under Article 21 of the

Constitution, cases of refusal to admit the patients are still common. There are number of cases where patients were discharged against their wishes even when they require further medical attention in the hospital. This is unfortunate in a country like ours where a good number of people are below poverty line and cannot afford the assistance of paid hospitals. To overcome this, there is a need that not only state hospitals but even private hospitals and nursing homes should be directed to provide medical assistance to an emergency patient by implementing the Supreme Court's directive.\(^\text{15}\)

3. An increasing tendency among nursing homes and hospitals these days is to withhold important medical records, including results of various tests, from the patient. As far as the hospitals are concerned, this prevents patients from seeking a second opinion or going to another doctor, but more importantly, it makes it difficult for the patient or the relatives to seek legal remedy when things go wrong. That is why it is obligatory for the doctor to supply free of cost to the patient a copy of his medical record on or before the conclusion of his visit, treatment or discharge so that gradually each patient would be in possession of a medical record which would facilitate further treatment as and when necessary.\(^\text{16}\)

4. It has generally been noticed that HIV/AIDS (Human Immuno Deficiency Virus/Acquired Immuno Deficiency Syndrome) patients are denied treatment and the health providers adopt a discriminatory attitude towards them. The researcher, therefore, suggest that it should be obligatory on the part of

\(^\text{15}\) Id., at 160.

Pushpa Girimaji, 'Hospital Can't Withhold Medical Records, Business Times, New Delhi, Saturday, November 1, 1997, p.1.
the health provider to provide medical treatment to HIV/AIDS patients. The necessary directions in this regard should be issued by the Union Ministry of Health and State governments. Further, there is a need to sensitize the doctors.\footnote{17}

5. In India, particularly in villages, a good number of patients take recourse to an alternate system of medicine and often consult ‘quacks’ who earn huge sum of money. Apart from the aforesaid recognized categories of health providers in our country there are private practitioners not having any formal qualifications such as herbalists, tantricks, hakims, vaidyas and others. They are very popular in rural sectors and among the poor and illiterate class of people. There is a need to deal with them with a heavy hand. This is all the more so, due to lack of education and general awareness among the people in villages, and particularly due to non-availability of adequate medical services. Unless the government provide medical services it is doubtful that mal practice can be eradicated. It is, therefore, suggested that the law should be amended to prescribe deterrent punishment for violators. The Indian Penal Code and the Medical Council Act be accordingly amended.\footnote{18}

Steps should be taken to implement the judgment of the Apex Court in \textit{D.K. Joshi v. State of UP & Ors.}\footnote{19} wherein, the Court directed the District Magistrates, and Chief Medical Officers of all the districts in Uttar Pradesh to identify and take

\footnote{17} Kalpana Jain, Government Watch on Salons to Check HIV Spread, \textit{The Times of India}, New Delhi, Thursday, October 14, 1997; \textit{Express News line}, AIDS, TB trap many in vicious circle, November 12, 1997, p.3; Bombay High Court asks PSU to Compensate AIDS Patients, \textit{Indian Express}, New Delhi, April 4, 1997; Shivanath Jha, ‘One death and Chochi is branded ‘AIDS Village’ \textit{Indian Express}, New Delhi, July 14, 1997; AIDS Telephone hotline launched, \textit{The Hindu}, New Delhi, Thursday, October 23, 1997; Rajesh Kumar, ‘Reuse of Syringes Aiding HIV Spread, \textit{Indian Express News Lines}, New Delhi, August 28, 1997.


appropriate action against all the persons practicing medicine without recognized qualifications. The Medical Council of India may give wide publicity to the judgment so that the States may also follow the procedure for preventing the entry of 'quacks' in protecting the life and health of individuals.

6. A survey of decided cases reveals that the complainants find it difficult to prove medical negligence before the consumer fora and courts. So it is suggested that too much emphasis should not be laid on technicalities and the Indian Evidence Act, 1872 may not be strictly followed. Further, the rules and procedure in dealing with medical negligence cases should be simplified.20

7. Strongly felt that the Union and State Governments besides formulating a health policy should enact a comprehensive health legislation on the lines of the Patients, Bill of Rights in USA (United States of America) and Patients Charter in UK (United Kingdom) keeping in view the contextual and socio-economic scenario of our country. The proposed legislation should incorporate the guidelines suggested by the Supreme Court on the rights and obligations of the doctors, nurses, hospitals, nursing homes and health centres. Further, there is a need to have special provisions for health provider services in villages where more than 75 per cent of the population of the country resides. Besides, it is also necessary to formulate health insurance schemes at nominal rates within the reach of all sections of society. It is hoped that the proposed legislation will go a long way and will mitigate the hardships caused to the patients' particularly those who are poor and below the

20 Staff Reporter, Hospital Ordered to Pay 17.5 lakhs compensation, *The Hindu*, Delhi, September 4, 1997.
poverty line and are unable to meet the health expenses. This
would bridge to a great extent the gulf between the rich and
the poor and bring accountability. It will also be a step towards
achieving the Universal slogan 'Health for All'.

8. Poverty is the worst enemy of the development of health and
other economic, social and cultural rights. Poverty cannot be
eradicated as long as the economics of developing countries
are crippled by external debt. Debt forgiveness for countries,
crippled by external debt, makes sense economically and for
serving human needs. This way the global economy must
serve human needs.

9. Priorities and approaches to health solutions must be
individualized and must be contextualize within in local
realities. Since health right has little meaning without
availability of health care infrastructure in adequate quantity
as per the need and location of the population, at least the
basic requirements to maintain a reasonable standard of
health must be provided. Furthermore, if infrastructure is in
place it may not necessarily mean that it is accessible to the
people, especially the poor. Thus, differences based on
location (rural-urban and distance), purchasing power
(pricing), ethnicity, race and caste, gender etc. must also be
eliminated so that access is not hampered due to any form of
discrimination or conditionality.

10. It is the time to realize that health is a global issue. It should
be considered as an essential component of the continuing

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23 Ibid.
globalization process that is reshaping interaction between countries in terms of world trade, services, foreign investment and capital markets. A wonderful opportunity now exists to build a new international partnership for health based on social justice, equality and solidarity, which the world community, all governments, the political parties, the organizations of various section of the people, the NGO’s (Non-Government Organizations) and the medical professionals should unite to achieve ‘Health for All’ without any discrimination, during the first quarter of the 21\textsuperscript{st} century, i.e. by the year 2025.\textsuperscript{24}

11. Laws will have to be ready to accept the development of new technologies in the area of medical sciences. If laws are to lag behind then it can lead to grave violation of right to health. So what can be suggested is that State should play an active role in appreciating the practical problems and thinking of possible measure to solve it. This will help law to go hand in hand with the development of medical technology and consequently improve the doctor patient relationship.

12. The overview of the Plans and policy reports not only throws light on the gap between the rhetoric and reality but also, the framework with in which the policies have been formulated. There has been an excessive preoccupation with single purpose driven programmes. Above all, the spirit of primary health care has been reduced to just primary level care. The health reports and plans mostly concentrated on building the health services infrastructure and even this lacked a sense of integration. Most of the policy reports miss out on the

\textsuperscript{24} Id., at 201; also see Parduman Singh, Health Protection in India in the year 2000, (New Delhi : Friedrich Ebert Stiftung/Social Security Association of India, 34-35 (2000).
importance of a strong referral system. Instead, there has been more emphasis on building the primary level care and even that has lacked proper implementation. The Bhore Committee Report and later, the primary health care declaration discussed the operational aspects of integrating the other sectors of development related to health. The Multi-sectoral approach that is much needed and the inter-sectoral linkages that are essential for a vibrant health system have not been well thought out, and there has been no plan drawn out for it later. The outline of plan documents and their implementation have been incremental rather than being holistic. It is important to question whether it is only the low investment in health that is the main reason for the present status of the health system or is it also to do with the framework, design and approach within the policies have been planned.\(^{25}\)

13. In order to ensure adequate protection to all aspects of the health of persons, it is necessary to provide health care facilities as well as ensure the maintenance of conditions essential for good health. However, it has to be noted that provision of these facilities alone would not be sufficient to ensure protection of the health of persons. What has to be ensured is that all people can access these facilities equally, without discrimination of any kind.\(^{26}\)

14. Polices must balance the efficacy of a proposed intervention with its impact on human rights. Human Rights principles are binding on the State legally, morally, politically and internationally. A policy interfering with human rights must be

\(^{25}\) http://www.the Sunday Indian.com/16-22 Oct./Special-Report/Special-report.htm/
adopted only as a compelling public health measure. Even then the burden should be minimal and least restrictive. Non-coercive public health strategies must be considered as the first alternative. These are education, counseling, voluntary testing and support services. Mandatory measures should be the last option only if the non-coercive measures are found inadequate to meet the challenge. Public pressures for adopting coercive measures in the first instance must be resisted in formulation of the policy. Procedural safeguards such as ‘due process’ or ‘natural justice’ are necessary, if coercive strategies need to be adopted. This decision then should be by an impartial tribunal, with no institutional bias and the restriction imposed ought to be the minimum needed to achieve the objective.\(^{27}\)

15. The judiciary has played a vital role to recognizing the right to live in healthy environment as a fundamental right under Article 21 of the Constitution in which right to life includes the right to live in health environment.\(^{28}\) The enactment of Employment of Manual Scavengers (EMS) and Construction of Dry Latrines (CDL) Act, 1993 is also one aspect to remove the pollution of human excretion in order to make the right to live in healthy environment. The E.M.S. and C.D.L. Act provides the right to live with dignity and enjoy healthy environment to the scavengers as well as to the public in general. However, this right has been violated in most of the states in which the EMS and CDL Act has not been adopted. The urban area is worst hit by the human excretion in

comparison to rural localities. The migrant workers are denied right to live in healthy environment due to the human excretion scattered around their place of living. The poverty may be one of the reasons that compels people to construct and maintain dry latrine or to go in open to ease themselves. Hence, the following submissions are made to ensure the quick realization of right to live in healthy environment. (a) E.M.S. and C.D.L. Act must also be made applicable to all the remaining states; (b) the public must be made aware of dangerous implications of the environmental pollution through mass media; (c) sufficient number of water-seal latrines must be constructed near the jhuggi clusters to prevent the environmental pollution by the human excreta; (d) the open space used by the public to ease themselves may also be included in the definition of dry latrine under Section 2(c) of E.M.S. and C.D.L. Act; and (e) the effluents from the water-seal latrines must be properly drained out under the cover. 29

16. The Constitution of India contains no provision conferring right to wholesome environment right to health within ambit of fundamental right. But the attempt of the Court should be expanded the reach and ambit of the fundamental rights rather than to attenuate their meanings and content by process of judicial Constitution. Principle of interpretation required that Constitutional provision must be construed, not in narrow and constricted sense, but in a wide and liberal manner so as to anticipate and take account of changing conditions and purposes so that the Constitutional provision does not get atrophied or fossilized but remain flexible enough to meet the newly emerging problems and challenges, applied

29 B.P. Singh Sehgal, Human Rights in India. Problems & Perspectives, at 380-381.
with greater force in relation to a fundamental right enacted by the Constitution.\(^{30}\)

17. The Indian government should pull up its sleeves to come to grips with the goal of achieving health care for all by the year 2020. The Indian Government will have to take more effective legislative and administrative measures to make the Primary Health Program Work a success. This is essential to combat and control the spread of AIDS and other infectious diseases in the country. There is need to have a comprehensive health care law enacted to deal with all aspects of health care in the country. This process is necessary as one can not expect the Supreme Court to ignore the constitutional scheme court to ignore the constitutional scheme of fundamental rights and directive principles of state policy in order to transform the fundamental rights into basic needs.\(^{31}\)

18. There is wide discrimination against the people living with HIV/AIDS. Unfortunately the society treats people with HIV/AIDS with hatred and dislike. It is a pity that when such people should be given love, care, sympathy and support, they are ill-treated and isolated. Many times discrimination arises out of ignorance and fears of infection. So there is a need to address the fears and ignorance of the medical staff and society. HIV/AIDS is a problem which raises many social, economic and cultural issues, which relate to human rights, ethics and law. But in reality all have the right to enjoy basic human rights and fundamental rights under the law. These rights also shall not be deprived to a person who is infected


\(^{31}\) B. Erabbi, The Right to Health Care : Need for Its Conversion into a Statutorily Enforceable Basic Human Need – An Indian Perspective, _Delhi Law Review_, at p.64.
with HIV/AIDS. Making aware of the human rights to the HIV/AIDS patients would not solve the problem of ostracizing but we have to secure the full sensitivity from the people and should be made aware that even the HIV/AIDS patients are to be treated equally at par with them. Spreading of the human rights awareness and education among the masses will strengthen not only the spirit of humanism but also the natural foundations of the human rights of the HIV/AIDS patients.\(^{32}\)

19. Non recognition of health as a citizen’s social right only under scores the law priority it has had in the shaping of public policy. With few exceptions, most legislation in India makes no distinction between health and female in the area of health. Some legislation, taking note of the specific features of our society, is, however, protectionist in nature. The protectionist kind of legislation would include Maternity Benefit Act, Medical Termination of Pregnancy Act etc. The extra ordinary and rapid advance of biological and genetic technology is going to give rise to new and complicated legal issues in the future that is still unknown. We already have been the misuse of technology in pre-natal diagnostic techniques to determine the sex of the child foetus and then its selective abortion. Amniocentesis is carried on in parts of the country despite legislation in certain states to regulate the tests. The status of children born by artificial insemination, the legal status of surrogate mothers, is some of the issues that might come to the Courts in the future. There are certain issues related to women’s health and have laws but, there is scope for changes in various areas. Legislation in itself cannot, curb deep –

\(^{32}\) N.S. Sreenivasulu, Human Rights Many Sides to a Coin, (2008), pp.127-128.
rooted prejudices and traditional custom that there are detrimental to women’s well-being.\(^3^3\)

20. The ASHAs are a new ray of hope for public health. Village Health and Sanitation Committees are seeking convergence in initiatives for water, health, sanitation, education, nutrition and women’s empowerment. Good health is not only about hospitals, it is much more about clean drinking water, good hygiene practices, sanitation and a pursuit of equity and entitlement for all. NRHM is fighting public health challenges not only water and sanitation as well. The challenge before NRHM today is to improve motivation wherever there is a lack of it, and seek service guarantees from public systems at each level. NRHM is not about inputs; it is about concrete service guarantees as per the Indian Public Health standards. So it should do more in taking the public health challenge to every household through a network of community health workers.\(^3^4\)

21. The Government recognizes that considerable time has elapsed since the last revision of the Drug Price Control Order (DPCO) in 1995. The meanwhile around 29 drugs out of the 74 that are under price control are not being produced in the country. Also, in 2003 the Ministry of Health notified 354 drugs including those used for the treatment of cancer and other ailments as essential medicines and there have been demands from the public at large to bring them under price control especially those that are very expensive. At the same time the pharmaceutical industry wants that there should be minimum price control and also there should be tangible


encouragement for research leading to the development of new drugs. The Government wishes to balance these conflicting interests so that while protecting the larger public interest, encouragement can be provided to the Indian Pharmaceutical industry to continue to grow at a fast pace. It may be mentioned here that since 1947, when the production value was only Rs. 10 crore, the Indian Pharmaceutical industry has taken great strides and today with a total production of around Rs. 75,000 crore and providing employment to around 3 million people, it is a force to reckon with in the world. The industry is growing at a rate of more than 11 per cent per annum for the domestic market with the growth in exports being higher at roughly 20 per cent per annum. The Indian pharmaceutical industry is today the 4th largest in terms of production volume after USA, Japan and China and 14th in terms of value. The Government has, therefore, initiated the process for formulating a new pharmaceutical policy, which seeks to compressively address the various issues in the pharmaceuticals sector including the ambit of price control and the form of the DPCO.\textsuperscript{35}

22. There is an urgent need to strengthen the implementation of all the existing nutrition intervention programmes and improve infant and young child feeding practices among lactating women through IEC. Scope of micronutrient fortification of food supplements under ICDS Programme should be explored. Fortification of staple foods such wheat flour, rice and other foods like milk, bread etc. also should be considered. There is also a need to strengthen indirect intervention programmes such as environmental sanitation,

35 Banerjee, A.K., “The Pricing of Drugs in India, Yojana, October 2009 at p.15, also see (E-mail: banerjeeanjan@gmail.com.).
supply safe drinking water, household nutrition security, income generating activities, and initiation of timely interventions in emergencies such as droughts, earthquakes, floods, etc. Simultaneously, there is a need to sensitize the community regarding the causes and consequences of obesity, hypertension and diabetes and also educate them to adopt appropriate lifestyles and dietary habits.\(^\text{36}\)

23. It has been found that the doctor practicing, ayurvedic or unani system of medicine also practices allopathy. This has serious repercussions. The Courts have also taken a serious note of this and ruled that if a person practices medicine without possessing the requisite qualifications or enrolment under the medical council qualifications or enrolment under the Medical Council Act, he becomes liable to be punished with imprisonment and fine. The Court added that, since the law requires him to practice in a particular system of medicine, he is under a statutory duty not to enter in the field of other systems. According to the Supreme Court, a person who does not have knowledge of a particular system of medicine but practices in that system is a 'quack'. In India particularly, in villages, a good number of patients take recourse to an alternate system of medicine and often consult 'quacks' who earn huge sum of money. Apart from the aforesaid recognized categories of health providers in our country there are private practitioners not having any formal qualifications such as herbalists, tantriks hakims, vaidyas and others. They are very popular in rural sectors and among the poor and illiterate class of people. It is now time to deal with them with a heavy hand. This is all the more so, due to lack of

\(^{36}\) Laxmaiah, A., "Nutritional Status of Rural Population in India; Yojana, Oct., 2009, at p.27.
education and general awareness among the people in villages, and particularly due to non-availability of adequate medical services. Unless the government provide medical services it is doubtful that malpractice can be eradicated. It is, therefore, recommended that the law should be amended to prescribe deterrent punishment for violators. The Indian Penal Code and the Medical Council Act be accordingly amended. Steps should be taken to implement the judgment of the apex Court in *D.K. Joshi v. State of UP & Ors.*[^37] wherein, the Court directed the District Magistrates, and Chief Medical Officers of all the districts in Uttar Pradesh to identify and take appropriate action against all the persons practicing medicine without recognized qualifications. The Medical Council of India may give wide publicity to the judgment so that the states may also follow the procedure for preventing the entry of 'quacks' in protecting the life and health of individuals.

24. For achieving the constitutional goals and also the objective of 'Health Care For All' there is a lot of need on the part of the Government to mobilize Non-Governmental Organization (NGO's) and the general public towards their participation for monitoring and implementation of health care facilities. To this end the Government should formulate legislations and health policies facilitating the participation of the public in health care.

25. We need regulatory measures to ensure that human organ transplant are kept with in the realm of legitimate surgical procedure and do not degenerate into criminal butchery. The medical profession should co-operate with administrative and

legal efforts to tackle problems like organ trade, spurious drugs sale and quackery.

26. The government should adopt, implement and review health polices, strategies and plans of action, on the basis of epidemiological, sociological and environmental evidence, addressing the health concern of the whole population. It should include methods such as right to health indicators and bench marks, by which progress can be closely mentioned, and evaluate them on the basis of outputs.

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