

## "Health Care for All" - Is it a Distant Dream ?

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### INTRODUCTION

Health is a vital indicator of human development and human development is the basic ingredient of economic and social development. Health is highly influenced by the health care facilities available in a country to its population. The non-provision of health care facilities is considered as the violation of basic human right i.e. the right to life. 'Health Services', therefore, is not a mere charity or the privilege of a few but a right to be enjoyed by all. Worldwide, nations are seeking viable answers to the question of how to offer a healthcare system which leads to improvements in the health status of their citizens. It is a crying need throughout the world that man has the right to ask for proper health care but when man is denied this right, we rarely think that it is a human rights violation. The health of a nation is the sum total of the health of its citizens. Thus, the survival of any human society is inextricably related with the health of its population. Likewise, developmental parameter also involves both economic development, which includes national income and per capita income, and human development which covers health indices, Infant Mortality Rate (IMR), nutritional standard, life expectancy and literacy.

The term health, implies more than an absence of sickness. Medical area and health

facilities not only protect against sickness, but also ensure stable manpower for economic development. Facilities of health and medical care generate devotion and dedication, to give the worker's best, physically as well as mentally, in productivity. It enables the worker to enjoy the fruits of his labour, to keep him physically fit and mentally alert for leading a successful, economic, social and cultural life<sup>1</sup>. The medical facilities are, therefore, part of social security, and like gilt-edged security, would yield immediate returns in the increased production, or at any rate reduce absenteeism on grounds of sickness, etc. Health is thus, defined by World Health Organisation as "*a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity*". From the definition itself clearly indicates, that conditions of life of the individual, which incorporate physical, mental and social well being and devoid of disease and infirmity. Thus, this pioneering institution (WHO) has played the best supportive role for more than fifty years in guiding health policy development and action at the global and national levels, with an overall objective of ensuring and attaining the highest standards of health care to all the people around the world.

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. Since ancient times human beings and societies have tried to formulate rules and protocols that would enhance chances of sustained good health<sup>2</sup>. Health is considered as a fundamental human right indispensable for the exercise of other human rights<sup>3</sup>. The right to health is recognized by numerous international and regional institutions. This paper concentrates on the international covenants as well as national momentum that guaranteed under the Constitution for the growth on right to health by the Courts in India.

### **International Momentum on Right to Health and India's Stand**

The health of every individual counts for the economic development of a country. The health service is a vital part of every modern society and the general health of an individual is equally significant. As the health of an individual greatly affects the economic growth and social welfare of the country, it is indicated that health and human rights are interdependent. 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. The declaration of Human Rights eloquently upholds the right to life as an inalienable entitlement of all human rights.

Article 25 of the Universal declaration of Human Rights states that :

*“Everyone has the 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 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”.*

Article 12 of the International Covenant on Economic, Social, and Cultural Rights 1966, *inter alia*, states that:

*“The State parties to the present Convention recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”* The International Covenant on Civil and Political Rights 1966, the UN Declaration on Elimination of All Forms of Discrimination Against Women 1979 and the Convention on the Rights of the Child provide, *inter alia*, for the protection of health care rights of persons including women, children and other disadvantaged sections of society.

Apart from the above, a number of international agencies have lent support to public participation in health care. To this end the World Health Organisation, Alma Ata Declaration,<sup>4</sup> clearly states that:

The people have the right and duty to participate individually and collectively in the planning and implementation of their health care.

According to the World Development Report,<sup>5</sup> public-private deliberation is not just desirable but in fact critical to the success of reforming the health system. Community participation is the key element of the international action plan, (known as Agenda 21) designed to bring about sustainable development for the 21<sup>st</sup> century. This plan has been endorsed by over 150 nations at the Earth Summit held at Rio in 1992. Further the fourth International Conference on Health Promotion, held in 1997, in Jakarta reaffirmed the importance of community participation as a key element of health for all.

From the above it is evident that the World Health Organisation has not only given a wider definition to ‘health’ but also brought the ‘vision

of health care for all by 2000' articulated by the World Health Assembly and the Alma Ata Declaration. Further, all the resolutions/declarations adopted by the UN and other agencies together constitute the global health policy.

The Millennium Development declaration was a visionary document, which sought partnership between rich and poor nations to make globalization a force for good. Its signatories agreed to explicit goals on a specific timeline. The Millennium Development Goals (MDGs) set ambitious targets for reducing hunger, poverty, infant and maternal mortality, for reversing the spread of AIDS, Tuberculosis and Malaria and giving children basic education by 2015. These also included gender equality environmental sustainability and multi-sectoral and international partnerships. The 10<sup>th</sup> anniversary of the declaration was used to review progress and suggest course corrections to meet the 2015 deadline. The glittering banquets, the power lunches and the rhetoric at the formal meetings, attended by many celebrities, ambassadors of different nations, international charities and the media, in New York belied the stark reality in many poor countries. While the declaration and the MDGs were a clarion call and mobilized many governments into concerted action, a review of the achievements to date and projections for 2015 suggest some success and much failure. Most rich nations failed to meet the targets on promised aid. While progress has been made, much more needs to be done.<sup>6</sup>

In India, it is generally accepted fact that even though science and technology contributed much to the field of medicine, health care services did not reach rural areas which are mainly covered by Primary Health Care Systems. A health care system has two components, namely public health

care and private health care. In the public health care system the responsibility is on the government to protect the public from both communicable and non-communicable diseases. Public health is the art and science of preventing disease, promoting health and prolonging quality life<sup>7</sup>. Public health is one of the most important areas of human development but sadly it is one of the most neglected in Modern India. The health services in rural areas are very meager and even the meager health services which are available do not percolate to remote corners of the rural areas.<sup>8</sup> It is also observed that the health care facilities available in rural areas are not enough to meet the growing demand of the people. It is not enough that high rate of absenteeism of health providers are found in primary health centres.

While the public health is in such a bad shape, in cities the growth of five star health care centres with facilities that match some of the best in the world, is very high. Importance is given to the maintenance and strengthening of private health care service at the expense of the public health care system. So private health care is expanding rapidly in compare to other European and Latin-American countries. While public health facilities are highly inefficient, private health services are virtually unregularised. Fraud, other medication, unnecessary surgery and enormous fees are the bread and butter of the private health sector. Many private practitioners are prescribing irrationally and giving patients a long list of totally unnecessary and expensive medicines for fairly routine problems. In Mumbai alone, about 65 percent of deliveries performed in the private sector end up with a caesarean, compared with only 9 percent in public sector<sup>9</sup>. Thus, it is due to these reasons patients are either forced to borrow money to pay the medical expenses in the private hospitals or kept away from treatment. Because of all their, India is not in a position to fulfill the

Health For All (HFA) promise given in the Alma Ata Conference even in 2005 and is considered the most in health care in the world.

### **Legal Framework for protection of Health Care**

In India, the right to health care and protection has been recognized since early times. Independent India approached the public as the right holder and the state as the duty-bound primary provider of health for all. As our country is a founder member of the United Nations, it has ratified various International Conventions promising to secure health care rights of individuals in society. In this content, Art-51 of the constitution of India provides for promotion of international peace and security<sup>10</sup>. The preamble to the Constitution of India, which strive to provide for a welfare state with socialistic patterns of society under Article 21 of the Constitution, guarantees the right to life and personal liberty. Though it does not expressly contain the provision of right to health but it has settled by the apex court in good number cases. Further, arts-38<sup>11</sup>, 42<sup>12</sup>, 43<sup>13</sup> and 47<sup>14</sup> of our Constitution provide for the promotion and protection of health of the individual members in the society.

In addition to the International and constitutional provisions, the Parliament in India have enacted a good number of laws that protect the health interests of the people in general. These include the Indian Penal Code, 1860, the Fatal Accidents Act, 1855, the Indian Medical Degrees Act, 1916, Dangerous Drugs Act, 1930, Drugs and Cosmetics Act, 1940, the Dentists Act, 1948, Drugs (Control) Act, 1950, Pharmacy Council of India Regulations, 1952, Prevention of Food Adulteration Act, 1954, Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954, the Indian Medical Council Rules, 1957, the Medical Termination of Pregnancy Act, 1975,

the Dentists Code of Ethics and Regulations, 1976, the Consumer Protection Act, 1986, the Consumer Protection Rules, 1987, the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994, the Transplantation of Human Organs Act, 1994 etc.

It is pertinent to discuss here that although the Parliament has enacted the Indian Medical Council Act in 1956 and other corresponding legislations governing various branches of medicine such as the Indian System of Medicine, Dentists, Homoeopaths etc., they only provided for the registration and regulations of the conduct of doctors, hospitals and nursing homes, and have failed to protect the interests of persons who have suffered on account of negligence or deficiency on the part of medical professionals. This field left untouched by the Medical Council Acts(s) is covered by the law of tort in general, and now by the Consumer Protection Act 1986. It is worthwhile to remember that the existence on the statute book of the Indian Medical Council Act has not stood in the way of such grievances being agitated before the ordinary civil courts, by the institution of civil suits claiming damages for negligence as against the concerned hospital or medical doctors. Prior to the enactment of the Consumer Protection Act 1986, the field of medical negligence is perhaps not possible, rather it would remain a somewhat slippery word.

Despite Constitutional and statutory provisions safeguarding the patient against medical negligence the growing incidence of medical negligence is disturbing. Although reliable official statistics on medical negligence has not available in our country, it has been observed that many a times the victims of such are not financially well off by which they are forced to avail the medical aid from the government run hospitals/dispensaries or charitable hospitals. However, these hospitals

have been kept out under the purview of the Consumer Protection Act, 1986.

Health providers in India may be broadly classified into five categories:

- (i) Government run hospitals and dispensaries, clinics, primary health care centres and sub-centres;
- (ii) Private hospitals and nursing homes;
- (iii) Charitable hospitals;
- (iv) Hospitals run by or under the authority of or connected with medical institutes or medical colleges; and
- (v) Hospitals or dispensaries run under the miscellaneous statutes such as the Employees' State Insurance Act 1948, the Plantation Labour Act 1951, and hospitals or dispensaries run by the employer such as CGHS dispensaries, Railways hospitals and health centres; and Army, Navy or Air Force hospitals.

Apart from the above mentioned recognized categories of health providers, in our country, there are private practitioners without any formal qualifications<sup>15</sup> such as, *hakims*, *vaidyas*, *quacks*, *tantriks* and others are very much popular in rural and semi-urban sectors and people, who are living in those areas, fall an easy prey.

All said, we have to raise some questions that should make all socially committed people react positively and creatively when there is an instance of health related human right violation and when a poor man becomes the victim:

- Do our poor people know that they have the right to health care ?
- Do they know that they can demand a Government doctor to treat them ?

- Does the common man know that a mentally ill person cannot be illegally confined without his consent ?
- Does he know that he can demand that basic facilities should be there in a Primary Health Centre ?

If the common man can answer all these questions, the poor man will get a better deal in health sector.

### **Judicial Response Towards Right to Health**

The Indian judiciary played a very active role by entertaining Public Interest Litigation (PIL) which provides an opportunity to the judiciary to examine the socio-economic and environmental conditions of the oppressed, poor and the downtrodden people through PIL. Under Article 32 of the Constitution, the Supreme Court has directed the government to implement the fundamental right to life and liberty and execute protection measures in the public interest. Likewise the Court also pointed out that fundamental rights are intended to foster the ideal of political democracy and to prevent the establishment of authoritarian rule but they are of no value unless they can be enforced by resort to courts. But it does not mean that directive principles are less important than fundamental rights or they are not binding on the various organs of the state.<sup>16</sup> The Supreme Court, while widening the scope of Article 21 of the Constitution in *Paschim Banga Khet Mazdoor Samity & others v. State of West Bengal & another*<sup>17</sup> held that in a welfare state, primary duty of the government is to secure the welfare of the people and more over it is the obligation of the government to provide adequate medical facilities for its people. The government discharges this obligation by providing medical care to the persons seeking to avail of those facilities. Article 21 imposes an obligation on the state to safeguard the right to

life of every person, preservation of human life is thus of paramount importance. The government hospitals run by the state are duty bound to extend medical assistance for preserving human life. Failure on the part of a government hospital to provide timely medical treatment to a person in need of such treatment, results in violation of his right to life guaranteed under article 21. The petitioner should, therefore, be suitably compensated for the breach of his right guaranteed under article. 21 of the Constitution.

It is true that no state or country can have unlimited resources to spend any amounts on or its projects. Similarly providing medical facilities to an employee by the state cannot be unlimited and this point has arisen in the case of *State of Punjab v. Ram Lubhaya Bagga*<sup>18</sup>, where medical services under a policy continue to be given to an employee, to get treatment in any private hospital in India, but the amount of reimbursement may be limited. Such a policy does not leave this limitation to the free will of the director, but it is done by a committee of Technical Experts. The Supreme Court held that if no scale or rate is fixed then in case of private clinics or hospitals increase their rate to exorbitant scales, the state would be bound to reimburse the same. The principle of fixing of rate and scale under such a policy is justified, and cannot be held to violate article 21 or article 47 of the Constitution. The Court further held that the State can neither urge nor say that it has no obligation to provide medical facilities. If that were so, it would be *ex facie in violation of article 21*.

It is for the state of secure health to its citizens as its primary duty. No doubt the government is rendering this obligation by opening government hospitals and health centres, but to be meaningful, they must be within the reach of its people, and of sufficient liquid quality. Since it

is one of the most sacrosanct and valuable rights of a citizen, and an equally sacrosanct and sacred obligation of the state, every citizen of this welfare state looks towards the state to perform this obligation with top priority including by way of allocation of sufficient funds. This in turn will not only secure the rights of its citizens to their satisfaction, but will benefit the state in achieving its social, political and economic goals. This sacred obligation shall be carried out by the health professionals whenever they are attending the life of the accident victims with due care and diligence. In light of the above, statement, the Supreme Court, in its landmark judgment in *Pt. Parmanand Katara v. Union of India & others*<sup>19</sup> ruled that every doctor whether at a Government hospital or otherwise has the professional obligation to extend his services with due expertise for protecting life. No law or state action can intervene to avoid/delay the discharge of the paramount obligation cast upon members of the medical profession. The obligation being total, absolute, and paramount laws of procedure whether in statutes or otherwise which would interfere with the discharge of this obligation cannot be sustained, and must, therefore, give way. Similarly again the Supreme Court in *State of Karnataka v. Manjanna*<sup>20</sup> deprecated the tendency of refusal to conduct medical examination of rape victims by doctors in rural government hospitals unless referred by the police. The Court observed: We wish to put on record out disapproval of the refusal of some government doctors, particularly in rural areas, where hospitals are few and far between to conduct any medical examination of a rape victim unless the case of rape is referred to them by the police. The Court added that such a refusal to conduct the medical examination necessarily results in a delay in the ultimate examination of the victim by which the evidence of rape may have been washed away

by the complainant herself or be otherwise lost. The Court, therefore, directed that the state must ensure that such a situation does not recur in the future.

A three Judge bench of the Supreme Court in *Consumer Education and Research Centre & Others v. Union of India*<sup>21</sup> ruled that right to health and medical care, to protect health and vigour while in service or post-retirement, is a fundamental right of a worker under article 21, read with articles 39(e), 41, 43 48-A. All related articles and fundamental human rights are intended to make the life of the workman meaningful and purposeful. Lack of health denudes him of his livelihood. Compelling economic necessity to work in an industry exposed to health hazards due to indigence to bread-winning for himself and his dependants should not be at the cost of the health and vigour of the workman.<sup>22</sup> The court further ruled that the jurisprudence of personhood or philosophy of the right to life envisaged in article 21 of the Constitution enlarges its sweep to encompass human personality in full bloom to sustain the dignity of a person and to live a life with dignity and equality. The expression 'life' assured in art. 21 does not connote mere animal existence or continued drudgery through life. It has a much wider meaning, which includes right to livelihood, better standard of living, hygienic conditions in the work place, leisure facilities and opportunities to eliminate sickness and physical disability of the workmen. The health of the worker is an integral facet of the right to life. In that case health insurance while in service or after retirement was held to be a fundamental right and even private industries are enjoined to provide health insurance to the workman.

Though the Supreme Court of India in series of judgments has declared the right to health care to be a fundamental right and it has not given

due recognition by the state. This is also quite unfortunate that in a country, where poverty and marginalized are more in numbers and these people cannot afford paid services in any government and private hospitals, the state should develop a novel health insurance policies at a nominal rate.

### Conclusion and Suggestions

Even after six decades of independence no effective steps have been taken to implement the constitutional obligation upon the state to secure the health and strength of people: It has rightly been said that nutrition, health and education are the three inputs accepted as significant for the development of human resources. But these sectors get adequate attention only when community becomes affluent to meet the heavy expenditure involved in each.

The focus on improvement in health continues to employ perspectives of curative medicine rather than concentrate on public health approaches clean water sanitation, nutrition, housing education, employment and social determinants seem to receive a lower priority despite their known impact on the health of population. Feudal social structures continue to oppress millions of people. Patriarchal society places much burden on girls and women, especially in rural India. Without changes in social structures, improvements in health and economic status will remain a distant dream for the many millions who live in the margins of a resurgent India.<sup>23</sup>

For achieving the Constitutional obligations and also objective of "health Care for All" there is lot of need on the part of the Government to mobilize non-governmental organizations (NGOs) 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.

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10. See Article 51(c) of the Constitution of India.
11. For the promotion of the Welfare of the people, the State shall strive to secure a social order in which justice, social, economic and political shall inform all the institutions of the national life.
12. The State shall make provision for securing just and humane conditions of work and for maternity relief.
13. Social security just and humane conditions of work and leisure to workman are part of his meaningful right to life and to achieve self-expression of his personality and enjoy the life with dignity, see more in details *Air India Statutory Corporation v. United Labour union*, AIR 1997 SC 645.
14. It is the primary duties of the State to raise the level of nutrition and the standard of living and to improve public health.
15. *D.K. Joshi v. State of U.P. & Others.* (2000) 5 SCC 80. In this case, the Apex Court directed the district Magistrate and Chief Medical officers of all the districts in Uttar Pradesh to identify and take appropriate action against all the persons practising medicines without recognized qualifications. The Medical Council of India may give wide publicity to the judgments so that the states may also follow the procedure for preventing the entry of quacks in practising the life and health of the individuals.
16. *Akhila Bharatiya Soshit Karmachari Sangh v. Union of India* (1981) 1 SCC 246.
17. (1996)4 SCC 37.
18. (1998)4 SCC 117.
19. AIR 1989 SC 2039.
20. AIR 2000 SC 2231.
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