'HUMAN RIGHTS PERSPECTIVE OF PUBLIC HEALTH ISSUES'

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SPECIAL TRAINING PROGRAMME FOR DISTRICT JUDGES AND SENIOR POLICE OFFICERS ORGANISED BY 'NHRC' ON HUMAN RIGHTS ISSUES

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Human Rights include rights relating to life, liberty, equality, and dignity of individuals guaranteed by the Constitution or embodied in the international covenant and enforced by Courts in India. The common man understands Human Rights to include freedom from torture, inhuman treatment; freedom from slavery/ forced labor, right of liberty and security, freedom of movement, choice of residence, conscience and religion, freedom of opinion and expression, right to fair trial, right to privacy and other similar rights. In international forums the western countries concede only to the civil and political rights as Human Rights of developing and underdeveloped countries. The debate between the northern and southern hemispheres to regard to economic social and cultural rights including the right to life with dignity and right to food as Human Rights is still open. The developed countries do not agree that right to life, which includes right to food and health, is included in the Human Rights. This article seeks to clear the understanding and to support the argument of the developing and underdeveloped countries that right to life, which includes right to live with dignity, right to food and right to health is integral part of the Human Rights, which needs protection from the State.

Justice A.S. Anand Chairman NHRC stressed on recognition of right to life including right to food, health and elementary education in the social economic and cultural rights as Human Rights, in the International Round Table on National Institutions implementing economic social and cultural rights organized by NHRC at New Delhi in 2005.

The Universal Declaration of Human Rights 1948, reads at Article 25:-

"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..."

Article 12 of International Covenant of Economic, Social and Cultural Rights (ICESCR) provides:-

> *12.1 The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.*
>
> *12.2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:*
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> *(a).....*
> *(b).....*
> *(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."*

Dr. Gro Harlem Brundtland, Director-General, World Health Organization said:

> *"Access to essential drugs – this is a key priority for the World Health Organization. Our longstanding aim is to help ensure equity of access to essential drugs, national use, and quality. This is simply part of the fundamental right to health care. Our work in WHO is built on this premise."*

In India, the Supreme Court has held:

> *(a) that "the right to health, medical aid and to protect the health and the vigor of a worker while in service or post retirement is a fundamental right under Article 21 read with Articles 39 (e), 41, 43, 48-A of the Constitution of India and fundamental human right to make the life of workmen meaningful and purposeful with dignity of persons". Security against sickness and disablement is a fundamental right under Article 25 of the Universal Declaration of Human Rights and Article 7 (b) of International Convention of Economic, Social and Cultural Rights and under Articles 39 (e), 38 and 21 of the Constitution of India."*
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> (Ref. (1995) 5 SCC 482 LIC of India vs. Consumer Education and Research Centre by Justice K. Ramaswami).
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> (b) *"The right of a citizen to live under Article 21 casts obligation on the State. This obligation is further reinforced under Article 47. It is for the State to secure health to its citizen as its primary duty. No doubt the Government is rendering this obligation by opening government hospitals and health centres, but in order to make it meaningful, it has to be within the reach of its people, ...Since it is one of the most sacrosanct and valuable rights of a citizen and equally sacrosanct sacred obligation of the State, every citizen of this welfare State looks towards the State for it to perform it's obligation with top priority including by way of allocation of sufficient funds."*

(Ref. (1998) 4 SCC 117 State of Punjab vs. Ram Lobhaya Bagga by Justice A.P. Mishra; Parmanand Katara Vs. Union of India (1989) 4 SCC 286; State of Punjab Vs.

Mohinder Singh Chawla (1997) 2 SCC 83 and Paschim Banga Khet Mazdoor Samiti Vs. State of West Bengal, (1996) 4 SCC 37).

'Human Rights' are defined in the Protection of Human Rights Act 1993:- "Section 2 (d) 'Human Rights' means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenant and Enforceable by Courts in India';

(f) 'International Covenant' means the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on the 16th December, 1966,* and such other covenant or convention adopted by the General Assembly of the United Nations as the Central Government, may by notification specify." [Amendment 2006. Notified on Sep 13, 2006]

PUBLIC HEALTH ISSUES

1. Female Foeticide/Female Infanticide;
2. Communicable Diseases;
3. Mental Health
4. Road Accidents and Dog Bites
5. Quackery
6. Affordable Drugs and Medicines
7. Elderly Persons
8. HIV/AIDs;
9. Malnutrition in Children/Lactating Mothers;
10. Blindness;
11. Water Born Diseases;
12. Indiscriminate use of Insecticide/Pesticide;
13. Disability.

1. FEMALE FOETICIDE/ FEMALE INFANTICIDE

The unholy alliance between tradition (son complex), and technology (ultrasound) is playing havoc with Indian society. Amniocenteses, foetoscopy and ultra sonography can determine sex of the child in womb. There are about 27,748 ultrasound clinics nationwide. Most of these clinics are clustered in Maharashtra, Karnataka, Punjab, Haryana and Gujarat. With these techniques the qualified doctors and quacks together are responsible for abortion of about 10 million foetus in India since 1991. The magnitude of this Human Rights violation with unborn children will put Hitler, Mussolini and Poll Pot to shame.

Child Sex Ratio (0-6 years) FEMALE / MALE

State	1991	2001

Punjab	875/1000	793/1000
Haryana	879/1000	820/1000
Gujrat	928/1000	878/1000
Maharashtra	946/1000	917/1000

Source Census 2001
(45 Districts out of 600 have sex ratio below 845).

Sex Ratio/ Birth Order by Joe Verghese, Delhi Hospitals F/M

1991		**2002**
925/1000	First Born	959/1000
731/1000	Second Born	542/1000
407/1000	Third Born	219/1000

The termination of pregnancy is an IPC offence. The Medical Termination of Pregnancy Act, 1971 introduced for safe and legal abortion has made abortion easier with loosely worded provisions like contraceptive failure as ground of legal abortion. With the development of ultra sonography and preference to male child in North India, has provided a safe heaven for indulging in female foeticide. The Pre-Conception and Pre-Natal Diagnostics (Regulation and Prevention of Measures) Act, 1994 was implemented IN 1996 with intervention of CEHAT and MASUM. The act, however, has not contained the horrendous crime. The provisions of the act permitting pre-natal diagnostic tests need to be amended to make it more purposeful. The present provisions allow the tests on a woman aged more than 35 years; or with two or more spontaneous abortions or foetal loss;, or exposed to potentially teratogenic agents such as drugs, radiation, infections or chemicals with family history of mental retardation or physical deformity such as spasticity for any genetic disease or any other disease specified by Central Supervisory Board can be subjected to such diagnostic for foetal health. Doctors, however, have made female foeticide a thriving industry.

2. COMMUNICABLE DISEASES

Tuberculosis, Malaria and Viral Encephalitis are endemic in large areas in our country. In the affidavit of Dr. R.K. Srivastava, Director General of Health Services, Government of India, it is stated that Viral Encephalitis has taken a heavy toll in eastern U.P. Japanese Encephalitis, a viral infection with its reservoirs in pigs and water birds and transmission through mosquitoes, breeding in peddyfields has taken toll of about 5000 children since 1978. An extract from his report gives the details as follows:-

Japanese Encephalitis (endemic in U.P.)

Year	Cases	Deaths
2001	1005	199
2002	604	133
2003	1124	237
2004	1030	228
2005	6061^	1500
2006 (provisional)	2320#	528#

^= Including 448 cases and 109 deaths from Bihar and 31 cases and 4 deaths from Nepal, one case and nil death from Mandhya Pradesh reported from B.R.D. Medical College, Gorakhpur.
#= Including 237 cases and 51 deaths from Bihar and 10 cases and one death from Nepal and nil case from Madhya Pradesh reported from B.R.D. Medical College, Gorakhpur.

J.E. Vaccination of 6.8 million children with single dose, Chinese SA-14-14-2 vaccine and vector control methods has brought some respite. The area, however, faced about 60 sudden deaths of children in 72 hours by of an unknown viral strain in Kushi Nagar in December, 2006. The Court is monitoring the matter with directions to establish a control center with surveillance units for early warning signals, and to develop capacities to fight JV. The present capacity of production of J.E. Vaccine by CRI Kasauli is only 2.5 million doses. The national health plan requires at least 20 million doses every year.

3. MENTAL HEALTH

There are reported 15 million mentally challenged persons in India. Indian Lunacy Act, 1912 was grossly inadequate and outdated legislation. It was replaced by Mental Health Act, 1987, which defines mentally ill person to mean: a person, who is in the need of treatment by reasons of any mental disorder other than mental retardation. This definition has introduced a wholly new humanist approach. The act provides for central and state authorities of mental health services to regulate development, coordinate and issue directions with regard to mental health services. It provides for establishment and maintenance of psychiatric hospitals and psychiatric nursing homes under a license. The admission is either voluntary or involuntary with the intervention of the Board. A treatment for more than six months requires a detention order from Magistrate for detention order.

The police is provided under the Act an important duty to protect a mentally ill person with powers to detain him for his protection, to be produced before Magistrate within 24 hours for a reception order. Section 81 of the Act protects human rights of mentally ill person. He cannot be subjected to any indignity during treatment and used for the purposes of research unless he is voluntary patient and gives his consent.

There are hardly any psychiatric hospitals and psychiatric nursing homes and handful of registered psychiatrists. The State of U.P. has to do much, to take care of the Human Rights of mentally ill persons under the Mental Health Act, 1987.

4. ROAD ACCIDENTS AND DOG BITES

Every year 51,000 lives are lost and more than 5 million suffer serious injuries in **road accidents**. The quality of roads, and the progress of traffic engineering, has not been able to contain the national loss. We do not have sufficient emergency health care and trauma centers in the hospitals, to save lives. In the State of Uttar Pradesh with a population of about 20 crores there is only one trauma center at Lucknow. In most of the road accidents, deaths are due to head injuries. There is no national plan for using safety measures and for establishing trauma centers in every hospitals. A proposal to have an ambulance on every petrol pump on highway has been mooted.. Safety measures on roads, regulation of speed, change in design of public transport vehicles and emergency health care at every 50 km on highways are measures, which falls in the category of Human Rights protection measures.

In Parmanand Katara Vs. Union of India, (1989) 4 SCC 286, the Supreme Court held that all Government Hospitals, Private Medical Institutions and every Doctor has professional obligation to provide immediate medical aid to all accident victims irrespective of the fact whether they are medico legal cases or otherwise. Doctors should not be called for evidence unless it is absolutely necessary. Preservation of human life is of paramount importance.

It is estimated that more than 30,000 people die by Rabies in India due to **dog bites** annually. It is a horrifying, incurable and fatal, incomparable with other diseases.

The 1998 W.H.O. South East Asia Regional Report on the Elimination of Rabies states:

"Both sylvatic and urban rabies have been present in [India] since ancient times. Urban canine rabies is however, responsible for significant mortality, morbidity and economic harm due to loss of precious livestock. The dog population in India, which was 18.8 million according to the 1982 census, rose to 19.7 million in 1987 and is now estimated to be 25 million [in 1998].

'.....Estimates on the basis of data obtained from various infectious disease hospitals, which act as sentinel centers for patients with hydrophobia, reveal about 30,000 deaths per year due to rabies.....45% are children less than 14 years of age.

.....Primary results on the basis of studies conducted by the National Institute of Communicable Diseases project an annual incidence of about 2.12 million cases of animal bites. More than 95% of bites [1.9 million cases] are inflicted by dogs."

Public health and dog control is responsibility of local government. The municipal laws provide for taking care of stray dogs. The Dog Control Rules, 2001 made under Prevention of Cruelty of Animals Act, 1960 by which killing of dogs and provides for sterilization alone, which does not prevent dog bites and transmission of diseases. The Supreme Court is ceased with challenge to Dog Control Rules, 2001 in Sujoy Chaudhary Vs. Union of India.

5. QUACKERY

On the intervention of Supreme Court in D.K. Joshi's case (2000) 5 SCC 80 the High Court is monitoring the identification and prosecution of quacks in U.P. About 27000 quacks have been identified so far. There are 4000 prosecutions pending in various Courts. During the proceedings it was found that 8 Unani Medical Colleges were running in western U.P. without recognition from the Indian Medicine Central Council under the Indian Medicine Central Council Act, 1970. There are about 49000 private practitioners in all branches of medicines in U.P. registered with CMOs. Out of the sanctioned strength of about 11000 PMS doctors out of which 1500 are doing only administrative jobs and there are about 2000 vacancies, the Community and Primary Health and Sub-Centers are either vacant or doctors posted at the centers do not attend to their duties regularly. Most of the PHCs are deserted and are visited by doctors only when the government sponsored programs like pulse polio, family planning or cataract operations are to be carried out.

There are various forms of quackery prevalent in India, which include color therapy, aromatherapy, electro homeopathy, acupuncture, Reiki, witch-culture etc. In spite of monitoring the matter for last five years, there has been very little progress in eradicating quackery. It can only be discouraged if the rural health schemes start functioning. Quackery is serious violation of right to health and it should be treated as Human Rights offence to be tried by Human Rights courts.

6. AFFORDABLE DRUGS AND MEDICINES

The Patent Act was amended in 1999 and then in 2005 to make it TRIPs compliant. The emphasis shifted from **process patent** to **product patent** giving immense benefits to pharmaceutical industries for patenting its product for a period of 20 years and to regulate its prices. The Word Trade Organization (WTO) was conceived as an international body to facilitate growth of international trade. The intellectual property rights in the form of “the Agreement on Trade Related Intellectual Property Rights (TRIPs) were brought within the ambit of WTO. The member countries had to amend their laws to make them TRIPs compliant. This gave advantage to pharmaceutical industries to regulate the prices of patented drugs in the member countries.

The 1999 and 2005 amendments carried out in the Patents Act 1970 in India have raised serious 'Human Rights' issues with regard “trade and health”. The 'Declaration of TRIPs and Public Health' adopted at the 4th WTO Ministerial Conference in 2001 at **Doha** acknowledged that public health problems in many countries **were in part** a result of intellectual property regime under TRIPs agreement. The declaration intended to dispel the notion that TRIPs solely concentrated on trade motivated agenda and has no place in human rights concerns. It emphasizes IPR protection for development of new medicines in commitment to TRIPs at the same time the declaration agreed that TRIPs agreement had to be part of a wider national and international responsibility to address grave public health problems in developing and less-developing countries resulting from HIV/AIDs, Tuberculosis, Malaria and other epidemics.

The TRIPs Council took a decision on August 30, 2003 to implement para-6 of the Doha declaration on TRIPS agreement in public health and to waive the obligations set out in Para (e) and (h) of Article 31 in certain exceptional circumstances like national health emergency or in a case of extreme urgency for public non-commercial use calling for grant of compulsory license.

With the enforcement of TRIPs the drug prices have sky-rocketed.

Drugs	Price in India (Rs)	Price in Pakistan (Rs)	Price in USA (Rs)
Ranitidine (Antacid)	6.02	74.09 (12.31)	863.59 (143.45)
Atenolol (For BP)	7.50	71.82	753.94
Ciprofloxacin (Antibiotic)	29.00	423.86 (14.5)	2352.35 (81.12)
Diclofenac (Pain Killer)	3.50	84.71	674.77
Zidovudine (Anti HIV)	77.00	313.47	895.90

In South Africa, AIDs drugs patented and marketed by MNCs costed US $ 10,000/- for one year's treatment. About 700 citizens of South Africa were dying every day. UNAIDs, WTO and UN General Assembly urged MNCs to reduce prices or to allow generic imports without any success. Greed was ruling over science and ethics.

CIPLA from India offered generic drugs against stiff opposition from 39 MNCs patent holders offering the drugs at the cost of US $ 350/-. The 39 MNCs filed a suit in Pretoria High Court. They did not succeed in getting injunction and then agreed to reduce the prices to less than US $ 600/-.

Malaria kills one child in each 30 seconds. 18.6 lakh people die of tuberculosis each year. 50 million new HIV cases in India are projected to 2025. 6 lakh died every day in the world. There will be 18 million new diabetics by 2030 and 50% of the global heart diseases will be seen in India. The affordable cost of medicines is thus a burning 'Human Rights' issue which needs urgent solution.

US President Clinton admitted his helplessness: "*One of the key reasons no action was taken on prescription drugs this session was because the pharmaceutical industry spent millions of dollars on an all out media campaign with flat-out falsehood*".

Mr. Clinton further said, he would like seniors to go on TV to explain *"why seniors have to go on the bus to Canada to buy drugs at less than half the price they can buy in America when the drugs are made in America with the benefit of American system & American research & American tax system."* Even President Bush has not been able to solve the problem.

Every year in USA: - As against 70 to 80 New Drug Approvals (NDA) by USFDA about 5,000 new drug patent claims filed/granted in US Patent office.

During 1995-2004 in India:- As against about 300 NDAs approved by DCGI, 7000 product patent claims for drugs were filed in Indian Patent Office.

7. ELDERLY PERSONS

The expectation of life at birth has increased from 32 years in 1940s to over 60 years in 1990s. Percentage of elderly persons (60+ years) in India has risen from 5.7% in 1961 to 6.7% in 2001 and is expected to increase to 7.6% by 2011. As compared to Assam with 4%, and Bihar with 6.7%, Kerala and Tamil Nadu have elderly population of 11.6 and 11.5% respectively.

Geriatrics (branch of medicine dealing with diseases of elderly persons) is a specialized subject. Old people suffers from visual impairment, locomotive disorders, neurological complaints, cardiovascular diseases, respiratory disorders, gastro intestinal/ abdominal disorders, psychiatric problems, hearing loss and genito-urinary disorders. In India joint family system supported old persons. The economic conditions have forced young people to leave home, leaving elderly persons alone to take care of themselves. Elderly people constitute a valuable human resource. They have great deal of knowledge and experience in various areas. The State has not built up sufficient number of elderly clinics and facilities to take care of their needs. There are hardly any elderly clinics in the State of U.P. or any Local Community Health Center. The old age home concept has not picked up in Uttar Pradesh as yet.

In United Kingdom the State Health Care covers almost the entire population. A general practitioner on every 2000 citizens with a minimum consultation to 30 patients a day covers the basic health issues. The State accounts for almost 90% of the health care guaranteed to its citizens. In USA the Insurance Companies look after the health care leaving 46 million without insurance of any form. A person not covered by medical insurance, finds it hard to live.

In India the per capita State expenditure on health is US $ 21 per year. India falls in the lowest 20 in government health expenditure. In private health expenditure India is amongst first 20 countries in the world and is now a destination for health tourism. In a survey in Jalgaon district in Maharashtra 82% households incurred expenditure on health on their own. Of the remaining 18% the State Government incurred 6.5%, municipal authorities 7.2% and corporate sector 4.2%.

In U.P the State Govt has notified [on Sep 25,1995 and then on May 2, 2005] all the courts of the senior most Add District Judges as Human Rights Courts in the districts. The High court on administrative side has decided that these courts will be treated to be functioning from the date of notification and that HRCs can under S.193 Cr.P.C can take cognizance only on committal by Magistrate. The lack of specification of the Human Right offences, procedure of trials and separate investigation agencies has not allowed these courts to function effectively. The special bench of Madras High Court has focused these issues.

Expressing his views in Indian Express, 'India Empowered to Me' Dr. Anbumani Ramodoss, Union Minister for Health & Family Welfare says, ***"Gandhi has said that India lives in its villages. Over 73 per cent of India's population still lives in the rural areas and they have access to only 25% of the health care facilities. The 25% who live in towns and cities have 75 per cent health care access.***

To rectify the deficiency, the government has; launched the National Rural Health Mission for the entire country focusing on 18 states in the North and North East. The aim is to bring down infant mortality, maternal mortality and stabilize population, provide nutrition, sanitation and drinking water, and ensure quality health care for even the last person living in the last village. This Rural Health Mission is the biggest programme in the health sector post-independence and results will be visible in the next three years."

The public health programes cannot be supported by individuals, NGOs and corporations. The areas of public health, which fall within the Human Rights, have to be served by the State. The expenditure in these areas, mostly catering to the lowest 20% of the population, is hardly sufficient. The Robin Hood approach is not a solution to public health issues. The crucial requirement is to increase the public health spending

and to adopt a national health policy, which may also cover the rich public health matters. The individual spending cannot contain the public health issues. The poor should be fully protected by the State.

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