



Imperatives of Global Health Law For the 21st century

*Professor R.K. Nayak**

INTRODUCTION

A loud thinking of world health geniuses have set the loud objective of "health for all by the year 2000" - a step that has initiated a global effort to define health and evolve and adopt strategies to implement the avowed target.¹ This strategy became necessary as the health status of hundreds of millions of people around the globe is not only worrisome but unacceptably pathetic. More than half the population of world does not have the access to adequate health care.² Vast gap exist between the people of developed and developing countries in their levels of health resources they have devoted for bettering health.³

THE GOALS

Scientific medicines could reduce the rate of mortality caused by various diseases in developed or developing countries. In the developed countries people die of heart disease and cancer and in the developing ones people die of diarrhea, pneumonia and measles.⁴ In spite of many advances in medical science half the developing world lacks medical care of any kind.⁵ To achieve the target of "health for all" the World Health Organization (WHO) has set as a goal the expenditure of 5 per cent of each country's GNP on "health care".⁶ This may not be feasible for the developing countries to do so but the achievement of WHO goal will need reorientation of development priorities.⁷ More than 76 countries - the most impoverished and least healthy spend less than 2 per cent of their GNP on public health.⁸ Approximately 100 countries spend less than the WHO set goal of 5 per cent.⁹

On an average per capita expenditure on health for more than two billion people is US \$1 to \$2 per year.¹⁰ To achieve WHO goal of providing primary health care to 1.5 billion people without adequate services, about US \$7 per capita would be needed.¹¹ This extra cost would total just over US \$10 billion per year.¹² Half the budgets of Ministries of Health in developing countries are spent on elite medical health and hospital services tuned to serve upper income urban dwellers.¹³ These countries have to adjust their priorities on present health care system. The Constitution of WHO and several Health Assembly resolutions have reaffirmed that health is a basic human right and a worldwide social goal.¹⁴ Providing basic human needs and improvement in the quality of life of the people should be main social plank of governments and WHO in the next century. All the governments have to devote their energy, efforts and resources towards "the attainment by all citizens of the world by the year 2000 - a level of health that will permit them to lead a socially and economically productive life".¹⁵ According to a recent WHO estimate, nearly 50 million people in the world died in 1996 as a result of various diseases.¹⁶

STRATEGY FOR GLOBAL HEALTH LAW

Poverty continues to be the biggest stumbling block to health advancement. The South-East Asia region of WHO, home to one quarter of the world population also harbours over 40 per cent of the World's poor.¹⁷ The poverty-health nexus is so strong that poor health keeps poor in absolute poverty and poverty pushes them in poor health status.¹⁸ To break this nexus world need global health law so that the essential issues and guiding principles for formulating strategies for health for all by the year 2000 could be evolved by the countries of the United Nations and the WHO. The global health law is intended to achieve the goal of "health for all". At present "health for all" will be interpreted differently by each country in view of its social and economic characteristics,

* *Professor of International Law; Secretary General of Three International Conferences viz. (1) Shaping the Future By Law : Children, Environment and Human Health (1994); Global AIDS Law (1995) and Global Drugs Law (1997) - all hosted by the Indian Law Institute, New Delhi; Member, Governing Council, The Indian Law Institute, New Delhi; & Executive Chairman, the Environmental & Consumer Protection Foundation, New Delhi.*



health status and morbidity patterns of its people and state of development of its health system. The global health law in the process of formulating strategies especially the setting of national targets, have to keep in view the health status of the population of developed and developing countries as some countries may concentrate more in the health status of particular group or section of population and some on the provision of health services of higher section of elite population. Therefore, the countries will vary in matter of interpretation of what is an acceptable level of health. In an attempt to provide health for all global health law will have to keep in view on the one hand the full range of services as mandatory beginning with those in greatest need and on the other progressively providing the health care to vast majority of population in the developing countries.

The global or international health law will have to specify well defined objectives, targets and incorporate them in the agenda for action for the countries to follow policies, strategies and plans of action. Although it is not easy to formulate regional and global strategies with well defined objectives and achievable targets. These achievable targets are to meet the most formidable challenges to public health and care viz. HIV infection and AIDS, drug related tuberculosis and malaria, longer life span, changing life styles, degradation of environment creating health problems, health of women and children, pollution of air, water and soil, prevalent gaps and inequities in health and evolving or enforcing health ethics etc. These challenges are within the scope of global health law and it has to keep health and health problem of billions of people at the centre of development.

SEMANTICS OF GLOBAL HEALTH LAW

Medicine is essentially an integral part of human health and equally also science, culture and civilization in every age irrespective of material progress achieved. As medicine, science and technology move forward in the service of humankind and improvement in quality of life will continue to be in dilemma as it is conditioned by socio-economic factors prevailing in a given country. The concept of universal happiness in the area of health, health policies and law could be of immense good to overcome morbidity, suffering and pain of the people at large the world over. The World Health Organisation, has defined health as a state of complete physical, mental and social well-being and not merely the absence of disease or

infirmity. In this regard Pt. Jawaharlal Nehru while referring to the definition said :

If you achieve that object, I am sure you would have solved the whole problem in the world, because if we can achieve that, every problem disappears from the world.

The right to health is a fundamental right of every human being irrespective of age, region, status, country or continent. It is a state of complete physical, mental and social well being and complete alienation or freedom from disease. Any struggle for having good health is incompatible with the process of living or leading a healthy life in one's life inspite of disease, ageing and mortality. We need to have a better policy of health, law and medicine to ensure healthiness. That should be integral part of any global health law. The developed countries of Europe, USA, Canada made massive investments to ensure better health to their people through high technology in medicine. In spite of enormous expenditure in scientific discoveries in medicines and drugs coupled with high technology the improvement in mortality has been disappointing. Heart diseases, cancer, AIDS, plague, malaria, epidemics and major fatal diseases continue to threaten the human race. The great philosopher Plato said :

A man who has built a fire to warm himself, but continues to fire it until it begins to roast him.

Poverty is the hard socio-economic reality in the developing countries. Poverty breeds illness or bad health and illness breeds poverty in many forms. In such situation, the developing countries need micro-macro socio-economic planning rather than medical planning. Health planning must take into consideration the vast unmet needs of millions of rural population in the developing countries. Any planning should take into consideration in rationalizing vast expenditure on health services in urban areas and megacities around the world. Concentration of resources, elite hospitals, expensive nursing homes and trends towards physician based health security schemes and elite health facilities are not going to solve the health problems of millions of people who have no health or just surviving on poor health in the developing countries around the world. Pharmaceutical progress has resulted in reducing sufferings and sadness and benefitted modern medicine by saving expenditure on health services. It saved from the reduction of loss of



working days and savings from the elimination of premature deaths but it has not minimised the sufferings of poor, weak and the downtrodden.

Health policy, ethics and human values have to go together with the changing attitudes to patient care and health promotion. It is necessary in developed and developing countries that health care system, development and law must cooperate and collaborate as they are inter-related. Human sufferings and health policies should be based on secular humanism as Samuel Gorovitz defines :

"Secular humanism" is a view point that places human welfare at the centre of the moral universe, and looks empirically to the way the world works in order to determine what is right and what is wrong. It is a doctrine of reason, compassion, respect, charity and tolerance, not because these values are divinely inspired, but because these are the values that work best. In advocating them, it keeps company with much of what is central in many of the world's religious traditions, which, while they are not secular are often human.¹⁹

A good global law and policy must encompass in it the sanctity of human life, unflinching emphasis on protecting the weak, dedication to minimise human sufferings, respect and equal treatment to all human beings irrespective of age, gender, socio-economic conditions and cultural ethos and no political, medical or genetic parameters should be applied with regard to defining quality of human life conditions. In achieving these goals of a good health law and policy health care leaders are to use their acumen and influence to avoid failing health of more than one billion people who live in grip of abject poverty, disease, squalor and condition of life is so limited by malnutrition, illiteracy, squalid surroundings, high infant mortality and low expectancy of life that all these stark realities cannot define reasonability what human survival and decency mean in the fag end of the century.

Right to food is very fundamental which implies right to adequate nutrient food to meet the biological need of human beings. Guaranteeing of this right undisputably amounts to guaranteeing one of the primary welfare rights. Right to food cannot be treated as a charity but a basic right of the individual and a perfect duty of the state to eliminate it as hunger arises due to interaction of social forces beyond the control of individual and not due to his

misconduct but owing to his placing in adverse circumstances. The right to food has long been considered and accepted in the normative instruments of international law under Articles 55 and 56 of the United Nations Charter, it is an obligation of every state to take joint and separate action to achieve high standards of living and solution to the problem of health. Article 25 of Universal Declaration of Human Rights provides that every one has the right to standard of living adequate for the health and well being of himself and of his family including food, clothing, housing, medical care etc. Article 12 of the International Covenant on Civil and Political Rights provides that people shall not be deprived of the means of subsistence. American Declaration of Rights and Duties of Man (Article XI); European Social Charter - Council of Europe (Articles 3, 11 and 13); African Charter on the Rights and Welfare of Child (Several Articles notably XIV), Revised European Social Charter (Articles 3, 8, 11, 13, 22 and 23) all these international instruments have only one road to follow i.e. the road to Global Health Law. There are several international instruments which have recognized, provided and adopted necessary measures for the realisation of right to health.

Like organ transplant and other inventions and discoveries in human good have created social and moral problems because social and moral values, norms and attitudes do not necessarily change with changing time to cope up with the new technologies. Organs transplant may give new turn in solving important health problems but it has created unanticipated problems which need adjustment for the government, the people, medico-legal experts and organisations and above all the people who opt for it. In new situations law and medicine have to come closer to each other in serving the humanity. They cannot afford to be at loggerheads as it is seen and experienced very often. Law and medicine have to move forward in the larger interest of humankind. New medicine technologies and therapies are very expensive which a few individuals can afford. Transplantation has raised socio-ethical and legal issues with regard to organ donor and selection of recipients which need to be resolved, if the technology has to do real human good.

Equity in health services or health care system is very much essential. The differentials in health is found in every country whether developed or developing. It is said that "in every part of region and in every type of political and social system, differences in health have been noted



between different social groups in the population and between different geographical areas in the same country²⁰ It is an accepted fact that the disadvantaged and poor groups have limited or meagre chances of survival. However, a child of professional parents in the U.K. can expect to live five years more than a child of unskilled manual labourer.²¹ In France, the life expectancy of a university lecturer is nine years more than that of an unskilled labourer of same age group.²² In Hungary, a man living in most depressed neighbourhoods had a four year less life expectancy than the national average and five and half years less than those living in the most posh residential districts.²³ In Spain, twice as many babies die among families of rural workers than those of professionals.²⁴

Equity in health connotes that ideally everyone should have a fair opportunity to attain his or her full health potential and more pragmatically, that no one should be disadvantaged from achieving this potential, if it can be avoided. Nevertheless, equity is, therefore, concerned with creating equal opportunities for health and with bringing health differentials down to the lowest level possible.²⁵

GENETIC ENGINEERING

The global health law for the 21st century will have to deal with emerging problems of medicine, technology and law. Technological imperative and its application for the suffering humanity are must. For example, as in case of malaria, it is outpacing science and giving modern medicine a tremendous challenge. More and more people are dying from it than AIDS even though the latter is potentially more devastating.²⁶ In India malaria is already claiming two million lives each year and its incidence is likely to go up two-fold over the next 15 years.²⁷

Manipulation of human reproduction has taken a new turn with the introduction of a technology that allows freezing of embryos or fertilized eggs for later implantation to make babies in reality.²⁸ The sperm business has kept pace with technology. About 2,00,000 women in the United States alone are artificially inseminated each year.²⁹ It is estimated that more than 65,000 babies are born annually by this method. Half of the artificially inseminated women received sperm from anonymous donors. Sperm donations usually come from medical students. Sperm samples are sold to clinics, physicians and sperm banks fetching as much as US\$ 200 per sample. To be

impregnated artificially, a woman spends around US \$1000 on an average. This raises question of law relating to biological fathers. Children, created through this process (donor insemination) become not only curious but also obsessed with discovering their genetic heritage. All these questions pose many challenges of law, ethics and morality.³⁰ In this regard global health law has to define the legal status of embryo to avoid further reduction of precious human life to an entity as a commercial commodity.³¹ This raises many question as how to deal with the beginning of human life, manipulation or destruction in clinic and human right, foetal material used as spare parts for repairing a biologically impaired individual and socio-legal implication of reproductive technology.³² Should embryo be classified as human or not and this will be an acid test of emerging global health law.

Mental illness, infant mortality and health of societies, mentally disordered offenders, artificial procreation and nature of confidentiality, switching off life support machines and legal implications relating to violation of criminal law amounting to homicide, doctrine of euthanasia, human health and right to live - all these actually fall within the purview of global health law. To prescribe remedies to these areas, global health law has to go to the precinct of existing health laws of various countries and advanced medico-legal research. In this regard international treaties and other legal instruments, international cooperation and role of inter-governmental organizations, multilateral cooperation, UN agencies, NGOs like International Red Cross and above all WHO will provide contents and shape to emerging global health law.

Alternative health system are making serious efforts for a comeback and they are "Ayurveda, homeopathy, Unani, Tibetan, herbal, naturo-therapy, hydrotherapy, bone alignment and other oriental methods of treatment should be part of global health law as a least cost strategy for improving world health.

Let the global health law make health care and service a reality through a new vision for the 21st century. If "Health for All by 2000 A.D." is to be made a reality some high priority issues spelled must be redressed and twin domains of poverty eradication and investment in public health have to make a global reality through global health law.

The wisdom of great Indian saint-philosopher, poet



and thinker Kabir can guide us in our efforts who sagaciously said :

The deed of tomorrow do
today, do it today;
today's deed do today
before life flies away
for opportunities will
never return, oh man,
do it now and do now as
much as you can.
Tomorrow and tomorrow,
and onward still,

you will postpone twenty
tomorrows untill;
but between today and
tomorrow waits death
so do it now without
wasting more breath.³³

India's one of the oldest scriptures and reservoir of rich thoughts, knowledge and wisdom - *Rig veda* preaches humanity.³⁴

May all be happy, may all be free from disease,
may all realise what is good and may none be
subject to misery.

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INTERNATIONAL CONFERENCE ON GLOBAL HEALTH LAW - 1997



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