

# Editorial Preface

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## Children

HEALTHY PEOPLE and healthy children are the achievable goals during the remaining part of the twentieth century or early part of the next century. Diseases that harm children are not bound by international boundaries. Health problems that face children wherever they exist include communicable and parasitic diseases, respiratory diseases and disorder, genetic and metabolic diseases, cancer, nutritional problems and many other disabilities. The Convention on the Right of Child (CRC), set of international standards and measures intended to protect and promote the well being of children the world over, remains a beacon of hope to many from strife torn and impoverished areas of the world. The United Nations - a long cherished hope of humanity will continue to work to ameliorate the suffering of millions of children who live under abject poverty and especially under arduous socio- economic conditions such as victims of apartheid and foreign occupation, orphans, street children, children of migrant workers, and the displaced children. They are sufferers of natural and man-made disasters, and the socio-economic conditions make them disabled and the abused, the educationally disadvantaged and exploited. Refugee children and children of without parents must be helped outrightly to find new avenues in life and social ordering with human values. The

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whole humanity irrespective of location in developed and developing countries should work for special protection for the working child and the abolition of illegal child labour. The humanity will have to work to ensure that children are not drawn into becoming of victims of the scourge of illicit drugs and trade. Child welfare services and law the world over must focus on improving the highly deplorable living conditions of children and their families and an improving or providing substitute for functions the parents have difficulty in performing. In fulfilling these goals, the role of the governmental agencies is undoubtedly crucial, but many private, non-profit and non-governmental entities urgently need to work together to provide a range of child welfare services to families in need. The primary responsibilities on child welfare services, nevertheless lies on the states. The welfare of a child is indivisible and a holistic approach to project juvenile justice must deal with the negative and positive aspects.

An Ombudsman for juvenile justice with statutory state powers may do good by evolving democratic dimension and values for the solution of the Child problems. Convention on the Rights of child emphasizes in the preamble that the child should be fully prepared to live an individual life in society and brought up in the spirit of the ideas proclaimed in the UN Charter and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity. To achieve these avowed objectives it is increasingly recognized that every nation must learn from other countries through cooperative efforts, exchange of ideas and experiences in solving the child related issues.

Many of the bilateral or country to country relationships that have been developed and nurtured in the past years have a relationship to goals and objectives imaginatively conceived and pragmatically articulated at the 'World Summit on Children' in September 30, 1990. "Healthy people 2000 and healthy children 2000" are the laudable goals of the 'World Summit on Children' which need to be achieved by the end of the present century.

It is high time not only to project but to establish in law the well set obligations to children and youth to ensure a safe and healthy future life. The hope of human civilization is in children and no civilized society can afford to ignore its most precious resources of development. The deplorable conditions of millions of children, in our world of affluence, science and highly sophisticated technology, is one of the serious challenges the humanity is facing. Maurice Strong in his article has aptly observed "among many things in which we have squandered over natural legacy, none is more notorious and reprehensible than our waste of young ones".

The age old institution of family is the basic foundation for the protection, nurturance and development of children of all age groups. Poverty, disease, and social unrest disrupt the stability, strength and integrity of the family. Preventive education and intervention are important measures in preventing psychological, social, medical and developmental injury to the child. The United States has the highest child poverty rates among western industrialized nations, the United States child poverty rates pale against the object poverty of many other countries. But negative outcomes for children are all too similar.

The global estimate provides that some 100 million city children now spend most of their time on streets, working as casual traders, beggars and too often as prostitutes and petty criminals. Thirty millions of these

actually live on streets and an estimated five millions are cut off from their families.<sup>1</sup> All these are living in the silence of poverty. Many of them just manage to survive on the streets in major cities of the world. Those who, by force of circumstances, get involved in illegal activities are brought in the net of juvenile justice system which in most of the places is either outdated or not in tune with the spirit of reforming children for making them future citizen of the country.

Children which constitute one of the most vulnerable groups of society are in the process of preparing to inherit an environmentally safe world from us for which we require international consensus, a common vision and a sustainable value system in order to move toward fulfilling the promise made to children. If we can ensure some kind of pragmatic amelioration of the existing deplorable conditions of children in poverty, then the governance of an agenda of child rights will have some reality. We can then only say to the children of the world "you are indeed the wonder tree plant, grown out of ruins".

On the basis of recent information both achievements and persisting challenges India's, target is to enrol 80 percent children of primary school going age by 2000 AD and retain them in the school system to avoid drop outs. This necessarily calls for massive and sustained investment and commitment. The government has announced the establishment of a "National Mission of Elementary Education" (NMEE). This will help to address pivotal areas of education outreach. In India at district level "District Primary Education Programme" (DPEP) is working to make decentralised planning an operational reality. Once Mahatma Gandhi assertively and aptly said :

I have travelled from one end of the country to the other and I have seen the miserable specimens of humanity with their lustreless eyes. They are India. In these humble cottages, in the midst of

1. Richard Jolly, "One Family or Two", 6(2) *Our Planet* (UNEP) 34 (1994).

ding heaps are to be found humble folk in whom you find the concentrated essence of wisdom.

## **Environment**

It is said that law is the old profession of the uncommitted and development of law is the responsibility of jurists and judges. Indeed the dynamism and magnetism of the developing international environmental revolution and law have provided soul to jurists, lawyers and environmentalists. Environmental lawyers look with great expectations towards law schools the world over as indeed rich source of much needed help as new generation of international environmental issues are fastly emerging. These law schools, realising the enormity and urgency of international environmental problems, are developing studies of legal responses to the vital issues and the growing legal arena is beacon light of developing environmental law and a positive step towards controlling extraterritorial threats. We need to develop "environmental constitution" based on environmental documentation as socio-legal research.

International legal order is emerging through the contemporary transformation, globalization and mutual cooperation between law schools and other legal institutions. In this regard, it is a magnificent effort of the New York University School of law which has established **The Global Law School Programme** for the deeper understanding of international legal order as well as to develop a range of new perspectives and nurture transnational ties in an attempt to bond the human race. As the world is witnessing unprecedented and rapid scientific and technological changes and approaching to the twenty-first century, system of legal education and research must be reformulated to meet the changing human needs. The

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2. Aaron Sachs, "Eco-Justice : Linking Human Rights and Environment" (Worldwatch paper 127 ) 37 (December 1995).

3. *Id.* at 54.

process of globalization and transformation is also affecting international development, international protection of human right and international humanitarian law etc. Notwithstanding, law must be perceived through global lense and accordingly it must serve billions of perople around the globe and carry the task of preservation of ecological balance irrespective of man-made geographical barriers. Hopingly, studies in international environmental law will get priority under the leadership of Dean John Sexton of the New York University School of Law for developing and strengthening international environmental socio-legal order based on Agenda 21 of the Earth Summit -1992. The marvellous work of globalization of legal education by the **New York University Global law School** will eventually become a bridge for cooperation and sustainable developments between the countries of North and South and usher a new era for achieving the goals of "environmental consumerism" and "environmental justice movement" through **international environmental socio - legal order** in the present century and in the new century to begin.

Environmental justice is a potent means to ensure healthy environment to every one. Issues relating to human rights and environment are inextricably inter linked, eco-justice deals with human costs of environmental degradation such as displacement of people by construction of dams and dumping of hazardous wastes resulting into infringement of basic legal rights. It is noteworthy that industrial countries account for more than 90 percent of 360 million metric tons of hazardous waste produced globally each year<sup>2</sup>. Thus, environmental justice issues are immense as every one likes to defend the health and livelihood. It is said that "not even the world's elites will be able to insulate themselves from global warming - they often take the environment for granted or think of it as a luxury<sup>3</sup>. To achieve the goals of environmental justice, citizens must participate in

crucial matters. In this regard human rights activists insist that environmentalists must cooperate and collaborate for the better future of humankind and the ecology.

The weaker section of society, the downtrodden, tribal people, ethnic minorities, women, children all should understand the environmental problems and share environmental information then they will have access to resources and potential polluters and affluent consumers would not be able to treat them as non-entities. These groups will force unjust and greedy polluters and men of affluence to seek alternatives to their polluting activities in relation to preservation of environment essential both for haves and have - nots. Emphasizingly, air pollution from industry and use of petrol as fuel in about 630 million automobiles worldwide are causing many diseases invariably such as cough, cold, bronchitis, asthma and lung cancer and having grave health repercussions. WHO and UNEP said that nearly 625 million people around the world are exposed to unhealthy levels of sulfur - dioxide and more than a billion one in five people - to excessive levels of particulate pollution<sup>4</sup>.

International environmental law is facing many crucial environmental challenges such as greenhouse effects, depletion of ozone layer, acid rain, international trade in hazardous substances and loss of biological diversity and tropical forests, pollution of some notable kinds - marine, air, water and noise have direct bearing on traditional models of international interactions. Without massive and fundamental changes in our traditional patterns of production and con-

sumption and a concerted and concentrated attack on world poverty, the earth will continue on its journey to deterioration and consequent destruction. International environmental law is to respond positively, potentially and seriously for global environmental menaces which have posed incalculable danger to the survival of human race.

Air pollution has reached at dangerous level in hundreds of towns, cities, mega cities and several rural areas around the world. Air breathing in Bombay is now equivalent to smoking 10 cigarettes a day.<sup>5</sup> In Mexico city, the air is considered life-threatening and female diplomats are advised to take maternity leave during pregnancy.<sup>6</sup> In Bangkok, two million automobiles and the use of low grade leaded gasoline have turned the city's air into a soup of 38 different chemicals.<sup>7</sup> Moreover, one million residents of Bangkok were treated for respiratory problems in 1990, led poisoning is now epidemic in Bangkok's children and lung cancer is three times as common there as in the rest of Thailand.<sup>8</sup>

Owing to serious environmental threats the world is passing through a "new age of environmental diplomatic interaction". Pollution knows no jurisdictional or geographical boundaries. Air and water carry dangerous substances from one end of one country to another end of another country. Such transnational pollution can originate in one country which is transmitted to one or more countries through common and shared natural resources. One single accident in one state can harm the environments of other states. As pollution respects no borders, international environmental law based on the principles of international law, is the workable solution to develop the doctrine of state responsibility to attribute activities of private citizens of the states. Imposing international liability on the polluting state is a way to regulate transboundary pollution and in this

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4. H. F. French, "Clearing the Air : A Global Agenda" (Worldwatch Paper 94) 12 (January, 1990)

5. L.R. Brown et.al, "Saving the Planet" (Worldwatch Environmental Alert Series) 25 (1991).

6. *Id.* at 26.

7. *Ibid.*

8. *Ibid.*

regard customary international law is to develop legal duty upon states to control and check serious transfrontier environmental harm and consequent crimes. To prove state responsibility for transboundary pollution, the complaining state has to establish all data, facts, figures and harm suffered due to offending conduct of the defendant state. The complainant state must prove three points viz. breach of an international duty, a causal relationship between the conduct and the injury caused and substantial damage sustained. Lot of legal literature exists on international liability for transboundary pollution. International Law Commission of the United Nations has codified the doctrines of state responsibility and international liability from customary international law. Other international organizations viz. OECD (Organisation for Economic Cooperation and Development), UNEP (United Nations Environment Programme) and WCED (World Commission on Environment and Development) have done appreciable work by developing rules of liability for states based on customary practices, general principles of law, treaties, charters and international judicial decisions etc.

International Court of Justice (ICJ) dealt with one noted dispute, the *Nuclear Tests* case<sup>9</sup> in which issues of transboundary pollution and harm were involved. International arbitration has decided a few important cases such as the *Trail Smelter, Lac Lanoux*<sup>10</sup> and

9. *Australia v. France*, 1974 I.C.J. 253 (Judgement of Dec. 20) I.C.J. also heard other case viz. *Gulf of Maine, (USA v. Canada)* 1984 I.C.J. 3 (Judgment of Oct. 12); *Fisheries Jurisdiction, (U.K. and N.Ir. v. Ice)* 1974 ICJ 3 (Judgment of July 25); *W.Germany v. Ireland*, 1974 I.C.J. 175 (Judgment of July 25)

10. *Spain v. France*, 12 R.Int'l Arb. Awards 281 (1969).

11. *Gut Dam Claims, (Canada v. United States)* 8 Int'l Legal Materials 118 (1969).

12. P. Sands, "Chernobyl : "Law and Communication" 11 (1988).

13. Note, "The Sandoz Spill : The Failure of International Law to Protect the Rhine from Pollution", 16 Ecology L.Q. 443 (1989).

*Gut Dam*<sup>11</sup>. Due to Chernobyl accident, occurred in 1985 in the former Soviet Union, more than twenty states registered significant increases in radioactivity levels but no state came forward to institute any suit against it<sup>12</sup>. No downstream states brought any suit under international law against Switzerland for the damages done due to Sandoz spill of toxic chemical into Rhine River, inspite of the fact that Article 7 of "the Convention for the Protection of the Rhine Against Chemical Pollution" provides for arbitration of all disputes<sup>13</sup>.

The development of effective legal regimes, to protect the earth's ozone layers, climate change and global biodiversity as well as to ensure chemical safety, will substantially contribute to more healthy and safe life of the both present and future generations.

The Earth Summit at Rio (1992) was a positive step in the direction of attaining complex ecological unity. It was a global effort to save the planet. Agenda 21 could be described as Magna Carta or Bill of Rights for the planet. For the first time, the world leaders of the North and South realised the gravity of situation and moved by responding and shaping societies environmentally healthy. The International Conference hosted by the Indian Law Institute in 1994 the papers of which are presented here have addressed in the environment segment that environmentally sustainable economy and environmental consumerism are interlinked. Thus the well being and survival of life on this planet to a great extent depend upon human behaviour that will prevent the disruption or destruction of the ecological unity. During the Earth Summit most of the international legal and institutional proposals received serious considerations for change in system rather than a fundamental overhaul because there is world expectation for improving the quality of life and dignity of humankind. In

this regard Principle 10 of the Rio- Declaration on Environment and Development, one of the principle instruments adopted at the Earth Summit, states aptly :

Environment issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making process. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

Undoubtedly, to deal with global crisis would itself be a tremendous task for the developing international environmental law. The future of earth is intimately linked with the sustainable development which is ostensible goal of environmental policy and law as enunciated in Agenda 21 of the Earth Summit, 1992. Some feasible ecological code is the need of the time and man has to give unqualified support to environmentally-oriented economic measures and developments. The perception of economists and ecologists need to be in conformity with the postulates of "environmental consumerism" in order to protect the health of the planet. The most important question, the humans face - "how can we create a safe environment for better world".

### **Human health**

Medicine is essentially an integral part of human health and equally also science, culture and civilization in every age irrespec-

tive 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. 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,

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14. P.C. Bhalla (ed.), “International Conference - Health Policy, Ethics & Human Values” (Indian Council of Medical Research) Proceedings (green book) B-15 (March 19, 1986).

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.<sup>14</sup>

A good health 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.

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 1(2) of the International Covenant on Civil and Political Rights provides that people shall not be deprived of the means of subsistence. 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 country"<sup>15</sup> 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 year more than a child of unskilled manual labourer.<sup>16</sup> In France, the life expectancy of a university lecturer is nine years more than that of an unskilled labourer of same age group.<sup>17</sup> 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.<sup>18</sup> In Spain, twice as many babies die among families of rural workers than those of professionals.<sup>19</sup>

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 levels possible.<sup>20</sup>

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15. M. Whitehead, "The Concepts and Principles of Equity and Health" (W.H.O. Regional Office for Europe, Copenhagen, Denmark) 2 (1990).

16. *Ibid.*

17. *Ibid.*

18. *Ibid.*

19. *Ibid.*

20. Report on a W.H.O. Meeting *Social Justice and Equity in Health* (Leeds, U.K., Regional Office for Europe), (1986).

The Conference papers of the International Conference have provided a fresh and realistic views on the various contemporary problems relating to children, environment and human health and we need to confront them and face squarely the global dilemma of inequity, injustice and poverty by shaping the future of suffering humanity by law. Notwithstanding the book is divided in six parts or segments and each segment contains a wealth of information as how to shape the future by law in the issue-based component. In each part efforts have been made cogently to strike a feasible balance between the

general and the particular wealth of knowledge. Hopingly it is believed that the book on the specified areas will prove sufficiently helpful for the readers to have a real-life sensitivity.

India's one of the oldest scriptures and reservoir of rich thoughts, knowledge and wisdom – *Rigveda* preaches humanity<sup>21</sup> :

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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21. *Rig Veda* I.89.1.