

Chapter VII

Conclusion and Suggestions

Chapter VII Conclusion and Suggestions

7.1	Introduction	302
7.2	Conclusions drawn by the Researcher	303
7.2.1	A Paradigm shift in the concept of health	303
7.2.2	Ensuring right to health care: a challenge for government	304
7.2.3	Legislations pertaining to health issues	305
7.2.4	Health care: recognized at the International level	307
7.2.5	Role of judiciary: laudable	307
7.2.6	Lack of awareness and information leads to violation of right to health	309
7.2.7	Lack of health awareness by the Government and the Role of media	310
7.2.8	No effective steps taken to implement the Constitutional obligation	311
7.2.9	No Minimum standards of health care formulated by the government	312
7.2.10	Lack of resources in Government hospitals	313
7.2.11	Legal procedures and formalities in emergency violates human rights	313
7.2.12	No priority given to cases relating to health	314
7.2.13	Liability of health providers under criminal laws	315
7.2.14	Medical negligence and right to health	316
7.3	Suggestions	317
7.3.1	Need for new laws and need for amendments in the existing legislations	317

7.3.1.1	Amendments required in Criminal Laws	317
7.3.1.2	Women's health legislations required	318
7.3.1.3	Regulation of Private hospitals needed	319
7.3.1.4	Need to amend Consumer Protection Law	319
7.3.1.5	Protecting rights of HIV patients	320
7.3.1.6	Changes required in the Mental Health Act, 1987	320
7.3.1.7	General Suggestions regarding need for legislations	321
7.3.2	Need to define the role of executive for health sector specifically	321
7.3.3	Role of media	323
7.3.4	People's participation and Sensitization	323
7.3.5	Health budget	323
7.3.6	Shortcomings of National Health Bill	324

7.1 Introduction

Human rights have been imbibed in the Indian culture since ages. The concept of human rights has been developed and recognized by the international community after the end of Second World War. Human right to health is not an old concept, the major development of this concept took place for the first time when the Universal Declaration of Human Rights document was made, and thereafter the Constitution of World Health Organization was another major step that gave recognition to the concept of health as human rights.

Health has always been considered at the vanguard in India. This is proved from the fact that we have a history of medical jurisprudence in India. Right from the Vedic period we had various healing techniques available and the systems of ayurveda, unani and siddha were recognized and are still recognized world wide.

We find that when the Constitution was made the Constitution makers were also well aware of the health rights and so had given place to health in its Directive Principles of State Policy. Though further development took place in 1980s through the National Health Policy and the liberal interpretation of Article 21 of the Constitution and also with the implementation of more health legislations, but even before that we had several legislations protecting and promoting the health rights of the people like The Drugs and Cosmetics Act, 1940; The Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954; The Epidemic Diseases Act, 1897; Employees' State Insurance Act, 1948; The Factories Act, 1948; The Mines Act, 1952; The Plantation Labour Act, 1951; Workmen's Compensation Act, 1923; The Prevention of Food Adulteration Act, 1954 etc.

A careful examination of Indian the laws relating to health as well as International Conventions, decisions given by the Indian and foreign Courts and from the interpretation and implementation of various policies and plans, the researcher has arrived on the following conclusions:

7.2 Conclusions drawn by the Researcher

7.2.1 Paradigm shift in the concept of health

There has been a paradigm shift in the concept of health right from ancient times to 21st century. The concept has been changed due to the increase in diseases and the changing environment. The shift has been from the bio-medical concept to the holistic concept. The concept of health of 3Ps i.e. promotion, protection and prevention has evolved from the plain and simple concept of 'absence of disease' that was prevailing in the ancient times. Then concept shifted to 'absence of pain and discomfort', the next development was that the 'health is affected by various social, psychological, cultural, economic and political factors', then came the era where 'health was conceived as to be a sound mind in a sound body in a sound family in a sound environment'. And the concept that is prevailing in the 21st century is the newer aspect of health that focuses on 3Ps i.e. protection, promotion and prevention.

Right to health is one of the third generation human rights which began to be considered as a human right after the end of Second World War. Though the concept was not developed till 80s, the recognition of it to be a human right was recognized in early International document UDHR.

Hence health includes all physical, mental, social, spiritual, emotional as well as vocational aspect into it. The concept of health for all as derived by the World health organization is considered to be as removal of all obstacles to health.

7.2.2 Ensuring right to health care: A challenge for government

Health depends on various factors; there have been innumerable determinants of health. Though the researcher has tried to broadly classify the same into three divisions i.e. the social and economic environment, the physical environment and person's individual characteristics and behaviors, but the same cannot be put in a pigeon hole formula box. The determinants of health vary with the change in circumstances. When we talk of providing comprehensive health care various classifications can be made on the basis of which health has to be ensured like age, sex, locality, culture etc. There are various determinants of health and all these variants affect different people in different ways. Hence considering health under the human rights realm involves a lot of issues.

The fact is that the concept of right to health is so broad that it has become difficult for the government to focus on each and every aspect ensuring health care.

Each and every violation of human right has a direct effect on the health of human beings as they are inextricably linked.

The international conventions also recognize that discrimination causes human right violations. Many times the discriminatory approach of the government in executing and implementing the plans and policies make the people to face human rights violations.

Though the plans, policies and legislations are beautifully worded but when it comes in to real practice discrimination is not excluded.

7.2.3 Legislations pertaining to health issues

The parliament has adopted a dynamic approach to meet the needs of the rapidly changing society. With the development in medical science the Parliament has come up with laws that cover several new areas like the Transplantation of Human Organs Act etc.

Till date we do not have any specific legislation on health care law. Though before independence we had laws on drugs but the scope of it was limited. The major development took place after 1980 when after the formulation of National Health Policy and legislation covering newer issues like transplantation of human organs, narcotic drugs, pre-natal diagnostic techniques etc.

The legislation of Narcotic Drugs and Psychotropic Substances Act was a turning point in the evolution relating to drug laws.

Along with various aspects relating to physical health, the parliament has also given stress on mental health in the 80s.

Occupational health laws are not a new concept for India. Several labour legislations could be found in the early years of the 20th century, at the same time more and more welfare legislations have come up in the last three decades to protect and promote the health rights of the labourers.

There has been a grey area in the laws that protect the health of women. We need to fill this gap by legislations. Some areas relating

to women's health protection like maternity protection, old age nutrition, pre-natal and post natal care, nutritional deficiency in adolescent girls, reproductive issues like surrogacy, etc. are not yet covered.

Surrogacy is the areas where there is an urgent need to have legal sanction, as the health of the surrogated mother is always at risk due to frequent deliveries of children.

Though we have laws for children and provisions relating to health in these legislations, but there is a dearth in these legislations that focus on the developmental needs and overall personality of children.

Regarding food laws, the recent legislation of 2006 i.e. Food Safety and Standards Act is a notable event but at the same time the implementation of it has been foreseen to have many hurdles. Till date no major steps have been taken to implement the same.

As environment and health are inextricably linked, the parliament is visionary to have been made legislations on environment which in turn provides for health care.

Laborers in our country work in unsafe working environment. Their human right to health is violated in every minute they stay at their workplace. At the same time many workers working at the unorganized sector have no legal protection as there is a dearth in law for unorganized sector. The Supreme Court has very well held¹ that it is the duty of not only government employers to provide

¹ Kirloskar Brothers Ltd. v. Employees' State Insurance Corporation, AIR 1996 SC 3261

health facilities during and after retirement but has casted an obligation even on private employers to provide such health facilities. As such the government employers as they fall within the definition of Article 12 are duty bound to do so, there has been no legislation that makes the private employers to be bound by the same.

There has been no specific legislation for the protection of the rights of AIDS patients. They are often discriminated by the health providers. Right to privacy of HIV patients is equally important. Hence necessary directions by the government should be provided in this regard to protect their rights.

7.2.4 Health care: Recognized at the International level

Health at the international level has been considered to include various aspects. In all the international covenants, declarations, principles health has been given a special status.

The World Health Organization is the magna carta of health and the Alma Ata declaration made the state parties to feel the urgent need of having effective health policies. The National Health Policy 1983 was an immediate development to fulfill the international obligation.

7.2.5 Role of Judiciary: Laudable

The role of the Supreme Court in proving judicial precedents has been laudable since the development of the concept of locus standi. The Apex Court has been vigorous enough for setting standards in almost all the aspects of health where the legislation is silent.

It is the initiative of the Supreme Court of India to give recognition of health as a right. Hence human right to health is a concept that has been developed by the Supreme Court in India.

One of the glaring examples of it is that the Indian judiciary has widened the scope of Consumer Protection Act, 1986 by including medical services within the definition of the word services². The awareness regarding the concept of medical negligence is on rise as more and more number of cases are filed in the courts regarding it.

However some of the points of judicial activism are noteworthy: The patients of HIV AIDS have been dealt very sympathetically³. New avenues in pollution control have been taken up like running CNG buses, ban on smoking in public places⁴, regulation of unqualified medical practitioners⁵, storage and supply of drugs⁶ etc.

The courts have dealt with the health providers who do not have the requisite qualification but are still practicing in the field very strictly to ensure the health of people.

But the most alarming thing is the states have not taken pains to translate the words of Supreme Court into reality. Very few or minimum implementation is done by the states and many a times it is just done so that they are not subject to contempt proceedings. The implementation of the same is done without

² Indian Medical Association v. V P Santha, (1995) SCC 651

³ M Vijaya vs. Chairman, Singareni Collieries Hyderabad, 2001(5)ALD 522 (LB); Smt. Lucy R. D'Souza vs. State of Goa, AIR 1990 Bombay 355

⁴ Murli Deora v Union of India and Others, AIR 2002 S.C. 40

⁵ D.K.Joshi V. UP, 2000(5) SCC 80; Rajesh Kumar Srivastava V. A.P. Verma, AIR 2005 ALL 175; Poonam Verma Vs Ashwin Patel, AIR 1996 SC 2111;

⁶ Common Cause V. UOI, (1996) 1 SCC 753; Vincent Panikurlangara v. Union of India, AIR 1987 SC 990;

putting life into the words of the Supreme Court. This is obvious from the fact that we get to know more and more Public Interest Litigations are filed on same or similar issues before the courts.

7.2.6 Lack of awareness and information leads to violation of right to health

We can identify women, children, and people belonging to scheduled caste and scheduled tribes (as per the statistics given by NHP 2002 document), labourers, people living in governmental institutions etc to be as vulnerable population. They lack education, resources, public participation and hence are unaware of the basic fundamental rights. The literacy level in our country is low amongst these groups and it is observed that there has been a direct relationship between health and education. Hence low literacy level results in lack of information and lack of awareness and creates human rights violations. This can be proved because all the major National Policies and programmes implemented by the Government are mainly towards the vulnerable and marginalized population.

An overall reading of various Supreme Court and High Courts decisions create an impression that those living in governmental institutions like prisons, shelter homes, protective homes, juvenile homes etc lack information relating to health aspects and are unaware of their rights. It has also been found that no effective efforts are made by the government for conveying the relevant information regarding health aspects. This creates a situation of human right violation.

At the same time poverty and financial problems creates a situation which leads to lack of public participation. Poor people

are always into earning the minimum necessities and so have seldom time to think about gathering information relating to health aspects.

7.2.7 Lack of health awareness by the Government and the Role of media:

Many a times the health facilities do not reach the remotest areas and to vulnerable minorities. Traditional practices have been adhered to by the people in India since long. People are not ready to accept the modern medicine and they stick on to the traditional remedies the effect of which is alarming at times. This is because of lack of awareness and sensitivity regarding the ill effects of traditional practices continued by people.

Health awareness amongst mass population has not been created by the government specifically in rural areas. No specific policy to create mass awareness has been formulated till date. Though various programmes are made and implemented but are of no use until awareness relating to such programmes are not created.

A strategy to provide information as well as awareness is lacking. Lack of man power is also one of the reasons for the mass not getting the required information. Adequate man power is not placed at remotest areas to ensure health facilities and services.

Many places do not have any access to any kind of media. Television, radio and newspapers play a prominent role in spreading awareness but in remote villages where there are no electricity facilities, media has no role to play. At the same time the population at those areas is illiterate and uneducated so newspaper are mere black letters for such mass.

Not only providing information and creating awareness would work but it has to be ensured that the people get the maximum benefits out of the plans made.

7.2.8 No effective steps taken to implement the Constitutional obligation

The ideals of the Constitution for securing social justice include health care facilities. Though there has been a remarkable development made by the government, parliament and the Supreme Court in fulfilling the said objective by various plans, policies, programmes, judicial decisions and legislations, they all been golden letter and no effective steps have been taken to transform the golden letters into reality.

Minimum standards of health care are required to ensure right to health for all and especially for the vulnerable population. Though the Directive Principles of State Policy lays down for the achieving minimum standard of living and many more but till now no effective steps have been taken in this direction by the executive.

A glaring example of the same can be that deaths due to malnutrition are still prevalent in spite of many health related policies and programmes.

The role of the judiciary in interpreting the Constitutional goals is remarkable as it has converted almost all directive principles into fundamental rights by its activism. But the role of executive does not seem to be satisfactory as still it is coming with new strategies, plans, policies and legislations. Many of those which have already been made and implemented have failed to be successful due to

many reasons. Our five years plans, national policies still focus on the basic needs.

Even after 60 years of independence we still talk about violations of basic and fundamental rights. We need to think beyond the fulfillment of basic human rights.

Planning and policy making would not do enough if the same are poorly planned. We find that we have extremely good planning and comprehensive policies to meet the needs of the society and to fulfill this basic right. All the drafts relating to health care whether they are legislations or any policy or plan are beautifully worded, but the fact which we all agree is the real factual position. Even without collecting any sort of primary data it can be proved that these all drafts have been in vain at times.

7.2.9 No Minimum standards of health care formulated by the government.

Recent policies and programs on various aspects like nutrition, housing, drinking water, sanitation, hygiene etc shows that the government is on the way to plan for a minimum standard of living for these groups.

Right to health care has no specific legislative sanction till date. The National Health Bill is introduced just recently in 2009 in the parliament. The Health Bill for the first time in Indian legislations focuses on aspects like general and core obligations of government in relation to health; collective and individual rights in relation to health; implementation and monitoring mechanism through the constitution of National and State Public Health Boards; redressal mechanism for health rights etc.

One of the biggest hurdles that the government is facing in laying minimum standards is that the socio-economic conditions vary to a large extent it becomes difficult for the government to formulate certain minimum standards.

7.2.10 Lack of resources in Government hospitals

This can be very much proved by the decisions given by the Supreme Court⁷. Needless to say, the cities in India have got the best of the medical professionals and hospitals to give treatment. Even the government hospitals at metropolitan cities and other cities are well equipped with man power and proper equipments. But the unfortunate part is in India we find almost 70% of the population living in villages, and the hospitals and dispensaries in villages lack minimum basic infrastructure which includes even basic drugs and equipments to treat a patient in emergency.

7.2.11 Legal procedures and formalities in emergency violates human rights

The government hospitals show a passive attitude in cases of emergency. Legal procedure and formalities are emphasized a lot whenever a patient is brought in emergency. In this context a landmark case of Parmanand Katara⁸ is notable. The Court emphasized on this point again in the case of Paschim Banga⁹ the same apprehension on the part of the doctors was realized and the court gave specific directions to liberalize the attitude of police and courts towards doctors serving the patients in emergency. But

⁷ Dr. Chander Prakash v. The Ministry of Health AIR 2002 Del 188

⁸ AIR 1989 SC 2039

⁹ AIR 1996 SC 2426

again a case filed in 2002 i.e. Dr. Chandra Prakash¹⁰ it was prayed to the court to give specific guidelines regarding emergency medical aid. This shows the passive attitude of the executive even towards judicial decisions. Cases of refusal to provide emergency medical care are common as on date and the victims are not at times provided with timely medical care.

Because of this attitude of the government hospitals people are compelled to move to the private hospitals where they are forced to spend a huge amount for treatment. The guidelines given by the Supreme Court are only for doctors working in Government Hospitals and are not applicable to Private practitioners and private hospitals.

Legal formalities are only for the purposes of regulating the things and one important thing that has to be remembered is that it should not violate fundamental rights.

7.2.12 No priority given to cases relating to health

Right to health is a basic human right and now it is also recognized as a fundamental right. This is the outcome of various judicial decisions. However it is found that cases relating to health aspects are pending in the courts of law for a long time and even the decided ones show that it had taken a long time to be decided. In fact they should be treated on priority basis.

Some of the reasons behind the delay in disposal of health related cases are increase in the number of cases filed on everyday basis,

¹⁰ AIR 2002 Del 188

complex nature of cases, inadequate infrastructural facilities lack of judges and courts, unspecialized knowledge of the judges etc.

7.2.13 Liability of health providers under criminal laws

Indian Penal Code has several provisions relating to health aspects like medical negligence, food adulteration, drugs, spoiling and fouling the environment etc. The 1860 document has been a visionary document to meet the need of the changing society.

Section 304A of the Indian Penal Code deals with death on account of rash and negligent act. Here we find that the following health providers can also be included under the said section:

- Homeopath doctors administering poisonous medicines to patients without thoroughly studying their probable effects.
- Unqualified vaidyas and doctors administering injections and medicines
- A doctor incharge of dispensary who employs unqualified nurses and compounders who thereby gives poisonous or irrelevant drugs to the patient.
- A doctor when he suppresses relevant information from the patient or his relatives and does not suggest any specialized treatment.

But the fact is that very few cases have been filed against doctors due to their negligence on the above related matters. We find cases where the courts have shown sympathy towards the doctors and have awarded minor sentences¹¹. The judiciary has to be sensitized on these matters and should provide severe punishments to those who are unqualified or are holding fake

¹¹ See Sukaroo Kobiraj v. The Empress (1877) ILR 14 Cal 566

degrees. Quacks should be severely punished to save the health of millions of people.

Apart from practitioners who are registered under the Medical Council Act and the like, in India we also have unrecognized and illegal health providers who without any formal qualifications or though having formal qualification are practicing in another field are found. Some examples of them are tantriks, vaidyas, hakims, herbalists and a homeopathic doctor practicing allopathy etc. These people tend to be very acceptable among the uneducated, illiterate and rural masses. Hence it has been rightly observed¹² that when the law requires a person to practice in a particular system of medicine he is duty bound not to enter any field of other systems and if he does so he should be considered to be a quack.

7.2.14 Medical negligence and right to health

Reasons for increase in the cases of medical negligence can be broadly laid down as under:

- Increase in commercialization in medical field.
- Degradation of the quality of medical education.
- Awareness of people for the consumer rights.

The field of medical negligence was uncovered till the decision of decision of V.P. Santha in 1995. Before that we had legislations governing the registration and regulation of the conduct of doctors, hospitals and nursing homes like the Indian Medical Council Act, and the like in the field of homeopathy, dentistry etc. but none of them provided for the cases relating to medical negligence. Hence before the Consumer Protection Act, 1986, the field of medical

¹² Poonam Verma Vs Ashwin Patel AIR 1996 SC 2111

negligence was governed only by the law of tort under the concept of negligence.

The incidents of medical negligence cases are rampant in our country. Though no precise records can be found regarding the official statistics of the institution of medical negligence cases, however it can be seen that the victims of medical negligence cases are poor people who cannot afford the services of private practitioners and are compelled to approach the government run hospitals. A notable point in this regard is that the Supreme Court has thrown the government run hospitals and charitable hospitals are out of the purview of Consumer Protection Act as the service rendered there is either free of cost or by paying a nominal fee. Hence the consumer protection law is available only for those who avail services of private practitioner, in another way it is available only for those who fall into the category of rich, educated employed masses.

7.3 Suggestions

7.3.1 Need for new laws and need for amendments in the existing legislations

7.3.1.1 Amendments required in Criminal Laws

- Section 304A of The Indian Penal Code should be amended to include special provisions dealing with rash and negligent acts by doctors as these types of offences are rampant and they altogether fall into a specific category.
- Removal of any organ without the consent of the patient or by obtaining wrongful consent of the patient should be criminalized very severely. The implementation of

Transplantation of Human Organs Act, 1994 should be made more effective by making necessary amendments to the Act.

- Stringent punishments should be provided by the laws for quacks, tantriks, hakims, herbalists who prescribe life threatening solutions to the people. The same should be strictly implemented with top priority.

7.3.1.2 Women's health legislations required

- Legal changes should be adopted to empower women for equality so as to protect their rights specifically during pregnancy and lactation periods.
- Present health care services should be reviewed and reassessed in order to make it more child and women friendly.
- Cases on surrogacy issues are on rise in India. There has been a dearth on law relating to surrogacy. Immediate steps should be taken by the Parliament to introduce and pass an Act which specifically deals with the health rights of the surrogate mother.
- Though the Maternity Benefit Act, 1961 is in force the same needs to be amended to increase the maternity leave with pay to all the working women for a period of 2 years which should start from the second trimester of the pregnant women.
- Health education to females of all ages should be made compulsory by specific legislation to the effect. The curriculum should specifically provide for health education to adolescent girls.

7.3.1.3 Regulation of Private hospitals needed

- Legislations should be made for the protection of the rights of health care workers and patients, and that should make both the public and the private sectors accountable.
- Not only government hospitals but also private hospitals should be made duty bound to attend the patients in case of emergency and accidents. Emergency operations must take place within a reasonable time.
- Separate legislations should be made to regulate the functioning and regulation of private hospitals and nursing homes.

7.3.1.4 Need to amend Consumer Protection Law

- The Consumer Protection Act should be amended to cover services rendered free of cost by all government and charitable hospitals in order to widen the scope of medical negligence and to make the doctors working at government and Charitable hospitals liable. It should not turn that a patient who is unable to pay is left with no remedy in cases of medical negligence.
- Separate forum should be established to deal with the medical negligence cases. The members of the forum should necessarily have in depth knowledge regarding medicine and law in order to give justice to the cases of medical negligence. The Consumer Protection Act should be amended in this direction to have such redressal machinery at the District, State and National Levels.

7.3.1.5 Protecting rights of HIV patients

- HIV positive patients need special protection regarding matters like privacy, health care, employment etc. Specific legislation to protect and promote the rights of HIV patients should be implemented.
- Such legislation should also focus on the steps to be taken to prevent spread of AIDS by various means.

7.3.1.6 Changes required in the Mental Health Act, 1987

- There is a need of big investment in development of infrastructure and provision of basic facilities in mental hospital, which is still largely ignored.
- The Act excludes mental retardation, dementia etc. which cannot be treated. But the fact is that these conditions need gentle mental care and excluding them may be against human rights of these patients. Hence specific provisions in this regard are urgently needed.
- Power and duties of police officers in respect to certain mentally ill persons have been laid down in Chapter 4 part B (Sect 23), of the Act. But we can see many mentally ill patients wandering in public places in conditions of total neglect and squalor. This indeed is testimony to the fact that the way section 23 is presently put to use has failed to achieve the objectives of the Act. Hence strict implementation of the same is needed in order to protect such persons.
- "Voluntary admission" as provided under the Act is not always real voluntary but is rather misused. The Act needs to be more specific on these lines and amendment to the

effect that expert's opinion is taken in such cases are required.

7.3.1.7 General Suggestions regarding need for legislations

- Crèches facilities should be made available at all the places of employment to take care of the children of working women. A specific legislation to this effect should be passed to make all employers liable to provide such facilities.
- The concept of Sex education is not fully developed in India looking towards the conservative attitude of the society. Legislation to provide sex education to all people belonging in the age group of 10 to 40 years should be made compulsory. Such legislations should provide for setting up of specific institutions where sex education is provided in a friendly manner. This would play a vital role in adolescents as well as in adults to save them from the risks of sexually transmitted diseases.
- Legislation to protect the health rights of older people should be implemented and it should provide for compulsory maintenance of health records and treatment of older people.

7.3.2 Need to define the role of executive for health sector specifically

- Government should make plans as to keep the health records of all people below poverty line.
- Regular and compulsory health check ups should be done for the vulnerable masses.
- All staff of health centers and hospitals, both in private and public sector should be trained and sensitized regarding rights of patient to get proper health care facilities. This can be done by organizing workshops and seminars on such issues.

- The government should provide appropriate infrastructure and favorable environment at hospitals enabling the staff members to respect the right of any person or patient to get suitable medical and health facilities.
- The government should from time to time do inspections and keep checks over the government hospitals in respect of the availability of drugs and medicines, equipments and other life saving necessary facilities especially in rural and remote areas.
- A notification to the following effect should be given to all the medical professionals whether they are working in government hospitals, charitable hospitals or are private practitioners in respect of the following matters:
 - ✓ No denial of treatment on the basis of zonalisation i.e. to say that a patient should not be referred to only those hospitals that falls under the zone in which the incident has taken place. (specifically applicable for accidental cases where police formalities are required)
 - ✓ The doctors should provide timely warning to the patient's family and should disclose the seriousness of the health of the victim.
 - ✓ A duty should be cast on the medical practitioner to either consult or suggest the consultation of a specialist, if he is of the opinion that such is required.
 - ✓ It should be made mandatory for all the doctors to provide with a free copy of his patients' complete medical record.
 - ✓ The ingress of visitors in the hospitals should not result in for infections in order to avoid complications.
 - ✓ Computerized maintenance of records of each and every patient should be done.

7.3.3 Role of media

- Violations of the right to health should be documented and the same should be spread amongst people at large to make them alert and to enable them to seek remedies if they face the same. This can be very well done with the help of media.
- Urgent problems like spread of epidemic, need for vaccinations etc. should be brought to the attention to the public through media, community programmes and awareness raising programmes at large for effective awareness amongst the mass.

7.3.4 People's participation and Sensitization

- People's participate in the design of policies, programmes and strategies should be encouraged and the communities should be made to involve in setting priorities, in designing, implementing and evaluating government programmes, policies, budgets, legislation and other activities relevant to the right to health.
- Public participation should be encouraged through NGOs and other voluntary organizations in order to fulfill the Constitutional goals and in order to achieve the target of Health Care for all.

7.3.5 Health budget

- Expenditure on health services should not be concentrated only in urban areas and mega cities, but should be used after proper identification into those areas where there is a genuine need.
- Health budget should be more focused towards improvement in the services provided to the poor, vulnerable other disadvantaged groups.

- The government should redistribute the available resources in order to ensure that each group is provided with adequate health services.

7.3.6 Shortcomings of National Health Bill

The National Health Bill should be implemented as soon as possible as it recognises the right to health of the people in general. The National health bill if implemented would to an extent provide for many of the suggestions given by the researcher the following are the shortcomings in the bill which should be taken care of by the Parliament. The full text of the bill is provided in the Annexure.

- Chapter II of the Bill deals with the Obligations of Governments in relation to health. In this chapter section 3 deals with the General Obligations of the government towards progressive realization of health and well being. Clause (d) of Section 3 obliges the government to ensure comprehensive involvement of civil society, especially vulnerable or marginalized individuals/groups, including by enabling them to effectively articulate their health needs and to participate in all health related decision-making processes including in setting health priorities and goals; and in devising, planning, implementing and evaluating the policies and strategies for health and well-being at every level; also integrally incorporating their roles and participation in the contents of such policies, strategies and plans; and ensuring demonstrably serious consideration to diverse expert views, in the planning of health care.

The definition clause defines “vulnerable and marginalized individuals or groups” as individuals or groups who require special

attention due to their physical conditions, or who are marginalized due to their social or economic status or conditions or due to their historical, traditional and/or current exclusion from political power and resources, including but not limited to: women, children, adolescents, older persons, persons with disabilities (mental and physical), persons with stigmatized, communicable diseases (like HIV/AIDS, leprosy), persons from Scheduled Castes (SCs), persons from Scheduled Tribes (STs), people of rural or remote areas, trafficked persons, migrant sections of population, internally displaced persons, persons in conflict situations, refugees.

On one hand the Bill defines and identifies the vulnerable and marginalized individuals/groups as all those who are deprived of their right due to education, poverty, unemployment, social status etc. and on the other hand it talks about the participation of such people in the decision making process. This situation seems to be more hypothetical as all attempts made in any direction by people belonging to these groups is always towards satisfaction of their bare necessities. In such a scenario they seldom think or rather have that insight to participate into the decision making process.

Instead of making provisions for their involvement into the decision making process, the government should try to know their health needs and priorities. Their involvement is indispensable but should be made in such a manner that they get proper and timely information regarding such plans, policies and strategies and ensuring that they get the best services out of such plans, policies and strategies.

- Section 5 of the Bill provides for Obligations to provide access to quality health care services wherein the Government is obliged to carry out certain obligations of comparable priority towards right to health and well being of all. Clause (d) of the said Section lays down to provide education and access to information concerning the main health issues in the communities, including methods of preventing and controlling them, and promoting healthy lifestyles, through sustained, and regularly updated national, State and local level IEC programmes.

The researcher finds that instead of providing such education and information to the community as a whole, which happens to be a complicated and expensive task, provision to provide education to specific class or classes of people living in society like women and adolescent girls should be made. As it is rightly said that if educate a man you educate only him but if you educate a women you educate the whole family.

- Section 5 under Clause (g) provides the government to ensure women's health and Clause (h) provides to ensure children's health.

Women and children specifically face lots of health issues. The researcher finds that these clauses should be made more defined and specific so as to include as to what has to be ensured on priority basis.

- Section 6 of the Bill provides for specific public health obligations of the Central Government and obliges the Government of India to take appropriate legal steps, like enactment of laws, or review/

amendment of existing public health related laws, and/or strict implementation of laws, and also through its powers to issue rules/ regulations/ orders/ bye-laws under this Act, to specifically address the areas specified in the clauses (a) to (k).

The most burning issue the researcher finds our country is facing today is ridiculous increase of the number of quacks providing medical services and people obtaining the same from such quacks. The section nowhere provides for taking legal actions or making the amendments in the existing laws or strictly implementing the laws that punishes quacks. Hence the researcher finds that specific legislation is required to punish and prevent such medical professionals like unregistered medical professions, professions holding fake degrees, professionals practicing in a different field than their own, hakims, vaidyas and tantriks who do not have specific knowledge on health related issues. Furthermore the cases of medical negligence in our country are on rise. Again the section is silent about the medical negligence issues which touch the right to health aspect in the fore front.

- Chapter III of the Bill deals with Collective and Individual rights in relation to health. It provides for different rights that a user should be endowed with. One such is the right to rational health care and it says that the user has right to receive rational healthcare and to not be subjected to irrational health care or over-medicalisation.

Here the lacuna of this provision is the Bill has nowhere made an attempt to define as to what constitutes rational and irrational health care. Hence in order to establish a right, the same has to be specifically defined.

- Another kind of right that is proposed to be endowed in the users' according to Chapter III itself is the right to terminal care. It says every user has the right to humane terminal care and to die in dignity.

The Constitutionality of right to die has been challenged before the Supreme Court in various landmark cases¹³ and the same has been held to be unconstitutional. The Bill by proposing to include such right is making an attempt to again raise up the controversy as to the constitutionality of right to die. Further it provides the users' the right to humane terminal care which means it talks about legalizing euthanasia. There are various types of euthanasia i.e. various forms by which the intentional killing of an ill person can be done. They are voluntary, non-voluntary, involuntary, assisted, active and passive forms euthanasia. Hence it become utmost important to clearly lay down as to how and by which methods a user has the right to humane terminal care.

Both these are too wide and controversial that they have to be particularly made clear to include them into legal bounds, protecting the interests of individual as well as the society as a whole.

- Section 15 lays down the Duties of users two of which are to provide the health care providers with relevant and accurate information for health care are to comply with the prescribed health care.

¹³ Gian Kaur v. State of Punjab AIR 1996 SC 946

The researcher thinks that these duties should be made mandatory so as to protect the rights of Medical Professionals. This is because we find plenty of frivolous medical negligence cases where the patient does not provide accurate information to the health provider or does not follow the medications as prescribed by the medical professional. These kinds of frivolous complaints lead to much mental harassment on the medical fraternity. This can be done by including a provision to the effect that the users' are bound to sign a standard document that lists out all the duties that he is bound to follow.

- Chapter IV of the Bill deals with the implementation and monitoring mechanism. It provides for the constitution and composition of National Public Health Board. Section 18 defines the function of such Boards and provides for certain functions to be carried out every five years in order to ensure better health care facilities to the people.

The period of 5 years seems to be too monotonous for all the function that is provided under the section. The section nowhere provides the discretion of the National Board to dispense with these 5 years time period in order to meet the needs rapidly changing society vis-à-vis scientific development. The researcher finds the Board should perform the functions as laid down in the section as and when required and such time bounds would bring injustice in ensuring public health.

- Chapter V of the Bill deals with the Disputes Resolution and Redressal Mechanism for health rights wherein Section 27 provides a mechanism of dispute resolution through public dialogues and public hearings i.e. Swasthya Jan Sunwais. According to this

section the State and Central Governments shall facilitate forums for amicable and non-adversarial disputes resolution at community level by establishing mechanism of public dialogues and public hearings on health in the manner provided under the said Section.

It lays down that the Swasthya Jan Sunwais shall be conducted at primary health centre (PHC), block and district levels twice in a year, and once a year at State and national level as events open to all citizens, which would enable the general public and various groups and organizations to give free and independent feedback about health care services.

The researcher finds the time period for the conducting Swasthya Jan Sunwais to be too long to defeat the object of the section. With this period there is a strong possibility that the number of issues would rise to such an extent that it would be impossible to address all the issues in a short span of time with adequate attention to each and every issue. The researcher thinks that in order to make such system to be more efficient in addressing the violation of health rights of people and so such forums should be conducted every month as to meet the object of this section.

- Section 29 of the Bill deals with the Outcome and follow-up of Swastha Jan Sunwais. This section talks about the Swasthya Jan Sunwais Panel which is to perform certain functions as provided in the section while dealing with the issues brought before it.

Chapter V no where deals with the constitution of such Swasthya Jan Sunwais panel and is silent about the number of members,

their qualification, their designation and their disqualifications. Hence such dispute redressal system has to be expressly defined.

- Section 31 lays down that complaints related to health may be filed before a district courts designated by the State Government within whose jurisdiction the health care establishment/provider is situated, or the cause of action, wholly or in part, arises. The researcher feels that basic knowledge of medicine and medical sciences is utmost necessary when a person is made to decide the health related matters. Special courts where judges having specialized knowledge in the field of medicine and medical sciences should be established as to bring justice to the people and to the medical fraternity. Moreover such judges should be provided with periodic training in the health related matters to ensure the rights of people.

Above all one thing has to be remembered that Health rights are sacrosanct and valuable rights and are the sacred obligation of state.