

groups. The wide differentials in the demographic, epidemiological status and the delivery capacity of health systems are a serious constraint to a nationally mandated health insurance system. Given the heterogeneity of different regions in India and the regional specifications, one would need to undertake pilot projects to gather more information about the population to be targeted under an insurance scheme and develop options for different population groups. Health policy-makers and health systems research institutions, in collaboration with economic policy study institutes, need to gather information about the prevailing disease burden at various geographical regions; to develop standard treatment guidelines, to undertake costing of health services for evolving benefit package to determine the premium to be levied and subsidies to be given; and to map health care facilities available and the institutional mechanisms which need to be in place, for implementing health insurance schemes. Skill building for the personnel involved, and capacity-building of all the stakeholders involved, would be a critical component for ensuring the success of any health insurance programme. The success of any social insurance scheme would depend on its design, the implementation and monitoring mechanisms which would be set in place and it would also call for restructuring and reforming the health system, and developing the necessary prerequisites to ensure its success.

It is also important to protect the interests of the poor that is why; a rational form of

health insurance is needed. Moreover, the traditional model has to be changed so that it could be suitable the present situation.

According to some legal experts, Indian companies can also be sued for possible divulging of Protected Health Information of US citizens even if they did not divulge the same. The legal experts warn that both the American and Indian counterparts should increase their errors and omission insurance by 100 times.¹⁶

There could not be a single model for health insurance in India and there's need to adopt differential norms for different groups, which could include credit co-operatives, dairy co-operatives, self-help groups *etc.* Community based health insurance schemes are good for the rural communities. Public-private partnership could become an ideal model for health insurance for the poor.

Health insurance is an emerging important financial tool in meeting health care needs of the Indian people. CBHI is to be further designed nicely so that the disadvantages, vulnerable section get maximum benefit. There is need to examine alternative mechanisms for financing of health care as well as to strengthen mechanisms for optimum utilization of existing systems. Let the author concludes with *"Purchasing health insurance is ninety nine percentage better than running fund raisers whenever such situation touches the community."*

PROTECTION OF ENVIRONMENT – THE ROLE OF JUDICIARY

By

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Introduction :—The goal of the Indian Constitution is a "Welfare idealism" covering

a wide range of socio-economic aspirations of its people. The Constitution of India has

16. <http://www.indiadaily.com/editorial/12-20e-04.asp>

the goal of securing “to all its citizens, justice—social, economic and political.” The fundamental rights and directive principles impose an affirmative duty upon the State to raise everyone to a minimum acceptable standard of living. For the life and development to its citizens the Indian Constitution is very categorical. Article 21 guarantees right to life and personal liberty. Article 47 imposes a primary duty upon the State to improve public health. Article 48-A mandates the State to protect and improve the environment and safeguard the forests and wildlife of the country. Article 51A(g) imposes a fundamental duty on every citizen of India to protect and improve the national environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures. Every citizen possesses the right to approach the Courts as a part of this duty.

Protection of environment and keeping it free of pollution is an indispensable necessity for life to survive on earth. Thus both the State and citizens are under a fundamental obligation to protect and improve the environment, including forests, lakes, rivers, wildlife and to have compassion for living creatures.

The Role of Judiciary in Protection of Environment

The judiciary as a champion of social justice and a sentinel on the *qui vive* has maintained a balance between the social justice and justice to the nature¹. It has played an important role in protecting the environment and nature through a number of pronouncements. The Courts have held that the right to live in a healthy environment is a component of fundamental right to life and personal liberty and hence enforceable.

Indian Judiciary is an embodiment of judicial activism. It has been taking a keen

interest in environmental matters. A brief review of some of the judgments having a bearing on environmental pollution is taken here.

Fundamental Right to Live in Health Environment – Lack of Funds no excuse

In *Municipal Council Ratlam v. Vardhichand*², residents of Ratlam Municipality tormented by stench and stink caused by open drains and public excretion by nearby slum dwellers filed a complaint under Section 133 Criminal Procedure Code. The Magistrate ordered the Municipality to provide amenities to abate public nuisance by constructing drain pipes and flush them with water to wash the filth *etc.*

The Municipality by way of special leave contended before the Supreme Court that because of financial difficulties, the construction of sanitation facilities was not possible. Dismissing the special leave petition, Court observed that financial incapacity is no defence and on the basis of this the Municipality cannot be exonerated from its statutory liability under Section 133 of Criminal Procedure Code.

The Court remarked, “industries cannot make profit at the expense of public health.

In *M.C. Mehta v. State of Orissa*³, is a writ was filed seeking *mandamus* to protect the health of thousands of innocent people living in Cuttack and adjacent areas who were suffering from pollution being cause the Municipal Corporation, Cuttack and the SCB Medical College Hospital, Cuttack, by discharge of sewage. It was alleged that the several acts of aforesaid authorities and State of Orissa were in violation of Article 21 of the Constitution of India. The Court directed the authorities to take immediate action to prevent and control water pollution. Court remarked : “the health of large number of people is at stake. Therefore, no amount of plea of helplessness or passing the buck to the other wings of the department will be of any assistance.

1. *Sudesh Kumar Sharma*, “Expanding Role of Judiciary in the Protection of Environment : An Environmental Concern as a Human Right in Jawarharan ‘L’ Kanl (ed.), Human Rights – Issues and Perspectives, (1985), P.196.

2. AIR 1980 SC 1622 at 1629-30 and 31.

3. AIR 1992 Ori. 225.

In *Ganga Water Pollution Case*,⁴ the Supreme Court directed the owner of tanneries to establish the primary treatment plants so as to prevent the pollution of water of Ganga. The Supreme Court observed that the polluted water affected the health and life of large number of people of the country and hence the financial capacity of the tanneries is irrelevant to be considered for the establishment of treatment plants.

In *Subash Kumar v. State of Bihar*,⁵ the Supreme Court upheld the right of a citizen to go to Court of law under Article 32 of the Constitution for removing the pollution of water or air. The Court observed that right to live included the right to pollution free water and air.

Ecological Balance, Industrial and Social Development :

Lime Stone Quarries is the first case *R.L. and E. Kendra v. State of U.P.*,⁶ of its kind involving issues relating to environment and ecological balance. It brings into sharp focus the conflict between development and conservation and serves to emphasise the need for reconciling the two in the larger interests of the society.

Supreme Court ordered for the closure of certain Lime Stone Quarries as they were proving hazardous to the health of workers and people putting up in the Mussoorie Hills. Court expressed its concern over the hardship its order would cause to the owners and observed: "It is a price that has to be paid for protecting and safeguarding the right of the people to live in health environment with minimal disturbance of ecological balance and without avoidable hazard to them and to their cattle, homes and agricultural land and undue affection of air, water and environment.

Environmental Education and Mass Awareness :

M.C. Mehta v. Union of India,⁷ is another public interest petition relating to environment and pollution. The reliefs claimed were for issuing of appropriate directions to cinema exhibition halls to exhibit slides containing information and messages on environment free of cost; directions for spread of information relating to environment in national and regional languages and for broadcast thereof on the All India Radio and exposure thereof on the television in regular and short term programmes with a view to educating the people. It was also prayed that the environment should be made a compulsory subject in schools and colleges in graded system so that there would be a general growth of awareness.

Conclusion :

It is unfortunate that although Parliament and State Legislatures have enacted laws imposing duties for the prevention and control of environmental pollution, many of these provisions have just remained on paper without any adequate action being taken pursuant thereto. On the other hand whenever a problem of environmental pollution is brought before judiciary, it has kept in mind the constitutional mandates contained in Articles 21, 48-A and 51-A(g) and discharged its responsibility most conscientiously. The Courts have given directions and never shifted the responsibility by telling that environmental priorities are a matter of policy. The judiciary emphasized "an environmental concern as a human right." Such a right the Courts have held encompasses the entire community in common against the environmental pollution. Judiciary never caged this right in procedural webs rather encouraged the public spirited persons in most deserving cases to approach the Court as a part of their fundamental duty.

4. *M.C. Mehta v. Union of India*, AIR 1998 SC 1037.

5. AIR 1991 SC 420.

6. AIR 1987 SC 359

7. AIR 1992 SC 382.