

BOOK REVIEW

R.K. Nayak, Chief Editor, Global Health Law: Proceedings, Selected Papers and Recommendations Presented at the Inter-disciplinary International Conference on Global Health Law, New Delhi, 5-7 December 1997.

In December of 1997, the Indian Law Institute and the WHO Regional Office for South-East Asia sponsored an international conference on global health law at the Vigyan Bhawan (International Conference Center) in New Delhi. Under the editorial supervision of Professor R.K. Nayak, this interesting and important volume includes selected papers and proceedings of this international conference. In addition, the volume includes the New Delhi Declaration on Global Health Law that was adopted unanimously by the participants on December 7, 1997.

Most importantly, the book and declaration espouse the fervent belief that law can be used as a tool to improve public health. As set forth in the declaration, "development of legislation and regulations is in itself a means of promoting health." Declaration, p. 328, Part III. Similarly, in an inspiring article, Ms. Aude L'hirondel of WHO in Geneva invites and urges all of us to "work together to make sure that the health system and legal system will complement each other to promote health." P. 57. In this regard, the volume should be read in context with the 1998 Special Issue of WHO's International Digest of Health Legislation, Vol.49, No.1, entitled Health Legislation at the Dawn of the XXIst Century. Both the WHO Special Issue and the proceedings of the New Delhi conference put law in the proper context and challenge us to make the law work for the health of the people.

Although much of the New Delhi volume deals specifically with the laws of India, there are several respects in which it truly deals with global health law issues. First, there are a few specialized articles on international law, such as the healthcare aspects of international trade (p.96) and patent laws (p.245). Second, there are some articles on global health law strategy, including Professor Nayak's Imperatives of Global Health Law for the 21st Century (p. 33), and an article by Dr. Derek Yach of WHO in Geneva entitled The Emerging Role of Public Health Law in the New Health Policy for the 21st Century (p. 58). In addition, the article by Ms. L'hirondel, mentioned above, discusses the results of WHO's pilot study on the needs and capacity for education in public health law, and concludes that educational capacity in public health law must be developed and strengthened. (p. 54). Finally, there is an extremely useful article by D. C. Jayasuriya entitled The Nature and Scope of Health Legislation, (p.43) which includes an excellent checklist of issues and areas of concern for anyone interested in the evaluation and modernization of healthcare laws, including methodologies for analyzing existing legislation. This article and the others mentioned above would be useful for those involved in recommending, drafting, and commenting upon healthcare laws, regulations, and policies in developing countries.

In addition to these global health law issues, the volume includes numerous articles on health law in India, albeit with a global or comparative perspective. For example, the articles on legal and ethical issues of euthanasia (pp. 82 and 93) and organ donation (pp. 79 and 123) are useful for several purposes. First, they provide information and references with regard to foreign law, which can be very difficult to locate. Second, there are interesting comparisons between Indian law and the laws of other countries. For example, one article observes that Indian law permits the spouse of the patient to give consent to organ donation, whereas the law of Great Britain does not allow the spouse to give that consent. (p. 126). Third, these articles provide an inside glimpse into legal and ethical debates that are taking place over issues of common concern in a different cultural and religious context. Just as foreign travel can teach us that our way of seeing the world is not the only way, these articles can provide perspective to enrich the study and discussion of common issues such as assisted suicide and organ donation. Readers interested in professional liability and patients' rights would be fascinated by the articles about India's development of legal remedies for patients who are injured as a result of negligence. (Pp. 86; 111; 142; 169; 177; 185). In addition to familiar tort law principles of medical malpractice, the Supreme Court of India ruled in 1995 that injured patients could sue doctors and hospitals under India's Consumer Protection Act. However, that remedy does not apply to providers who render services for free. (Pp. 169; 182). In addition, India has developed other unique legal remedies such as Public Interest Litigation (PIL), in which the court works with the complaining party and the state to fashion an appropriate remedy. (P. 119).

The matter of legal remedies against the state raises what is probably the most difficult and important issue of healthcare law. That issue is how to obtain access to appropriate healthcare services by all members of the society. In some societies, lawmakers have attempted to accomplish that goal by establishing a constitutional right to health. Although the United States has no constitutional right to healthcare services, the Constitution of India provides a clear right to healthcare and makes the improvement of public health one of the primary duties of the state. (Pp. 64-66; 143-45).

Unfortunately, there have been serious economic and political problems in enforcing the constitutional right to health. For example, one of the articles told heartrending stories of lepers dying from starvation and mental patients in an asylum without any electricity, water, toilets, or beds. Although the courts issued orders to state officials in those cases, the states apparently delayed for years or simply failed to comply with the orders of the courts. (Pp. 120-21). Of course, those state governments may have simply lacked the economic resources to comply with the orders of the court or the mandates of the Constitution of India.

It is clear that merely creating a constitutional right to health is not enough. However, it remains unclear whether, on balance, the creation of a legal right to health is good or bad for the citizens of a developing country. Declaring a legal right to health would certainly help society by establishing a vision and a goal for the future. However, when lawmakers promise things they cannot deliver, they may harm society by generating disrespect for the law. The advisability of creating a legal right to health is an important question that needs to be answered, and this collection of articles from the New Delhi conference will make a useful contribution to the continuing search for that answer.

The articles are generally well written. Although the quality of written English is not uniform, all of the articles are understandable. However, there appears to have been a minor problem in the production process, because the volume is missing pages 99 through 102. Despite these minor problems, the volume is useful, interesting, and inspiring, and it makes an important contribution to the progress of global health law.

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