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Assistant professor of Law

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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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FUNDAMENTAL RIGHTS AND **PUBLIC HEALTH LAW**

AUTHORED BY - RESHEL BRETN Y FERNANDES

ABSTRACT

Health is the situation of mental and physical well being of human being which in a broad perspective has connected towards the happy living among the members of community . The public health was brought into concept to suite the betterment of the individuals so that the all round development among all the sectors are found . Law is the strong foundation under which the aspect of public health functions completely influencing the policy intervention so that it is taken seriously among the people that retains the sustenance . The public health cannot function only with the scientific upholdings , but proves best only with the social setups that which can reach the majority of the people leading to emergence of the “ Public Health Law.” Indeed , in India we find that , along with the constitutional ties a lot of developments are made that they serve to be making these laws successful . The international declarations has led to the depth of providing roots which ensures that the constitution serve as the foundation inorder to control and formulate the policies and plans which would be balance between rights and duties in securing safety with clean and healthy conditions for the living of citizens . The essay paper consists of the broad purview where the fundamental rights through numerous dimensions serves to be dealing with the recent developments and its necessity in the modern through many changes in the health sector . The significance and awareness is the objective of making the health law intruding towards the modifications with the outcome of Covid -19 . The need of time is to understand that our aim lies at the sustainable future which can be achieved through the public health systems.

Key Words: Public health , Constitution of India , Sustainable future ,Modern living

INTRODUCTION

India has the glory of its unique way of working through the ancient systems¹ and traditions in all the fields which has led to the preserving of the community health that has been in modern terms given rise to the concept of the public health which our country was rich through historic times . But then if we consider the sources , we find that , public health was in concern without the authority to govern it . When the industrialization² began , this concept required a special attention which had turned to have legislations on it's behalf regarding it as “ Public Health law”³ , which refers to the legal approach and jurisdiction to control and improve the health standards among the community . The public health law is created to ensure the ties of applying the healthy living among the people so that the efficiency is noticed in the outcomes which is the power and duty of the citizens to work and gain the facilities towards the better living in the society . In the society considering the context of India , we notice that , the public health law is along with the constitution for the better functioning with particular aims . The significance of its growth began globally when the need to combat dreadful diseases was the centered view. This inturn curbs all the illegal practices that effects the health of the people but to create and bind the legislations that has been scattered . Today Bioterrorism is the concern all over the world , under which the outline of Universal Declaration of Human Rights⁴(UDHR) in 1948 strongly emphasized the domestic countries to take strict actions which creates a balance between the citizens and the government .

DISEASES, DISCRIMINATION AND PUBLIC EMPLOYMENT

The mental health among the people remains as hazardous with the working class which is curbed through laws. To note that , even the disabled are provided with the rights to be employed with special measures . Oftenly the community which should set aback the differences among the people and support all the people in the society . India since times is known to maintain brotherhood among people in helping out a lot of people without bias which through legislations has tried to stabilize the

¹(2014), <https://asia.nikkei.com/Business/Science/Ayurveda-the-ancient-Indian-medical-practice2>

² (2019), <https://www.thoughtco.com/public-health-in-the-industrial-revolution-1221641>

³ (2008), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7150113/>

⁴ (2019) , <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

Selvam Panneer , Declaration of Human Rights, Discovery Publishing Pvt Ltd

public health and control diseases in the employment sector . The introduction of National Policy on safety , health and environment with the Ministry of Labour⁵ along with directive principles strongly commands to avoid health risks and provide clean sanitation facilities . Recently during Pandemic new codes are introduced to safeguard health, especially among who work at mines and hazardous places and at industries maintenance of appliances without harm under Health Provisions under Factories Act 1948⁶ . The premises with proper sanitation and healthy environment . The legislations in India promote that the mental health under the National Mental Health Programme⁷. The Employment state insurance Act 1948⁸ conveys that with guarantee to secure health conditions . In the fundamental rights , we find Right to freedom seeks any individual to not be discriminated in the employment on any grounds.

CASE STUDY: National Policy on HIV/AIDS and World of Work⁹

Under this , the major part of HIV cases noted are from the working age group in India who often face discrimination . The ILO code of practice¹⁰ along with guiding principles makes this policy to be success with making them go ahead and remove the stigmas which will be a move towards public health by removing discrimination with removing screening in the employment list and maintaining confidentiality . The support at workplace by the making of medical checkups but in confidential manner with giving utmost importance to the capabilities of an individual . This policy strongly gives a way for the infected people to work and provide termination until their physical and mental conditions are proper.

We can notice that public health laws are generated under various articles to promote and uphold healthy conditions with safe living among people . But , not only that the mindset can decide better employment levels which through support can make the illness work in to a boon that we could notice during Covid -19 pandemic¹¹ .

⁵ (2020), <https://labour.gov.in/>

⁶ (2018 ,) <https://www.ilo.org/dyn/natlex/docs/WEBTEXT/32063/64873/E87IND01.htm>

⁷ (2017), http://nhp.gov.in/national-mental-health-programme_pg

⁸ (2009), <https://vikaspedia.in/social-welfare/social-security/employees2019-state-insurance-scheme#:~:text=The%20ESI%20Act%201948%2C%20encompasses,earning%20capacity%2Dtotal%20or%20partial>

⁹ (2019), <https://labour.gov.in/sites/default/files/NationalPolicyonHIVAIDS.pdf>

¹⁰ (2018), <https://www.ilo.org/global/topics/safety-and-health-at-work/normative-instruments/code-of-practice/lang-en/index.htm>

¹¹ (2021), <https://pubmed.ncbi.nlm.nih.gov/34750546/>

PRIVACY AND HEALTH DATA SHARING: EMERGING CONCERNS

Today with the step towards digitalization , we find that the health services are connected towards the digital techniques of working . The National Digital Health Mission during 2020 had introduced creating health data storage and technologies . It ensures to provide the security and confidentiality in the information which was built using the privacy control operators with the health ID's .It has spread its purview among the securing the information of the health care workers , pharma companies . The PDP bill ¹²ensures the health related institutions to be processed and stored . They have standardized operational measures to store the data and even while sharing the data they have special measures to be noticed over which marks crucial step under the system making mandatory with the records of ID systems . With the outbreak of covid -19 a new measure taken by GOI which implemented DISHA [Digital Information Security In Healthcare Act] ¹³which has served best in securing data and information under health care services having health data and identifiable information . Under this the personal data and health care records are stored . But , it has posed issues like gaining the consent from owner to cross verify or gain the information .Due to the cyber attacks which pose serious threat of the malwares that try to seize the information regarding the stored data . Sensitization of data ¹⁴which is the need today.

CASE STUDY - CERTAIN DATA ISSUES

We find in Ahmedabad ¹⁵, paper record were found at rural areas and in urban places digital data is found .For the sake accuracy it poses a hinderance in all fronts . The translation of English records for its regional implementation are a problem . The conversion of data to be shared is an issue . The transfer of data remained a risk from places where the shift was necessary. A firm noted that the denial of charges towards the surveillance over it's information is needed . The new health ID is introduced at regions but fraud calls can trap it . Similarly , the Arogya Setu ¹⁶apps has location sharing via Bluetooth where personal data can be easily tracked . Certain crucial chronic diseases information

¹²(2019), <https://prsindia.org/billtrack/the-personal-data-protection-bill-2019>

¹³ (2019),<https://www.znetlive.com/blog/digital-information-security-healthcare-act-disha/>

¹⁴ (2019), <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0203721>

¹⁵ (2019), <https://health.economictimes.indiatimes.com/tag/ahmedabad>

¹⁶ (2021), <https://www.mygov.in/aarogya-setu-app/>

the victims have the fear of getting loss of information . The researchers from abroad collecting data seem to be a critical way to think for acquisition of data without IRB consent.

LEGALITY OF POPULATION CONTROL MEASURES

India since times with the traditional base is leading in its population , but due to the insecurity in the living standards which has led to the creation of population control laws. In consideration of the health hazards .Normally the informal techniques were utilized into terms with the spread of education by raising the standards of women promoting better social security . In 2019, the population control Bill was introduced in Rajya Sabha which enables two child policy to the couple . The other ideas is to develop economic stability among the people through employment . The recent measure taken to raise the marriage age from 18 to 21¹⁷ is helpful to promote development . The usage of contraceptives under the Family Planning programmes , promoting exports under the Import and Export control Act , 1947 ¹⁸and drug selling and manufacturing acts between 1940-47 have promoted the sales .The publicity also is given under the act of 1954 would allow the same . The surgical methods under the Medical Termination Act , 1971 ¹⁹continuity with Indian Penal Code promotes abortions , sterilizations . Under the public employees act the first two children are provided with maternal facilities . The concurrent list promotes population control giving control to the state governments to make necessary plans . We find that , the maintaining of healthy standards among the individuals is noticed which enables them to provide the citizens who have enriched themselves in qualitative betterments ,

CASE STUDY –KERELA ²⁰

In this state we find that there is efficiency of population control , with this betterment in all fields have taken with clean sanitation facilities and promotion of awareness among the women . It is that the awareness and adult education was provided under the population control policy . We find that , the contraceptive measures are taken here so that the population remains under control and people

¹⁷ (2021), <https://indianexpress.com/article/explained/raising-legal-age-for-marriage-for-women-law-reasons-criticism-7675447/>

¹⁸ Pillai Swapna , Exports and Imports documents , Sahitya Bhawan publication, (2018)

¹⁹ Universal , Medical termination Act and Bare act , Universal publications,(2020)

²⁰ P,G pannikar , Health conditions in Kerela 1984

Trivandrum : Centre for Development Studies publications, Trivandrum

can avail better amenities among the people. Even the MMR and IMR rates seemed to be under control that the facilities have reached a larger amount of people in the society at that place ensuring public health . Even in 2022 the healthy circumstances are seen here.

COMPULSORY VACCINATION IN INDIA

In the modern times , we can notice that certain deadly chronic diseases are not found in large number due to immediate vaccination measures taken by GOI . Right from 1978 ²¹and later the Vaccination policies had started which considered the health issues to stop the maternal and infant deaths in India . Under the Universal Immunization Programme which included with the note to technology mission . It spread to rural areas in 2005 ²²seriously along the National Rural Health Mission . In 2014 due to this plan , India was declared Polio –free by WHO and these necessities through PHC’s are provided with awareness right from birth itself . The new born child is injected with vaccinations to prevent diseases . Further ASHA and AWW ²³support is rendered for the success of the drives . During the Covid -19 pandemic the compulsory vaccination arrangements were made to prevent the infections lead to larger level which has made our surroundings better . The strict rules in certain places were made to produce the vaccination certificate which was to ensure healthy life to people . The AEFI surveillance ²⁴systems has been created to link channels for magnificent storage among the medical services. Under the NHP the secured systems of vaccine storage are created . The equipped system must reinnovate with research techniques to restructure the drives . Making vaccinations compulsory leads to the promoting of safety measures.

CASE STUDY – CERTAIN VACCINATIONS AND IMPACT

In 2005 massive outbreak of Japanese encephalitis²⁵ spread in UP and Bihar ,GOI even during a decade introduced compulsory vaccination system and led to the successful combating of such disease . The PATH along with government of AP worked to provide this vaccination at rural and urban areas

²¹(2008) , http://nhp.gov.in/universal-immunisation-programme_pg

²² (2017), https://www.who.int/immunization/programmes_systems/financing/countries/cmyp/india_cmyp_2013-17.pdf

²³ (2018), <https://nhm.gov.in/images/pdf/communitisation/task-group-reports/guidelines-on-asha.pdf>

²⁴ (2016),

<https://main.mohfw.gov.in/sites/default/files/National%20Quality%20Assurance%20Standard%20AEFI%20on%2022-11-16%20B.pdf>

²⁵ (2016), <https://www.cdc.gov/japaneseencephalitis/index.html>

under roughly 156 million children²⁶ gained immunization under this .With the compulsion for vaccination on appropriate vaccination in 2020-21 tenure with 2 doses it was successful in reaching 1 crore population²⁷ maintaining the healthy growth and fight back against the pandemic.

We can say that , the care of every citizen lies in the hands of GOI through the public health laws introduces immunizations and vaccines from an infant to adult which making it compulsory leads to better facilities among the public which contributes towards secured chains in all the levels confronting betterments .

RIGHT TO HEALTH AS A FUNDAMENTAL RIGHT

Although in India we find that , there is no separate section in the Part III of the Indian constitution in the fundamental rights . But we can find the articles that uphold the essence of public health of community and the individual . The right to equality principle conveys in Article 14 ²⁸that the people have equal circumstances and whatever laws are guaranteed under health perspective conveys the same . Along with which Article 21²⁹ which says the right of an individual over life which means that the destruction of any individuals life is not possible at all . Indeed right to health must be added as a separate section guaranteeing its purview , but nevertheless it is already found but under other legislations and articles . If we look broader , making right to health as a fundamental right can make its significance to be raised at best levels . Under the directive principles of state policy we find relevance of rights , Article 39 {E} ³⁰securing the health of workers , Article 42 states humane working conditions and maternity relief . Article 47 is to raise the health standards.

CASE STUDY – RIGHT TO EQUALITY IN CONNECTION TO RIGH TO HEALTH

Under the Abortion rights, we find mainly the consent of the mothers are needed which inturn affecting their health , mothers are given the right to decide . If any person pollutes the public place

²⁶ (2018), <https://www.path.org/>

²⁷ (2022), <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/covid-19-vaccines>

²⁸ Basu DD, constitution of India , lexis News publications ,2015

²⁹ Agarwal PK ,the constitution of India ,prabhat publications ,2018

³⁰ (2017), Agrawal PK , the constitution of India ,prabhat publications, 2018

or any industry emitting harmful chemicals all the people under the fundamental right can question and file petition on it . Ayushman Bharat³¹ is an enthusiastic scheme making the capability to reach citizens.

ANALYZATION:

But interpreting all these , making right to health as a foundation would make the people gain services and the balance in socio-economic conditions making focused attention in the public health . The plans and schemes introduced gains the support and importance from all . It would improvise the levels by service oriented developments . To make a sustainable future , it is health which contributes in numerous ways towards the people gaining betterment in all the sectors . For example, The RTE plan³² when implemented made it sound effect on the educational sector , similarly , this health with the previledge can stop illegal happenings in the medical arena providing safe ecosystem . We find shortage in the health infrastructures which needs to be rectified and when it becomes a right even the people will have the zeal to acquire and avail those schemes . Though we face certain issues at the health sector through the call from WHO and other International organizations making it as a fundamental rights can bridge the gap between urban and rural India with successive method in reaching the public gaining the better standards . It is possible for the people to quickly access to health , in Covid -19 pandemic we found the urgent need of those measures .

DUTY OF STATE IN RELATION TO MENTAL HEALTH

Mental Health is crucial part in the public health laws as the physical dangers can be controlled but it is very difficult to control the mental imbalances . The GOI has considers the mental health , with treatment of PMI where the mental disorders are treated without their personal liberty for treatment under the British established law , Indian Lunatic Asylum Act , 1886³³ with providing an atmosphere to the mentally stressed people with counseling support and established Mental Safety Authority under District Administrations . Under MHA , it considers human rights to be protected which necessarily makes the mental health to be upheld in best possible levels . In Persons with disability Act , 1995³⁴ , we find that the opportunities are completely provided for mentally disabled with a

³¹ (2019) ,<https://www.esic.nic.in/ab-pm-jay>

³² (2018),<https://righttoeducation.in/>

³³ (2015), <https://www.ideasforindia.in/topics/human-development/understanding-india-s-mental-health-crisis.html>

³⁴. (2017), <https://www.mondaq.com/india/healthcare/972410/mental-healthcare-act-a-legislation-for-the-people>

provision for reservation in public sector . Similarly , the National Trust Act , 1999 welfare and empowerment with the people closely connecting them to mainstream of society was noticed . In 2011 MHCB act³⁵, promotes that Indian government with the protocols of UN would provide mental health facilities , also made changes in admission process and provides chances to their capabilities . Under Indian contract law, 1872 makes provisions to legal unbiasedness and welfare in laws. In 2017 manual , GOI has provided with facilities of qualified institutions to promote workforce with rights to improve mental health . But we find there is a need today in society , in Covid-19 situation we find mental risks were due to isolation and work pressure , even which was solved through helplines that the people need to avail these facilities so that they are capable of leading normal life and platforms of NGO's³⁶ which treats homeless people who are mentally ill , with community support they can be helped .

CASE STUDY – NATIONAL MENTAL HEALTH MISSION

In 2014 , under the Ministry of health and family welfare , called for a mission named “ New pathways and New Hope”³⁷, which predicted the rise of mental illness among the youths and owed to make them access towards the Mental Health Programmes with a policy group to acknowledge medical and non- medical aspects in it . The Programme successfully divides the empowerment in every step from child till the elderly people and even among the people who are prone to poverty and also promoting the support to families . Along with this ,community is made to recognize such individuals and provide them institutional care . According to this proposal , all the environmental contents should be safe which illegally found has legal action like the Sexual harassment ..etc . Under this various workshops and seminars in public ,private institutions are supported to make citizens be sound mind .The options of research are given with which can bring out acute problems that can be rectified . The aim is to make community to participate for helping one another in cases like suicides and with beat possible efforts make them come out from the situation . The Local Self Governments³⁸ are enriched with the authority to bring to notice in such cases along with PHC's .

³⁵ (2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5270284/>

³⁶ (2015),<https://www.fic.nih.gov/Global/Pages/NGOs.aspx>

³⁷ (2014), <https://www.semanticscholar.org/paper/National-Mental-Health-Policy-of-India-New-Pathways-Singh/e30fc9184f4ad556e6ffe5f571f4303b52d359d6>

³⁸ (2017),<https://www.ijlmh.com/paper/healthcare-system-and-role-of-local-self-government-during-covid-19-pandemic-in-india/>

INTERFACE BETWEEN PUBLIC HEALTH AND RELEGIIOUS FREEDOM /FREEDOM OF TRADE , COMMERCE AND PROFESSION

The practices of religion endowed to the ways of 'Sarva Dharma Sambhava'³⁹, which makes among the people to maintain healthy and cooperative relations . In the terms of certain religious practices that should not harm the peace and harmony in the society that ensures through Article 25 of Indian constitution . The humanistic ways of dealing under it are found . We find in the population policies , traditional religious methods supersede wherein the right of religion constitutes its right in action . The religious practices ⁴⁰should be of the ways in which that it does not mentally exert pressure among the people . During the covid-19 with a precautionary measure , the religious institutions though being a right to religion were not allowed to maintain safety among the people which was to secure the public health . The follow of ethics even makes the human to be mentally sound .

Under the Article 19 ⁴¹, we find that , the public health is ensured wherein the illegal trade of human trafficking which affects the community health are not allowed. The legal sanctions over intoxicating materials are made whose regulations are to be followed strictly . We find in Covid-19 situation strict protocols are maintained for the sake of community development . Though , the tradings are allowed the food imbalances and climatic changes can adversely affect the lives of people . Sometimes the occupations at hazardous industrial areas⁴² can create effects to health , further disturbing the community . The trade of food materials must have a investigation so that quality foods get sold . The drugs to be noted whether they are legally allowed for sales and even the trading merchants or agents to maintain their health standards as moving from one place to another can sometimes adversely impact on their health and become mediators to certain communicable diseases . The need is to even maintain the mental health so as to promote the safe communities towards the healthy and happy atmosphere among the individuals . The indulging in mining activities should not make way serious harm to the lives of people which would lead to an imbalance . The indulging of trading practices without patent rights would be a major setback and can be misused which would lead to problem among the individuals.

³⁹ (2015), <https://m.timesofindia.com/topic/sarva-dharma-sambhav>

⁴⁰ (2015), http://marrikipedia.org/effects_of_religious_practice_on_health

⁴¹ Agarwal PK , The constitution of India, Prabhat publications, 2018

⁴² (2018), <https://dgfasli.gov.in/en/book-page/list-industries-involving-hazardous-processes>

RIGHT TO SMOKE – TOBACCO CONTROL IN INDIA

It is a general fact that , tobacco is not only a harm to public health , to one who smokes but also to the surroundings . In 1975 ⁴³, one act was passed to mention the harm of consuming tobacco on the sachets. Even under the Air pollution act , 1981 , the prevention is focused . The Cable Television Networks Amendments Act , 2000 to prohibit it .The state governments had strictly implemented at regional levels . The GOI had strictly provided with the measures to curb the smoking at public places under the COTPA act , 2003 ⁴⁴with strict measures banning smoking . Through NGO's under this act many regulations are taking place by which in many states of India it is implemented . We find the law prohibits even the tobacco advertising and there are strict sales restrictions which even has strict boundaries for the external trade . It is found that both men and women use the tobacco , the reasons is to prevent cancer and other chronic diseases by utilizing it . We find that though harmful nearly 3.5 million people ⁴⁵are working and employed in these industries . The federation taxation systems have given notice that , the illegal trading and smuggling is to be prohibited . The online trading practices regarding the tobacco was banned recently in 2019⁴⁶ . The concern lies to promote healthy habits and various campaigns throughout the country try to convey the same message of sustaining the future with healthy habits which retains the better future of youths .

CASE STUDY – NATIONAL TOBACCO CONTROL PROGRAMME ⁴⁷

Under the 11th Five Year Plan , this initiative was taken with an aim to reach the people of different states and setup camps , connect with YRC's of the institutions to reach among the people to save the youngsters of the affects of smoking . As per the further laws in 2006 , it was found that due to this trainings , the tobacco consumption has lowered . The control cells with three tier structure are made at the National ,State and districts setups . In all these levels , the trained ailments under the local urban and rural bodies are created. The Delhi governments had strictly tried to ensure the plan at

⁴³ (2017), https://www.indiacode.nic.in/handle/123456789/1739?sam_handle=123456789/1362

⁴⁴(2017), <https://nhm.gov.in/index4.php?lang=1&level=0&linkid=459&lid=692>

⁴⁵(2021), <https://www.who.int/india/health-topics/tobacco#:~:text=Tobacco%20use%20is%20a%20major,1.35%20million%20deaths%20every%20year.>

⁴⁶ (2018),<https://www.businesstoday.in/opinion/columns/story/why-e-cigarette-ban-in-india-will-do-more-harm-than-good-296540-2021-05-20>

⁴⁷(2021), <https://main.mohfw.gov.in/major-programmes/other-national-health-programmes/national-tobacco-control-programme-ntcp>

public places .Even other states have taken best measures for the curb of tobacco .

CONCLUSION

From this above description , we can understand that public health is the major concern among the people today and even the GOI has the complete focus in its budget with a purview towards the healthcare systems which has the transformation towards the digitization process . So , we find that , ensuring the transparency is found towards the implementing of the constitutional balance ⁴⁸with the rights and duties among the citizens . The duty is to uphold the standards among health to channelize and transform the living of the community through implementing strict measures so that the citizens do not deprive and not lack behind in any forms of health issues . It is a true aspect that , the enforcement of any idea lies through the legislation itself which the government is completely working to preserve the standards among the people with the aim and aid of support and wellbieng among the members with supportive nature⁴⁹ among the individuals at all forms to enhance the happiness which through plans and policies has been successful in implementing among the members of society. We find that their functioning will prove towards the society moving towards the incredible India. But , still we find areas of development that healthy habits need to be promoted with effective legislations in the society and measures to check the public health laws with complete reviews are necessary at all basis . With the dedicated efforts and intelligence as Gopal Krishna Gokhale rightly opines that: “ It does not take patience to quite long manifest into intelligence.”⁵⁰, which truly marks that the indications towards the effective workings must be noticed wherein we find the community development should remain as the main aim leading towards the path of excellence .

⁴⁸ (2020), <https://pubmed.ncbi.nlm.nih.gov/3542899/>

⁴⁹(2014), <https://www.semanticscholar.org/paper/Supportive-Nature-and-Stress-Adevi/dcc1b78e428dac49638516f16bd75cf9e5acb63d>

⁵⁰(2019), <https://www.ritiriwaz.com/gopal-krishna-gokhale-quotes/>