RIGHT TO HEALTH: A BASIC HUMAN RIGHT

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Abstract

In a democracy where sovereignty rests on people, people must be armed with certain basic fundamental rights. The Right to health is such a right which is foundation of all other right. Its primarily associated with the existence of an induvial. People can exist without jobs, money, education, and other rights but cannot remain in existence without good health except for a few days. The fundamental question which arises is only health means physical health, certainly not all other things which are necessary for the existence of human being are necessary. A healthy mind can only be protected and developed by only the healthy body. Adequate food is necessary for health. Food include all energy, celeries, vitamins which are foundation of a strong body. The paper will try to examine the right to health as basic human right and its implications and status in India.

INTRODUCTION

"The world needs a global health guardian, a custodian of values, a protector and defender of health, including the right to health." - Dr Margaret Chan, Director-General, WHO

As human beings, our health and the health of those we care about is a matter of daily concern. Regardless of our age, gender, socio-economic or ethnic background, we consider our health to be our most basic and essential asset. Health is one of the goods of life to which man has a right; wherever this concept prevails the logical sequence is to make all measures for the protection and restoration of health to all, free of charge; medicine like education is then no longer a trade - it becomes a public function of the State.

The operationalization of health rights is a dynamic and progressive process. International human rights law and constitutional obligations can provide a framework from which national

health policies and laws can be formulated. The right to health is a fundamental part of our human rights and of our understanding of a life in dignity.[1]

The human right to health means that everyone has the right to the highest attainable standard of physical and mental health, which includes access to all medical services, sanitation, adequate food, decent housing, healthy working conditions, and a clean environment. It guarantees a system of health protection for all.[2] The right to health means that States must generate conditions in which everyone can be as healthy as possible. It does not mean the right to be healthy. Such conditions range from ensuring availability of health services, healthy and safe working conditions, adequate housing and nutritious food.[3] The right to health does not mean the right to be healthy.

INTERNATIONAL RECOGNITION OF HEALTH AS A HUMAN RIGHT

The right to the enjoyment of the highest attainable standard of physical and mental health is not new. Internationally, it was first articulated in the 1946 Constitution of the World Health Organization (WHO), whose preamble defines health as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity". The preamble further states that "the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition."[4]

The 1948 Universal Declaration of Human Rights also mentioned health as part of the right to an adequate standard of living (art. 25). The right to health was again recognized as a human right in the 1966 International Covenant on Economic, Social and Cultural Rights. [5]

[1] Sofia Gruskin & Daniel Tarantola, Health and Human Rights, in Gruskin *et al.* (eds.) *Perspectives on Health and Human Right* (New York: Routledge, 2005)

[2] World Health Organization. 25 *Questions & Answers on Health & Human Rights.* Health & Human Rights Publications Series No.1. Geneva, July 2002: p. 16.

[3] SK Peruhoff, *Health, Essential Medicines, Human Rights & National Constitutions* XV (Geneva: World Health Organization, 2008).

[4] World Health Organisation, 1946, *Constitution of World Health Organisation,* http://www.who.int/about /definition/en/

[5]The Covenant was adopted by the United Nations General Assembly in its resolution 2200A (XXI) of 16 December 1966. It entered into force in 1976 and by 1 December 2007 had been ratified by 157 States.

Since then, other international human rights treaties have recognized or referred to the right to health or to elements of it, such as the right to medical care. The right to health is relevant to all States: every State has ratified at least one international human rights treaty recognizing the right to health. Moreover, States have committed themselves to protecting this right through international declarations, domestic legislation and policies, and at international conferences.

In recent years, increasing attention has been paid to the right to the highest attainable standard of health, for instance by human rights treaty monitoring bodies, by WHO and by the Commission on Human Rights (now replaced by the Human Rights Council), which in 2002 created the mandate of Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health. These initiatives have helped clarify the nature of the right to health and how it can be achieved.[6]

The right to health is an inclusive right. The Committee on Economic, Social and Cultural Rights, the body responsible for monitoring the International Covenant on Economic, Social and Cultural Rights, calls the factors that help us lead a healthy life as the "underlying determinants of health", being, safe drinking water and adequate sanitation; safe food; adequate nutrition and housing; healthy working and environmental conditions; health-related education and information; and gender equality.[7]

The right to health contains freedoms**.** These *freedoms* include the right to be free from non-consensual medical treatment, such as medical experiments and research or forced sterilization, and to be free from torture and other cruel, inhuman or degrading treatment or punishment.[8]

The right to health contains entitlements. These *entitlements* include the right to a system of health protection providing equality of opportunity for everyone to enjoy the highest attainable level of health; the right to prevention, treatment and control of diseases; access to essential medicines; Maternal, child and reproductive health; Equal and timely access to basic health

[6] M Mulumba, D Kabanda *Constitutional provisions for the right to health in east and southern Africa.* Centre for Health, Human Rights and Development, CEHURD, in the Regional Network for Equity in Health in East and Southern Africa. EQUINET Discussion Paper 81, April 2010, http://www.equinetafrica.org/bibl/docs/Diss81%20ESAconstitution.pdf

[7] UN Committee on Economic, Social and Cultural Rights (CESCR), 2000, General Comment No.14, http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/40d009901358b0e2c1256915005090be?Opendocument .

[8] Ibid

services; The provision of health-related education and information; Participation of the population in health-related decision making at the national and community levels.[9]

Health services, goods and facilities must be provided to all without any discrimination. Non-discrimination is a key principle in human rights and is crucial to the enjoyment of the right to the highest attainable standard of health.[10]

All services, goods and facilities must be available, accessible, acceptable and of good quality. The functioning public health and health-care facilities, goods and services must be *available* in sufficient quantity within a State.[11]

They must be *accessible* physically (in safe reach for all sections of the population, including children, adolescents, older persons, persons with disabilities and other vulnerable groups) as well as financially and on the basis of non-discrimination.[12]

Accessibility also implies the right to seek, receive and impart health-related information in an accessible format (for all, including persons with disabilities), but does not impair the right to have personal health data treated confidentially.[13]

The facilities, goods and services should also respect medical ethics, and be gender-sensitive and culturally appropriate. In other words, they should be medically and culturally *acceptable*.

The importance given to the "underlying determinants of health", that is, the factors and conditions which protect and promote the right to health beyond health services, goods and facilities, shows that the right to health is dependent on, and contributes to, the realization of many other human rights. These include the rights to food, to water, to an adequate standard of living, to adequate housing, to freedom from discrimination, to privacy, to access to information, to participation, and the right to benefit from scientific progress and its applications.[14]

[9] Ibid
[10] Ibid
[11] Ibid
[12] Ibid
[13] Ibid
[14] Abhay Shukla, Right To Health Care: Moving From Idea To Reality, Proceedings of the Seminar held at The Asian Social Forum, Hyderabad – 3 and 4 January, CEHAT.

In addition, the treaty bodies that monitor the International Covenant on Economic, Social and Cultural Rights[15], the Convention on the Elimination of All Forms of Discrimination against Women[16] and the Convention on the Rights of the Child[17] have adopted general comments or general recommendations on the right to health and health-related issues. These provide an authoritative and detailed interpretation of the provisions found in the treaties. Numerous conferences and declarations, such as the International Conference on Primary Health Care (resulting in the Declaration of Alma-Ata[18]), the United Nations Millennium Declaration and Millennium Development Goals,[19] and the Declaration of Commitment on HIV/AIDS,[20] have also helped clarify various aspects of public health relevant to the right to health and have reaffirmed commitments to its realization.

RIGHT TO HEALTH IN INDIA

Years after Independence the Indian State has failed to provide its citizens the basic requirements like food security, health care, housing and education, which are the basis for reasonable human existence. Due to rampant poverty and lack of social equity large sections of population have been denied adequate nutrition, clean drinking water and sanitation, basic education, good quality housing and a healthy environment, which are all prerequisites for health. A highly inequitable health system has denied quality health care to all those who cannot afford it.

There are numerous laws and Supreme Court Judgements, which reflect Right to Health as a basis for human existence. The Right to Life (Article 21) enshrined as a fundamental right in the Constitution makes a case for provision of emergency medical care, and protection from

[15] Committee on Economic, Social and Cultural Rights, general comment N° 14 (2000) on the right to the highest attainable standard of health.

[16] Committee on the Elimination of Discrimination against Women, general recommendations N° 19 (1992) on violence against women and N° 24 (1999) on women and health.

[17] Committee on the Rights of the Child, general comment N° 4 (2003) on adolescent health and development in the context of the Convention on the Rights of the Child.

[18] Declaration of Alma-Ata, International Conference on Primary Health Care, Alma-Ata, USSR, September 1978.

[19] Supra 9.

[20] General Assembly resolution S-26/2 of 27 July 2001.

all threats to life.[21] Article 47, which is a Directive Principle of State Policy, relates to nutrition, standard of living and health.[22]

In addition to these constitutional provisions the judiciary has played an active role in ensuring the right to health to the common man. In the case of *Consumer Education and Research Centre* v. *Union of India*[23] it was held that the government has a positive duty to provide the basic conditions necessary to lead a life that is more than mere animal existence, including a Right to Health, right to Clean Environment, right to Privacy.

In an important judgement the case of *Paschim Banga Khet Mazdoor Samity* v. *State of West Bengal*[24], the Supreme Court of India ruled that "in a welfare state the primary duty of the Government is to secure the welfare of the people. Providing adequate medical facilities for the people is an essential part of the obligations undertaken by the Government in a welfare state. … Article 21 imposes an obligation on the State to safeguard the right to life of every person. … The Government hospitals run by the State and the medical officers employed therein are duty bound to extend medical assistance for preserving human life. *Failure on the part of a Government hospital to provide timely medical treatment to a person in need of such treatment results in a violation of his right to life guaranteed under Article 21."*

But despite all these constitutional and judicial provisions India has been unable to secure the right to health for majority of its population. The first National Health Policy (NHP) of 1983 made its motto 'Health Care for All by 2000' which has not happened.[25]

The National Health Policy 2002 clearly acknowledges that the public health care system is grossly short of defined requirements, functioning is far from satisfactory, that morbidity and mortality due to easily curable diseases continues to be unacceptably high, and resource allocations generally insufficient.[26] The public spending on health care in India is as low as

[21] *Supra* 45.

[22] Anant Phadke, "Right to Health Care: Towards an Agenda" Vol. 38, No.41 *Economic and Political Weekly* 4308-4309 (October 11-17, 2003).

[23] 1995 (3) SCC 42.

[24] 1996 (4) SCC 37.

[25] NFHS-1998, 2000: National Family Health Survey –2: India, IIPS, Mumbai.

[26] Ministry of Health and Family Welfare, 2002, Health Information of India Central Bureau of Health Intelligence, Directorate General of Health Services.

0.9% of the Gross Domestic Product (GDP) in contrast to a total health expenditure of 5% of GDP making public health expenditure a mere 17% of total health spending in the country.[27] Decreasing public health expenditure has adversely affected the health outcomes. The NHP

2002 acknowledges that the public health investment in the country has been comparatively low[28] and planned to raise it to 2 percent of GDP by 2010, however this is much lower than the 5% GDP recommended by the World Health Organisation (WHO).

India has one of the most privatised health systems in the world, denying the poor access to even basic health care. The crushing burden of bearing expenses on health care is put on the people of this country resulting in out-of-pocket expenditure on private health care services which is as high as 82 per cent.[29] Various studies show that private health sector accounts for over 70% of all primary care, which is sought, and over 50% of all hospital care.[30] This is not a very healthy sign for a country in which three-fourth of the population lives at or below subsistence.

The judgements have reflected importance of health as a prerequisite for Right to Life. Thus it can be inferred that Right to Health is an important human right and its denial can be detrimental to the existence of human life. It is necessary to make Right to Health Care a fundamental right in the Indian Constitution rather than limiting it to the Directive Principles of State Policy.

CONCLUSION

Health is a social, economic and political issue and above all a human right. Inequity and poverty are the root cause of ill health leading to malnutrition and starvation deaths in the marginalised sections of the society. The current health scenario favours the urban affluent

[27] Ravi Duggal "Operationalising Right to Healthcare in India" Vol 2 No.*3The ICFAI Journal of Healthcare Law* (August 2004).

[28] Government of India, National Health Policy 2002, *available at*: http://mohfw.nic.in/np2002.htm

[29] S Chakraborty,2003, *Private Health Provisions in Uttar Pradesh, India*, in Yazbeck, Abodo S, Peters David, (ed.) Health Policy Research in South Asia: Building Capacity for Reform (The World Bank, Washington DC).

[30] Ravi Duggal, 1993, For A New Health Policy, A Discussion Paper, CEHAT, Mumbai.

class, which is only about 10% of the total population. There is a need to remove regional imbalances.

There is a need to restructure the existing health system to usher equity and social justice. This can be achieved through promulgation of a comprehensive legislative framework, which should create conditions conducive to restore the balance in the health sector. The legislation should be complemented by making 'Right to Health Care' a fundamental right, which will be an enforceable right. The ultimate aim of Universal Access to Health Care could be achieved through the restructuring of health finance and introduction of universal coverage of health care.

India must strive to move towards a system where **every citizen has assured access to basic health care, irrespective of capacity to pay.** A number of countries in the world have made provisions in this direction Introducing a system of Universal social health insurance or some form of compulsory coverage such as national health insurance as in Canada or Germany is necessary. Insurance services could be provided by making a combination of a significantly strengthened and community-monitored public health system, along with some publicly regulated and financed private providers, under a single umbrella. The entire system would be based on public financing and cross-subsidy, with free services to the majority population of rural and urban people including vulnerable sections, and affordable premium amounts (which could be integrated with the taxation system) for higher income groups.

Ensuring the Right to Health Care as a fundamental right has become imperative for a nation, which as the 'world's largest democracy' claims to accord certain basic rights to its citizens, including the Right to Life in its broadest sense.