Bridging Right For Health And Global Participation: Need Of The Hour?

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ABSTRACT

Human rights is the most globalized political value and contentious current outlook, is now being widely criticized on the grounds that it is legal, individualistic and universal with assumptions being particularistic. The relative advantage by framing health as an entitlement rather than a commodity with attending problems and the possibilities of a rights approach in addressing health ethics issues are addressed in write up. Located within legal frameworks that focus on civil and political rights, more frequently being the current use is to challenge abuses of health by invoking social and economic rights, even though this places the right to health on slippery terrain that is not as internationally accepted as civil and political rights.

Keywords: Right to Health, Ayushman Bharat, RSBY, SCHIS, International Human Genome Project, SECC

The reported rise of annual population in India is currently at 26 million. The expenditure on health by State is 1.4% of GDP. To be rightly called a welfare state Right to health should be a fundamental right as is enshrined in the Constitution of India.63 million face poverty due 57.57% out of pocket expenditure of health care burden.253 deaths per 100000 population is due to communicable diseases- epidemics like COVID 19 add on to this statistics. Assam tops the lists of maternal mortality according to the Niti Ayog studies. India has 1 million doctors to medically cover its 1.3 billion population. Dismal figures of 11 % of rural India turns up for treatment promptly. 98% Russians compared with 17.8% of lower income groups on India have access to medical treatment- this is a valid point to ponder on better feasible newer decision

making strategies. Promotion and protection of health are enmeshed in promotion and protection of human rights and dignity.

Health and human rights interdependence has substantial conceptual and practical implications. Research, teaching, field experience and advocacy are required to explore this. Ayushman Bharat is National Health Protection Scheme, covers over 10 crore poor and vulnerable families (approximately 50 crore beneficiaries) providing coverage up to 5 lakh rupees per family per year for secondary and tertiary care hospitalization. Ayushman Bharat - National Health Protection Mission will subsume the on-going centrally sponsored schemes - Rashtriya Swasthya Bima Yojana (RSBY) and the Senior Citizen Health Insurance Scheme (SCHIS).

The seeds of modern public health sprouted in Europe during the 19th century industrial revolution. Unhealthy living and working conditions led to serious health issues. This led to the birth of Public Health Act of England. United Nations Conference in 1945 made right to health an international issue. Cold War superpowers took divergent positions on human rights and although the Declaration of Alma-Ata reaffirmed health as a right in 1978. Governments proved unable to implement appropriate policies in many countries. Article 55 UN charter led to establishment of WHO in 1946.Preamble to its constitution imbibed explicit right to health concept. A baseline is taken below which no individual should find themselves in and health care strategies were structured so as to provide for comprehensive health coverage. Scholars, activists and UN bodies identified the constitutional elements of right to health which the states had to guarantee under all circumstances regardless of resource availability. Covered areas include a) access to maternal and child health care, family planning; b) immunisation against the major infectious diseases; c) appropriate treatment of common diseases and injuries; d) essential drugs; e) adequate supply of safe water and basic sanitation; and f) freedom from serious environmental health threats. This concept depends on availability and accessibility of quality health services with equal and free access. Tripartite typology includes respect, protect and fulfilment of right to health concept by the States. Legislation should ensure provision of equal access at the same time mitigate third party interferences.

A. Key aspects of the right to health

• The right to health is an inclusive right envisages a broader vision of not only access to health care, building hospitals but also helps in provision of a range of factors that can to

healthy life- rightfully these have been collectively termed as the "underlying determinants of health". Examples include: 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.

• The right to health includes freedoms- 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.

• The right to health contains entitlements- like 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. 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. Maternal, child and reproductive health; Equal and timely access to basic health services; Provision of health-related education and information; Participation of the population in health-related decision making at the national and community levels.

• Health services, goods and facilities to be provided without any discrimination. Functioning public health and health-care facilities, goods and services must be available in sufficient quantity within a State. 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 without discrimination. The facilities should be medically and culturally acceptable. Finally, they must be scientifically and medically appropriate and of good quality.

Common misconceptions about the right to health

• The right to health is NOT the same as the right to be healthy. A common misconception is that the State has to guarantee us good health. The right to health refers to the right to the enjoyment of a variety of goods, facilities, services and conditions necessary for its realization. It is more accurate to describe the right to health as the highest attainable standard of physical and mental health, rather than an unconditional right to be healthy.

• The right to health is NOT only a programmatic goal to be attained in the long term. The fact that the right to health should be a tangible programmatic goal does not mean that no

immediate obligations on States arise from it. Some obligations have an immediate effect, such as the undertaking to guarantee the right to health in a non-discriminatory manner, to develop specific legislation and plans of action, or other similar steps towards the full realization of this right, as is the case with any other human right.

• A country's difficult financial situation does NOT absolve it from having to take action to realize the right to health. It is often argued that States that cannot afford it are not obliged to take steps to realize this right or may delay their obligations indefinitely. The link between the right to health and other human rights Human rights are interdependent, indivisible and interrelated. 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.

Human Rights Day is recognised annually on Dec 10, and this year is especially important since it is the 70th anniversary of the day that the UN General Assembly adopted the Universal Declaration of Human Rights.

At the UN level, right to health is dealt with in Article 25 UDHR; Article 12 ICECSR; Article 12 CEDAW; Article 24 CRC; Article 5 CERD; Article 28 CMW; and Article 25 CRPD. The Convention requires early intervention and treatment of disabilities, and further, that health facilities be as close as possible to the communities of disabled people.

In addition, the Convention Relating to the Status of Refugees sets out, in Article 23, the obligation for states to accord to refugees in their territories 'the same treatment with respect to public relief and assistance as is accorded to their nationals'. Some protection of the right to health is also envisaged in the Geneva Conventions and Additional Protocols, such as the obligation to provide medical care for the wounded (Common Article 3(2) and Article 7 of Protocol II) and Article 12 of the First and Second Geneva Conventions. Instruments adopted under the framework of the UN provide for the right to health, such as the Declaration on the Protection of Women and Children in Emergency and Armed Conflict; the Standard Minimum Rules for the Treatment of Prisoners; the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment; the Declaration on the Rights of Mentally Retarded Persons; the Declaration on the Rights of Disabled Persons; and the Declaration on the Rights of Indigenous Peoples. American Declaration of the Rights and Duties of Man contains the right to health (Article XI). Article 10 Protocol of San Salvador specifically deals

with the right to health. In Africa, the right to health is found in Article 16 ACHPR. African Charter on the Rights and Welfare of the Child includes the right to health (Article 14).

Article 11 European Social Charter deals with the right to health. There are no references are made to child health, occupational health and to environmental health but there is a provision of advisory and educational facilities.

The duration and extent of health impacts resulting from severe abuses of rights and dignity remain generally under-appreciated. Torture, imprisonment under inhumane conditions, or trauma associated with witnessing summary executions, torture, rape or mistreatment of others have been shown to lead to severe, probably life-long effects on physical, mental and social well-being. Committee on Economic, Social and Cultural Rights, should have the legal prerogative to receive individual complaints upon the entry into force of the Optional Protocol to the IESCR. In optional Protocol to CEDAW, it is possible to submit complaints by or on behalf of individuals and groups.

WHO which has several programmes and standards in place that deals with prohibiting the use of tobacco, promoting breastfeeding and preventing and treating HIV/AIDS. ABCDE of right to health includes: A – accessibility, B –breaking down barriers, C-is for civil society, D-for determinants of health and E is for equality and non-discrimination. WHO is authorised to deal with the effects on health of the use of nuclear weapons but ensuring it legally requires global cooperation. World Bank has adopted a comprehensive 'Strategy for Health, Nutrition, and Population Results' to reinforce its work to improve the health conditions of the people. Agreement on the Application of Sanitary and Phytosanitary Measures which forms part of the WTO body of law aimed to prevent states from using sanitary measures as a pretext for banning or inhibiting foreign imports. Corruption and mismanagement can result in failure to provide basic health, safe drinking water and medical health facilities. National health care systems are 'core social institution' in the same way a 'justice system' is a core social institution.

Mental Capacity Act enables capacitous patients to decide whether they should receive treatment for their illness. Progress in molecular genetics threaten to compromise the destiny of the human species. The ethical reflections raised around these questions have been called 'bioethics. International Human Genome Project (IHGP), launched in the 1990s, with an objective to identify the map of the structure of the human genome and to sequence human DNA. New technologies causes fresh sources of discrimination, especially financial. Ethical codes being followed by medical practitioners and other health professionals extremely

relevant. Emphasis is on right to enjoy the benefits of scientific progress and liberalisation of confrontation with intellectual property rights and the question of patenting. Prohibiting genomic research and application is probably not a realistic/desirable solution.

National Health programmes in India will target about 10.74 crore poor, deprived rural families and identified occupational category of urban workers' families as per the latest Socio Economic Caste Census data covering both rural and urban. The scheme is designed to be dynamic and aspirational and it would take into account any future changes in the exclusion/ inclusion/ deprivation/ occupational criteria in the SECC data.In India Articles 38, 39(e), 41, 42 & 47 do not guarantee right to health enforceable by law. Article 21 needs to clear about the definition of Life. So is there a need to Constitutional Amendment, amend article 21, part IV of DPSP, amend fundamental duties or do we need a separate Act? Failure of a government hospital to provide a patient timely medical treatment results in violation of the patient's right to life **(6)**. Similarly, the Court has upheld the state's obligation to maintain health services **(7)**.Public interest petitions have been filed under Article 21 in response to violations of the right to health. They have been filed to provide special treatment to children in jail **(8)**; on pollution hazards **(9)**; against hazardous drugs **(10)**; against inhuman conditions in after-care homes **(11)**; on the health rights of mentally ill patients **(12)**; on the rights of patients in cataract surgery camps **(13)**; for immediate medical aid to injured persons **(14)**; on conditions in tuberculosis hospitals **(15)**; on occupational health hazards **(16)**; on the regulation of blood banks and availability of blood products **(17)**; on passive smoking in public places **(18)**; and in an appeal filed by a person with HIV on the rights of HIV/AIDS patients **(19)**.

Potential drawbacks of visualising the implementation of human rights concepts as alien or imposed one often leads to conflict. Global participation is the need of the hour. Health and human rights are complementary approaches for defining and advancing human well-being. The mutually enriching combination of research, education and field experience will advance understanding around human rights and health. Mahatma Gandhi aptly said health is your real wealth. "We as a society aren't there, and we aren't going to have successful universal health care until we start caring about each other."

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