DEFENDING HEALTH RIGHTS*

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Health rights abuse has various faces. To counter these violations, we need to create awareness lobby for these rights, and use the Judiciary to get the relevant Constitutional segments and international declaration endorsed by India.

There is a continuous violation of human rights in health, whether it concerns individuals or societal groups. This is true of both India and the world. More recently, there is a growing awareness among international and national bodies about the rights to better health status and better access to health care. These include the World Health Organization (WHO), the International Federation of Health and Human Rights Organization (IFHHRO), Physicians for Human Rights, the National Human Rights Commission in India and others. The appearance of journals such as Health and Human Rights, is also indicative of this.

Abuses of health rights

There tends to be a greater focus on the violation of the rights of individuals by the State, such as during torture in police lock-ups or in jails, or when deaths occur during ‘encounters’ with the police. However, in terms of the magnitude of unnecessary human suffering, the concept of the right to health has much broader implications and calls for a response from the State as well as from civil society.

State torture and societal violence

Torture in jails is common in our country, sometimes resulting in custodial deaths. Doctors are often indirectly involved in torture and in certifying fitness for ‘corporal punishment’ or ‘to be put to death’. This raises issues concerning the ethics of the medical and allied professions.

A 1995 survey by the Indian Medical Association (IMA) on the reaction of 743 doctors to violations of human rights by torture, found that 71.1% of them had come across at least one case of torture or suspected torture within their medical practice; 15.7% were witness to the infliction of torture; 57.5% felt that coercive techniques were justified to elicit information from ‘suspects’ and 58.3% thought that manhandling during interrogation was unavoidable (JIMA, 1996). Various forms of State torture and violence which negate human rights, are taken as part of everyday life. The IMA has developed training modules to enable physicians to detect torture, and about the medical and legal action that is required.

But is it only when there is direct state oppression that human rights are denied? What happens when there is caste, communal and ethnic violence against vulnerable groups and individuals, leading to the killing and burning of innocent people, houses and vehicles as has happened recently in Bihar and Orissa? Groups involved in community and public health are beginning to

recognize societal violence as a health issue. All member countries, including India, formally recognized violence as a public health problem at the 1995 World Health Assembly of the WHO in Geneva.

**Defining health human rights**

Whilst fighting state oppression and societal violence against individuals, we are also concerned about the denial of the right to life and the right to health of millions of people. The levels of health care actually available to the vast majority of our people, especially the poor, are deplorable. They are denied access to the determinants of health – food, education, shelter, clothing, a reasonable environment and purchasing power- because of the policies of the state. About 350 million of our people live in poverty; 200 million persons are destitute. Who will fight for their rights?

The Universal Declaration of Human Rights (UDHR) states that ‘everyone has the right to life’ (Art 3). Yet, the Infant Mortality Rate (IMR) in India is 73; out of 1000 infants born alive, 73 will die before their first birthday. They are denied their right to live. Why should this happen? In Japan and the Scandinavian countries, the IMR is 4; in every developed country, it is less than 10. Even in India, there are great disparities between states and districts and between states and districts and between the genders. In Kerala, the IMR is 13; it is around 100 (No one is sure, for many infant deaths are not reported) in Madhya Pradesh and Bihar. Of 12 million girl children born in India every year, only 9 million live up to their fifteenth year. Why should these children be denied their right to live? Very few voices are raised to protest against this denial of the fundamental right to life. Death occurring from preventable causes is just an unnecessary, wrong and reprehensible as death from a bullet. Both deny the right to life.

**Gender bias**

Several issues where health rights are denied are underpinned by gender and class factors. These are rarely recognized or addressed by the health profession and in fact, are most often unreported. The widespread practice of female foeticide has been researched and reported from Tamilnadu, Maharasta and Haryana, and probably occurs nationwide even after national legislation has been passed banning prenatal sex-determination tests. Modern technology in the form of ultrasounds and amniocentesis is used by trained professionals, and medical termination of pregnancy is performed, often by obstetricians. The ethical basis of this practice is rarely debated.

Female infanticide and dowry deaths are well-known examples of the violation of the right to life. However, gender biases in health care are also evident in the lower utilization by women of in-patient and out-patient government health services. Gender biases in the health status are even more evident in the declining gender ratio, the high maternal mortality and the high rate of women’s ill health. The Women and Health (WAH) group (WAH, 1997), the Medico Friends Circle (MFC) and several women’s groups all over the country have been working on this issue, particularly from the late 1970s.

**Poverty and health**

Poverty and health linkages have been long known, but not adequate recognized or addressed by medical and health professionals. Medicalization of the problem usually occurs. Poverty as a
cause of death has been recognized by the WHO in 1995: “The world’s most ruthless killer and the greatest cause of suffering on earth is extreme poverty. Poverty is the main cause of reduced life expectancy, of handicap and disability and of starvation” (WHO, 1995). Following the current global and national economic and political trends, the widening gap between the rich and the poor and its health consequences are also increasingly recognized. But addressing these issues is not usually considered as a necessary health intervention.

**Malnutrition**

There is rampant malnutrition, especially among children. About 64% of our children are underweight, according to the World Watch Institute, Washington (The New Indian Express, January 25, 1999). This leads to physical and mental underdevelopment. There is also undernutrition with respect to calories and specific nutrients such as Vitamin A, iron and iodine. We produce enough food but people do not have adequate purchasing power. The public distribution system has deteriorated. With the ‘structural adjustments’ and the reduction in subsidies, food grains and other materials of primary necessity are priced out of the reach of the poor. Food security is intricately related to health rights.

**Environment**

The environment is unhealthy and is itself endangered, with consequences on all, across the class divide. Persons below the poverty line living in unhygienic slums and in poor housing in villages, are more exposed and susceptible to pollution of air, water and soil.

The facilities for healthy living are missing. Water supply is insufficient and most often contaminated. Drainage and waste disposal are unsatisfactory. Domestic air pollution due to ‘chulhas’ affects women and children. Water-borne and water-related diseases and acute and chronic respiratory infections take a heavy toll on the lives of the young and the old.

**Education and employment**

Lack of access to education, poor quality education, high drop-out rates due to the need to supplement family income or look after younger siblings, etc., also impact health. With no education, the understanding of the processes of health and disease becomes limited. The people’s lack of opportunity, knowledge, skills, and decision-making capacities to attain better health within the circumstances and to demand better health services.

The health effects of working in hazardous jobs are felt mainly by the poor. For the majority of workers in the informal, unorganized sector, there is no access to ESI benefits. There is no system to claim compensation or protection from occupational diseases and accidents in this large sector.

**Medicinal drugs**

Drugs play a role in preventing sickness (vaccines) and protecting, maintaining, and restoring health. But drugs are expensive. As per recent Drug policies, price regulation and control is gone for all practical purposes. Drugs have become unaffordable for major portions of the population.
KEY DECLARATIONS AND STATEMENTS

There are several legal declarations and statements concerning health, health care and human rights. These include the following ones.

Universal Declaration of Human Rights

Article 25 declares that everyone has the right to a standard of living adequate for the health and well being of themselves and their families, including food, clothing, housing and medical care.

International Covenant on Economics, Social and Cultural Rights

This document proclaims that the states which are party to the covenant recognize the right of everyone to an adequate standard of living for themselves and their families (Art.11) as well as the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (Art.12). The government of India, being signatory to the declaration and the covenant, is committed to their implementation.

The Constitution of India envisions the establishment of a new social order based on liberty, fraternity, equality, justice and dignity of the individual. It aims at the elimination of poverty and ill health. It directs the state to regard the raising of the level of nutrition and standard of living of the people and the improvement of public health as among its primary duties, thus securing the health and strength of its people. These are included in the Directive Principles which are considered to be the conscience of the Constitution.

The Supreme Court has repeatedly held the Right to Life given in Article 21, included in the Fundamental Rights, is not merely for existence but to have a healthy and productive life. Public interest petitions have been successful in ensuring special treatment to children in jail (Sheila Barse vs. Union of India, 1963, 3 SCC 596) action against health hazards due to pollution (Mehta vs. Union of India, 1987 4 SCC 463) redressal against failure to provide immediate medical aid to injured persons (Paramanand Kataria vs. Union of India, AIR, 1989 SC 2039). Life has to be meaningful and not merely a vegetative existence. The Supreme Court has held that the right to live with human dignity derives its life and breath from the Directive Principles of State Policy, particularly articles (39 (e) and (f), 41 and 42). Without health, a person cannot have the freedom guaranteed by Article 19.

The Charter of Health Promotion of the World Health Organization (Ottawa, 1986) has a pledge to: advocate a clear commitment to health and equity in all sectors; counters unhealthy conditions and environment and bad nutrition; focus attention on public health issues such as pollution and occupational hazards; respond to health gaps within and between societies and tackle the inequalities in health, living conditions and well being; re-orient health services and their resources towards the promotion of health; and recognize health and its maintenance as a major social investment.

What are our governments (central, state and local) doing? We have high expectations from the Panchayati Raj under whose purview comes public health. But there is a need for the transfer of resources and authority and for building capacity among elected representatives, especially the women members.

Right to Health: Special Categories Children are often denied the right to health. Child labour, often in hazardous industries, is rampant. Street children and rag pickers are exposed to various health hazards. There is also the physical and sexual abuse of children. The 1990 convention on the Rights of the Child, however, asserted: “The States party (to the declaration) recognize the right of the child to the enjoyment of the highest attainable standards of health and to facilitate the treatment of illness and rehabilitation of health. Government shall strive to ensure that no child is deprived of his or her right to access to such health services.” (Art.34)

The principles for the protection of persons with mental illness, enunciated by the UN General Assembly in 1991, gave many rights to persons with mental illness. But these rights are often denied. Examples are the forced sterilization and hysterectomy of mentally retarded women that were reported from Mahastra.

Every programme and service in health care that spends public money should be accessible to all sectors of society, including persons with disabilities. They must have the opportunity to receive health care services, rehabilitation and assistive devices.

The right to confidentiality is often denied to persons with HIV infection/AIDS. HIV testing without consent and counseling services, is often done for pregnant women and before surgery. The right to work is also denied. Many employers discharge such employees, treatment is denied even by hospitals in the voluntary sector. HIV Positive children have been denied admission to schools or have been asked to leave.
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Sometimes, drugs which are spoiled or whose date of expiry is over, are dispensed in hospitals, producing a hazard to health. The people’s Union for Civil Liberties (PUCL) filed a complaint that the authorities in G.B. Pant Hospital, New Delhi, have been using contaminated, expired and damaged drugs, resulting in an increasing number of patients dying from infections. The matter has been handed over to the CBI. The PUCL attributed the problem to a cover-up of purchases irregularities worth 86 crore rupees (Indian Express, August 15, 1998).

Health Care Services

The poor have very little access to treatment when they are ill. They get poor health care. Treatment is often delayed and inappropriate. Diseases progress and end in early death or become chronic with lifelong misery. National surveys have found that expenditure on medical care is one of the most common causes of rural indebtedness. Inadequate primary health care services result in common diseases like tuberculosis, not being detected early or treated adequately. Official estimates are that at least 500,000 persons die of TB every year. This is largely preventable as TB is curable at a low cost. Further, the poor case management in the public and private sectors results in a large proportion of patients receiving inadequate, wrong and irregular treatment. This causes the development of drug resistance and an increasing number of disease transmitters. This scenario is also a form of violation of citizens rights (Narayan, 1998). TB is just one example of the consequences of neglecting the determinants of health and the adequate provision of health care services.

Current prescriptions by international monetary agencies have resulted in the stagnation and rolling back of government expenditure on public health services. This among other factors is already causing a break-down in the public health system with outbreaks of epidemics of infective hepatitis, dengue fever, malaria etc, even in metropolitan cities and capitals. Simultaneously, there is the mushrooming of high tech diagnostic centres and hospitals offering...
the latest state of the art technology to those with the ability to pay, despite the fact that the efficacy and quality of these services leave much to be desired.

It is therefore necessary for citizens groups, social activists and professionals to claim the people’s right to basic healthcare, which is an entitlement that has constitutional support.

**Allocation of resources**

Only very meagre allocations are made by the government for the elimination of poverty and improvement of health. It is agreed that the financial resources of the government are limited. Choices must therefore be made: How do we set our priorities? What resources should be allocated to health in comparison to other sectors? How shall the resources be allocated within the health sector? Who shall receive what health care?

The American College of Physicians, a highly conservative organization, has called for a radical restructuring of the American Health System. “The current system is intolerable. There is need to guarantee equal access for all Americans, regardless of their financial status. “India is a ‘welfare’ state. What is our position? Should we not guarantee equity for all?

By various means and partnerships, action plans can be initiated to achieve short and long term objectives to help realize the fundamental right to health, with equity and justice. The right to health, in addition to being a basic human right, can act as a translator of their human rights.

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