

An Analysis of Right to Health as an Indispensable constituent of the Right to Development

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ABSTRACT

Any amount of human development will not be justified if it is being done at the cost of human health. Both the aspects i.e human development and human development has been has indispensable part of any informed debate related to human rights jurisprudence. Right to health has been now duly recognized as pre requisite for the human development at the international by various international bodies through the conventions and treaties. With the constant efforts on the part of nations now various principal for the right to health has been crystallized for the accessibility, availability and acceptability.

Keywords: Right to Health, Right to Development, Human Rights

Introduction

For almost every one health is a matter of every day concern. Considerations like age, gender, social and economic setting becomes immaterial when it comes to the question of health. It is even said that the 'health is wealth' therefore it is the most basic and essential asset as far as human resource is concerned. In fact poor health can prove dear to human resource by taking a heavy toll on it in the form of putting obstacles in attending to various responsibilities or from contributing to the activities of society. In the same spirit one can make many sacrifices if state or society promises to secure healthier life in the form of right and it reflects in its policies too. Moreover development and health are having very close connections; both affect each other and having far reaching consequences for another.¹

As even Arjun Sengupta, who was an independent expert on the Right to Development in the United Nation also consider right to health as one of the non ignorable component to the right to development. It in this context it would be important to examine the various facets of right to health in the context of the right to development.

Jurisprudence of the right to health is not just restricted to health care, but goes afar from this. The right to health is an inclusive, composite and complex right, expanding not only to timely and suitable health care, but also includes within its fold various determinants of health, such as access to safe and potable water, pollution free environment for better health, sufficient hygiene and many other determinants.² It also implore for access to health-related education and information, which includes information on sexual and reproductive health which forms integral part of right to health debate. Certain freedoms and entitlements have now become the part of right to health jurisprudence. These freedoms include the right to control one's health, including the right to be free from nonconsensual medical treatment and experimentation. Entitlements³ include the right to a system of health protection that provides equality of opportunity for people to enjoy the highest attainable standard of health.⁴

In the history of mankind the right to health movement has reached at such a stage and is so much inspired by the philosophy of human rights that today it assimilates in its sphere so many principles which have been originally the part of any human rights movement. These includes guarantees like nondiscrimination and equal treatment, as well as the assurance on the part of states that they would take

¹ The Right to Health Fact Sheet No. 31 World Health Organization at 1 available at <http://www.ohchr.org/Documents/Publications/Factsheet31.pdf> accessed on 12.4.2009.

² For example : Safe food, Adequate nutrition and housing, Gender equality.

³ 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, Maternal, child and reproductive health, Equal and timely access to basic health services, The provision of health-related education and information, Participation of the population in health-related decision making at the national and community levels, Access to essential medicines.

⁴ Paul Hunt, *The UN Special Rapporteur on the Right to Health: Key Objectives, Themes, and Interventions, Health and Human Rights*, Vol. 7, No. 1 (2003), 1-27 at 3 available at ; <http://www.jstor.org/stable/4065415> as accessed on 2.11.2009.

purposeful, tangible, and focused steps in the direction of the full realization of the right to health. At present because of various development at the international level especially under the umbrella of UN the demand for right to health has taken a specific shape. These are few steps in a particular direction to achieve the desired goal in long term. By these efforts agenda has been set for the progressive realization of the right to health. These efforts are basically assisting in giving rise to responsibilities in relation to international assistance and cooperation: States have an obligation to take steps, individually and through international assistance and cooperation, towards the full realization of the right to health.⁵ Although one can trace the roots of human rights philosophy in ancient times and even in the oldest of epics, but it is a well known fact that the contemporary philosophy of human rights and UN have developed simultaneously. In fact one cannot refer to human rights in last 66 years minus UN. Commitments and contributions of UN cannot be ignored in promoting and protecting the human rights. The right to health is not an exception to above mentioned fact, UN has contributed a lot in ensuring that no international agreement or policy has an adverse impact on the right to health, and to make certain that their representatives in international organizations take due account of the right to health, as well as the obligation of international assistance and cooperation, in all policymaking matters.⁶ It is in this background it has to be examined that what is the status of right to health under international law and how this right has been accepted as one of the non derogable human rights in international law. It would also be pertinent to see that how development especially in the age of market oriented economy has affected this human right and what is the impact of such kind of market oriented development on the availability, accessibility and acceptability of right to health.

Right to Health: Issues and Claims under International Law

If one traces the roots of the Right to Health, it was conventionally covered under the private sphere rather than a subject matter of public law. Industrialization was one phenomenon in the history which brought so many changes in the society and it is understood that the first laws containing health-related provisions go back to the era of industrialization. It was under the pressure of the labour movement and the poor labour conditions in England the laws like The Moral Apprentices Act, 1802 and Public Health Act, 1848 were enacted. It is also said that law related to the state's responsibility for preserving public health were present in the Mexican Constitution way back in 1843.⁷

But a major breakthrough regarding the evolution of right to health and its acceptance as a social issue was achieved when World Health Organization was set up in 1946.⁸ With this for the first time right to health was given a wide meaning and there was a sea change in the concept of right to health. According to World Health Organization health is considered as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity”. The World Health Organization Constitution asserts 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”. With the passage of time this was time and again confirmed and reasserted by many international and regional human rights law. Which can be summarized as follows:

- Universal Declaration of Human Rights (article 25)⁹
- European Social Charter (art. 11)¹⁰

⁵ *Id.* at 4.

⁶ *Ibid.*

⁷ Circle of Rights Economic, Social, and Cultural Right Activism as available at <http://www1.umn.edu/humanrts/edumat/IHRIP/circle/modules/module14.htm> as accessed on 20.12.2010.

⁸ *Ibid.*

⁹ Article 25(1) of UDHR says:

“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control”. Again Article 25(2) of UDHR declares Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

¹⁰ Article 11 of European Social Charter declares as under ‘The right to protection of health’ with a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in co-operation with public or private organisations, .

- African Charter on Human and Peoples' Rights (art. 16)¹¹

Again the acceptance of this right as one of the fundamental human right came in the form of Alma-Ata Declaration on Primary Health Care in 1978 in which international community agreed on progressive realization of right to health and pledged to progressively develop comprehensive health care systems to ensure effective and equitable distribution of resources for maintaining health. States committed themselves to provide health facilities along with social measures.¹² Although the declaration is not binding in nature however it reaffirms the commitment for providing the universal health care to all. It was resolved to develop the mechanism in this regard and World Health Organization designed the plan, which is famously known as Health for All by the Year 2000.¹³

Moreover, the United Nations has developed two types of human rights monitoring mechanisms first type of mechanism are established under human rights treaties and the second category consist of and set up by the UN Commission on Human Rights. Under the second category thematic based mechanisms is established by the Commission. In the beginning issues like classic civil and political rights for instance disappearances (1980), summary executions (1982), torture (1985), and religious intolerance (1986)etc were covered but after Vienna Conference in 1993, the Commission has shown more interest in setting up special procedures on economic, social, and cultural rights issues. That is how it established Special Rapporteurs on the rights to education (1998), housing (2000), food (2000), and, on lastly health (2002).¹⁴

As it was observed in the foregoing paragraphs that right to health has been recognized internationally and it is systematically moving in a particular direction however, there are certain misconception regarding this right. Following are the main misconceptions:¹⁵

- The right to health is not the same as the right to be healthy : It is more accurate to describe it as the right to 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: it does not mean in any way that there is not any time frame of short term goal for achieving targets regarding right to health.
- A country's difficult financial situation does not absolve it from having to taking action to realize the right to health: Economic and other resources are important but no state can make financial inability an excuse for fulfilling the obligation regarding the right to health.

Accessibility, Availability and Acceptability¹⁶

Recognition of the right and mentioning of it in international legal instrument is not enough but accessibility, availability and acceptability always forms the core issue of any right. Conditions for all these interrelated issues and its application will depend on the ground realities of a particular country.

- **Availability:** Effective working of public health system is crucial for realization of right to health in any countries. Health care facilities and services should be easily available to all. However these facilities and services will vary according to Social-Economic and Political condition of a country. But some basic determinants to health such as life saving drugs, safe drinking water, trained medical supervisors as prescribed by World Health Organisation is must.

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- to take appropriate measures designed *inter alia*:
 - to remove as far as possible the causes of ill-health;
 - to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;
 - to prevent as far as possible epidemic, endemic and other diseases, as well as accidents.

¹¹ Article 16 of African Charter declares as under

- Every individual shall have the right to enjoy the best attainable state of physical and mental health.
- States parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

¹² *Supra* note 7.

¹³ *Ibid.*

¹⁴ *Supra* note 4 at 1.

¹⁵ *Supra* note 1 at 5.

¹⁶ Ravi Duggal, "Right to Health and Health Care- Theoretical Perspective", in Mihir Desai and Kamayani Bali Mahabal (Eds), *Health Care Case law in India*, 1-16 at 12 (2007) as available at <http://www.cehat.orghumanrightscaselaws.pdf> as accessed on 19.02.2011.

- **Accessibility:** Accessibility of health services should be Universal without any kind of discrimination to anyone. Accessibility to health services has several dimensions and depend on many related issues in a Social and Political milieu of particular society. It has the following dimension.
- **Should be based on Non-discrimination:** Policy of the state should be such where even the most vulnerable and marginal section of the society should get access to it without any kind of exclusion.
- **Physical and Geographical Accessibility:** Accessibility should not only be based on the principle of non-discrimination but it should also be within the safe reach of all the segment of the society immaterial of the fact that whether it is a rural area or urban area. State should ensure that nobody should be deprived of these facilities or access to health related institution because of geographical distance or any kind of disability.
- **Economic Accessibility (affordability):** Today everything in a market oriented economy is based on purchasing power and those who can't pay will be excluded from the market. But Right to Health demands the health services should be economically affordable for everybody and these facility should be based on the principle of equity to those who can't afford.
- **Information Accessibility:** The present era is considered as information era and at present Right to Health accessibility includes right to receive and import information. But at the same it is pertinent to mention here that in the name information right to confidentiality of personal data can't be compromised.
- **Acceptability.** It is equally important that health services should be culturally acceptable and it should be sensitive and respectful to the social, cultural, other particular aspect of a community.
- **Quality.** Not only the cultural acceptability but health service should also pass the test of scientific para meter and it should be of good quality. Universal access to good quality healthcare equitably is important and vital for the realization of Right to Health.

(b) State's Obligations to Right to Health under International Law

As it is very much clear that the right to health has been recognized by several international instrument. However still there is lots of scope for the debate that what are the obligation of the states who are parties to different international legal instrument. However, the state obligations regarding right to health can be on the basis of combined reading of various UN documentation can be summarized as follows

- Reducing infant mortality and providing for the healthy development of children;
- Improving environmental conditions and closer monitoring of the consequences and working conditions of industry;
- Disease prevention, treatment, and monitoring, including preventive health systems and systems for monitoring occupational health; and
- Basic medical services for the entire population.
- The policies of promotion, information and education for health as expressions of states' obligations are present in the preamble of the WHO Constitution and in the Convention on Rights of Child¹⁷ in relation to maternal and child health.
- WHO Constitution,¹⁸ adopts social promotion measures as an essential component of states' responsibilities. Access and benefits for all persons to scientific progress and its applications (specifically with respect to health) are set forth in the WHO Constitution and in the ICESCR.¹⁹

Right to Health and Millennium Development Goals:

The roadmap for executing the UN Millennium Development Goals is also important for contemplation of the health-related MDGs through the prism of the right to health. According to this

¹⁷ Article 24(2)(e) of convention on rights of child declares as under " To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;" as available at <http://www2.ohchr.org/english/law/crc.htm> as accessed on 02.05.2010.

¹⁸Constitution of World Health Organization as available at http://www.who.int/governance/eb/who_constitution_en.pdf as accessed on 30.08.2010.

¹⁹ Article 15(1)(b) of International Covenant on Economic, Social and Cultural Rights declares as under "To enjoy the benefits of scientific progress and its applications" as available at <http://www2.ohchr.org/english/law/cescr.htm> as accessed on 31.07.2010.

roadmap, economic, social and cultural rights are at the heart of all the MDG. Eight of the 16 MDG “targets” and 17 of the 48 MDG “indicators” are health related. The Prominence of health is also reflected in eight Millennium Development Goals out of which following four are related to health to be achieved by 2015:

- Maternal mortality: reducing it to by three-quarters its current rate;
- Child mortality :to reduce mortality of children younger than five years by two-thirds its current rate;
- To halt and begin to reversing the spread of HIV/AIDS, malaria, and other major diseases that afflict humanity; and
- To ensure environmental sustainability.

Elements of the other MDGs-in particular a global partnership for development-also bear closely on the right to health. Although sometimes MDG is being criticized²⁰ for not fulfilling the criteria or standards of human rights however, given the prominence of health in the MDGs and in their “targets” and “indicators”, it is important to examine the health-related MDGs through the prism of the right to health.²¹

Looking into the development at various world bodies it can be summarized that the human civilization has recognized the importance of right to health and has understood its relationship with the idea of human development. On the basis of this understanding both the aspects has been duly made the essential part of human rights jurisprudence.

²⁰ For criticism of MDG for not fulfilling the test of Human right see: *Supra* note 4 at 7.

²¹ *Ibid.*