

Letter to Editor

Public Health, Human Rights & The Role of Judiciary

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The right to health as human right paved the way to encourage efforts to optimize the satisfaction of the basic needs of vulnerable people in a sustainable manner and promised to codify as well as to reconstruct them into legal and ethical norms. Health as human right requires that civil society must have democratic participation to capture the essence of the needs and sentiments of people, i.e., equal access to all the underlying determinants of health (e.g., safe and nutritious food, sanitation and clean water, adequate public health infrastructures with well-trained doctors and other clinical staff to serve people on a non-discriminatory basis, especially for vulnerable and marginalized groups). It conceives the interpretation of health as a judicially enforceable right in every part of the world. At the global level, the institutionalization of health as a human right has found manifestation in international conventions, declarations, and directives. The linkage of health and human rights reference to the understandings that the language of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, or economic and social conditions. This linkage also attributes to the understanding that the status of health is determined in a large measure of the degree to which human rights are enjoyed.

Any attempt to advance health as a human right must start with addressing the cultural, economic, environmental, political, and the social challenges. Rights are meant to empower and mobilize the vulnerable and the disadvantaged, and this should be the main concern of anxiety all over the world particularly in the developing and least-developed countries. Health as a basic and fundamental human right is indispensable for the existence of the other human rights (e.g., right to life and liberty, freedom from slavery and torture, freedom of opinion and expression right to work and education, etc.). Both human rights and health are so intrinsically involved with each other that the attainment of the rights is not plausible if an individual cannot take proper care of his/her health. Each and every human being is entitled to the attainment of adequate standard of health conducive to enjoying a life with dignity.

Most countries in the world have become States' parties to one or more international human rights treaties, thus creating an obligation by the State to its people towards the realization of the

right to health, which includes access to essential medicines. The question here is to what extent the judiciary has enforced this right in practice. For example, Hans et al. identified 71 completed court cases from a total of 12 low-income and middle-income countries, wherein individuals or groups had claimed access to essential medicines with reference to the right to health in general or to specific human rights treaties ratified by the government. Of these cases, 59 (mostly from Central and Latin America) could successfully enforce access to essential medicines as part of the fulfillment of the right to health (e.g., constitutional provisions and the human rights treaties) through courts. Fourteen of these 59 successful cases (24%) made their references to international human rights treaties to which the State is party, while the other 45 made references to the right to health as a matter of the national constitution [1]. Issues of human rights affect the relations between the States and their individuals, which in turn generate State obligations and the individual entitlements. The promotion of human rights is one of the main purposes of the United Nations. For example, the WHO Constitution of 1946 points out 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, and political belief, economic or social condition" [2].

Article 25(1) of the Universal Declaration of Human Rights (1948) lays down that "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" [3].

The right to health is also recognized in many other international [4-6], and regional treaties [7-9], especially the International Covenant on Economics, Social, and Cultural Rights (ICESCR) of 1966, an international treaty that is binding on the States Parties [10], and provides the foundations for legal obligations under the right to health. In the ICESCR, States parties "recognize the right of everyone to the highest attainable standard of physical and mental health." In Article 12.2, the treaty lists several steps to be taken by States parties to achieve the full realization of this right, including the right

to prevention, treatment, and the control of disease, and “the creation of conditions which would assure to all medical service and medical attention in the event of sickness.” Article 12 thus constitutes an important standard against which to assess the laws, policies, and practice of States parties. The implementation of the ICESCR is monitored by the Committee on Economic, Social and Cultural Rights, which regularly issues authoritative but non-binding General Comments, which are adopted to assist states in their interpretation of the ICESCR. In General Comment No.3, the Committee confirms that States Parties have a core obligation to ensure the satisfaction of minimum essential levels of each of the rights outlined in the ICESCR, including essential primary care as described in the Alma-Ata Declaration [11], which includes the provision of essential medicines. ICESCR General Comment of May 14, 2000, is concerned with access to essential medicines and services as included in Article 12.2 (d), which is consistent with the WHO’s definition of essential drugs in its Action Program [12].

Essential medicines are those that satisfy the priority health care needs of the population. Essential medicines selected with due regard to disease prevalence, evidence on efficacy and safety and comparative cost-effectiveness. Essential medicines are intended to be available within the context of functioning health systems at all times, in adequate amounts, in the appropriate dosage forms, with the assured quality and at a price the individual and community can afford. The implementation of the concept of essential medicines is intended to be flexible and adaptable to many different situations, exactly which medicines are regarded as essential remains a national responsibility.

Although the ICESCR acknowledges the limits of available resources and provides for the progressive realization of the right to health including the right to access to essential medicines, States parties have an immediate obligation to take deliberate and concrete steps towards the full realization of Article 12, and to guarantee that the Right to Health is exercised without discrimination of any kind.

Most countries in the world have acceded to or ratified at least one worldwide or regional covenant or treaty confirming the right to health. For example, more than 150 countries have become States parties to the ICESCR, and 83 have signed regional treaties. More than 100 countries have incorporated the right to health in their national constitution [1]. Some might argue that social, cultural, and economic rights are not enforceable

through the courts, and some national courts have indeed been reluctant to intervene in resource allocation decisions of government. Yet accountability and the possibility of redress are essential components of the rights-based approach. Being a State party to human rights treaty that is internationally binding and creates certain state obligations to its people. The questions remain, however, are: do governments live up to these binding obligations in practice? If not, do individuals manage to obtain their rights through the judiciary? And if they do, which factors would contribute to their success? Answers to these questions may contribute to the transformative justice to the issues of health care inequity, access, and affordability in the present century.

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