



Access to Medicine and Human Right

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ABSTRACT *The right to health is closely associated with the right to life and indispensable for the exercise of most other human rights. To achieve right to health access to medicine is very much essential. It focuses on sustainable, universal access to essential medicines through the development of national medicines policies. Medicine is needed for people when they become afflicted with any disease. So the availability and affordability of medicine is essential for the health of the people. It is the duty of the government in classifying the essential medicines, determining the quality of medicine, their supply and checking whether they are reaching the needy people. No government can excuse themselves that they don't have enough funds for providing its citizens with healthcare. It is their primary duty and they have a legal obligation to provide essential drugs.*

Human rights are legally guaranteed by international, regional and national human rights law, protecting individuals and groups against actions that interfere with fundamental freedoms and human dignity. Most human rights are interdependent. Right to health is a fundamental human right. Inherent in the right to health is the obligation to ensure access to affordable medicines for all without discrimination, in order to prevent, treat and control diseases. Yet each year millions of people die due to preventable and treatable diseases, too many diseases remain untreated simply because communities around the world continue to live beyond the reach of adequate, affordable medicine.

There are several provisions in the Constitution of India in respect of right to health. According to Article 38 of Indian Constitution "The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life." It imposes liability on State to secure a social order for the promotion of welfare of the people but without public health we cannot achieve it. So without public health, welfare of people is impossible. Article 39(e), (f) and Articles 41 and 42 provides for the protection of health of men women and children. Article 47 provides for raising the level of nutrition and improvement of health as the primary duty of the State. Article 48A ensures that State shall Endeavour to protect and impose the pollution free environment for good health

The provisions under directive principles are only directive to the state. But the Supreme Court has brought the right to health under the preview of Article 21. It provides that, "No person shall be deprived of his life or personal liberty except according to procedure established by law". The right to life is the most basic of all rights. In many cases. Supreme Court has liberally interpreted the expression 'life' and said that life does not mean mere animal existence. "The right to life includes the right to live with human dignity". Supreme Court in *Consumer Education & Research Centre Vs Union of India* held that medical facilities to protect health constituted the fundamental right to make the life meaningful and purposeful with dignity of person. The Supreme Court thus declared that the right to health, medical aid to protect the health was a fundamental right under Art. 21. The right to life guaranteed under Art.21 includes within its ambit the right to health and medical care. It includes the right to lead a healthy life so as to enjoy all faculties of the human body.

In *P.B.Khet Mazdoor Samity Vs. State of W.B.* the Supreme Court said that the Constitution envisaged the establishment of a welfare state at the federal level as well as state level. In a welfare state the court said the primary duty of the Government was to secure the welfare of the people. Providing adequate medical facilities for the people was an essential part of the obligations undertaken by the Government.

We can see that medications can be indispensable for life. it is foreseeable that state policies likely to lead directly to diminished physical accessibility and affordability of certain medications. That will, in effect, deprive people of life. The right to life not only implies the negative obligation not to deprive anyone of life arbitrarily, but also the positive obligation to take all necessary measures to secure that, that basic right is not violated.

The WHO Constitution (1946) states: "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." WHO considers equitable access to safe and affordable medicines as vital to the attainment of the highest possible standard of health by all. WHO Member States reaffirmed their commitment to these principles in May 2008, with the adoption of a resolution on the "Global strategy and plan of action on public health, innovation and intellectual property" (WHA61.21). The resolution expressed Member States' commitment to improving the delivery of and access to all health products and medical devices by effectively overcoming barriers to access.

Article 25.1 of the Universal Declaration of Human Rights (1948) reads: "Everyone has the right to a standard of living adequate for the health of himself and of his family, including food, clothing, housing and medical care and necessary social services". The right to health" was reiterated in the 1978 Declaration of Alma Ata and is widely recognized in many other international and regional human rights instruments After the Universal Declaration of Human Rights, two subsequent international treaties of 1966 provide more detail on the practical implications of human rights: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

The core provision on the right to health in international human rights law is set

out in article 12 of the International Covenant on Economic, Social, and Cultural Rights ("ICESCR"), which recognizes "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health." Access to medications is a critical component of the right to health both as treatment for epidemic and endemic diseases and as part of medical attention in the event of any kind of sickness.

In Article 12.2 it has listed a number of steps to be taken by States Parties to achieve the full realization of this right, including the right to: maternal, child and reproductive health; healthy natural and workplace environments; prevention, treatment and control of disease; and "the creation of conditions which would assure to all medical service and medical attention in the event of sickness.

The Economic, Social and Cultural Rights Committee ("ESCR Committee") has explained that all health care facilities, goods, and services—including medications and the provision thereof—should be: (1) available in sufficient quantity; (2) accessible to everyone without discrimination; (3) acceptable in the sense of respectful of medical ethics and customs; and (4) of good quality and scientifically appropriate. Accessibility in particular includes: (1) physical accessibility ("health facilities, goods and services must be within safe physical reach for all sections of the population, especially vulnerable or marginalized groups, such as ethnic minorities and indigenous populations, women, children, adolescents, older persons, persons with disabilities and persons with HIV/AIDS") (2) economic accessibility ("health facilities, goods and services must be affordable for all"); and (3) information accessibility ("accessibility includes the right to seek, receive and impart information and ideas concerning health issues," including pricing and treatments).

The governments have not only moral or humanitarian responsibilities to undertake such measures to ensure access to essential drugs, but also have legal obligations. The central question at issue from the human rights perspective is whether the government is taking steps by all appropriate means to make medications accessible, physically and economically, and to make information relating to medications accessible as well. Access to medications, which in practice often accompanies access to health care facilities and trained personnel, must be realized on a non-discriminatory basis.

Treaties and statutes relating to trade, competition, intellectual property, or other factors bearing on access to medications can often be ambiguous; in such cases, a human rights framework imposes an obligation to interpret such treaties and legislation in the manner that most fully advances the public's health interests. States have obligations to respect the right to health by refraining from adopting laws or measures that directly infringe upon people's health. Human rights provide a set of principles according to which laws, policies and programs can be evaluated and reformed. Thereby life-saving medications can be provided to the millions of destitute sick people around the world. For the poorest and most vulnerable groups, the high cost of medicines remains a barrier to treatment, especially in rural areas.

Patents, grant exclusive rights over the manufacture, use or sale of an invention. Patent rights can keep prices of drugs artificially high if no measures are put in place to reduce them. In order to reduce the adverse impacts of patent rules on prices, the TRIPS Agreement allows countries to use certain key flexibilities, such as the granting of compulsory licenses in order to make cheaper generic versions of patented medicines or the parallel importation of patented medicines that are sold more cheaply in other countries. A country's ability to freely interpret and use these flexibilities was reaffirmed by the WTO Doha Declaration on TRIPS and Public Health of 2001. The Doha Declaration expressly states that the TRIPS Agreement "can and should be interpreted and implemented in a manner supportive of WTO members' right to protect public health and, in particular, access to medicines for all."

The Indian Supreme Court has ruled against a Novartis challenge of a denial of a patent on its cancer medicine Glivec. The Court upheld strict standards in the India Patents Act thereby limiting pharmaceutical monopolies and speeding access to more affordable generic medicines.

Medicines should be made affordable so that the common people will be able to get access of the medicine if they are afflicted with any disease. If the price of life saving drugs is escalating the majority of people will not be able to access it. Since most of the Indians are not under the medical insurance scheme they have to pay for the medicine themselves. It is important that the prices of the medicine should be kept at an affordable rate. Then only the human right of the people can be protected.

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