



HUMAN RIGHTS AND HEALTH

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ABSTRACT

Health is a fundamental human right, indispensable for the exercise of many other human rights, and necessary for living a life in dignity. The right to the highest attainable standard of health as a normative standard was first enunciated in 1946 in the Constitution of the World Health Organization (WHO). The preamble to the WHO Constitution also affirms that it is one of the fundamental rights of every human being to enjoy “the highest attainable standard of health”. Inherent in the right to health is the right to health or health care. In an increasing number of societies, health is no longer accepted as a charity or the privilege of the few, but demanded as a right for all. However, when resources are limited, the government cannot provide all the needed health services. Under these circumstances the aspirations of the people should be satisfied by giving them equal right to available health care services. The concept of 'right to health' has generated so many questions like right to medical care, right to responsibility for health, right to a healthy environment, right to food, right to procreate, the right not to procreate, rights of the deceased persons and to right to die, etc. Many of the issues have been the subject of debate. Thus this article emphasizes on right to health, constitutional provisions, human rights based approaches and violations of human rights in health care setting.

KEYWORDS

Human Rights, Health, Violation

HEALTH AS A HUMAN RIGHT

*"The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without the distinction of race, religion, political belief, economic or social condition."* [WHO Constitution]

“The right to the highest attainable standard of health” requires a set of social criteria that is conducive to the health of all people, including the availability of health services, safe working conditions, adequate housing and nutritious foods. Achieving the right to health is closely related to that of other human rights, including the right to food, housing, work, education, non-discrimination, access to information, and participation.

The right to health includes both freedoms and entitlements.

- **Freedoms include the right to control one's health and body (e.g. sexual and reproductive rights) and to be free from interference (e.g. free from torture and from non-consensual medical treatment and experimentation).**
- **Entitlements include the right to a system of health protection that gives everyone an equal opportunity to enjoy the highest attainable level of health.**

Health policies and programmes have the ability to either promote or violate human rights, including the right to health, depending on the way they are designed or implemented. Taking steps to respect and protect human rights upholds the health sector's responsibility to address everyone's health.

HEALTH AND HUMAN RIGHTS:

The first relationship between health and human rights involves the positive and negative impacts of health policies, laws, programs, and practices on human rights. The challenge is to negotiate the optimal balance between promoting and protecting public health and promoting and protecting human rights. In order to accomplish this aim, it would be necessary that Governments adequate their national health policies, laws, programs and practices to national and international human rights instruments.

The second relationship expresses that violations or lack of fulfillment of any and all human rights have negative effects on physical, mental, and social well-being. This is true in peacetime and in times of conflict and extreme political repression

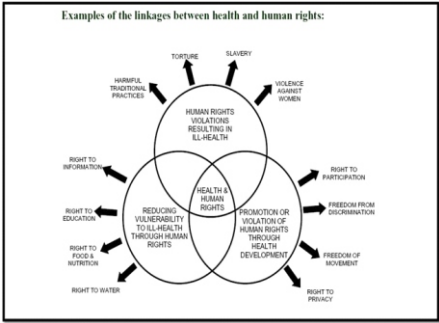
The third relationship is the unavoidable connection between health and human rights. The central idea of the health and human rights approach is that health and human rights act in synergy. Promoting and protecting health requires explicit and concrete efforts to promote and protect human rights and dignity. In addition, greater fulfillment of human rights requires sound attention to health and to its societal determinants. In other words, the enjoyment of health is necessary for exercising human rights; and at the same time, exercising human rights positively contributes to the enjoyment of health. For example, the enjoyment of physical and mental health is essential for exercising the right to work; and at the same time, exercising the right to work contributes positively to the enjoyment of physical and mental health.

**LINKAGES BETWEEN HEALTH AND HUMAN RIGHTS:  
Promoting and protecting health and respecting, protecting and fulfilling human rights are inextricably linked:**

Violations or lack of attention to human rights can have serious health consequences (e.g. harmful traditional practices, slavery, torture and inhuman and degrading treatment, violence against women and children).

Health policies and programmes can promote or violate human rights in their design or implementation (e.g. freedom from discrimination, individual autonomy, rights to participation, privacy and information).

Vulnerability to ill-health can be reduced by taking steps to respect, protect and fulfill human rights (e.g. freedom from discrimination on account of race, sex and gender roles, rights to health, food and nutrition, education, housing).



## RIGHT TO HEALTH: AVAILABILITY, ACCESSIBILITY, ACCEPTABILITY AND QUALITY

Health facilities, goods and services must be **available** in sufficient quantity within a given country. This includes hospitals, clinics, trained medical personnel, and availability of essential medicines. It also comprises preventive public health strategies and promotional activities, such as awareness-raising campaigns against HIV/AIDS, or information as regards safe drinking water and adequate sanitation facilities.

The dimension of **accessibility** without discrimination comprises non-discrimination, particularly for the marginalized and disadvantaged sections of the population, in law and in fact. It also addresses physical accessibility, i.e. within safe physical reach for all sections of the population, especially for the most vulnerable groups, such as ethnic minorities, indigenous peoples, women, children, adolescents, older persons, persons with disabilities, and particularly persons with HIV/AIDS. Most critical is the further aspect of economic accessibility (affordability); equity demands that poorer households should not be disproportionately burdened with health expenses as compared to richer households. If a health centre charges user fees and those in need cannot pay the fee, the centre is not economically accessible. Needless to say, the exact amounts to be assessed are up to democratically elected parliaments and other processes at the national level.

The right to health also requires that health facilities must be respectful of medical ethics; they must also be culturally appropriate and gender-sensitive. There should be **acceptability**. Thus health workers need to be aware of cultural sensitivities in the provision of health care. For example, when women are examined by male doctors, a female nurse should be in attendance.

Lastly, the quality of health care is a decisive factor. Facilities must be scientifically and medically appropriate, and of **good quality**. Thus, for example, provision of an expensive mammography machine to a health centre may not be scientifically and medically appropriate where human and technical resources are scarce, as in many less developed countries, and where the main issue for women is cervical cancer. Where health education is offered, it must be ensured that such education is of high quality.

## THE RIGHT TO HEALTH, A HUMAN RIGHT ENSHRINED IN INTERNATIONAL HUMAN RIGHTS LAW

The right to health was first articulated in the WHO Constitution (1946) which states that: "the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being...". The preamble of the Constitution defines health as: "... a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity ».

The 1948 Universal declaration of Human Rights mentioned health as part of the right to an adequate standard of living (article 25). It was again recognised as a human right in 1966 in the International Covenant on Economic, Social and Cultural Rights, Article 12:

"1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child; (b) The improvement of all aspects of environmental and industrial hygiene; (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases; (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness."

## REPRODUCTIVE RIGHTS AND REPRODUCTIVE HEALTH

Reproductive rights are considered by many women as being at

the very core of women's rights. Throughout history, women's reproductive functions have been used to control women themselves. If we examine why women are denied numerous life opportunities; why women are stopped from attending school once they attain puberty; why they are not allowed to move around freely; why they are restricted from taking up employment or from pursuing a career; why they are married off early without a say in the choice of the partner, we return again and again to the same answer-because women have bodies that can be impregnated.

The meaning of reproductive and sexual rights that has evolved over the years is the right to manage one's fertility safely and effectively by conceiving when one desires to, terminating unwanted pregnancies and carrying wanted pregnancies to term; the right to express one's sexuality free of disease, violence, disability, fear, unnecessary pain or death associated with reproduction and sexuality; and the right to social and economic and political conditions that make these possible.

It is important to clarify that reproductive rights and reproductive health are not the same. Reproductive health is only a small component of reproductive rights. Further access to reproductive health services is only one part of the right to reproductive health, just as access to health services is only one aspect of the right to health. For women to have good reproductive health they have to have good general health and the physical, economic and social conditions that make possible good health overall.

## DISADVANTAGED POPULATIONS AND THE RIGHT TO HEALTH

Vulnerable and marginalized groups in societies are often less likely to enjoy the right to health. Three of the world's most fatal communicable diseases - malaria, HIV/AIDS and tuberculosis - disproportionately affect the world's poorest populations, placing a tremendous burden on the economies of developing countries. Conversely the burden of non-communicable disease - most often perceived as affecting high-income countries is now increasing disproportionately among lower income countries and populations

Within countries - some populations - such as indigenous communities are exposed to greater rates of ill-health and face significant obstacles to accessing quality and affordable healthcare. This population has substantially higher mortality and morbidity rates, due to non communicable diseases such as cancer, cardiovascular and chronic respiratory diseases, than the general public. People who are particularly vulnerable to HIV infection - including young women, men who have sex with men, and injecting drug users - are often characterized by social and economic disadvantage and discrimination. These vulnerable populations may be the subject of laws and policies that further compound this marginalization and make it harder to access prevention and care services.

## VIOLATIONS OF HUMAN RIGHTS IN THE HEALTH SPHERE

Violations or lack of attention to human rights can have serious health consequences. Overt or implicit discrimination in the delivery of health services violates fundamental human rights. Many people with mental disorders are kept in mental institutions against their will, despite having the capacity to make decisions regarding their future. On the other hand, when there are shortages of hospital beds, it is often members of this population that are discharged prematurely, which can lead to high readmission rates and sometimes even death, and also constitutes a violation of their right to receive treatment.

Similarly, women are frequently denied access to sexual and reproductive health care and services in developing and developed countries. This is a human rights violation that is deeply engrained in societal values about women's sexuality. In addition to denial of care, women in certain societies are sometimes forced into procedures such as sterilization, abortions or virginity examinations.

**THE HUMAN RIGHT TO HEALTH IS PROTECTED IN:**

- Article 25 of the Universal Declaration of Human Rights
- Article 12 of the International Covenant on Economic, Social and Cultural Rights
- Article 24 of the Convention on the Rights of the Child
- Article 5 of the Convention on the Elimination of All Forms of Racial Discrimination
- Articles 12 & 14 of the Convention on the Elimination of All Forms of Discrimination Against Women
- Article XI (11) of the American Declaration on Rights and Duties of Man
- Article 25 of the Convention on the Rights of Persons with Disabilities

**CONCLUSION:**

In recent years, increased attention has been paid to the right to health, providing a broad interpretation of this human right: "The right to health is an inclusive right, extending not only to timely and appropriate health care, but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health." The right to health is not simply the right to be healthy but the right to a comprehensive public health system that provides equal opportunities to everybody to be able to enjoy the highest attainable standard of health. Non-discrimination in relation to access to health care and the conditions necessary for good health is a key entitlement. Moreover, irrespective of a country's developmental levels and economic situation, there are essential services that should be in place, such as available, accessible, acceptable, and affordable and quality health care services.

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