



## THE RIGHT TO HEALTH AND ROLE OF WORLD HEALTH ORGANIZATION

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### Abstract:

‘Health is not mainly an issue of doctors, social service and hospitals; it is an issue of social justice.’ Health in its broader prospective connotes ‘a state of complete physical, mental, and social well being and not merely the absence of disease or infirmity. Improved public health requires unbiased access to medical treatment, medicines and diagnostic procedures. Such a system can be achieved through rights oriented approach. Right to health gives common man right to access health services and right to demand improvements in it. World Health Organization (WHO) was created to facilitate access to health services to human being across the globe irrespective of their nationality. It has helped countries to realize right to health for their people. This paper discusses right to health and the role played by the WHO in its realization. For this purposes it also discusses the establishment and functioning of the WHO.

**Keywords:** Right to Health, Public Health, World Health Organization, Human Rights, Vulnerable Group, Elder People, Population

### (1) Introduction:

Planned development without a rights based approach can only yield limited results and outcomes. Right oriented approach helps in realizing it for common people otherwise healthcare programmes have a limited impact. Such an approach sensitizes people and political managers so that it comes over in priority list of government.

The traditional notion of healthcare has tended to be individual-centric and access to medical treatment, medicines and procedures. But today, healthcare at the collective level was largely identified with statistical determinants such as life-expectancy, mortality rates and access to modern pharmaceuticals and procedures. There is an obvious intersection between healthcare at the individual as well as societal level and the provision of nutrition, clothing and shelter. The term ‘public health’ has a distinct collective dimension and has include the wholesome aspect such as a clean living environment, protections against hazardous working conditions, education about

disease-prevention and social security. Further, special emphasis is laid on elements such as women's reproductive health and the healthcare of children.<sup>1</sup>

The idea that all people are entitled to have the physical needs of their bodies satisfied is at the heart of the human rights movement. This includes the right to survive and to live free of reasonably preventable suffering. The right of everyone to the enjoyment of the highest attainable standard and of physical and mental health<sup>2</sup> was therefore guaranteed by international community as 'Human Rights'. Health in its broader prospective connotes 'a state of complete physical, mental, and social well being and not merely the absence of disease or infirmity. This right is social right and it is called right to health. The right to adequate health touches on an issue of fundamental importance in our society. The responsibility to respect, protect and fulfill the 'right to health' lies not only with the medical profession but also with the states, administrators, judges, and organizations.

As disease have no boundaries and it can affect population across countries and keeping in mind importance of 'right to health' and need to regulate and monitor the health programmes across countries World Health Organization (WHO) was established.

## **(2) Right to health as a Human Rights:**

Human beings are rational beings. They by virtue of their being human possess certain basic and inalienable rights which are commonly known as human rights. 'Human rights' is a generic term and it embraces civil rights, civil liberties and social, economic and cultural rights. These are the rights which no one can be deprived without a grave affront to justice.<sup>3</sup> Thus 'right to health' as recognized by International community as Human Rights connotes that every human being has right to the enjoyment of the highest attainable standard of physical and mental health and States are under obligation to take steps for the reduction of the stillbirth rate and of infant mortality and for the healthy development of the child; improvement of all aspects of environmental and industrial hygiene; prevention, treatment and control of epidemic, endemic, occupational and other diseases and creation of conditions, which would assure to all medical service and medical attention in the event of sickness.<sup>4</sup>

Justice Ramaswami has made unique and valuable contribution to declare to right to health as a human right and fundamental right under the Constitution of India. He took assistance from the provisions of the Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights and Constitution of India. Justice Ramaswami also stated that the right to health is the most important aspect of social justice. It is obligation of the state to improve public health.

*Jonathan Mann, a doctor who led the efforts to develop the interface between health and human rights:*

*"Modern human rights, precisely because they were initially developed entirely outside the health domain and seek to articulate the societal preconditions for human well-being, seem a far more useful framework, vocabulary, and form of guidance for public health efforts to analyze and*

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<sup>1</sup>See: Benjamin Mason Meier and Larisa M. Mori, 'The highest attainable standard: Advancing a collective human right to public health', 37 Columbia Human Rights Law Review 101-146, Fall 2005.

<sup>2</sup>Article 12 (1) of the International Convention on Economic, Social & Cultural Rights, 1966; Article 25 (1) of the Universal Declaration of Human Rights, 1950; Article 11 of the European Social Charter, 1961; Article 16 of the African Charter on Human Rights and People's Rights, 1981.

<sup>3</sup> Maurice Cranston quoted in L. J. Macfarlane, 'The Theory and Practice of Human Rights' (1985) p. 7.

<sup>4</sup> Article 12 of the International Convention on Economic, Social & Cultural Rights, 1966.

*respond directly to the societal determinants of health than any inherited from the biomedical or public health traditions.*"<sup>5</sup>

The World Health Organization (WHO) issues the International Health Regulations from time to time as a guiding framework for domestic policies. These regulations have further strengthened the link between human rights and health. For instance, Article 3(1) of the same states: "The new International Health Regulations shall be implemented with full respect for the dignity, human rights and fundamental freedoms of persons."<sup>6</sup>

### (3) Concept of Health:

The most widely used modern definition of health was developed by the World Health Organization (WHO): "Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity."<sup>7</sup> Through this definition, WHO has helped to move health thinking beyond a limited, biomedical and pathology-based perspective to the more positive domain of "well-being." Also, by explicitly including the mental and social dimensions of well-being, WHO radically expanded the scope of health, and by extension, the roles and responsibilities of health professionals and their relationship to the larger society.<sup>8</sup>

The WHO definition also highlights the importance of health promotion, defined as "the process of enabling people to increase control over, and to improve, their health". To do so, "an individual or group must be able to identify and realize aspirations, to satisfy needs, and to change or cope with the environment".<sup>9</sup> The societal dimensions of this effort were emphasized in the Declaration of Alma-Ata (1978), which described health as a "...social goal whose realization requires the action of many other social and economic sectors in addition to the health sector."<sup>10</sup>

Scores of definitions of 'health' are available now in the literature. The most commonly quoted definition of health is that which is formalized by the WHO over half a century ago; "a complete state of physical, mental and social well-being, and not merely the absence of disease or infirmity".<sup>11</sup> Several other generally accepted definitions of the noun 'health' exist. Bircher defines health as "a dynamic state of well-being characterized by a physical and mental potential, which satisfies the demands of life commensurate with age, culture and personal responsibility"<sup>12</sup>, while Saracchi defines health as "a condition of well-being, free of disease or infirmity and a basic and universal human right".<sup>13</sup>

Thus, the modern concept of health includes beyond health care to embrace the broader societal dimensions and context of individual and population well-being. Perhaps the most far-reaching statement about the expanded scope of health is contained in the preamble to the WHO

<sup>5</sup> See, Jonathan Mann et al., *Health and Human Rights: A Reader*, New York: Rutledge, (1999) p. 444 <http://www.columbia.edu/~jdl5/Health%20and%20Human%20Rights.pdf>. Sited visited on 26.12.14.

<sup>6</sup> World Health Assembly, Revision of the International Health Regulations, WHA 58.3 (May 23, 2005).

<sup>7</sup> World Health Organization, *Constitution*, in *Basic Documents*, 36<sup>th</sup> ed. (Geneva, 1986).

<sup>8</sup> *Ibidem* pp 7&8.

<sup>9</sup> Ottawa-Charter for Health Promotion, presented at First International Conference on Health Promotion, Ottawa, November 21, 1986).

<sup>10</sup> Declaration of Alma-Ata, "Health for All" Series No. 1, World Health Organization, Geneva, September 12, 1978.

<sup>11</sup> WHO Preamble to the Constitution of the WHO as adopted by the International Health Conference, New York, 19-22 June 1946, and Entered into Force on 7<sup>th</sup> April 1948.

<sup>12</sup> Bircher J., "Towards a Dynamic Definition of Health and Disease", *Medical Health Care Philosophy*, Published by Research GATES, Scientific Society, 2005, 8(3) pp.335- 41.

<sup>13</sup> Saracchi, 'The World Health Organisation Needs to Reconsider its Definition of Health', *BMJ* 1997, 314:1409.

Constitution, which declared that “the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being.”<sup>14</sup>

#### **(4) Establishment of WHO:**

The creation of a specialized institution in the field of health was proposed at the United Nations Conference International Organization at San Francisco in 1945. Later, in 1946, at International Health Conference, convened by the Economic and Social Council was held in New York wherein the Constitution of WHO was drafted and signed. The Organization was adopted and came into force on April 7, 1948 two years earlier before the Universal Declaration of Human Rights was made. World Health Day is celebrated every year on 7<sup>th</sup> April, the day on which the Constitution came into force. At present, it has 192 Member- States on its role and a multinational staff numbering 4,500. W.H.O is the principle organization which is concerned with the public health. Its concern for ‘health for all’ is not restricted only to the provision of health care to everyone, but also covers the provisions of care throughout the entire life of each individual from conception to death.

The Preamble of this Constitution says that enjoyment of the highest attainable standards of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition.

#### **(5) Objectives and Functions WHO:**

The objective of WHO is “the attainment by all peoples of the highest possible level of health”<sup>15</sup>. Health, as defined in its Constitution is “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.”

As pointed out by Prof. Stephen S. Goodspeed, the World Health Organization “is typical of the specialized agency with multipurpose functions and well defined objectives”<sup>16</sup>. There is a list of 22 functions ranging from rendering assistance to governments, furnishing technical assistance, proposing conventions and agreements, promoting research, developing international standards with respect to pharmaceutical products, to the undertaking of studies and provision of information<sup>17</sup>.

WHO has the credit has the eradication of smallpox, leprosy, venereal diseases, influenza, poliomyelitis and much other communicable disease which was responsible for killing and disfiguring millions of people. Smallpox became the first ever disease to be eliminated by vaccination. Further, it has given major assistance to many countries in the fight against above disease. This Organization performs both advisory and technical functions relating to health. It also gets research work done for the solution of world-wide problems relating to health. Thus, the Organization has performed a very vast and commendable work in different field related to health of the people of the world.

#### **(6) United Nations and WHO:**

The WHO, a specialized agency of the United Nations is exclusively concerned with public health. In the matter of health, there is close co-operation between the United Nations and W. H. O. The Global Strategy for Health for All by the year 2000” which was adopted by the World Health Assembly was endorsed by the General Assembly, in 1981. Its task ‘Health for All’ is not limited only to ‘health care’ for everyone but also to the provisions of care of each individual from conception to death, that is throughout the life<sup>18</sup>. In addition the General Assembly adopted in

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<sup>14</sup> *Supra* note 9 p17.

<sup>15</sup> Article of 1 of the Constitution of WHO.

<sup>16</sup> Prof. Stephen S. Goodspeed, ‘The Nature and Function of International Organization’, Second Edition (1967) p. 426.

<sup>17</sup> Vide, Prof. D. W Bowett, ‘The Law of International Institutions’, 4<sup>th</sup> Edition, p.114. Cited in Dr. S. P. Gupta, ‘International Organization’, pp. 91-92.

<sup>18</sup> T. P. Tripathi, ‘Human Rights’, Allahabad Law Agency, (2008) p. 215.

1982 the principles of Medical Ethics relevant to the Role of Health Personnel, in the protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment or punishment. It was prepared with the help of W.H.O.<sup>19</sup>

**(7) WHO and the Right to Health of Certain Vulnerable Group:**

**(a) Health Problems Related to Young Children, Adolescent, Women and Disabled-**

WHO is making efforts to promote appropriate nutrition for infant and young child.<sup>20</sup> It has also urged the member states to give priority to the health needs of adolescents and child; and provide support to meet the requirements of those groups of young people who were particularly vulnerable disadvantages or had special needs.<sup>21</sup> Further, WHO called on its member states to ensure that relevant knowledge and technology for the prevention of disability and for rehabilitation of disable person were utilized fully with the available resources.<sup>22</sup>

**(b) Health of Working Population-**

The right to adequate health includes healthy and safe working conditions. WHO take measures for the protection and promotion of health of the working population while at work. In this light, Organization has passed several resolutions requesting the member states to pay particular attention to the health of workers which are exposed at work to biological, chemical, physical and psychological risk factor. Moreover, in May 1980, WHA has adopted a resolution, in which it has emphasized that there is a need to develop new perspective. It was suggested that occupational health care of underserved working population should be integrated into primary health care, particularly in developing countries.

**(c) Health of Elder People-**

The programme of WHO to provide 'health for all' covers the health of elderly people also. The WHO is making effort to provide opportunities in order to promote full involvement of all ageing persons in society to the limit of their capacity. It also is making efforts in expanding its ageing – related research activities.

The progressive nature of the right to health requires that one explore the apparatus of administrative law, whose effectiveness and methodology will depend on the specific peculiarity of the domestic order of each state. The existence of a tiered health system and an identifiable administrative order are favorable to success in implementing these mechanisms.

Finally, the broad scope of protection offered by the *recurso de amparo* (a special remedy to seek an injunction of imminent state action alleged to violate one's constitutional rights), recognized by a large number of countries, is a means by which the programmatic concept of the right is giving way to a directly enforceable right, subjective in nature.

In addition, WHO has its own apparatus for requiring submission of reports, as do its regional offices. There is certain mutuality between the WHO and UN systems for submitting reports, considering the consultative status of WHO before the UN system and the fact that WHO has undertaken to oversee the provisions of treaties that set forth the right to health.

According to various provisions of the Constitution of WHO<sup>23</sup>, states parties are to submit an annual report on the measures taken to ensure certain levels of health to the entire population. An annual report on the measures adopted to implement the WHO recommendations, and on the application of the provisions of the instruments that protect the right to health that have been consented. The submission of all health-related statutes, regulations, and statistical information,

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<sup>19</sup> See para 1204 of the Actions of the United Nations in the field of Human Rights, 1994.

<sup>20</sup> World Health Assembly Resolution, WHA 41, 11 adopted in May 1981.

<sup>21</sup> World Health Assembly Resolution, WHA 42, 41 adopted in May 1989.

<sup>22</sup> World Health Assembly Resolution, WHA 42, 28 adopted in May 1989.

<sup>23</sup> Articles 61, 62, 63, 64 & 65.

especially regarding health-related measures; the submission of statistical and epidemiological reports; and the forwarding of any additional information to the executive committee of WHO.

According to current WHO reckons, 1.7 million people die annually in developing countries from diseases appear from unclean water and inadequate sanitation. Over three million children die annually from malnutrition while an estimated 170 million children suffer from under nutrition due to insufficient prenatal and early childhood healthcare, as well as lack of nutrition. In developing nations high mortality rates for children under five years old are palpable.<sup>24</sup>

### **(8) Conclusion:**

In an era where health risks assume a transnational character, it is important for all countries to ensure effective engagement at an international level. Over the last decade, we have all heard of the threats posed by infectious diseases such as the Mad Cow disease, SARS and Avian-Flu. The growth of HIV/AIDS continues unabated despite increasing investment in AIDS control measures such as awareness campaigns, the provision of contraceptives and increased supply of Anti-retroviral drugs. In such a scenario, the importance of the international human rights discourse cannot be understated. Governmental and private measures at the domestic level need further support from international collaborations such as the transfer of medical technology, personnel and medicines. The 'right to health' cannot be conceived of as a traditional right enforceable against the state. Instead, it has to be formulated and acknowledged as a positive right at a global level – one which all of us have an interest in protecting and advancing.

Right of health need an international legal instrument to claim health as right but state has to recognize it. The WHO is making effort to provide opportunities in order to promote full involvement of all ageing persons in society to the limit of their capacity. In making efforts to provide health related opportunity, there is no boundary wall.

For straighten<sup>3</sup> of the WHO, these suggestion should be followed. Explore possible channels for furthering involvement of the WHO with a view to its,

- (a) Effective participation in the system of international supervision;
- (b) Involvement in monitoring of local public policies that affect observance of the right to health; and
- (c) Nonparticipation in reform programs that sponsor the dismantling of the public health structure.

Further, it should be pursued legislative recognition of the right to health. Efforts along these lines should be focused not only on constitutional recognition, but on all levels of regulation of health matters. Furthermore, the right to health requires the various branches of government to adopt measures for the systematic and programmatic implementation of the structure of protection.

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<sup>24</sup> <http://www1.umn.edu/humanrts/edumat/studyguides/righttohealth.html>. Site visited on 26.12.14