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Right to Health and Health Care-
where are we in the South East Asian
Region??



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So what is meant by Right to Health?

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- Right to Health Care Services is part of of the demand for Right to Health:
- Right to Health is the right to the enjoyment of the highest attainable standard of health without distinction of race, religion, political belief, economic or social condition.

Defining Right to Health



WHO Constitution (1946-8):

“Health is a state of complete physical, mental and social well-being and **not merely the absence of disease or infirmity.**”

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.**

The extension to all peoples of the benefits of medical, psychological and related **knowledge is essential to the fullest attainment of health.**

Informed opinion and active co-operation on the part of the public are of the utmost importance in the improvement of the health of the people.”



Two Essential Aspects



Right to Healthcare Services

(preventive, promotive, medical/curative, palliative, rehabilitative)

And

Right to the Underlying Determinants of Health

1. Reduced Social Inequities
2. Entitlements to basic provisions required for life with dignity
3. Protection from Commercial determinants of health and health life styles

The Underlying Determinants



- **Social Inequalities-**

- Based on Gender, Caste, Class, Religion, Ethnicity and Social Status
- Marginalization By Occupation, by Social Status, By Geography
- Poverty, Hunger, Unemployment

Basic Provisions- Safe drinking water and adequate sanitation; Safe food; Adequate nutrition and housing; Healthy working and environmental conditions; Education

Protection from commercial determinants of ill health

Promotion of harmful life styles- tobacco , alcohol and substance abuse.

Urbanization and Urban Planning,

Commercial foods and unhealthy consumerism

Actions of corporate capitalism in destruction of eco-systems



International Obligations



- ICSECR_ International Covenant on Social, Economic, and Cultural Rights, 1976- article 12 & General Comment-14 (2000)- ratified by India, 1979
- As of 2015, the Covenant has 164 parties. A further six countries, including the United States, have signed but not ratified the Covenant.
- India adopts in 1979
- The ICESCR is part of the Declaration on the Granting of Independence to Colonial countries and peoples, International Bill of Human Rights, Universal Declaration of Human Rights & the International Covenant on Civil and Political Rights-including first and second optional protocol.
- •The Covenant is monitored by the UN Committee on Economic, Social and Cultural Rights.(UNESCO)

General Comment 14- of ICSECR



- Right to health- contains both freedoms and entitlements- free with respect to decision making on body, from harm, on treatment etc and entitlement to services required-equality of opportunity.
- Progressive realization, but immediate obligations and core content: Obligations to
 - Respect: do not interfere in the right to enjoy health/services
 - Protect: prevent third parties from interfering in 12 guarantees
 - Fulfil: adopt, legislative, administrative, budgetary, judicial, promotional and other measures as required

Other international obligations



- **Declaration of Alma Ata, 1978**
- **Convention on Elimination of all forms of discrimination against women (CEDAW): Treaty-1979**
- **Convention on the Rights of the Child (CRC): Treaty 1989**
- **Convention on the Rights of Persons with Disabilities: Treaty : 2006**
- **WHO Framework Convention on Tobacco Control (WHO FCTC):Treaty: 2003**
- **International Health Regulations: Treaty: 2005**
- ***There are also a number of Supreme Court Rulings and Policy Statements made in India- which are drivers for Right to Health Legislation.***

Right to Healthcare Services



- Every person in need of healthcare services currently resident in the state shall have guaranteed access to to all essential health care services and that such services will be
 - ✦ timely,
 - ✦ of good quality,
 - ✦ Without financial hardship
 - ✦ Provided with complete respect to dignity, comfort and human rights
 - ✦ Available without discrimination.

What are the protections?



- Right to Non-discrimination.
- Right to Information.
- Right to confidentiality, privacy
- Right to informed consent, and second opinion
- Right to dignity.
- Rights to measures against avoidable pain and suffering
- Rights related to death..



The Pitfalls of Legislation



- Many nations and state governments have laws which have no impact. Eg Assam..
- Usually these are not poor implementation- these are poor legislation, never meant to be implemented
- Legislation, that creates entitlements without mechanisms for delivery can lead to privatization- and shift of care to more privileged sections.
- Most examples of “successful legislation” and realization of rights depends upon universal and comprehensive primary healthcare with a legal pathway through which all health services are accessed.

How can the right to healthcare services be delivered as a justiciable entitlement?



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Learning from other LMIC nations



Learning from Thailand



- One law is not the usual approach
- Thailand Public Health Act- 1992
- National Health Security Act- 2002
- National Health Act- 2007
- Primary Health Care Act 2019.

The real challenge is to make a law that would drive implementation- feasible, yet far reaching,



Thailand's National Health Security Act- 2002-



Creates an entitlement

Chapter 1: The Right to Health Service

Section 5 Every person shall enjoy the right to a standard and efficient health service as provided in this Act.

The Board may determine that, at each visit, beneficiaries of the health service shall contribute a fee at the specified rate, except for the indigents or other persons whose contribution is exempted by the Board.

The type and scope of health service entitled to a person shall be as prescribed by the Board.



NHSO creates the delivery of the entitlement



Section 6: Any person intending to exercise the right pursuant to Section 5 shall select a service unit for regular visitation, and shall be registered there as per rules and shall be entitled to the health services. .as prescribed by Board (Choice of service unit or application for a change of the service unit shall be in accordance with the rules.... with due regard given to the convenience and need of the person.)

Section 7 A registered person shall exercise the right to health service at the service unit of their own choosing or a primary care unit within the relevant network of service units or another service unit thereto he or she is referred by their service unit or the relevant

network of service units, except in the case of justifiable cause, accident or emergency illness whereby the registered person shall have the right to access another service facility, as prescribed by the Board..... In such case, the service facility shall be entitled to reimbursement of the expense from the Fund

Section 8 : for first services- may access any service unit- but they will ensure registration.

Section 10- scope of service as per law, Board shall ensure its availability..

Section 11: is a person registered with ESI takes service from a service unit, ESI would reimburse the service unit.

Other important features of the NHSO act



- **The No-Fault Liability Clause: Section 41** The Board shall earmark no more than one percent of the budget to be allocated to service units for financial assistance in the case where a beneficiary is damaged by the medical treatment provided by a service unit where no wrongdoer is identified, or where the wrongdoer is identified but the beneficiary has not received compensation within a reasonable period of time, according to the rules, procedures and conditions as prescribed by the Board. (this goes along with a grievance redressal mechanism”_
- **Section 57-58-** enforcing quality standards of care
- **Section 59-** covers denial of service or charging excess or unwarranted fee

Financing and Governance



- section 46- Service units and networks- shall be entitled to receive health service expenses from Fund according to rules , procedures and exa
- shall be Based on cost-estimates of services delivered-as decided by a standards Board- taking into account variations of mission, of geography, and will include costs of HR,
- Section 47- local govt. shall manage fund for local health security
- **Governance-** The National Health Security Board and the Quality and Standards Control Board- representative with clarity in mandate- vis a vis other authorities.

Learning from Costa Rica



- Rights driven- provision of healthcare as core value
- Political facilitators- de-militarization, democracy,
- Largely organized, urban work-force
- Built around social insurance
- Integration of social insurance & ministry of health team
- Multi-disciplinary health teams provided universal primary healthcare- linked closely to secondary and tertiary care.
- Empanelment of Costa Ricans to these care teams to support population health management and continuity of care;
- Adequate management capacity

Nepal-Article 51(h)-a constitutional provision



- Article 38 (2): Every woman shall have the right to safe motherhood and reproductive health.
- Article 51(h):
 - (5) To keep on enhancing investment necessary in the public health sector by the State in order to make the citizens healthy
 - (6) To ensure easy, convenient and equal access of all to quality health services
 - (7) To protect and promote health systems including Ayurveda, as a traditional medical system of Nepal, natural therapy and homeopathy system
 - (8) To make private sector investment in the health sector service oriented by regulating and managing such investment, while enhancing the State's investment in this sector
 - (9) To focus on health research and keep on increasing the number of health institutions and health workers in order to make health services widely available and qualitative
 - (10) To increase average life expectancy by reducing maternal and infant mortality rate, while encouraging family planning for population management on the basis of Nepal's capacity and need

Article 51- based Service delivery related Acts in Nepal



The Health Insurance Act, 2074 (2017)334: The Act enables implementation of the social protection programme of the Government of Nepal. This programme aims to enable its citizens to access quality health-care services without placing a financial burden on them.

The Public Health Service Act, 2075 (2018)323The Act makes necessary legal provisions for implementing the right to get free basic health service and emergency health service guaranteed by the Constitution of Nepal and establishing access of the citizens to health service by making it regular, effective, qualitative and easily available.



Constitutional Right in Timor Leste



- **Article 57: Health**

1. Everyone has the right to health care and medical care, and is obliged to protect and advance them.
2. The State shall advance the establishment of a universal and general national health system, and as long as possible free of charge under the law.
3. National health services, as far as possible, will be managed in a decentralized and participatory manner.

Law No. 10/2004 of 24 November 2004 on the Health System : The purpose of this Law is to establish the bases for the national health system, construed as meaning the set of institutions and services, both private and public, ensuring health protection through prevention, promotion and treatment activities.

- **Decree-Law No. 18/2004 on Private Health Units⁴⁹³ : regulation of private sector**



Creating legal entitlements in the Indian context:



- Putting in place a network of comprehensive primary healthcare providers- build upon the HWC or equivalent service unit
- Registration in neighbourhood HWC mandatory and entitles to a full range of primary services- right there- and secondary and tertiary care services through this gateway.- all insurance schemes link back to this
- All services access through this portal are free- as they are pre-paid by tax based premiums
- Board specifies only exclusions- and it specifies gateways.

Right to Health is more than one legal instrument



Related to Health Services

- **Right to Health Services**
- Clinical Establishments Act.
- National Medical Commission Act
- National Allied Health Workers Act
- National Nursing Commission Bill
- Acts pertaining to medicines, and medical devices
- Biomedical waste management act
- PCPNDT & Abortion Act

Related to underlying determinants

- **Public Health Act**
- Food Safety Act
- National Food Security Act
- Social Security Codes
- Employees State Insurance Act
- Factories, Mines, Dockworkers and Construction workers Acts
- COPTA (tobacco control)
- Air Pollution Control Act
- Environmental Protection Act
- Right to Education
- Consumer Protection Act

Who legislates- Center or the States?



Center?

- Has more funds to implement the law
- Has international obligation- can override states
- Has greater capacity

States?

- Health is a state subject.
- States at very different levels of development – many states have the capacity to deliver this.
- Center's thrust is towards privatization- already excessive centralization has not helped.

Our position: It should be the states prerogative- with a financial sharing arrangement. States without their own law, or unable to meet certain standards, will be obliged to follow central law- ---- ????

References



- For International Law- ICSECR document and the General Comment 14
- For Primary Health Care: Now more than ever- WHR, 1980
- SEARO-WHO resolutions on CPHC and regional strategy for CPHC
- Thailand's NPHSO Act copy
- For Costa Rica- see Atul Gawande's article





Thank You

