

LIMITATIONS OF HUMAN RIGHTS: AN ANALYSIS OF HEALTH ISSUES WITH INTERNATIONAL COMMITMENTS

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Abstract

This article is an analysis about the health issues and its relationship with human rights. As a strong supporter of human rights researchers personally very much concerned with the emerging health issues and misuse of health data of patients. After the end of Second World War; movement for protection of the human beings and their basic needs became the center of discussion globally and leaders of the world brought into existence international recognized instruments like European Charter of Fundamental Rights. Later on most of the countries ratified and followed these instruments to provide basic amenities and human rights to their citizenry. With the passage of time, unfortunately or fortunately, globally, human rights became the center of discussion for all nations and several policies were framed but to no avail. In the era of digitalization, liberalization, plight for personal autonomy and transitional phase, new issues emerged and Europeans are not an exception to this.

KEY WORDS GDPR, 2016, Charter of Fundamental Rights, degradation & Health issues

INTRODUCTION

Europeans are very much concerned about the human rights and have given a way of life to whole world but after achieving the motto of welfare State, became the victims of health issues and privacy issues. This happened because while deciding the parameters for basic human rights, the natural rights were overlooked, which resulted into that young generation is busy for achieving liberties and became habitual of human rights without understanding the limitations efficacies of these human rights. No doubt, young generation is familiar with human rights, legal rights, regulations, directives and tried to follow them but they are not aware about other arenas of other intellectual and physical development or it is not wrong to say that our whole physical and mental development is based upon parameters decided by the state, political and administrative bosses, this might be due to global politics and commercialization which has played a vital role. Every culture had civilization based upon social norms, ethics and morals and our forefathers followed them. Presently, we forget about the concept of natural rights and inadvertently suppressed these natural rights in the name of education of human rights and professionalism. I think there are four natural rights without which nobody could survive, which are; right to think, right to sleep and right to breath and right to survive (includes food.(water good health). Take very good example, How we can decide the price of water? Which is a natural resource and available in rivers, ponds and other resources, similarly in forest one can have food (wild one). In our interest we forget about the important aspects of natural rights, one aspect is very important; if we consider it as a basic health matter. Take example if someone wish to have drinking water, whether it's a natural right or human right, if it is provided by the state or any instrument then it became human right or any other right but if it is saleable in bottles then it may be a matter of environment degradation and commercialization of water; hence violates the basic principles of human rights also .On the other hand, if we simply drink water from river, sea, pond then its natural rights. Sanfrisco is the first city in the world to ban water in plastic bottles why? Because it is hazardous for health issues, in every minute, one million plastic bottles are sold globally. Everybody is aware about plastic products how harmful they are? The matter of human rights and its relationship with health issues and other allied rights is a matter of understanding rather to consider it as a matter of education.

INTERNATIONAL COMMITMENTS FOR HEALTH CARE

There is an international commitment in the form of WHO constitution, European Charter of Fundamental Rights, UDHR, 1948, ECHR, 1950 AND Civil, Political Covenant and later on GDPR, 2016

1. European Charter of Fundamental Rights for Health care

In accordance with *Article 35* everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all the Union's policies and activities.

2. World Health Organization (WHO)

Some Principles are provided in the preamble to the Constitution of **WHO** to achieve Highest Attainable Standard of Health.-

“The right to the highest attainable standard of health” implies a clear set of legal obligations on states to ensure appropriate conditions for the enjoyment of health for all people without discrimination. The right to health is one of a set of internationally agreed human rights standards, and is inseparable or ‘indivisible’ from these other rights. This means achieving the right to health is both central to, and dependent upon, the realization of other human rights, to food, housing, work, education, information, and participation.

But contrary to this World health organization (WHO) observed that violations or lack of attention to human rights can have serious health consequences. Mental ill-health often leads to a denial of dignity and autonomy, including forced treatment or institutionalization, and disregard of individual legal capacity to make decisions. Violations of human rights not only contribute to and exacerbate poor health, but for many, including people with disabilities, indigenous populations, women living with HIV, sex workers, people who use drugs, transgender and intersex people, the health care setting presents a risk of heightened exposure to human rights abuses – including coercive or forced treatment and procedures.

World Health Organization (WHO) Integrate Human Rights Approach to Health

WHO has made a commitment to mainstream human rights ¹ into healthcare programmers and policies on national and regional levels by looking at underlying determinants of health as part of a comprehensive approach to health and human rights? In addition, WHO has been actively strengthening its role in providing technical, intellectual, and political leadership on the right to health including advocating for health-related human rights, including the right to health?

3. UDHR 1948, ECHR 1950 and International Covenant on Civil and Political Rights

Under other international instruments for the protection of health as human right; there are many Articles like Article 25 of UDHR, 1948 provides about “Everyone has the right to a standard of living adequate for the health”being of himself and of his family, including food, clothing, housing and medical.. Good health of an individual is very important and everybody have a right to protect his or her health. Apart from the international commitments as discussed above; globally there are health issues in the form of disease and mental illness is also growing, it might be due to changing lifestyle in the era of YouTube culture, digitalization or junk food; but young generation is not aware about the parameters of good health. How to have good health? Reply would be that we have regulations and legislations (matter of legal education) it is clear to all of us that we have regulations and policies to be implemented by the state or individual even then reply would be by the state but one aspect we have forgotten is way of living. We are also attending seminars/conferences etc. for the sake of knowledge or to get legal education but health problems still persists. The international commitments for to achieve good health requires lot of deliberation, when we are thinking to have good health integrated with human rights. The problem of personal data including information related to health is going to be a big problem; when companies are interested in marketing of personal information of individual. We have to think a lot.

PROTECTION OF PERSONAL HEALTH DATA (HUMAN RIGHTS)

There are two major instruments for the protection of personal data including health data, which includes **processing of genetic data, biometric data for the purpose of uniquely identifying a natural person**, data concerning health or data concerning a natural person’s sex life or sexual orientation shall be prohibited (with exceptions of para 2 of article 9 of GDPR, 2016). The Relevant excerpts of **European Union Charter of Fundamental Rights: - Article 8 (Protection of personal Data)**

- Everyone has the right to the protection of personal data concerning him or her.
- Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
- Compliance with these rules shall be subject to control by an independent authority.

General Data Protection Regulation, 2016:- Article 9 Processing of Special Categories of Personal Data.-

Processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the **processing of genetic data, biometric data for the purpose of uniquely identifying a natural person**, data concerning health or data concerning a natural person’s sex life or sexual orientation shall be prohibited. In comparison to GDPR 2016 in India there is no such protection of health data and no parameters are in practice.

CONCLUSION

On the basis of above discussion, it may be said that there are international instruments with commitments for the protection of health care as well as having two major legal instruments in Europe for the protection of personal data including health data (human right), it is crystal clear that in the era of human rights there are two aspects associated with the health of a person one is to have good health and another is to protect health data (human right). No doubt after passing

of General Data Protection Regulation, 2016(GDPR); it is obligation upon the state to protect the personal information including of health of an individual or process the personal data with the consent of individual. A good number of persons are suffering from disease despite that there are policies and regulations and the problem is growing. Digitalization has changed whole scenario and personal health data became saleable and used for commercial purpose. On the other hand children's are prone to mobile phones and habitual of internet which may be enough to give a kind of Mental illness and sometimes Medical- Aid is not helpful for the patient, which may lead to violation of basic human rights. To cope with this problem, an attempt may be made by the social groups to provide good atmosphere and knowledge about the data health to younger generation.

REFERENCES

1. UDHR, 1948.
2. GDPR, 2016 (Applicable w.e.f 25.5.18)
3. ECHR,1950.
4. International Covenant on Civil and Political Rights,1966.
5. European Union Charter of Fundamental Rights.
6. General Data Protection Regulation, 2016.