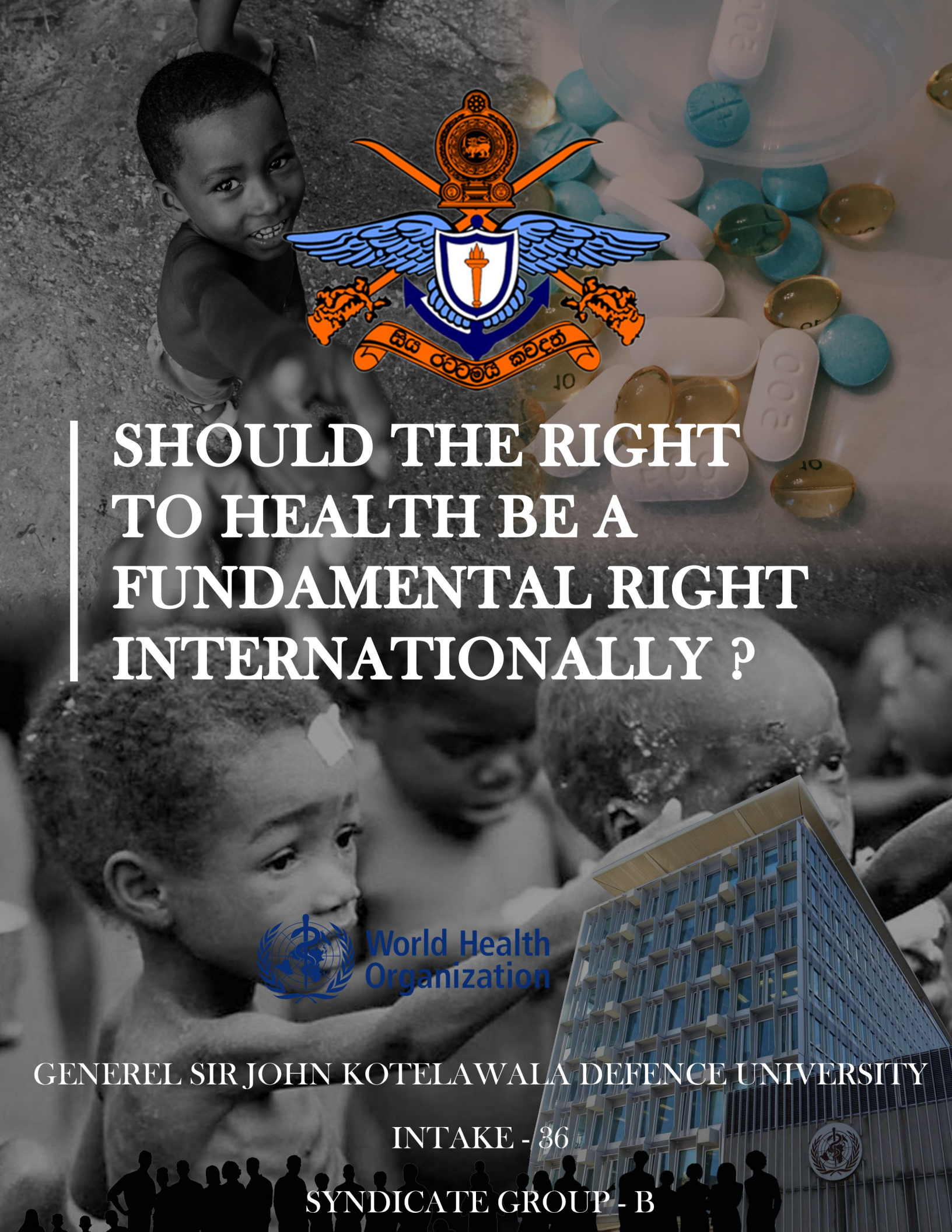

SHOULD THE RIGHT TO HEALTH BE A FUNDAMENTAL RIGHT INTERNATIONALLY ?

World Health Organization

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SYNDICATE GROUP - B

DS COMMENTS

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CONTENTS

ABSTRACT

1. This syndicate presentation is mainly focused on a discussion of the topic "Should the right to health be a fundamental right internationally?"

2. Being healthy is preached as the most valuable state a human can achieve according to Buddhist teachings. Accordingly, the questions that need to be asked are what is Health? What is being healthy? And what is the right of a human to be healthy?
As per the World Health Organization Health is, "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity." Health is a basic human need. Being healthy is most important as a human. Health is considered to be a fundamental human right which forms the basis for the exercise of other human rights and is necessary for a life of dignity. A successful healthcare system is a vital structure within a society, one that is important in a system of justice and democracy.

3. The Right to health, according to the United Nations Office of High Commissioner for Human Rights is "The right to health is a fundamental part of our human rights and our understanding of a life in dignity. The right to the enjoyment of the highest attainable standard of mental and physical health, to give it its full name, is not new."

4. But is this a fundamental right internationally? And does every country in the world maintain this right? Why should it be maintained as a fundamental right globally? The problems arising, misconceptions, the actions being taken to overcome these problems and their practical implications will be discussed under this syndicate presentation.

CHAPTER 1

BACKGROUND

5. The increasing numbers of the world's COVID pandemic patients was a huge wake-up call for every nation. The fundamental importance of healthcare was brought to the surface ensuring that all countries redirect substantial resources to meet the emerging threat to global health.

6. Although it has taken almost 70 years for the World Health Organization (WHO) to recognize healthcare as a basic human right, there are still a considerable number of countries whose people do not have access to proper healthcare especially in this critical period with the ongoing COVID-19 pandemic. This shockingly alarming fact should be given the necessary gravity, unless we are prepared to sacrifice that with human lives, in large numbers.

7. Hence, whether the right to health should be a fundamental right internationally, is a question of utmost urgency today.

CHAPTER 2

INTRODUCTION

WHAT ARE HUMAN RIGHTS?

8. Human rights are rights inherent to all human beings, regardless of race, gender, nationality, ethnicity, language, religion, or any other status.

INTERNATIONAL HUMAN RIGHTS LAW

9. Human rights law lays down obligations of Governments to act in certain ways and to refrain from certain acts. Human rights law is a universal and internationally protected code to which all nations can subscribe. The Charter of the United Nations and the Universal Declaration of Human Rights are the foundations of human rights law.

10. The Universal Declaration of Human Rights (UDHR) was adopted by the United Nations on 10 December 1948. The UDHR spells out the basic civil, political, economic, social, and cultural rights that all human beings should enjoy. It has over time been widely accepted as the fundamental norm of human rights that everyone should respect and protect. A series of international human rights treaties and other instruments adopted since 1945 have conferred legal form on inherent human rights.

WHAT IS FUNDAMENTAL RIGHT?

11 Fundamental rights are a group of rights that constitutions recognize as being fair and legal and are also rights that are listed within the Bill of Rights. Not only are fundamental rights covered by the Bill of Rights, but each state constitution can also include fundamental rights.

12. 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", states the Constitution of the World Health Organization.

WHAT IS HEALTH?

13. According to the world health organization “Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.”

WHAT IS RIGHT TO HEALTH?

14. The Right to health is the economic, social, and cultural right to a universal minimum standard of health to which all individuals are entitled. The right to health is inclusive. Health services, goods, and facilities must be provided to all without discrimination.

15. It includes a wide range of factors that can help us lead a healthy life. The Committee on Economic, Social and Cultural Rights calls these the "underlying determinants of health" These include safe drinking water and adequate sanitation, food, housing, health-related education, and information. The rights also include the right to be free from non-consensual medical treatment.

16. Every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life of dignity. Health is a fundamental human right indispensable for the exercise of other human rights. The realization of the right to health may be pursued through numerous, complementary approaches.

17. The right to health contains the freedom to say no to medical treatment. It entitles people to a system of health protection, including the prevention, treatment, and control of diseases. States must do everything they can, within their available resources, to provide all these things. It is not only the right to be healthy.

IS THE RIGHT TO HEALTH IS A FUNDAMENTAL RIGHT INTERNATIONALLY?

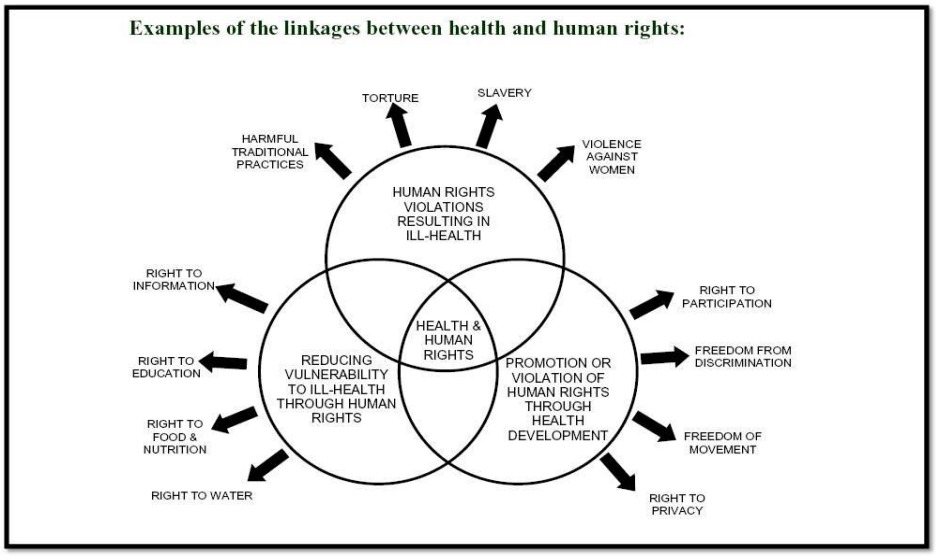
18. Currently, the Right to health has been formally recognized by 56 national governments. The scope and meaning of this right have been the subject of debate within the international community. Much work still needs to be done before this right can legitimately be considered universal. The Right to health has been recognized as one of a set of basic human rights for at least the past half-century since the adoption of the Universal Declaration of Human Rights in 1948.

THE LINK BETWEEN THE RIGHT TO HEALTH AND OTHER HUMAN RIGHTS

19. Human rights are interdependent, indivisible, and interrelated. Violating the right to health may often impair the enjoyment of other human rights, such as the right to education or work, and vice versa.

20. For people living in poverty, their health may be the only asset on which they can draw for the exercise of other economic and social rights. Physical health and mental health enable adults to work and children to learn, whereas ill health is a liability to the individuals themselves.

21. There are many and complex linkages between health and human rights, as the model below shows.



Examples of the Linkages between Health and Human Rights diagram by World Health Organization

22. Violations or lack of attention to human rights can have serious health consequences. Individuals' right to health cannot be realized without realizing their other rights. Rights to work, food, housing, and education are at the root of poverty.

CHAPTER 3

CONSTITUTIONAL BACKGROUND OF RIGHT TO HEALTH

INTERNATIONAL CONSTITUTIONAL BACKGROUND OF RIGHT TO HEALTH.

23. The Universal Declaration on Human Rights (UDHR) in Article 25(1) states that "everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including medical care and necessary social services.

24. The UNs International Covenant on Economic, Social and Cultural Rights (ICESCR) describes the right to health in article 12.1 as "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."

25. The trend is for countries to recognized health as a fundamental right in their constitutions. A study done on 191 countries in 2011 showed that almost 70 countries guarantee the rights to overall health or medical care. A few examples are given below:

26**.** **Constitution of South Africa (1996).** As stated in the constitution of South Africa section 27: Health care, food, water, and social security: "Everyone has the right to have access to health-care services which including reproductive health care and sufficient food and water. The State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of each of these rights. No one may be refused emergency medical treatment."

27. **Constitution of India (1950).** According to the constitution of India part IV, art. 47, articulates a duty of the State to raise the level of nutrition and the standard of living and to improve public health: "The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties…".

28. **Constitution of Sweden.** According to statistics of US news, Sweden ranks in the third place of the world's best health system rankings. In its constitution. The right to health is mentioned as follows.

29. **Art. 2** The personal, economic, and cultural welfare of the individual shall be fundamental aims of public activity. In particular, the public institutions shall secure the right to employment, housing, and education, and shall promote social care and social security, as well as favorable conditions for good health.

30. **Art. 15** In the case of limitations on the use of land or buildings on grounds of protection of human health or the environment, or on grounds of safety, however, the rules laid down in law apply in the matter of entitlement to compensation.

31. Even though Health is not stated as a fundamental right in the Sweden constitution they have succeeded in maintaining their health system at the best level.

32. **Constitution of Canada.** According to statistics of US news, Canada ranks in the first place of the world's best health system rankings.

33. The preamble to the Canada Health Act [3] (the Act) states that: continued access to quality health care without financial or other barriers will be critical to maintaining and improving the health and well-being of Canadians.

34. As well, section 3 of the Act provides that the primary objective of Canadian health care policy is: to protect, promote and restore the physical and mental well-being of residents of Canada and to facilitate reasonable access to health services without financial or other barriers. These statements from the Canada Health Act, supportive as they are, do not grant a right to health care.

SRI LANKAN CONSTITUTIONAL BACKGROUND OF RIGHT TO HEALTH

35. The Fundamental Rights Chapter 3 of the Sri Lankan Constitution does not explicitly express or recognize the right to health.

36. The only reference given to health is as a suspension or derogation where Article 7 of the Fundamental Rights of the constitution states, “in the interests of national security, public order and the protection of public health.” the state may withhold rights.

CHAPTER 4

MISCONCEPTIONS ABOUT RIGHT TO HEALTH

THE RIGHT TO HEALTH IS NOT THE SAME AS THE RIGHT TO BE HEALTHY

37. The common misconception is that the State must ensure good health. Good health, however, is affected by several factors outside the direct influence of governments, such as the biological make-up and socio-economic conditions of the person. Rather, the Right to health applies to the right to enjoyment. A variety of items, facilities, services, and conditions are required for its achievement. This is why it is more appropriate to describe it as the best thing to do.

THE RIGHT TO HEALTH IS NOT A PROGRAMMATIC GOAL TO BE ATTAINED IN THE LONG TERM

38. States must make every possible effort, within available resources, to realize the right to health. States also have to ensure a minimum level of access to the essential material components of the right, such as the provision of essential drugs and maternal and child health services. Some obligations have an immediate effect such as an undertaking to guarantee the right in a non-discriminatory manner.

A COUNTRY'S DIFFICULT FINANCIAL SITUATION DOES NOT ABSOLVE IT FROM HAVING TO TAKE ACTION TO REALIZE THE RIGHT TO HEALTH.

39. It is often argued that States that cannot afford it are not obliged to take steps to realize this right. No State can justify a failure to respect its obligations because of a lack of resources. States must guarantee the right to health to the maximum of their available resources, even if these are limited.

‘RIGHT TO HEALTH’ WOULD PERMIT THE JUDICIARY TO OVERSTEP THEIR ROLE

40. Judicial interpretations exist in many countries with Common Law systems, (including our own) which contributed to developing ideas on human rights and strengthening their implementation.

CHAPTER 5

PROBLEMS ARISING REGARDING RIGHT TO HEALTH

41. Making the Right to health a fundamental right is discussed among many nations but actions towards implementing it are not taken by most of these nations. It is mainly because many problems arise when adding such a right to the constitution. These are some of the issues we are facing in making the right to health a fundamental human right.

SOCIAL IMPACT OF RIGHT TO HEALTH

42. **Statelessness**. There are at least 11 to 12 million stateless individuals worldwide who are often unable to access basic healthcare. The human right to health assumes that every human being has legal nationality.

43. Rather than presuming nationality, statelessness must be recognized by the medical community, says Dr. Agnes Poirier: “Stateless individuals often face an inability to access the most basic healthcare”. The Roma in Europe, the hill tribes of Thailand, and many Palestinians in Israel highlight the negative health impacts associated with statelessness.

44. **Specific Groups.** Some groups or individuals, such as children, women, persons with disabilities, or persons living with HIV/AIDS or tuberculosis face specific hurdles concerning the Right to health.

45. These can result from biological or socio-economic factors, discrimination, and stigma, or a combination of these. States should adopt positive measures to ensure that specific individuals and groups are not discriminated against.

ECONOMIC IMPACT OF RIGHT TO HEALTH

46. **Insufficient state funding.** One major problem with universal healthcare is that it has to be funded somehow. Healthcare can be quite a significant allocation in the overall budget of a country. Hence, free healthcare has to be funded in one way or the other, and taxation policy must be in harmony with this.

47. A significant proportion of taxpayers' money is used to finance those free healthcare schemes. Some economists claim that the taxpayers' money that is currently spent on healthcare could be far better spent on other important projects instead. A state may be unable to allocate adequate funds to provide health care for the entire county.

48. Thus, it may result in a shortage of medicines, absence of a required amount of equipment and the number of healthcare professionals hired by the government, and crowded hospitals which finally result in decreased efficiency of the health sector.

49. **Low-income families**. Emergency patients requiring urgent treatment such as urgent heart bypass surgery or a stroke patient requiring immediate imaging for further treatment will be unable to get these done as quickly as they are needed. These patients will have to wait on waiting lists to undergo particular procedures.

50. Unless the patients are able to afford treatment from the private sector, it may result in causing irreversible damage or even death. But families with more income will be able to receive treatment in the private sector at any time of day or night without undue delay. This is a very big advantage to the affluent patients as most health issues could be addressed as soon as possible.

MEDICAL IMPACT OF RIGHT TO HEALTH

51. **Emerging infectious diseases.** An emerging infectious disease is one that is either newly recognized in a population or involves a recognized pathogen affecting new or larger populations or geographic areas. Disease emergence is influenced by ecologic and environmental changes (e.g., agriculture, deforestation, droughts, floods), human demographics and behavior (e.g., population migration, urbanization, international trade, and travel), technology and industry, microbial adaptation, and breakdown in public health measures. It may take time to develop or discover drugs for these diseases. During this time, a very large human population may be affected. A good example is COVID-19 pandemic.

52. **No globally accepted a common method of treating a particular illness.**
Medicine is not centralized. There have been moves to standardize some aspects of practice. For many issues in medicine, there are many valid approaches to solve the same problem. Just because there is a guideline, doesn't make it any more or less valid than anything else. Different perspectives and approaches can be very useful.

53. Throughout the world, different methods may also be used. For example, Western Medicine, and other alternative medical systems such as Indian Traditional Medicine, Chinese Traditional Medicine, Natural Medicine, Witchcraft, Traditional Medicine, Spiritual Medicine, Prayer healing of all sorts, Quack Medicine, Osteopathic Medicine, Homeopathic Medicine, Yoga healing, and Psychology. Treatment for some diseases is still not found.

54. There are also disorders that either constantly requires some form of medicinal attention or cannot be fully healed. Allergic disorders, asthma, depression, for example, can be very detrimental to one's emotional and physical well-being, and can even lead to suicide. A chronic condition that causes brain cells to waste away (degenerate) and die is Alzheimer's disease.

55. **Drug resistance.** Resistance may develop more rapidly in conflict situations because of inappropriate diagnoses or inappropriate drug regimens. Treatment compliance may be poor because of the purchase of insufficient quantities of drugs. Private pharmacies can flourish in a conflict situation due to the absence of regulations.

56. These factors affect attempts to establish uniform policies on the Right to health.

SANITATION ISSUES AND RIGHT TO HEALTH

57. Poor sanitation leads to the spread of more infectious diseases. Absent, inadequate, or inappropriately managed water and sanitation services expose individuals to preventable health risks. This is particularly the case in health care facilities where both patients and staff are placed at additional risk of infection and disease when water, sanitation, and hygiene services are lacking. Globally, 15% of patients develop an infection during a hospital stay, with the proportion much greater in low-income countries.

58. In 2017, almost 1.6 million people died from diarrheal diseases globally as a result of unsafe drinking-water, sanitation, and hand hygiene. Where water is not readily available, people may decide handwashing is not a priority, thereby adding to the likelihood of diarrhea and other diseases.

59. In 2017, 45% of the global population (3.4 billion people) used a safely managed sanitation service. 31% of the global population (2.4 billion people) used private sanitation facilities connected to sewers from which wastewater was treated. 14% of the global population (1.0 billion people) used toilets or latrines where excreta were disposed of in situ. 74% of the world's population (5.5 billion people) used at least a basic sanitation service. 2.0 billion people still do not have basic sanitation facilities such as toilets or latrines. Of these, 673 million still defecate in the open, for example in street gutters, behind bushes, or into open bodies of water. At least 10% of the world's population is thought to consume food irrigated by wastewater.

60. Cropland in peri-urban areas irrigated by mostly untreated urban wastewater is estimated to be approximately 36 million hectares (equivalent to the size of Germany) Poor sanitation is linked to transmission of diseases such as cholera, diarrheas, dysentery, hepatitis A, typhoid, and polio.

61. Poor sanitation reduces human well-being, social and economic development due to impacts such as anxiety, risk of sexual assault, and lost educational opportunities. Inadequate sanitation is a major factor in several neglected tropical diseases, including intestinal worms, schistosomiasis, and trachoma. Poor sanitation resulting in water borne diseases contributes to malnutrition and exacerbates stunting.

PRIVATE SECTOR IMPACT OF RIGHT TO HEALTH

62. Health care has turned into a profit-seeking sector than a service. Healthcare providers can commit fraudulent acts by billing for services, procedures and/or supplies that were never rendered; charging for more expensive services than those provided; performing unnecessary services for financial gain, misrepresenting non–covered treatments as a medical necessity; falsifying a patient's diagnosis to justify tests, surgeries, or other procedures billing each step of a single procedure as if it were a separate procedure.

INSURANCE COMPANY FRAUDS

63. The insurance companies also take advantage of the healthcare needs of humans and they sell the risk of getting a disease and charge very high and unreasonable amounts to make greater profits. Fake insurance companies and dishonest insurance agents can defraud consumers by collecting premiums for bogus policies with no intention or ability to pay claims. These "companies" may offer policies at costs that are significantly lower than the traditional market price to woo consumers who are trying to save money.

64. In many cases, a fake insurance company will provide consumers with documents that look real. In other instances, these policies may even be represented by legitimate insurance agents who themselves have been misled by fraudulent companies. Between the years 2000-2002, the General Accounting Office of the federal government of United States America identified 144 fake insurers nationwide that sold bogus health insurance to more than 200,000 policyholders, resulting in more than $252 million in unpaid claims. Similarly, there are many fake companies selling auto,

homeowners, renters, life, disability, prescription drug, and long-term care policies. Some patent granted drugs are more expensive and unaffordable for the majority.

65. The biggest issue is what you factor in. The companies say you have to calculate not only the cost of the raw ingredients and manufacturing but also the cost of research and development of the drug – and also the costs of all the drugs that fail to get to market. Clinical trials to test new drugs for safety and find out how well they work cost millions of dollars, and many drugs look good in the lab or animals but don't work in humans or there are serious side effects. Research pharma companies need to set those costs of failures against the profits from the drugs that work

66. It's the only way they can afford to keep looking for new medicines. Due to this, the patent system was introduced. The patent system exists to protect the intellectual property of innovators.

67. Too often, however, some brand-name drug companies attempt to patent features of drugs that do not represent true innovation. Some attempt to bury competition from generic and biosimilar drugs indefinitely by finding ways to repackage existing inventions in later patents.

68. These "patent thickets" chill competition by discouraging competitors from entering a market because of the exorbitant cost of litigating meritless patents.

EDUCATIONAL IMPACT OF RIGHT TO HEALTH

69. Not all citizens are equally educated on the causes and dangers of some diseases. Boiling water is the surest method to kill disease-causing organisms, including viruses, bacteria, and parasites. Contaminated water and poor sanitation are linked to the transmission of diseases such as cholera, diarrhea, dysentery, hepatitis A, typhoid, and polio. Some who refuse to take medicine believe all diseases would be healed with time. Even very minor diseases can cause a lot of harm due to negligence.

70. There are some followers of religious beliefs or supernatural powers instead of medicine. Many religious groups reject some or all mainstream health care on religious grounds. Christian Scientists, Jehovah's Witnesses, Amish, and Scientologists are among them. 11-year-old Kara Neumann of Weston, Wisconsin, suffered waves of nausea as she lay motionless on her deathbed. Her parents knelt in prayer beside their dying daughter but did not call a doctor for help. She died without medical care.

71. **Shyness or unwillingness to seek medical advice until it becomes severe.** Vaginal or rectal prolapse, fecal, and urinary incontinence are uncomfortable words and sensitive topics. One-quarter of women suffer from pelvic organ prolapse. These diseases need medical treatment. The population needs to be taught to seek medical advice without being shy or embarrassed.

JUSTICIABILITY

72. If the Right to health has been stated as a fundamental right by the constitution, any inequitable incident or inconvenience happens to the patients, the constitution would give the right to the patient to sue the executive (The Government) according to article 3 of the Sri Lankan constitution. This may give rise to an extra burden for the government if the victims of any losses due to lack of health care facilities or the negligence of medical staff. This could be either due to incorrect diagnosis by the doctor causing a delay in receiving proper treatment or inadequate maintenance of sanitation within healthcare units by hospital staff giving rise to unnecessary infections. This is one of the main reasons why most nations are reluctant to make the Right to health a fundamental right.

73. In many countries and jurisdictions Right to life has been identified and incorporated as a fundamental human right. It can be simply to live freely. Proper health is also a major factor in this. If there is nothing to protect and ensure good health, then the possibility of a healthy life diminishes. In that sense, we can understand that health is indeed mandatory. But the parameters of determining the 'Right to health' would be more complex. For example, if we consider the “Right to be free from torture”, a fundamental right in Sri Lanka, although we can have different interpretations based on the context, it's understandable that this right to be free from torture simply means that no one shall be physically or mentally harmed. Conversely when we consider the Right to Health, declaring the limits of healthcare facilities one is entitled to would be extremely difficult. It may change depending on the understanding of the extent of this right. So, if we are to add the demarcations of this right, whether that it is basic health care or total assurance of healthcare is included, it may also be confused as limitations to the right. Also, if health is added as a fundamental right the possibility of it being misinterpreted and misused also becomes high. The addition of the Right to health as a fundamental human right comes with a great number of

problems that should be addressed before implementing it. These problems are the main reasons why the Right to health is still not a fundamental Right internationally.

CHAPTER 6

IMPLICATIONS OF ACTIONS TAKEN TO PRIORITIZE THE RIGHT TO HEALTH

LEGAL ACTIONS TAKEN BY THE SRI LANKAN CONSTITUTION

74. Though the Right to Health is not directly stipulated as a Constitutional right, there are instruments in the Sri Lankan fundamental rights field that may be evoked.

75. According to Article 12 (1) of the Constitution, "all persons are equal before the law and are entitled to the equal protection of the law" Therefore, special mechanisms if the situation requires should be provided to uplift their rights because different qualities of health standards for persons residing in different geographic locations may constitute discrimination under the Article 12 of Sri Lankan Constitution.

76. Statutes like the Food Act, Health Service Act, and the Sri Lankan Constitution do not explicitly express and recognize the right to health. As described earlier, the only reference given to health is as a suspension or derogation where Article 7 of the Fundamental Rights of the constitution states, "in the interests of national security, public order and the protection of public health…" the state may withhold rights.

77. The Sri Lankan Constitution further guarantees that "No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any such grounds". The constitution does clearly articulate the right to life in Article 11 of the constitution. This inalienable right to life is indeed a pragmatic link to the right to health since the right to life would connect directly with good health.

78. The Right to health is given statutory recognition by implication in numerous Statutory Rights in Sri Lanka in the 13th Amendment of Sri Lanka's Constitution (Certified on 14th November 1987) which devolves major elements of health care to provincial and district level government authorities, to especially promoting more efficient administration by the local authorities concerning public health. As per the 154A of 13th Amendment to the Constitution "the establishment and maintenance of public hospitals, rural hospitals, maternity homes, dispensaries "Public health services, health education, nutrition, family health, maternity and child care, food, and food sanitation, environmental health, and Formulation and implementation of Health

Development Plan and the Annual Health Plan for the Province come under the purview of relevant Provincial Councils. According to the Concurrent List schools for the training of Auxiliary Medical Personnel; the supervision of private medical care, control of nursing homes and diagnostic facilities within a Province; Population control and family planning and Constitution of Provincial Medical Boards are to be done by both parties".

79. Sri Lanka's criminal code is a document that compiles all, or a significant amount of, a particular jurisdiction's criminal law. In Sri Lanka's Penal code 3 sections cite offenses affecting the public health:

I. Section 271. Making atmosphere noxious to health.

II. Section 262. A negligent act is likely to spread injection of any disease dangerous to life.

III. Section 263. The malicious act is likely to spread infection of any disease dangerous to life.

80. These sections make it punishable "to do a negligent or malicious act likely to spread infection of any disease dangerous to life".

81. Also, adulteration of foods, fouling the water of a public spring or reservoir, inter alia are made as offenses under the Penal Code and also under the Food Act. To speak of health in isolation of other rights then becomes futile. These inter-relationships, show the protection of specific rights during disasters and their connection with the normative frameworks.

ACTION TAKEN FOR STATELESSNESS

82. **Protection of stateless persons under international law.** Despite the 1954 Stateless Convention sharing the same overall approach as the 1951 Convention relating to the Status of Refugees, there remain several significant differences.7 For instance, there is no prohibition against refoulement (Article 22, 1951 Convention) in the statelessness conventions which refers to the forcible return of refugees to a country where they are liable to be persecuted and no protection against penalties for illegal entry (Article 3, 195 Convention), and both the right to employment and the right of association provide for a lower standard of treatment than the equivalent provisions in the 1951 Convention.

ACTIONS TAKEN ON THE ISSUE OF INSUFFICIENT STATE FUNDING FOR HEALTH

83. There are however five key mechanisms currently used in Australia to slow growth in health care expenditure. These mechanisms, which are not unique to Australia but used commonly around the world, are deciding which health care interventions will be publicly funded (commonly known as Health Technology Assessment) changing the way health care providers are paid; imposing costs on individuals; constraining the capacity of the health system, and encouraging competition.

84. Key mechanisms for controlling health expenditure growth are;

I. Developing equitable health financing mechanisms.

II. Deciding which health care interventions will be publicly funded.

III. Changing the way health care providers are paid.

IV. Health-sector stewardship.

V. Strengthening the delivery of health services.

85. The way health care providers are paid is an important determinant of total health expenditure. Providers include individual health professionals such as GPs, medical specialists, and physiotherapists, as well as organizations such as hospitals and community health centers.

86. They are paid in a variety of ways, including:

I. Budget allocations (where a lump sum is used to fund a pre-defined range of health services and activities).

II. Salaries.

III. Fee-for-service payments (providers are paid according to the number of services delivered).

IV. Diagnosis-related groups (DRGs).

V. Activity-based funding (ABF) (providers are paid a fixed fee per patient that takes into consideration the complexity of the patient's condition).

VI. Capitation payments (providers are paid a fixed amount based on the number of patients they are responsible for).

VII. Per diem payments (providers are paid a daily fee for each patient treated).

ACTIONS TAKEN BY THE WORLD HEALTH ORGANIZATION (WHO)

87. WHO works worldwide to promote health, keep the world safe, and serve the vulnerable.

88. **Law for Universal Health Coverage (UHC).** For all aspects of health, there are binding rules that govern the rights and responsibilities of governments, health workers, companies, civil society, and a country's population. Together these rules make up the legal framework or legal architecture for health. WHO is involved in making these rules, and the form they take differs from country to country.

89. UHC policy performance is about the role of law in providing the capacity to achieve the desired policy objectives of UHC: universal access to health care, financial protection, quality health care.

90. For Financial protection, UHC law contributes to efforts to provide people with protection from the potentially catastrophic effects of high out-of-pocket health expenditure. WHO's approach to health financing focuses on these core functions:

I. Revenue raising.

II. The pooling of funds.

III. UHC law provides the capacity to perform all of these functions. For example, in countries with tax-based systems, there are constitutional or statutory provisions that allow taxes. Tax laws can approve revenue-raising derived from different tax sources, such as income tax and indirect taxes.

91. **Conduct Health-promoting schools.** A health-promoting school is one that constantly strengthens its capacity as a healthy setting for living, learning, and working. It strives to provide a healthy environment for school health education and school health services along with school projects, health promotion programs for staff, nutrition, and food safety programs which provide multiple opportunities for success.

92. **Health taxes.** WHO gives their guidelines to make new health taxes among their members. Health taxes are imposed on products that have a negative public health impact. These taxes result in healthier populations and generate revenues for the budget even in the presence of illicit trade evasion. These are progressive measures which benefit low-income populations relatively more, once health care costs and health burden are taken into account.

93. **Food and Nutrition Actions in Health Systems.** The Food and Nutrition Actions in Health Systems (AHS) Unit of the WHO assists countries with the application of essential nutrition actions delivered through healthcare and community platforms. The Unit provides support to WHO's Member States in reducing the burden of diseases caused by unsafe food, unhealthy diets, and malnutrition in close collaboration with UN partner agencies, and other international organizations and stakeholders.

94. **Medicines.** WHO promotes universal access to health products by reinforcing their selection and supply chains, supporting research and development for new health projects, and working to remove barriers to health services, particularly in low-income areas. WHO works with governments to create strategies for measuring, monitoring, and managing medicine prices that fit regional contexts and health care systems.

95. The high price of many essential medicines is a major barrier to the goal of universal health coverage and primary health care. The poor bear a disproportionate portion of this burden, and it is common in low- and middle-income countries for medicines to be the highest out-of-pocket expense after food. WHO works with the Member States and partners to promote programs and policies that make medicines affordable and accessible to all people.

96. **Occupational health.** The main functions of WHO (occupational health) mandated in article 2 of its Constitution include promoting the improvement of working conditions and other aspects of environmental hygiene. Recognizing that occupational health is closely linked to public health and health systems development, WHO is addressing all determinants of workers' health, including risks for disease and injury in the occupational environment, social and individual factors, and access to health services.

97. **Refugee and migrant health.** The WHO Constitution states that everyone has the right to enjoy the highest attainable standard of physical and mental health and ratified international human rights standards and conventions exist to protect the rights of refugees and migrants including their right to health. The access of refugees and migrants to quality, essential health services is of paramount importance to rights-based health systems, global health security, and public efforts aimed at reducing health inequities and achieving the 2030 Sustainable Development Goals (SDGs).

98. The WHO has primary responsibility for promoting the health of refugees and migrants and achieving universal health coverage.

WATER, SANITATION AND HYGIENE

99. As the international authority on public health and water quality, WHO leads global efforts to prevent transmission of waterborne disease. This is achieved by developing, updating and disseminating health-based guidelines and supporting resources, promoting health-based regulations to governments and working with partners to support effective risk management practices by water suppliers, communities and household’s Safe sanitation systems are fundamental to protect public health

100. WHO also coordinates sanitation actions with partners in other health initiatives such as neglected tropical diseases, cholera, nutrition, infection prevention and control, and antimicrobial resistance. It has published various guidelines, in which it sets recommended limits for health harmful concentrations of key air pollutants, both outdoors and inside buildings and homes, based on a global synthesis of scientific evidence.

101. By these efforts, the WHO has strengthened the efforts to ensure affordable healthcare for all the world's people. Thus, the achievement of the Right to health as a fundamental right becomes that much achievable.

CHAPTER 7

SUGGESTIONS

102. With Millennium Health Development Goals are being replaced by, sustainable development goals and their strong commitment to leaving no one behind as well as addressing inequalities both among and within countries provide us with an unprecedented opportunity to develop a more relevant global health agenda.

DEVELOPING DOMESTIC LEGISLATION.

103. The recommendations in this section are to help States put in place measures to strengthen domestic legislation protecting access to health care and ensuring its safe delivery, and thus comply with their obligations under international law.

104. States must take appropriate measures so that their domestic legislation reflects the international obligations they have undertaken with regard to safeguarding access to, and delivery of, health care, taking due consideration of national specificities.

NEW METHODS FOR FINANCING AND REGULATING HEALTH CARE SYSTEMS ARE NEEDED TO ENSURE THERE ARE NO FINANCIAL BARRIERS TO ACCESS.

105. There was a consensus that financing and shared responsibility are essential to equitable health systems. Indeed, out-of-pocket payments have created huge barriers to realizing the right to health for all, preventing 1 billion people from seeking the health care they need, and pushing a further 100 million into poverty each year.

106. Poverty determines who should access services, and the introduction of user fees means many cannot receive the health care they need. International partnerships must work together to put strategies in place to help improve and integrate health in a progressive manner.

GREATER INVESTMENT IN HEALTH FACILITIES IS REQUIRED IN RURAL AREAS TO INCREASE ACCESS AND ALSO TO TRAIN MORE HEALTH WORKERS

107. In 2014, the World Health Organization (WHO) estimated that the global health workforce shortage could reach 12.9 million in the coming decades. Meanwhile, resilient and sustainable health systems require more than a billion dollars a year.

108. Building more rural health facilities and improving the workforce would result in reducing the spread of communicable diseases and the reduction of infective diseases and recurrent pandemics.

109. In 2012 WHO Director for Reproductive Health and Research, Marleen Temmerman emphasized the need for a global fund for public health based on rights. It is important to improve the health facilities to provide access to every individual.

PROMOTING KNOWLEDGE AND AWARENESS OF HEALTHCARE PERSONNEL OF THEIR RIGHTS AND RESPONSIBILITIES

110. Measures should be put in place to ensure that health-care personnel has a broad understanding of human rights laws and the ethical principles of health care. This knowledge can help health-care workers defend their rights and those of their patients at all times. It can also help them choose to assume their professional responsibilities when faced with dilemmas. These responsibilities include treating the wounded and sick humanely, not abandoning anyone in need, refusing to take part in hostilities, and providing impartial care.

CHAPTER 8

CONCLUSION

111. We have attempted in this presentation to state the factors that affect, and contribute to inequalities in healthcare delivery worldwide.

112. We have also presented how the WHO has made great strides in reducing these inequalities.

113. If there is a collective effort by international agencies and governments, it may be possible to achieve an ideal status where the Right to health will be made a fundamental right internationally.

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