

Securing health as a fundamental right

POLICY BRIEF



Human Rights
Commission
of Pakistan

Securing Health as a Fundamental Right

Policy Brief



Human Rights Commission of Pakistan

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1 Introduction

The right to health has been globally recognised as the fundamental right to attain the highest level of both physical and mental health. It grants individuals certain entitlements and protections. In this sense, the right to health is a **positive** right in that it **guarantees individuals the freedom to** control and make decisions with regard to their health and body, and entitles them to equal and non-discriminatory access to a system of health protection that ensures the attainment of the highest level of health. It is a **negative** right in that it **protects individuals from** undue interference from the state or third parties in matters related to their health. Framing the right to health as a positive and negative right imposes an obligation on states to take appropriate measures to ensure the full realisation of the right to health.¹

International and local jurisprudence recognize the interdependence between the right to health and other human rights. The right to health cannot be sought in isolation and is dependent on the due provision of the rights to food, housing, work, education, safe and potable water, healthy working conditions and adequate sanitation – and vice versa.

The constitutional framework in Pakistan does not stipulate this as an independent fundamental right but extrapolates the right to health from the right to life and human dignity. The jurisprudence on the right to health in Pakistan does not provide detailed guidance on the extent and scope of the right and the concomitant obligations on the state. International jurisprudence can therefore serve as an important supplementary guide in this regard.

In the aftermath of the Covid-19 crisis and given Pakistan's generally poor health outcomes, the Human Rights Commission of Pakistan (HRCP) has deemed it necessary to initiate a discussion on the subject as part of its wider campaign lobbying for the right to health to be made a fundamental – and therefore justiciable – right. To this end, HRCP has prepared a policy brief targeting legislators, jurists and human rights defenders who are interested in pursuing this aim.

The policy brief examines the constitutional framework governing the right to health in Pakistan (Section 2) and draws guidance from international legal instruments and conventions to understand the scope and meaning of the right to health (Section 3). It also examines briefly the relevant legislative and policy instruments that govern this right (Sections 4 and 5). It concludes by making the case for recognising the right to health as an independent constitutional right in Pakistan (Section 6).

¹ Negative rights restrain other persons or governments by limiting their actions towards or against the right-holder. Positive rights provide the right-holder with a claim against another person or the state for some good, service or treatment.

2 The right to health and the constitutional framework

Fundamental rights

Part I of Chapter I of the Constitution of the Islamic Republic of Pakistan 1973 (the 'Constitution') is titled 'Fundamental Rights' and lays down the fundamental rights guaranteed to citizens of Pakistan, including inter alia the right to life (**Article 9**), dignity (**Article 14**) and equality (**Article 25**), freedom of association (**Article 17**), freedom of trade, business or profession (**Article 18**), freedom of expression (**Article 19**), the right to information (**Article 19A**) and the right to education (**Article 25A**).

Pursuant to **Article 8** of Chapter I, all laws inconsistent with the fundamental rights enshrined in the Constitution are void and of no legal effect. Citizens can seek direct enforcement of the fundamental rights guaranteed in Chapter I by invoking the writ jurisdiction of the high courts under **Article 199** of the Constitution.

The 'right to health' has not been stipulated as an independent fundamental right in Chapter 1 of the Constitution. Indirect reference to the state's obligation to undertake measures to ensure the health of citizens is made in the Principles of Policy – and that too, to a limited extent.

Principles of policy

Part I of Chapter II of the Constitution prescribes certain 'Principles of Policy' that are intended to guide state authorities in performing their functions. The Principles of Policy also do not make direct reference to the 'right to health'. **Article 38(d)**² instead refers to the state's obligation to provide the basic necessities of life, including 'medical relief', to those citizens who, on account of sickness or unemployment, are unable to earn their livelihood.

Judicial interpretation and the 'right to health'

The superior courts of Pakistan have broadly interpreted Article 9³ of the Constitution (which pertains to the right to life) read with **Article 14**⁴ of the Constitution (which guarantees the right to dignity) as giving 'birth to the "right to health" as a fundamental right' (PLD 2017 Kar 157 *Getz Pharma v Federation of Pakistan*).

² Article 38: 'Promotion of social and economic wellbeing of the people. The State shall: (d) provide basic necessities of life, such as food, clothing, housing, education and medical relief, for all such citizens, irrespective of sex, caste, creed or race, as are permanently or temporarily unable to earn their livelihood on account of infirmity, sickness or unemployment.'

³ Article 9: 'Security of person: No person shall be deprived of life or liberty save in accordance with law.'

⁴ Article 14: 'Inviolability of dignity of man etc.: (1) The dignity of man and, subject to law, the privacy of home, shall be inviolable. (2) No person shall be subjected to torture for the purpose of extracting evidence.'

The courts have held that the right to life entails the right to the highest standard of physical and mental health, such that state functionaries are bound to:

- Ensure easy and non-discriminatory access to high-standard medicines and healthcare services and facilities (2020 SCMR 1 *Government of Sindh v Dr Nadeem Rizvi*; 2020 SCMR 622 *Naimatullah Khan v Federation of Pakistan*).
- Ensure that public hospital buildings and equipment are properly maintained and in working order (PLD 2020 Kar. 35 *Saba v Federation of Pakistan*).
- Ensure that hospital ambulances are equipped with skilled staff, and rescue centres and blood centres established in every public hospital, medicines made available in government hospitals free of cost and all government hospitals be manned by proper staff (2019 CLC Kar 224 *Aamir Lutuf Ali Zardari v Province of Sindh*).
- Take measures to protect the life and health of citizens from the consequences of hazardous smog (PLD 2018 Lah. 1 *Walid Iqbal v Federation of Pakistan*).
- Ensure access to life-saving drugs (PLD 2017 Kar 157 *Getz Pharma v Federation of Pakistan*).

In this sense, the right to health has therefore been recognized in the Pakistani constitutional jurisprudence as a fundamental right emerging from the guarantee of the right to life and dignity provided to citizens under the Constitution (see Appendix 1). Pakistani jurisprudence does not, however, lay down in great detail the **meaning** and **scope** of the right to health. This is discussed in Section 3.

3 The right to health in international human rights law

The scope of the right to health may be more valuably gauged and understood with reference to the international human rights instruments to which Pakistan is a signatory. These instruments define the right to health in broad terms as the right to mental and physical health, and impose both positive and negative obligations on state and nonstate parties to fulfil this right. They also lay down broad guidelines regarding provision and enforcement of the right to health in terms of adequacy, accessibility and quality of the measures taken by the state to implement this right.

International legal instruments also recognize that human rights are interdependent, indivisible and interrelated. The attainment or fulfilment of the right to health would mandate the provision and realisation of other human rights. In similar vein, a violation of the right to health will often impair the enjoyment of other human rights such as the right to education or work, and vice versa. International legal instruments therefore recognize the importance of the 'underlying determinants of health', that is, the factors and conditions which protect and promote the right to health beyond health services, goods and facilities, and which include the rights to food, water, an adequate standard of living and adequate housing as well as freedom from discrimination, the right to privacy and access to information and the right to benefit from scientific progress and its applications. The fulfilment of the right to health therefore requires ensuring the provision of the underlying determinants of health.⁵

International Covenant on Economic, Social and Cultural Rights

The International Covenant on Economic, Social and Cultural Rights (ICESCR) and the General Comments provided thereunder lay down the meaning and scope of the right to health, and relevant state obligations in comprehensive terms. Pakistan ratified the ICESCR in 2008.

Meaning of the right to health

Article 12 of the ICESCR recognizes the right of citizens to enjoy the highest attainable standard of physical and mental health. General Comment 14 on **Article 12** (issued by the UN Committee on Economic, Social and Cultural Rights) provides more detail on what the right to health may entail.⁶ The right to health must be conceived of as:

- Freedom to control one's health and body (for example, sexual and reproductive rights) and to be free from interference (for example, free from torture and nonconsensual medical treatment and experimentation).
- Entitlement to access a system of health protection that gives everyone an equal opportunity to enjoy the highest attainable level of health (for example, access to essential

⁵ OHCHR and WHO. (n.d.). *Right to health* (Factsheet 31).

<https://www.ohchr.org/sites/default/files/Documents/Publications/Factsheet31.pdf>

⁶ Adopted at the Twenty-Second Session of the Committee on Economic, Social and Cultural Rights on 11 August 2000 (Document E/C.12/2000/4). Accessed from <https://www.refworld.org/pdfid/4538838d0.pdf>

medicines and basic health services; maternal, child and reproductive health; equal and timely access to emergency healthcare; provision of health-related education and information; and community participation in health-related decision-making).

Interdependence on other rights

The right to health is interdependent on the fulfilment and realization of other fundamental human rights, which serve as its underlying determinants. General Comment 14 identifies the 'underlying determinants of health' (paragraphs 3, 4 and 11) to include:

- The right to food
- The right to housing
- The right to work
- The right to education
- The right to human dignity
- The right to life
- The right to safe and potable water
- The right to adequate sanitation
- The right to safe and healthy working conditions
- The right to a healthy environment
- The right to nondiscrimination and equality
- Freedom from torture
- The right to privacy
- The right to access health-related information, including on sexual and reproductive health
- Freedoms of association, assembly and movement
- The right to participate in all health-related decision-making at the community, national and international levels.

Pakistani jurisprudence also recognizes the interdependence between the right to health and other rights, including:

- The right to transport (2020 SCMR 622 Naimatullah Khan v Federation of Pakistan)
- Access to water (2018 SCMR 2001 Barrister Zafarullah Khan v Federation of Pakistan)
- The right to a healthy environment (free of air pollution) (PLD 2018 Lah 1 Walid Iqbal v Federation of Pakistan)
- The right to food (PLD 2020 Lah. 229 Muhammad Ahmad Pansota v Federation of Pakistan).

Criteria for provision of the right to health

General Comment 14 also prescribes that all services, goods and facilities provided with reference to the right to health must be **available, accessible, acceptable** and **of good quality**. This is explained below.

Availability. Functioning public health and healthcare facilities, goods and services (which include the underlying determinants of health) should be available in sufficient quantities. These include the provision of safe and potable drinking water and adequate sanitation facilities, hospitals, clinics and other health-related buildings, trained medical and professional personnel receiving domestically competitive salaries, and provision of essential drugs.

Accessibility. Health facilities, goods and services (which include the underlying determinants of health) must be accessible to everyone on a nondiscriminatory basis. Accessibility entails:

- Physical accessibility: health facilities, goods and services must be within safe physical reach of all members of the population, including those with disabilities.
- Economic accessibility: health facilities, goods and services must be provided on the basis of the principle of equity and must be affordable.
- Information accessibility: all persons must be entitled to seek, receive and impart information and ideas concerning health issues.

Acceptability. Health facilities, goods, services and programmes (which include the underlying determinants of health) must be ethical, culturally appropriate, people-centred and cater to the specific needs of diverse populations and groups.

Quality. Health facilities, goods, and services (which include the underlying determinants of health) must be scientifically and medically approved, safe and effective and provided through skilled medical personnel, and make use of scientifically approved and unexpired drugs and hospital equipment.

It is pertinent to mention that, under the international legal framework, nondiscrimination and equality are essential components and guiding principles of the right to health. These prohibit the state from drawing any distinction – on any ground whatsoever – in its provision and protection of the right to health. At the same time, nondiscrimination and equality obligates states to recognize and account for the different and specific needs of groups and individuals with particular health problems (such as women) and undertake specific measures for their protection. General Comment 14 makes particular reference to the need to integrate a gender perspective in the health policies of the state and to implement a comprehensive national strategy for promoting women’s right to health throughout their lifespan.

Obligation of signatory states to implement the right to health

Article 12 of the ICESCR provides a non-exhaustive list of measures that signatory states must take to ensure full realisation of the right to health. These include: provision to reduce the stillbirth rate and of infant mortality and for the healthy development of the child; the improvement of all aspects of environmental and industrial hygiene; prevention, treatment and control of epidemic, endemic, occupational and other diseases; and the creation of conditions that would assure to all medical service and medical attention in the event of sickness.

General Comment 14 elaborates that state signatories are under an obligation to **respect**, **protect** and **fulfil** the right to health (paragraph 33).

The obligation to **respect** requires that state signatories must not directly or indirectly interfere with the enjoyment of the right to health by, for instance, denying or limiting access to

healthcare services, marketing unsafe drugs, imposing discriminatory practices relating to women's health status and needs, limiting access to contraceptives and other means of maintaining sexual and reproductive health, withholding, censoring or misrepresenting health information, and infringing on the right to privacy.

The obligation to **protect** requires that state signatories take measures that prevent third parties from interfering with the guarantee of the right to health. State signatories must adopt appropriate measures to ensure that private actors conform to human rights standards when providing healthcare or other services; regulate the marketing of medical equipment and medicines by private actors; ensure that individuals are protected from medical procedures that are detrimental to their health; and ensure that persons with disabilities are not subject to any medical procedure or treatment without their free and informed consent.

The argument against constraints and limitations on the state as a duty-bearer

It is pertinent to mention that a signatory state cannot plead lack of financial resources as grounds for absolving it from taking the necessary action to implement and realize the right to health. States must guarantee the right to health to the maximum of their available resources.⁷

It is also worth pointing out that, pursuant to General Comment 14, any limitations imposed by a state on other fundamental rights or freedoms for the apparent protection of public health must be justified and must be proportionate (that is, they must present the least restrictive alternative).

Pakistani courts have made reference to **Article 12** of the ICESCR in judicial pronouncements on the right to health (PLD 2017 Kar 157 *Getz Pharma v Federation of Pakistan*). However, Pakistan is a dualist state where international law and the state's international legal commitments cannot be directly implemented or incorporated into national or municipal law without due ratification from Parliament in the form of legislation. At times, courts choose to be guided by Pakistan's international legal commitments in their interpretation of national law; at other times, they do not. Pakistan's dualist legal structures impose a serious impediment to the fulfilment of its responsibilities under international legal instruments.

The obligation to **fulfil** requires that state signatories adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures to fully realize the right to health. According to General Comment 14 (paragraphs 15–17), state signatories must:

- Formulate a national health policy or a national health plan identifying particular challenges and possible solutions to health crises/problems.
- Plan and implement effective immunisation programmes.
- Provide a system of urgent medical care, disaster relief and humanitarian assistance in emergency situations.
- Provide equal and timely access to basic preventive, curative and rehabilitative health services and health education.
- Provide regular screening programmes and appropriate treatment of prevalent diseases, illnesses, injuries and disabilities.

⁷ OHCHR and WHO. (n.d.). Right to health (Factsheet 31).
<https://www.ohchr.org/sites/default/files/Documents/Publications/Factsheet31.pdf>

- Ensure equal provision of the underlying determinants of health through provision of adequate housing, safe and hygienic working conditions and an adequate supply of food and proper nutrition.
- Promote the social determinants of good health, such as environmental safety, education, economic development and gender equity.
- Ensure sufficiency and proper training of doctors and other medical staff.
- Provide information to the public on health-related issues.
- Discourage the abuse of alcohol and the use of tobacco, drugs and other harmful substances.
- Establish prevention and education programmes for behaviour-related health concerns such as sexually transmitted diseases, in particular HIV/AIDS.
- Provide essential drugs and appropriate mental health treatment and care.

Article 25.1 of the Universal Declaration of Human Rights and **Article 12** of the ICESCR also stipulate the right to health in more general terms (see Appendix 2).

The right to health in other countries

In most constitutions of South Asian states, the right to health has been expressed in terms of a principle of policy.⁸ Nepal, however, is an exception. Article 35 of the Constitution of Nepal guarantees citizens the right to health and the right to equal access to health services, including emergency health services, and the right to obtain information about their medical treatment. Article 35 further guarantees access to the determinants of the right to health, such as access to clean drinking water and sanitation, while Article 30 stipulates the right to a healthy environment.

Several other countries stipulate the right to health as an independent fundamental right in their constitutions. These include South Africa, Thailand, Cambodia, Indonesia, China, Japan, Vietnam, DPR Korea, Uruguay, Latvia, Senegal and Fiji (see Appendix 3).

The right to health of specific groups under international law

International legal instruments recognize that certain groups or individuals—such as children, women and persons with disabilities—may confront particular challenges in attaining the right to health on account of a host of socioeconomic factors. Since the principles of accessibility, equality and nondiscrimination are central to the concept of the right to health, specific measures must be taken to respect, protect and fulfil the right to health of such groups and individuals. The following international legal instruments identify the particular health needs of certain disadvantaged groups:

⁸ It is interesting to note that, since the Indian Constitution does not provide explicit recognition of the right to health or healthcare, the Supreme Court of India in *Bandhua Mukti Morcha v Union of India & Ors* (1984 AIR 802) interpreted the right to health under Article 21 which guarantees the right to life. In *State of Punjab & Ors v Mohinder Singh Chawla* (AIR1997 SC 1225), the apex court reaffirmed that the right to health was fundamental to the right to life and it should be put on record that the government had a constitutional obligation to provide health services. In *State of Punjab & Ors v Ram Lubhaya Bagga* ((1998) 4 SCC 117), the court went on to endorse the state's responsibility to maintain health services.

- Racially discriminated persons: International Convention on the Elimination of All Forms of Racial Discrimination (1965), Article 5.
- Women: Convention on Elimination of All Forms of Discrimination Against Women (1979), Article 12.
- Children: Convention on the Rights of the Child (1989), Article 24.
- Persons with disabilities: Convention on the Rights of Persons with Disabilities (2006), Article 25.

4 State institutions and relevant stakeholders

Following the promulgation of the 18th Constitutional Amendment, the legislative subject of health was largely devolved to the provinces. However, the federation retained competence to frame policy and legislation on health information (inclusive of research in health),⁹ health regulation, international commitments and national health policy.

The relevant institutions and offices are listed below:

- Federal Ministry of National Health Services, Regulation and Coordination
- Provincial Ministries of Health (Punjab, Sindh, Khyber Pakhtunkhwa and Balochistan)
- Ministry for Population Welfare (Punjab and Balochistan)
- Council of Common Interests (for the purpose of undertaking coordination between the federation and the provinces)
- National Institutes of Health (includes Centre of Disease Control, National Research Institute, National Health Laboratory, Health Data Centre, Institute of Nutrition and Health, Vaccines and Biological Products Centre, Centre for Environment and Occupational Health)
- Drug Regulatory Authority of Pakistan
- Pakistan Medical Commission
- Provincial Healthcare Commissions (Punjab, Sindh, Khyber Pakhtunkhwa and Balochistan)
- Primary and Secondary Health Department
- Specialized Healthcare and Medical Education Departments
- Provincial Population Welfare Departments (Punjab, Sindh, Khyber Pakhtunkhwa and Balochistan)
- National Information Technology Board
- Provincial Information Technology Boards (Punjab, Sindh, Khyber Pakhtunkhwa and Balochistan)

⁹ Including disease security, monitoring health indicators and health systems performance assessment, collecting evidence for policy decisions and health research. See: S. Nishtar. (n.d.). *Health and the 18th Amendment: Retaining national functions in devolution*. Heartfile. http://www.heartfile.org/pdf/HEALTH_18AM_FINAL.pdf

5 Domestic policies and legislation

National Health Policy

The last National Health Policy was framed by the federal government in 2001. Given shortcomings in the latter, an effort was made by the federal government to frame a more effective policy document with the help of the World Health Organization (WHO). Although a draft policy was implemented, it was not promulgated.¹⁰

Provincial health plans and strategies

Each province has developed its own health strategies and plans, including:

- Punjab Health Sector Plan 2019
- Punjab Health Strategy 2019
- Sindh Health Sector Strategy 2012
- Khyber Pakhtunkhwa Health Sector Strategy 2010
- Health Policy Khyber Pakhtunkhwa 2018
- Health Sector Strategy Balochistan 2018

National Health Vision 2016–25

The Ministry of National Health Services, Regulation and Coordination devised the National Health Vision 2016–25 after intensive consultations at the national level. The National Health Vision has been framed in light of the Sustainable Development Goals and aims to enable provincial health departments to contextualise their policy frameworks to achieve universal health coverage.¹¹ The National Health Vision seeks to:¹²

- Advocate enhancement of state expenditure on health [which then stood at 0.6 percent of GDP] as an investment.
- Address the dearth of doctors, nurses, paramedics and other staff as per requirements.
- Develop effective information systems and decision-making based on these systems.

¹⁰ WHO. (n.d.). *Pakistan: Health policy, governance and leadership*.

<https://www.emro.who.int/pak/programmes/health-policy-governance-and-leadership.html>

¹¹ Government of Pakistan. (2019). *Pakistan's implementation of the 2030 Agenda for Sustainable Development: Voluntary national review*.

https://sustainabledevelopment.un.org/content/documents/233812019_06_15_VNR_2019_Pakistan_latest_version.pdf

¹² I. Junaidi. (2016, September 9). National health vision identifies critical issues. *Dawn*.

<https://www.dawn.com/news/1281496>. See also: Government of Pakistan. (n.d.). *National Health Vision Pakistan 2016–2025*.

https://extranet.who.int/countryplanningcycles/sites/default/files/planning_cycle_repository/pakistan/national_health_vision_2016-25_30-08-2016.pdf

- Create a mechanism that regulates and distinguishes the nature of services, facilities and staff available or required at primary, secondary and tertiary-care hospitals.
- Develop a monitoring mechanism, pursuant to which the provincial and federal governments will be bound to table annual health reports in the assemblies.
- Strengthen disease surveillance and response system uniformly across the country.
- Enforce public health laws related to smoking, drug safety, organ donation and transplant, safe blood transfusion, environmental protection and food safety.

Legislation

No legislation has been passed at the federal or provincial levels that recognizes or frames the scope of the right to health. However, in 2017, the National Health Care Bill 2017 was introduced in the Senate but not passed into law. The Bill recognizes the right to healthcare of a particular quality, the right to emergency lifesaving care, the right to informed consent and the right to privacy and confidentiality. The Bill also proposes the establishment of grievance redressal cells.

The health sector is, however, governed by a range of other laws promulgated at the federal and provincial levels:

Federal level

- Disability (Protection and Rehabilitation) Act 2021
- Pakistan Medical Commission Act 2020
- Pakistan Health Research Council Act 2016
- Drug Regulatory Authority of Pakistan Act 2012
- Prohibition of Smoking and Protection of Non-Smokers Health Ordinance 2002
- Mental Health Ordinance 2001
- Pakistan Veterinary Medical Council Act 1996
- National Institute of Health Ordinance 1980
- National Institute of Cardiovascular Diseases (Administration) Ordinance 1979
- Pakistan Nursing Council Act 1973
- Eye Surgery (Restriction) Ordinance 1960
- Medical Qualifications (Information) Ordinance 1960
- Pharmacy Act 1967
- Unani, Ayurvedic and Homoeopathic Practitioners Act 1965
- Drugs and Medicines Indemnity Act 1957
- Public Health (Emergency Provision) Ordinance 1944
- Vaccination Act 1880

Punjab

- Punjab Emergency Service Act 2006

- Punjab Infectious Diseases (Prevention and Control Ordinance) 2020
- Punjab Hepatitis Act 2018
- Punjab Blood Transfusion Safety Act 2016
- Punjab Mental Health (Amendment) Act 2014
- Punjab Reproductive, Maternal, Neonatal and Child Health Authority Act 2014
- Punjab Healthcare Commission Act 2010
- Transplantation of Human Organs and Tissues Act 2010 (amended in 2012)
- Disabled Persons (Employment and Rehabilitation) Ordinance 1981 (amended in 2012)
- Punjab Protection of Breast-Feeding and Child Nutrition (Amendment) Act 2012
- Injured Persons (Medical Aid Act) 2004

Sindh

- Sindh Reproductive Healthcare Rights Act 2019
- Sindh Empowerment of Persons with Disabilities Act 2018
- Sindh Safe Blood Transfusion Act 2017
- Sindh Occupation Safety and Health Act 2017
- Sindh Mental Health Act 2013
- Sindh Protection and Promotion of Breast-Feeding and Child Nutrition Act 2013
- Sindh Healthcare Commission Act 2013
- Sindh Transplantation of Human Organs and Tissues Act 2013

Khyber Pakhtunkhwa

- Khyber Pakhtunkhwa Reproductive Healthcare Rights Act 2020
- Khyber Pakhtunkhwa Regional and District Health Authorities Act 2019
- Khyber Pakhtunkhwa Public Health (Surveillance and Response) Act 2017
- Khyber Pakhtunkhwa Mental Health Act 2017
- Khyber Pakhtunkhwa Blood Transfusion Safety Authority Act 2016
- Health Foundation Act 2016
- Khyber Pakhtunkhwa Healthcare Commission Act 2015
- Khyber Pakhtunkhwa Protection of Breast-Feeding and Child Nutrition Act 2015
- Khyber Pakhtunkhwa Medical Transplantation Regulatory Authority Act 2014
- Injured Persons and Emergency (Medical Aid) Act 2014
- Disabled Persons (Employment and Rehabilitation) Ordinance 1981 (amended in 2012)

Balochistan

- Balochistan Healthcare Commission Act 2019
- Balochistan Mental Health Act 2019

- Balochistan Juvenile Smoking Act 2018
- Balochistan Persons with Disabilities Act 2017
- Transplantation of Human Organs and Tissues Act 2010
- Balochistan Safe Blood Transfusion Act 2004

6 Recognising the right to health as an independent fundamental right

It is clear that the right to health has, through judicial interpretation, been held to be a fundamental right guaranteed under the Pakistani constitutional framework. However, a case for promulgating an independent constitutional right to health may be made on the following grounds.

Principles of constitutional interpretation

Under settled legal principles of constitutional interpretation, the provisions of the Constitution are not mutually exclusive and must be interpreted in a harmonious manner to give ‘full measure of [all] the freedoms to the people to which they are entitled’ (PLD 2022 Lah. 773 *Meera Shafi v Federation of Pakistan*). In the instance of a conflict between two provisions of the Constitution, the courts are to adopt such an interpretation that would harmonise the conflicting provisions (PLD 2008 SC 522 *Accountant General Sindh v Ahmed Ali U. Qureshi*).

There may be countless situations where the right to health may come into conflict with other fundamental rights or constitutional provisions.

Furthermore, pursuant to settled principles of constitutional interpretation, any restriction imposed by the state on fundamental rights must be reasonable and proportionate, that is, the state is bound to adopt the least restrictive measures to undertake any action in public interest entailing a curb on fundamental rights.

As an independent standing fundamental right, incorporated in Part I of Chapter II of the Constitution, the right to health will be subject to the rules of harmonious interpretation, reasonableness and proportionality, and may as such stand on firmer ground.

Direct and more meaningful enforcement

Citizens may be able to rely on an independent right to health—directly enforceable through judicial review under Article 199 of the Constitution—to more effectively demand and restrain government action. That is not to say that the right to health, as currently extrapolated or inferred from Articles 9 and 14 of the Constitution, cannot be employed as a ground for judicial review.

However, an independent standing fundamental right to health, which more substantively explains the scope of such a right—by, for instance, providing for the underlying determinants of health (see Section 3)—may be more effective in holding the state to account. We can refer to the right to free and compulsory education, as enshrined in Article 25A of the Constitution as an example. Even prior to the promulgation of the 18th Amendment and the incorporation of Article 25A to the Fundamental Rights chapter, the superior courts of Pakistan interpreted Article 9 (right to life), Article 14 (right to dignity) and Article 18 (freedom of trade, business and profession) as laying an obligation on the state to provide quality education to citizens. Article 25A was nonetheless promulgated in 2010 to impose (in clearer terms) an obligation on the state ‘to provide free and compulsory education to all children of the age of five to sixteen years in such manner as may be determined by law.’

Symbolic importance

The recognition of an independent right to health in the Fundamental Rights chapter is of symbolic importance and serves as an expression of the significance attached by the state to the right to health, and its moral and legal commitment to enforce it.

Efficacy

A study on the effect of a constitutional right to health on public health in 157 countries, undertaken as part of the Harvard Initiative for Global Health, found that ‘the introduction of a right to health in a national constitution was significantly associated with reductions in both mean infant and under-five mortality rates.’ Although the study qualifies this by adding that this was more likely to be an effective mechanism for improving health in countries ‘that have a high level of democratic governance’, it also makes a case for ‘longer-term health benefits’ in countries with low scores for democratic governance ‘if governance subsequently improves’ and ‘the right to health remains in the constitution.’¹³

¹³ H. Matsuura. (2013). The effect of a constitutional right to health on population health in 157 countries, 1970–2007: *The Role of Democratic Governance*. https://cdn1.sph.harvard.edu/wp-content/uploads/sites/1288/2013/10/PGDA_WP_106.pdf

Appendix 1: Excerpts from relevant judgments

2020 SCMR *Government of Sindh v Dr Nadeem Rizvi*

'26. ... The right to life undoubtedly entails the right to healthcare which means that everyone has the right to the highest attainable standard of physical and mental health and this comprises of access to all kinds of medical services including but not limited to hospitals, clinics, medicines and services of medical practitioners which must not only be readily available and easily accessible to everyone without discrimination, but also of high standard. As the State, the Federal Government has an obligation to carry out all necessary steps to ensure realization of this goal.'

PLD 2020 Kar. 35 *Mst. Saba v Federation of Pakistan*

'7. Accordingly, the Secretary Health is directed to ensure that all the aspects pointed out in the reports of the District and Sessions Judges in respect of the public hospitals in their respective district are rectified/acted upon including repair, maintenance, provision of equipment and staff etc. prior to the next date of hearing.

8. In this respect the Secretary Health shall file a report which shall clearly state what works/repairs/maintenance the respective District and Sessions Judges in their reports required to be carried out/what equipment was needed, how many staff and at what level etc. were needed in respect of each public hospital and confirmation that all such work has been undertaken, all such equipment and staff provided as set out in the reports of the District and Sessions Judges.

9. We direct the Secretary Finance to ensure that sufficient budget is made available for the aforesaid purposes since citizen's right to adequate health care is a part of the right to life which is a fundamental right guaranteed under the constitution which the Government of Sindh is obliged to ensure.

10. On the next date of hearing Secretary Health and Finance, MS Civil Hospital and Director Anti Encroachment GOS shall all be in attendance. A copy of this order shall be sent by fax to them for compliance and also to the Chief Secretary Government of Sindh for information.'

2020 SCMR 622 *Naimatullah Khan v Federation of Pakistan*

'3. The preamble of the Constitution lays down, inter alia, that the State shall exercise its powers and authority through the chosen representatives of the people, wherein the principle of democracy, freedom, equality, tolerance and social justice, as enunciated by Islam, shall be fully observed and wherein shall be granted the fundamental rights, including equality of status, of opportunity and before law, social, economic, political justice and freedom of thoughts, expression, belief, faith, worship and association, subject to law and public morality. Article 3 of the Constitution provides that the State shall ensure the elimination of all forms of exploitations and the gradual fulfilment of the fundamental principles, from each according to his ability to each according to his work. Part-II of the Constitution deals with the fundamental rights and Principles of Policy and Article 9, thereof provides that no person shall be deprived of life or liberty save in accordance with law. Article 14 of the Constitution

provides that the dignity of man and subject to law, the privacy of home shall be inviolable and Article 15 of the Constitution provides that every citizen shall have the right to remain in, and, subject to any reasonable restriction imposed by law in the public interest, enter and move freely throughout Pakistan and to reside and, settle in any part thereof. Article 18 of the Constitution provides for freedom of trade, business and profession and Article 25 thereof provides that all citizens are equal before law and are entitled to equal protection of law, Article 37 of the Constitution provides for promotion social justice and eradication of social evils. Article 38 of the Constitution provides or promotion of social and economic wellbeing of the people.

4. These are the provisions, which guarantee to the citizens the rights, as are noted therein and each of them as essential to the citizen and also interdependent on each other. Most sacred among them is the 'right to life' and such right to life is not restricted only to the prosecution of a person but the state is required, as mandated in the Constitution, to ensure that all aspects of citizens' life are protected and dealt with by the State.

5. The provision of drinking water, is a right to life; provision of electricity, is a right to life; provision of education, is a right to life; provision of health facility, is a right to life; provision of civic infrastructure and civil infrastructure, is a right to life; so is the subject of transportation of the citizens, is a right to life, for without transportation neither can the citizen get education, engage in his trade, business or profession, nor can a citizen reach the healthcare institutions nor can a citizen obtain necessities of life, like, food, clothes, etc. and such needs keep on going 'ad infinitum'. The: pivotal thing to be noted is that the State is required to provide citizens, safe, humane and dignified means of travelling, from one destination to another, within and outside the Cities. This is also essential to ensure equality of the citizen and also as a social justice, to eradicate social evils and to promote social and economic wellbeing of the people. The State and its Organs cannot, as per mandate of the Constitution, abdicate, ignore or abandon this most important function of theirs and leave the citizens to fend themselves, which only drives the citizen towards anarchy. This is what is happening in Karachi today.'

2019 CLC Kar. 224 Aamir Lutuf Ali Zardari v Province of Sindh

'3. At this juncture, it would be relevant to say that there can be no denial to the well-established principle for exercising Constitutional Jurisdiction that 'in serving the interests of the community or public at large, the inconvenience and loss to an individual or some shall not come in the way, particularly when it involves fundamental rights of community or public at large'. Reference, if any, can well be made to the case of Pakistan Muslim League (N) (PLD 2007 SC 642). Since, the issue involved in the instant petition, being directly and prima facie relating to the 'healthcare' in a government hospital which otherwise is ensured / guaranteed by the Article 9 of the Constitution itself and was/is meant for public at large therefore, status of 'Custodian' of fundamental rights of public at large, compelled to take a pause on individual grievance of petitioner, and to direct Mr Asif Hyder Shah, Commissioner, Hyderabad Division to visit the hospital and to report so as to know whether matter, in fact, involves infringement of guaranteed fundamental rights or otherwise? The report had prima facie indicated poor rather miserable condition of hospital thereby denying such guarantee, with certain suggestions/recommendations with reference to admitted/acknowledged facts and positions i.e.:

(i) the poor rather miserable condition of hospital thereby infringing guarantee, provided by Articles 9 and 14 of Constitution;

(ii) recommendations/suggestions from skilled persons for uplifting the health care within four corners of admitted/acknowledged facts and law;

(iii) pendency of financial schemes/projects, already recommended, before quarter concern;

but was not being dressed up thereby resulting in denial to guarantee provided by Chapter-I of Part-II of Constitution. There can be no denial to the well-established fact that 'healthcare' does include the meaning of term 'life' because the term 'life' is not restricted to mere the vegetative or animal life or mere existence from conception to death but it (life) includes all such amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally, therefore, order dated 22.09.2015 was passed by this Court, which in fact was a hammer only to what was acknowledged and recommended by concerned and related persons i.e. Officials who otherwise are always under legal obligations and duty not only to perform their duties fairly but to accelerate that process which directly involves "guaranteed fundamental rights".

8. We find no legal justification that how and why the repair of lifesaving machines/equipments; availability of lifesaving drugs; assurance of hygienic condition in hospitals; non-release or delay of funds for seriously required schemes of healthcare; renovation and extension; repair of ambulance service; convenience of patients; ambulance service etc. can be ignored or delayed despite allocation of considerable funds under claim of the Government to provide healthcare facilities to every poor. Needless to add that the majority of our total population lives below the poverty line hence they are left with no option but to rush to government hospitals and even can't complain when three patients are to adjust on a single bed or even in Verandah(s) of such hospitals. This otherwise is a pure negation to the guarantee, provided by Article 14 of the Constitution that:

Article 14. Inviolability of dignity of man, etc---(1) The dignity of man and, subject to law, the privacy of home, shall be inviolable.

We are conscious that normally the Courts should avoid interference in independent affairs of other 'Organs' but whenever a question of 'fundamental rights of community or general public' is involved, this Court would be legally justified in departing from normal procedure. Needless to add that normal procedure is meant for normal situations but in abnormal situations a departure is always permissible and justified.

A reference can be made to the case of *Watan Party v. Federation of Pakistan* (PLD 2013 SC 167) it is held that:

8. From the bare reading of the Constitution, particularly, Articles 29 and 38 of Chapter 2, Part-II, relating to principles of policy, it is evident that policies are to be made by the respective Federal and Provincial Governments and all decisions regarding their implementation are also to be taken by them on the basis of determined priorities of different projects and availability of financial resources at their disposal. Obviously, this exercise cannot be ordinarily interfered with by this Court by invoking its jurisdiction under Article 184(3) of the Constitution, unless shown to be mala fide or in violation of the fundamental rights guaranteed under the Constitution to every citizen of this Country, thereby affecting the interest of public at large.

[Emphasis supplied]

Therefore, a 'tapping to slept organs' to do only what was always their obligations and duties cannot be avoided in name of procedural technicalities, if any, because procedural technicalities are always subordinate to substantial justice/fundamental rights of public at

large hence cannot prevail over such rights. This Court, being custodian of 'fundamental rights' is always competent to come forward for enforcement of such rights.'

PLD 2018 Lah. 1 Walid Iqbal v Federation of Pakistan

'13. In the present case, dense smog is physically visible in the city and the air monitoring record shows that it has gone above 300+ i.e., the highest level. Doctors have confirmed that the smog levels are seriously hazardous to health of the residents. In spite of the same no preventive measures to protect the life and health of the people have been put in place. This Court is bound to protect the fundamental rights of the people, therefore, relying on Article 9 of the Constitution, i.e., right to life, read with the internationally recognized precautionary principle, till such time that the Government proposes a detailed action plan, keeping in view the emergent nature of the current crises, the following plan shall be put in place:...'

PLD 2017 Kar 157 Getz Pharma v Federation of Pakistan

'Unlike 115 countries of the world, the Constitution of Pakistan, 1973 does not explicitly recognize the 'right to health'. However, since 'right to life' is enshrined under Article 9 of the Constitution, the said article when read with Article 14 which grants the right to 'dignity of man', in our view, gives birth to the 'right to health' as a fundamental right. Additionally, the said 'right to health' is also covered by several international human rights instruments, including the International Covenant on Economic, Social and Cultural Rights ("ICESCR"), ratified by Pakistan on 17 April 2008, which recognizes the right of nationals to the enjoyment of the highest attainable standard of physical and mental health. Specific obligations are set out by General Comment 14 (a legally binding key source document seeking to develop and apply human rights principles and standards via the interpretation of the human right to health through the UN Committee on Economic, Social and Cultural Rights), under which States are bound to respect, protect, and fulfil the right to health and make good-quality services and goods available, accessible, and acceptable. ICESCR so far however provides the most comprehensive coverage of the issue. As of 1995, one hundred and thirty-two states, including Pakistan, India, and Brazil have ratified the said Covenant. Article 12.1 of the Covenant defines the right to health from an availability and accessibility framework. In regards to 'availability', the Covenant lays out the responsibility of the State to provide essential drugs (as defined by the WHO Model Lists of Essential Medicines). Also, under the said Covenant, a State has the international obligation to "...facilitate access to essential health facilities, goods and services in other countries, wherever possible and provide the necessary aid when required". The 'affordability' or economic accessibility section of the Covenant stresses that health services, whether privately or publicly owned, be made affordable for all, including the disadvantaged populations. Therefore, it is the State's obligation to ensure that its population has the financial means to access such goods as medicines. Article 12.2(d), the right to health facilities, goods and services of the Covenant provides for the creation of conditions which would assure to all medical service and medical attention in the event of sickness. Article 12 also includes information on a State's obligation to provide equal health care and services; a denial of which could be considered non-overt discrimination based on wealth. Therefore, the State is not permitted to favour expensive health services that benefit a few privileged, over reasonably priced medicines and preventative medicine that improves public health broadly.

According to Edwin, Jonathan James (Access to medicines as a right to health, and the conflict between innovators and generics -- November 2012, The University of British Columbia) obligations on a State to provide its people with the right to health under the said Covenant falls into three categories: respect, protect, and fulfil. The obligation to 'respect', according to

him, means that a State should not interfere with a person's enjoyment of their right to health, including the denial of health services to marginalized populations. The obligation to 'protect' has strong implications to the access to medicines issue, as it outlines that a State must protect the guarantees made under Article 12 of the Covenant by preventing third party interference. A State has the responsibility to oversee and keep in check the marketing practices of medicines by the pharmaceutical industry. The obligation to 'fulfil' holds the State responsible for implementing legislation and policies that allow its population to realize the right to health. With regards state's duty to ensure access to medicines, a State, as per Edwin, can be found in violation to the above listed obligations, if the State:

- ignores such laws while entering into bilateral or multilateral agreements with other parties (States, international organizations, multinational corporations),
- fails to regulate the actions of other parties who may infringe on the right to health of their population (i.e. failure to protect consumers and workers from practices detrimental to health),
- fails to implement national policies that ensure the right to health for all, particularly marginalized populations.

Beside the said Covenant, the right to health can also be found incorporated into several other declarations as follows:

- WHO Constitution
- Article 25.1 of the Universal Declaration of Human Rights
- Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Articles 11 and 12 of the Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Article 24 of the Convention on the Rights of the Child (1989)
- Articles 12.1/12.2 of the International Covenant on Economic, Social and Cultural Rights (1966)
- The 1989/11 resolution to the Commission on Human Rights
- The Vienna Declaration; and
- The International Bill of Rights

The above discussion culminate to a point that access to affordable drugs has been interpreted to be part of the right to health (Blood, Plasma, and Plasma Proteins: A Unique Contribution to Modern Healthcare by Jose Luis Valverde, Published by IOS Press), which as per above deductions emerges as a fundamental right in the light of Articles 9 and 14 of the 1973 Constitution.

The foregoing discussion reveals that access to affordable drug, being part of 'right to life' is an obligation undertaken by the state under the Constitution, as well as, pursuant to many international covenants including ICESCR. While at the same time TRIPs agreement and Doha Declaration provided flexibility to have lifesaving drugs (at least) be reproduced through national means by invoking compulsory licensing options by the respondent (MoH) who is mandated to respect, protect, and fulfil the right to health and make good-quality services and drugs available and accessible at affordable prices.'

PLD 2020 Lah. 229 Muhammad Ahmad Pansota v Federation of Pakistan

'52. When one violates the right to food, the enjoyment of other human rights, such as the right to health , education, life, adequate housing, work and social security may also be marred and vice versa. State was duty bound to legislate, to protect the wastage of excess food and to start awareness campaigns to sensitize the people in such regard to achieve the target of food security.'

PLD 2022 Lah. 773 Meera Shafi v Federation of Pakistan

'34. Dignity of man is a cherished value under our Constitution and Article 14 thereof not only declares it as such but also enjoins that it is inviolable. In the light of the jurisprudence discussed above, it includes the right to reputation. Even otherwise, it is well settled that the fundamental rights enumerated in a written constitution are not mutually exclusive. The provisions conferring those rights have to be harmoniously and purposively interpreted in order to give full measure of the freedoms to the people to which they are entitled.'

CLD 2020 Lah 638 Muhammad Shoaib Arshad

'10. The above interpretation is also in consonance with the settled law that when two constructions are reasonably possible, then preference should be given to one which helps to carry out beneficial purpose of the Ordinance and ensue smooth and harmonious working of the Constitution and eschew the other which will lead to absurdity and make the fundamental right nugatory.'

PLD 2008 SC 522 Accountant General Sindh v Ahmed Ali U. Qureshi

'18.... whereas this is well settled principle of interpretation of statutes that redundancy cannot be attributed to any provision of the Constitution rather in case of any conflict in two provisions, the rule of harmonious interpretation is to be followed.'

Appendix 2: Relevant international human rights instruments

Universal Declaration of Human Rights (UDHR)

Pakistan became signatory to the UDHR in 1948. Article 25.1 of the UDHR prescribes:

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) 1965

Pakistan ratified the ICERD in 1966. Article 5 of the ICERD prescribes:

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

...

(d) Other civil rights, in particular:

...

(iv) The right to public health, medical care, social security and social services.

Convention on Elimination of All Forms of Discrimination Against Women 1979 (CEDAW)

Pakistan ratified CEDAW in 1996. Article 12. CEDAW stipulates:

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

2. Notwithstanding the provisions of paragraph I of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Convention on the Rights of the Child of 1989 (CRC)

Pakistan ratified the CRC in 1990. Article 24 of the CRC stipulates:

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.
2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:
 - (a) To diminish infant and child mortality;
 - (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
 - (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
 - (d) To ensure appropriate pre-natal and post-natal health care for mothers;
 - (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;
 - (f) To develop preventive health care, guidance for parents and family planning education and services.
3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.
4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Convention on the Rights of Persons with Disabilities 2006 (CRPD)

Pakistan ratified the CRPD in 2011. Article 25 of the CRPD prescribes that:

States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation. In particular, States Parties shall:

Provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes;

Provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities, including among children and older persons;

Provide these health services as close as possible to people's own communities, including in rural areas;

Require health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent by, inter alia, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation of ethical standards for public and private health care;

Prohibit discrimination against persons with disabilities in the provision of health insurance, and life insurance where such insurance is permitted by national law, which shall be provided in a fair and reasonable manner;

Prevent discriminatory denial of health care or health services or food and fluids on the basis of disability.

International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966

Pakistan ratified the ICESCR in 2008. Article 12, ICESCR prescribes:

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.

Appendix 3: Constitutions that recognize the independent constitutional right to health

Nepal

30. Right to Clean Environment: (1) Every citizen shall have the right to live in a clean and healthy environment.

(2) The victim shall have the right to obtain compensation, in accordance with law, for any damage caused by environmental pollution or degradation.

35. Right relating to Health: (1) Every citizen shall have the right to free basic health services from the State, and no one shall be deprived of emergency health services.

(2) Every person shall have the right to get information about his or her medical treatment.

(3) Every citizen shall have equal access to health services.

(4) Every citizen shall have the right of access to clean drinking water and sanitation.

Democratic People's Republic of Korea

Article 56. The State shall consolidate and develop the system of universal free medical service, and consolidates the section doctor system and the system of preventive medicine to protect people's life and improve working people's health.

Article 72. Citizens are entitled to free medical care, and all persons who are no longer able to work because of old age, illness or a physical disability, the old and children who have no means of support are all entitled to material assistance. This right is ensured by free medical care, an expanding network of hospitals, sanatoria and other medical institutions, State social insurance and other social security systems.

Indonesia

Chapter XA. Fundamental Human Rights:

Article 28H (1) Each person has a right to a life of well-being in body and mind, to a place to dwell, to enjoy a good and healthy environment, and to receive medical care.

(2) Each person has the right to facilities and special treatment to get the same opportunities and advantages in order to reach equality and justice.

(3) Each person is entitled to social security enabling him to develop his entire self unimpaired as a dignified human being.

Section XIV National Economy and Social Welfare:

Article 34 (3) The state has the responsibility to provide proper medical and public service facilities.

Cambodia

Article 72

The health of the people shall be guaranteed. The State shall pay attention to disease prevention and medical treatment. Poor people shall receive free medical consultations in public hospitals, infirmaries and maternity clinics.

The State shall establish infirmaries and maternity clinics in rural areas.

China

Article 21

To protect the people's health, the state shall develop medical and health care, develop modern medicine and traditional Chinese medicine, encourage and support the running of various medical and health facilities by rural collective economic organizations, state enterprises, public institutions and neighbourhood organizations, and promote public health activities.

To improve the people's physical fitness, the state shall develop sports and promote public sports activities.

Fiji

36. Right to adequate food and water

(1) The State must take reasonable measures within its available resources to achieve the progressive realization of the right of every person to be free from hunger, to have adequate food of acceptable quality, and to clean and safe water in adequate quantities.

(2) In applying any right under this section, if the State claims that it does not have the resources to implement the right, it is the responsibility of the State to show that the resources are not available.

38. Right to health

(1) The State must take reasonable measures within its available resources to achieve the progressive realization of the right of every person to health, and to the conditions and facilities necessary to good health, and to health care services, including reproductive health care.

(2) A person must not be denied emergency medical treatment.

(3) In applying any right under this section, if the State claims that it does not have the resources to implement the right, it is the responsibility of the State to show that the resources are not available.

41. Rights of children

(1) Every child has the right

b. to basic nutrition, clothing, shelter, sanitation, and health care

42. Rights of persons with disability

(1) A person with any disability has the right –

(a) to reasonable access to all places, public transport and information;

(b) to use sign language, Braille or other appropriate means of communication; and

(c) to reasonable access to necessary materials, substances and devices relating to the person's disability.

(2) A person with any disability has the right to reasonable adaptation of buildings, infrastructure, vehicles, working arrangements, rules, practices or procedures, to enable their full participation in society and the effective realisation of their rights. (3) To the extent that it is necessary, a law or an administrative action taken under a law may limit, or may authorise the limitation of, the rights set out in this section.

Japan

Article 25: All people shall have the right to maintain the minimum standards of wholesome and cultured living

In all spheres of life, the State shall use its endeavours for the promotion and extension of social welfare and security, and of public health.

Vietnam

Chapter II: Human Rights and Citizen's Fundamental Rights and Duties

Article 38

1. The citizen is entitled to health care and protection, equal in the use of medical services, and has the duty to practice regulations with regards to prophylactics, and medical examination and treatment.

2. Any acts threatening the life and health of other people are strictly prohibited.

Chapter III: Economy, Society, Culture, Education, Science, Technology, and Environment

Article 58

1. The State shall invest in the development of the protection and care of the People's health, provide health insurance for the entire people and exercise a priority policy of health care for ethnic minorities, highlanders, islanders and people living in extremely difficult socio-economic conditions.

2. It is the responsibility of the State, society and family to ensure care and protection for mothers and children and family planning implementation.

Article 20

3. Everyone has the right to donate human tissues and organs and to donate corpse in concordance with the law. Medical, pharmaceutical, and scientific experimentation and any other forms of experimentation on human body must have the agreement of the applied

South Africa

24. Everyone has the right –

(a) to an environment that is not harmful to their health or wellbeing; and

(b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that –

(i) prevent pollution and ecological degradation;

(ii) promote conservation; and

(iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

27. (1) Everyone has the right to have access to –

(a) health care services, including reproductive health care;

(b) sufficient food and water; and

(c) social security, including, if they are unable to support themselves and their dependents, appropriate social assistance.

Uruguay

Article 44

The State shall legislate on all questions connected with public health and hygiene, endeavouring to attain the physical, moral, and social improvement of all inhabitants of the country.

It is the duty of all inhabitants to take care of their health as well as to receive treatment in case of illness. The State will provide gratis the means of prevention and treatment to both indigents and those lacking sufficient means.

Latvia

111. The State shall protect human health and guarantee a basic level of medical assistance for everyone.

Senegal

Article 8

The Republic of Senegal guarantees to all citizens the fundamental individual freedoms, the economic and social rights as well as the collective rights. These freedoms and rights are notably:

the civil and political freedoms: freedom of opinion, freedom of expression, freedom of the press, freedom of association, freedom of assembly, freedom of movement [déplacement], [and] freedom of manifestation,

the cultural freedoms,

the religious freedoms,

the philosophical freedoms,

the syndical freedoms,

the freedom of enterprise,

the right to education,

the right to know how to read and to write,

the right to property,

the right to work,

the right to health,

right to a healthy [sain] environment,

[and] the right to plural information.

These freedoms and these rights are exercised within the conditions provided for by the law.

Article 17

The State and the public collectivities have the duty to see to the physical and moral health of the family and, in particular of the handicapped persons and of elderly [âgées] persons.

The State guarantees to families in general, and to those living in [the] rural milieu in particular[,] the access to the services of health and of wellbeing. It guarantees equally to women in general and to those living in [the] rural milieu in particular, the right to alleviation of their conditions of life.

Thailand

Section 47. A person shall have the right to receive public health services provided by the State. An indigent person shall have the right to receive public health services provided by the State free of charge as provided by law. A person shall have the right to the protection and eradication of harmful contagious diseases by the State free of charge as provided by law.

Section 48. The rights of a mother during the period prior to and after giving birth shall be protected and assisted as provided by law. A person who is over sixty years of age and has insufficient income for subsistence and an indigent