

# Right to Health Care

## Towards an Agenda

*By way of commemorating the 25-year old Alma Ata Declaration on health for all, the health movement organised a three-day programme on the right to health. Included were public submissions on denial of health care that illustrate the deterioration in the public health system.*

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The national level programme held recently (September 5, 6, 2003) in Mumbai on the Right to Health Care, is an important step forward in the health movement in India. This programme organised by the Jan Swasthya Abhiyan (JSA) was the way health activists in India decided to commemorate the 25th anniversary of the famous 'Health for All by 2000 A D' Declaration that emerged from the Alma Ata conference, inaugurated on September 6, 1978. It may be recalled that the JSA, formed in the Peoples' Health Assembly (PHA) held in Kolkata in December 2000, is a broad nationwide health coalition, consisting of hundreds of organisations which have decided to pursue the aim of the Alma Ata conference. This major JSA programme at the national level, hosted by CEHAT, had two components. On September 5, there was a national workshop of JSA activists, 'health advocates', on the need to launch a campaign on right to health care, and to discuss the various aspects. Over 250 JSA representatives from 16 states, participated in these deliberations.

It emerged from these discussions that the gap between words and deeds on the issue of Right to Health Care is glaring and is increasingly unacceptable to the people.

Various international declarations, the constitutional guidelines and the Supreme Court judgments are in favour of Right to Health and Health Care. Various UN health rights instruments refer to health related rights. The UN International Covenant on Economic, Social and Cultural Rights (ICESCR), UN Conventions on Rights of the Child (CRC) and the UN Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) are some such significant conventions, to which India is a signatory. The famous Alma Ata Declaration signed in September 1978 by government representatives of 134 countries including the Indian representative, had also declared health as a fundamental human right.

Though the Indian Constitution has not included the right to health care as a constitutional right, the Supreme Court in its judgments has interpreted Article 21 (Fundamental right to life) and Article 47 of the Directive Principles (which mentions improving health of the citizens as one of the duties of the government) to mean the right to life as right to life with dignity, including access to basic health care as a right. But all these declarations and judgments have not been taken up seriously either by the state officials nor by the civil society actors. In the last 10 years, thanks to the policy of privatisation, the

state is withdrawing more and more from its function of providing essential services like health services, education, public distribution system, etc. The proportion of central government's expenditure on health care as proportion of GDP, reduced from 1.3 per cent to 0.9 per cent during 1990 to 1999, while the WHO recommendation has been 5 per cent! Maharashtra government's health expenditure too has declined from 1 per cent to 0.6 per cent of State Domestic Product, during 1985-86 to 2002-03. The Indian health care system is the most privatised in the world, with 83 per cent of health care expenses being borne privately, mostly out-of-pocket, compared to 6 per cent in UK and 56 per cent in the US. No wonder, that even those 20 per cent of patients who seek medical care in the public health facilities are increasing getting less and less quality care there. With private health care being expensive and often exploitative, people are finding it more and more difficult to financially cope up with illness-episodes. Studies have shown that 40 per cent of patients admitted in hospitals have to take loans or sell precious belongings to pay for medical expenses. Given this further worsening, it is no wonder that ordinary people and activists strongly feel that "something needs to be done".

The September 5-6, workshop and consultation was meant to draw the attention of the people, the media, the politicians, opinion and decision-makers to this dire state of affairs of deterioration of public health services and to the need to make health care as a constitutional right. On September 5, after a plenary session in which the above was discussed, there were group discussions on different aspects of health care as a fundamental right – right to basic (including PHC) health services, women's access to health care; right to essential drugs; health care rights of unorganised workers and urban poor; health rights of HIV-positive persons the special responsibilities of health-professionals and health rights during conflict situations, as recently exemplified by the situation created by the Gujarat carnage. Similarly, there were short plenary presentations on 'children's right to health care', 'right to mental health care', 'health care related to the private medical sector' and 'health sector employees and the right to health care'. It emerged through these presentations and discussions that the health care needs of various vulnerable sections have been neglected and a

comprehensive strategy to address these is required.

The most appealing, participatory part of this day's programme was the session on 'cases of denial of health care'. In this session, in parallel, languagewise groups, grass roots activists narrated in their own language, tragic stories of how because of gross deficiency/neglect/absence of health care in PHCs rural hospitals and urban public health facilities, their relatives suffered heavily or even lost their lives. In all about 50 such cases were presented, based on careful documentation by JSA activists in different states with the help of a questionnaire. Six of these cases were presented the next day in a larger gathering of about 300 people in a programme chaired by Justice Anand, chairperson of the National Human Rights Commission:

– Suchitra Devi (name changed), was motivated by the ANM to undergo sterilisation at the tubectomy camp in Halharmau PHC, in Uttar Pradesh. She was made to sign papers, but not explained their contents, and nature of information. She expired during the operation, although it is a minor and routine procedure. All the PHC staff, including the doctor, then, fled from the PHC, without informing the relatives of the deceased. Members of her family found her dead body on a stretcher outside the operation theatre.

– Twelve year old, Neeta, from Malakapur was bitten by a rabid dog. She was taken to the district hospital in Moradabad, but not given appropriate anti-rabies vaccine. She expired after some time, along with three others from the same village who had similarly been bitten and were denied the vaccine.

– Tukaram, a resident of Thane district was bitten by a snake. He was first taken to Saralgaon PHC, in Maharashtra. Next he was taken to Murbad rural hospital. Here too anti-snake venom was not available and some injections were purchased from outside. He was also made to wait in a queue and go through routine procedure. Tukaram died the same day.

– One year old Asha, resident of Mokhada, Thane district had swollen eyes and pneumonia. Her parents took her to the PHC, twice but there was no doctor available. When they took Asha to another PHC, the doctor said she needed to be admitted but there was no space at the PHC, which had only a single bed. They kept her in a neighbour's home and she was being treated from there. This doctor too later went away and eventually the baby expired.

– Chotu and his family of three – father, mother and sister were all suffering from tuberculosis. Dr Biswas of West Bengal referred them to the government hospital for treatment of TB, by DOTS. They were refused DOTS treatment because they did not have a ration card, and since their name was not mentioned in the voter's list. When Dr Biswas next met Chotu, his father and little sister had expired.

Justice Anand in his inaugural speech stated that Supreme Court has taken a view that health care is a human right. But unless there is much more awareness amongst the public on this issue and unless our health care system and professionals become sensitive to people's needs, things cannot go further. At the end of this inaugural speech, Justice Anand took a welcome position that "Obligation of the state to take care of primary health is paramount, total and absolute. The state cannot avoid its constitutional obligation on account of financial constraints." Satyaranjan Sathe, the renowned constitutional expert and former principal, ILS Law College, Pune, took a stand that the government was acting against the Constitution by abdicating its responsibility of providing basic health care to people. He also stressed that without increased awareness and civil society pressure, mere judicial, constitutional actions would not realise the aim of health care as a fundamental right. In a systematic presentation, the JSA's view about the right to health care was put forth by Abhay Shukla of CEHAT. Amongst other things, he pointed out that even within the bounds of the market-economy, the states in developed countries except the US have created a system of universal access to health care and India should move towards such a system of health care through reforms and legally enforceable entitlements. He pointed out that NHRC in its recommendations of workshop in April, 2000 has clearly recommended that the right to health be expressly transformed and declared as a fundamental right, and a

suitable amendment to the Constitution be made to this effect. Unfortunately senior government health officials who were invited, did not turn up for this programme as promised.

In response to the JSA presentation and of the six representative cases of denial of health care to poor person, Justice Anand, said that these cases were 'heart-rending'. He recounted how as a judge and as chief Justice of Supreme Court, he heard about cases of callous neglect of patients. In one such case a patient of head injury was shifted one after the other, to seven(!) public hospitals in Kolkata in 12 hours before being admitted and treated in a private hospital. He welcomed the suggestion by the JSA that NHRC should hold regional consultation on right to health care. The JSA has decided to pursue this matter so that these and many other cases of clear denial of health care can be recorded officially by NHRC and consequently some official enquiry process as well as widespread public debate be initiated to put pressure on the official machinery to make amends. The programme ended with all the participants taking the following pledge in presence of Justice Anand:

On this day, September 6, 2003, on the occasion of the 25th anniversary of the historic 'Health for All by 2000 AD' declaration, we as national representatives of Jan Swasthya Abhiyan, take the following pledge:

We regard the right to the highest attainable standard of health as an inalienable human right. We declare that the right to health care should be made a fundamental right in the Indian Constitution, and that this right must be enforced immediately through appropriate legal and executive measures. We pledge to work tirelessly to resist the denial of this right in all forms and at all levels, and to mobilise our fellow countrymen and women towards the establishment of the right to health care as an important milestone on the way to the realisation of the dream of 'Health for All'. **EPW**

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