

## Dilemma of health rights of vulnerable citizens: A narrative review

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### Abstract

Vulnerable populations have traditionally faced non-availability of health services. Enforcement of constitutional protections to vulnerable citizens is essential to secure the health rights for them. The current narrative review was planned in the perspective of laws related to health rights by reviewing and highlighting such provisions in the constitutions of different countries and the scope of the World Health Organization (WHO), and to compare them with the on-ground situation prevailing in Pakistan. The findings can invoke debate, inspire research and facilitate the recognition of the enabling provisions for healthcare guaranteed in the Constitution. Data was searched related to constitution and health affairs of countries, including Pakistan, United States, United Kingdom, China, Saudi Arabia and India, using search engines, databases and different websites. Of the 170 reports, publications and articles downloaded, 30(17.6%) full-text articles, publications and reports in English language were used for the narrative review.

**Keywords:** Health, Rights, Vulnerable population

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### Introduction

Universal health coverage (UHC) is an essential tool to ensure that no one is excluded by any means to avail the required health services.<sup>1</sup> However, vulnerable individuals and groups face exclusion from use of health services as well as social services due to a number of factors<sup>1</sup>. Vulnerable population is the population which is vulnerable to abuse of human rights, and includes children and women, disabled, elderly, refugees, internally displaced and stateless persons, minorities, those affected by human immunodeficiency virus (HIV), transgenders etc.<sup>2</sup>

In Pakistan, there is a self-perpetuating myth that the ordinary citizen does not enjoy any inherent right to free public healthcare, and fundamental rights are

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guaranteed to the extent of economic, education and other rights only. This notion may have crept in as medical and health professionals have apparently not approached this subject in tandem, or perhaps this is more of a constitutional public health matter than of public health alone, and is beyond the scope of public health professionals who have not been exposed to international public health legislation. Perhaps due to this misconception, no serious and concerted efforts have been made to emphasise that health rights in Pakistan are embedded in the country's Constitution,<sup>3</sup> and a calm and laidback approach has been adopted by civil society, health practitioners and public health experts. Due to the fact that the affluent and prosperous segment of society prefers and can afford private healthcare, the vulnerable, under-privileged and poor are left to be catered to by the public healthcare system in matters related to even basic health needs. The provision of constitutional protection to vulnerable individuals and groups is, hence, essential. Efforts have been made by the United Nations as well as activists and scholars in connection with expanding the scope of human rights to health.<sup>4</sup>

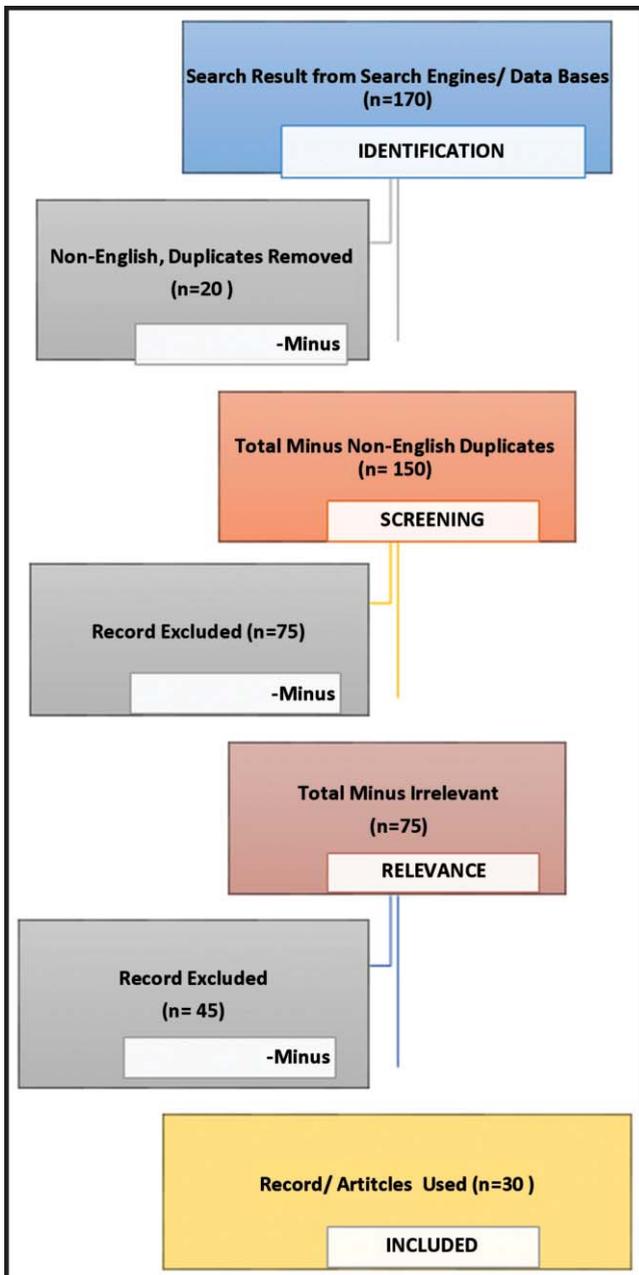
To examine health issues threadbare in the perspective of human rights laws is an important dimension,<sup>4</sup> as the quality of life (QOL) of this threatened population group is affected.<sup>5</sup> They face the additional drawback of being unable to project their voice on the media and agitate, which further compromises their productivity and affects their capacity to earn a livelihood. The current narrative review, as such, was planned to highlight constitutional provisions in different countries and under the banner of the World Health Organisation (WHO), and to compare them with the on-ground situation in Pakistan. The review has immense significance since this can invoke debate and facilitate the recognition of the constitutional provisions that ensure state's responsibility to provide healthcare to the masses, especially the vulnerable population.

### Methods and Results

The narrative review comprised data search for publications related to constitutions and health affairs of different countries of the world, including the United States, the United Kingdom, China, Saudi Arabia, India and Pakistan. The search was conducted on search

engines, like Google and Google Scholar, databases, like Medline and PubMed, and different websites. The key words used were: 'health rights', 'health', 'constitution', 'vulnerable population' and combination of these words.

Of the 170 publications, reports and articles downloaded, 75(44%) carried titles of relevance, and, of them, 30(40%) were used for literature review (Figure). Articles and publications not pertinent to the objective of study, non English language, repetitive and very old were excluded.



**Figure:** Literature search strategy.

## Discussion

Part I of the Islamic Republic of Pakistan's Constitution in its Article 3 stipulates that the "State shall ensure the elimination of all forms of exploitation and the gradual fulfillment of the fundamental principle, from each according to his ability to each according to his work",<sup>3</sup> and emphasises that every citizen's capability and productivity is not on the same plane as of others, and any citizen of Pakistan who is afflicted with a disability cannot be categorised with others who have no such infirmities. The Objectives Resolution provides that the citizens of Pakistan have an inalienable right to realise their potential in the international arena and contribute to humanity which is not possible unless all citizens of Pakistan are equally enabled.<sup>3</sup> However, to do so, a person has to be in the best possible state of mental and physical health, including accessibility to paediatric and geriatric healthcare. The Constitution directly and indirectly points to disability and health. It is enshrined in Article 25(3) that the State is required to ensure that women and children are protected.<sup>3</sup> What is noteworthy here is the grouping of women and children. The contents of Article 25A reveal that it is incumbent upon the State to ensure free and compulsory education to all children of a certain age bracket.<sup>3</sup> On this premise, no child, if unwell or suffering from any ailment or disability, may be dis-entitled to have access to healthcare. Article 35, Chapter II of the Principles of Policy, emphasises that there can be no segregation of the mother from the child as far as health rights are concerned, as not only the mother and the child have to be provided their legitimate healthcare needs, but the institutions of marriage and family are part of sanctioned constitutional health guarantees. Articles 25(3) and 35 of the Constitution hinge around the theme that the State has certain obligations towards the family institution manifested in provision of nutrition and appropriate healthcare for the mother and the child. The same concern is reflected in Article 38 wherein it is binding on health authorities to ensure access to medical care for those citizens of Pakistan who are unable to earn their livelihood on account of infirmity, sickness or unemployment.<sup>3</sup> The right of securing medical relief to such disadvantaged individuals is covered under the broad health and socio-economic umbrella.

All these provisions are consistent with the WHO charter, according to which highest possible level of health is envisaged as fundamental right of every human and this should be provided without discrimination on the basis of age, race, ethnicity, religion, certain diseases like acquired immunodeficiency syndrome (AIDS) and tuberculosis (TB), or on any other basis,<sup>6</sup> including refugees as well as internal displacements that act as barriers and result in

exclusion.<sup>1</sup> Thus, health right also demands that human rights be maintained and violation results in denial of rights. Vulnerable population, including those with mental health issues, still suffer inattention as regards public health.<sup>6</sup>

The WHO envisages and focusses on the vulnerable and marginalised population with a human health right-based approach, especially targeting practices that are discriminatory to the principles of accountability; non-discrimination to ensure provision of health rights without bias of gender, race, colour, religion, language, origin, political affiliation, family status, gender identity, socioeconomic etc., and participation of relevant stakeholders and non-state actors in the process.<sup>6</sup>

Surprisingly, in developed countries, like US, disparities exist in the provision of healthcare, especially in the vulnerable population,<sup>7</sup> and right to healthcare is deficient in official US documents with reference to rights.<sup>8</sup> Specifically speaking, the health right does not enjoy protection in UK's domestic laws, but it is covered under the Human Rights Act, 1998.<sup>9</sup> The European Convention on Human Rights (ECHR) Act in Section 3 places a statutory obligation on all state organs, including health services, to carry out State's obligations.<sup>10</sup>

According to the Chinese constitution, as contained in Article 21, there is a mandatory obligation on the State to establish medical and health services, to promote modern as well as traditional Chinese medicine, to provide support to establish medical and health facilities, and mass promotion of public health as well as development of social insurance, social medical and health services so the public may enjoy and realise its rights as State responsibility.<sup>11</sup> In connection with violation of the right to health, accountability framework is operating in China at different levels,<sup>12</sup> which is a significant and positive leap since accountability frameworks usually have three aims, comprising improved quality of healthcare provision, improved healthcare safety, and better healthcare result with minimal cost involvement,<sup>13</sup> as seen in the ongoing coronavirus disease 2019 (COVID-19) pandemic. However, according to Qiu and MacNaughton, there are hindrances in this accountability process due to longstanding cultural and political barriers.<sup>12</sup>

The Indian constitution guarantees right to the best possible state of physical and mental health, but petitions in connection with violation of the right to health, filed under Article 21, have been reported.<sup>14</sup> The state of health rights in the constitution of Saudi Arabia has a better outlook, with Article 31 stating that healthcare of every citizen is State's responsibility. Also, Article 27 ensures the

rights in case of emergency, sickness, disability as well as in old age.<sup>15</sup>

In the constitution of any country, a delicate balance needs to be collectively established between the compulsory requirements of the State in providing indiscriminate health coverage to individuals suffering from disabilities, permanent or temporary, universally recognised as a vulnerable category of citizens, thereby retarding their individual progression. The rulings by higher judiciary is that adequate healthcare is extendable to children suffering from hearing disabilities who are unable to articulate their needs and secure equal healthcare and opportunities, as embodied in the Constitution of Pakistan.<sup>3</sup>

Though the infant mortality rate in Pakistan has reduced from 64.6 in 2015 to 61.2 per 1,000 live births in 2017, it is still much higher than its neighbouring countries, like India with a rate of 32/1,000 live births and China with a rate of 8/1,000 live births.<sup>16</sup> Age-appropriate skills and education leading to academic growth and professional development is the intrinsic right of every child in Pakistan. The State is constitutionally obliged to create an enabling environment so as to secure for every disadvantaged child such health rights. Gender discrimination and marginalisation of women suffering from any disability or disease is evident in Pakistan which impacts on the health of the mother and the child. The level of expenditure on public health was Rs133.9 billion, or 0.45% of Pakistan's gross domestic product (GDP) in 2015-16,<sup>17</sup> which witnessed a slight increase to Rs203.74 billion, or 0.53% of the GDP, in 2018-19.<sup>16</sup>

Healthcare following the 18th Amendment to the Constitution resulted in the loss of stewardship functions of the federal government, while at the provincial level, it is confronted with lack of dedication and capability among departments. Besides, there are issues of in-service training, transparency, assessment of performance of staff, and resource for capacity building, which demands the development of a priority-based system.<sup>18</sup> The need of an accountability framework cannot be undermined and is an essential element for government-level campaigns, national healthcare reform programmes, healthcare service delivery which is now decentralised to local level, and other community-based health funds,<sup>19</sup> though positive steps have been taken to initiate dialogue at both professional as well as leadership level.<sup>20</sup> A study concluded that a special policy analysis framework, EquiFrame, which has been used for the evaluation of mental health policies in some countries, can prove to be a novel tool for the evaluation of mental health policies, keeping in view the concept of human

rights in relation to vulnerable population.<sup>21</sup>

The productivity of labour in Pakistan is lower in comparison with other Asian countries due to compromised physical and human capital<sup>22</sup> and a significant cause is lack of adequate nutrition, with the prevalence of malnutrition of all varieties in Pakistan commencing in early ages and persisting there, resulting in marred and stunted growth, frequent illness and increased susceptibility to diseases.<sup>23</sup> Those suffering from any disease or disability as well as females face discrimination at the time of pursuing employment or admission in educational institutions.<sup>24</sup> Campaigns for securing rights of individuals with disabilities have resulted in improved policies, plans and strategies, but, as this issue is related to capacity, the implementation is trudging along at a snail's pace.<sup>25</sup> As is claimed and to a welcome extent evident, the security environment in Pakistan has visibly improved which should have diverted public funds towards public healthcare. Such diversion of public-sector expenditure towards socio-economic agenda of which universal, accessible, quality healthcare and inclusive education are integral components, should have taken place, but it has not been witnessed yet.

According to a study, it is essential to consider ways to conduct meaningful engagements and manage power differentials when services are being arranged for the vulnerable population.<sup>26</sup> This would be in line with Article 25 of the Universal Declaration of Human Rights, which provides "the right to a standard of living adequate for health and well-being of individual and his family, including food, clothing, housing, 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".<sup>27</sup> The right to health is also included in the International Covenant on Economic, Social and Cultural rights (ICESCR), 1966, along with the right to physical and mental health, infant and child health etc.<sup>28</sup>

According to a study, public participation in healthcare governance and policy is essential to cater to the inequalities in the provision of healthcare<sup>29</sup> and to develop health knowledge that caters to sociocultural factors related to health having significant importance for the vulnerable population facing inequalities, stigmas and exclusion,<sup>29</sup> including transgenders, who also have the right to the best level of health for which coordinated efforts respecting their right to self-determination are required.<sup>30</sup>

In the current narrative review, some data limitations might have occurred due to the fact that search engines

had to be used due to the dearth of data on the subject in medical databases. Besides, the academic requirement of not including too many website references could not be met, which was also a limitation.

## Conclusion

There is a misconception prevalent amongst public health professionals that the Constitution of Pakistan does not provide for any fundamental rights for the vulnerable population, including the disabled. This is clearly a misplaced notion. Compromise on public health amounts to compromise on a country's development agenda and is the worst form of intellectual dishonesty. The constitutional provisions, as cited, were perhaps not extensively analysed in the past as it is basically a legal discourse. Any further feet-dragging in this area would represent criminal neglect, especially in the light of guarantees available in the WHO charter. If the pulse of excitement is still there in the public health community, the current narrative review and analysis should generate debate, inspire research, and lead to a demand for increasing awareness of securing individual health rights for the vulnerable citizens of Pakistan.

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