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Status of the Right to Health Care During the Covid-19 in Asia Under International Law

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Abstract

On January 30, 2020, the World Health Organization declared that the spread of COVID-19 is a public health emergency of international concern. Then, on March 11, 2020, the World Health Organization announced that COVID-19 is a global pandemic, calling on all countries to strive to confront it and limit its spread. As soon as COVID-19 was declared a global pandemic, the governments of all countries rushed to take strict measures, under the pretext of preventing the spread of the pandemic. International human rights law recognises in exceptional situations and serious threats to public health and public emergencies, such as wars, natural disasters, and epidemics, to restrict and suspend some rights to protect another higher right, which is the right to life, and to prevent any threats to public health. This paper will discuss the status of the right to health care during the spread of COVID-19 in some Asian countries. Through doctrinal and legal study and content analysis, this paper will analyse the important relevant legal provisions under international human rights law and applies these provisions to the reality of managing the COVID-19 crisis to identify the most prominent human rights violations to the right to health care in Asia during the COVID-19 outbreak. The Universal Declaration of Human Rights (UDHR), the ICCPR and the International Covenant on Economic Social and Cultural Rights will be used as a standard for the definition of relevant human rights. It is concluded that the COVID-19 pandemic has posed unprecedented challenges to global health systems, and its impact on the right to health care has been profound. In addition, this pandemic has shown the ugly fractures in health-care systems, health inequities, racism, and discrimination. The benefit of this paper is to provide recommendations that protect human rights during pandemics.

1. Introduction

On January 30, 2020, the World Health Organization proclaimed COVID-19's spread as an international public health emergency. Subsequently, on March 11, 2020, it classified COVID-19 as a global pandemic, urging countries worldwide to address and curtail its dissemination (World Health Organization, 2020).

Promptly after COVID-19 gained global pandemic status, governments worldwide swiftly enacted stringent measures to ostensibly contain its propagation. International human rights law acknowledges that during exceptional circumstances and grave threats to public health or emergencies such as epidemics, natural disasters, and wars, certain rights can be temporarily restricted or suspended to safeguard the paramount right to life and to avert risks to public health (Layachi, O.B., 2020; Al-Majri, K., 2020). The International Covenant on

Civil and Political Rights (ICCPR) stipulates that during a formally declared public emergency endangering the nation's existence, States Parties can undertake measures that derogate from their obligations under the Covenant to the extent necessitated by the crisis, provided these measures do not contravene other international obligations and do not involve discrimination based on race, colour, sex, language, religion, or social origin [29] (United Nations General Assembly, 1966b).

On March 16, 2020, several United Nations human rights experts urged governments globally to exercise restraint in their response to the COVID-19 pandemic, emphasizing the need for emergency measures to be proportionate, essential, and impartial [18]. Nonetheless, certain human rights possess absolute legal protection, with no room for derogation by any state, even during emergencies or epidemic outbreaks primarily, the rights to life and health care (United Nations General Assembly, 1966a; United Nations General Assembly, 1966b).

This paper aims to evaluate the status of the right to health care in Asia during the outbreak of COVID-19. However, this article will not cover all Asian countries. It will highlight some countries in East Asia, such as China, Taiwan, South Korea, and Japan. In addition to countries from Southeast Asia such as Malaysia, Indonesia, Singapore, and Vietnam. Also, India and Bangladesh from South Asia, and Iran and Turkey from West Asia.

Employing a doctrinal and legal analysis along with content scrutiny, this study will examine relevant legal provisions in international human rights law and assess their application to the COVID-19 crisis management reality. This analysis seeks to identify the most notable human rights infringements concerning the right to health care in some Asian countries during the COVID-19 outbreak. The Universal Declaration of Human Rights (UDHR), the ICCPR, and the International Covenant on Economic, Social, and Cultural Rights will serve as benchmarks for delineating pertinent human rights.

This paper will begin by clarifying the protection of the right to health care provided by international human rights law, and it will then explain the relationship between the right to health care, sustainable development and ESG factors. Hence, it will focus on assessing the health care situation during Covid-19 in some Asian countries.

2. Protection Of The Right To Life And Health Care Under International Law

The fundamental human right to life serves as the cornerstone of all rights. Should this right be left unprotected, the necessity of other rights becomes irrelevant. The Universal Declaration of Human Rights (UDHR) affirms: "Every individual has the entitlement to life, freedom, and personal security" (United Nations General Assembly, 1948).

Under international law, the right to life remains inviolable even in moments of crisis (United Nations General Assembly, 1948). Illegitimate and arbitrary deprivation of life is universally prohibited. The International Covenant on Civil and Political Rights (ICCPR) declares: "1. Every human being possesses the inherent right to life. This right must be safeguarded by legal means" (United Nations General Assembly, 1966a; United Nations General Assembly, 1966b).

The right to health care is intimately linked to the right to life, making it a crucial safeguard. International human rights law guarantees every individual the entitlement to the highest attainable standard of health and imposes on states the responsibility to avert public health threats and deliver medical care to those in need. The International Covenant on Economic, Social, and Cultural Rights establishes: "The parties to this Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

Steps to achieve the full realization of this right shall encompass provisions for:

1. Decreasing stillbirth and infant mortality rates and promoting healthy child development.
2. Enhancing environmental and industrial hygiene in all respects.
3. Preventing, treating, and managing epidemics, endemic, occupational, and other illnesses.
4. Establishing conditions that ensure access to medical services and attention during illness" (United Nations General Assembly, 1966b).

Furthermore, the International Covenant on Economic and Social Rights underscores that these rights, including the right to health care, should be exercised without any form of discrimination: "The rights outlined in this Covenant should be exercised without distinction of any kind, such as race, color, gender, language, religion, political or other opinion, national or social origin, property, birth, or other status" (United Nation Committee on Economic, Social and Cultural Rights, 2000).

On August 11, 2000, the United Nations Committee on Economic, Social, and Cultural Rights, responsible for monitoring compliance with the International Covenant on Economic, Social, and Cultural Rights, issued a general comment no. 14. This comment delineates four constituents of the right to health, as follows (United Nation Committee on Economic, Social and Cultural Rights, 2000):

1. Availability: The nation must ensure an adequate supply of public health facilities, healthcare services, goods, and programs.

2. Accessibility: Access to health facilities, services, and goods should be unrestricted and non-discriminatory, especially for marginalized or vulnerable groups such as ethnic minorities, women, children, the elderly, disabled individuals, and the critically ill.
3. Acceptability: All services and facilities should respect medical ethics and cultural norms.
4. Quality: Health services and facilities should meet medical and scientific standards. Services must be safe, effective, people-centered, timely, equitable, integrated, and efficient.

3. The Relationship Between the Right To Health Care, Sustainable Development And Esg Factors

As the world continues to grapple with complex challenges ranging from environmental degradation to social inequality, the interconnection between various facets of human well-being becomes increasingly evident (Sadiq, M. Ngo, T. Pantamee, A. Khudoykulov, K. Ngan, T. & Tan, L, 2023). One particularly intricate nexus exists between the right to health care, sustainable development, and Environmental, Social, and Governance (ESG) factors.

The principle of sustainable development emerged as a response to the recognition that societal progress should not compromise the ability of future generations to meet their own needs. One of the 17 Sustainable Development Goals established by the United Nations in 2015 is "Good Health and Well-being". The official wording is: "To ensure healthy lives and promote well-being for all at all ages" (United Nations, 2015).

ESG factors have gained substantial prominence in the realm of corporate and investment decision-making. Environmental factors consider a company's impact on natural resources and ecosystems. Social factors encompass a company's treatment of its employees, stakeholders, and the broader community. Governance factors relate to a company's internal structure, ethical practices, and accountability mechanisms. Increasingly, organizations are realizing that sound ESG practices contribute not only to long-term financial performance but also to societal resilience and stability (Peterdy, K., 2022).

The intersections between the right to health care, sustainable development, and ESG factors are multifaceted and profound. Accessible and effective health care is integral to achieving equitable societal development, as a healthy population is more productive, educated, and capable of contributing to economic growth. Conversely, sustainable development provides a conducive environment for better health outcomes by addressing factors like clean water, sanitation, education, and poverty eradication (Peterdy, K., 2022).

ESG factors contribute to both the realization of the right to health care and the advancement of sustainable development. Corporations that prioritize employee well-being, community engagement, and environmental stewardship often create positive externalities that bolster public health and social cohesion. Additionally, investments in health care infrastructure, research, and innovation align with sustainable development objectives, yielding benefits that extend beyond financial returns (Global Data, 2021).

Despite the inherent synergy between the right to health care, sustainable development, and ESG factors, challenges persist. Global disparities in access to health care remain a critical issue, with marginalized communities disproportionately bearing the burden. Similarly, while progress has been made on the sustainable development front, urgent action is needed to mitigate environmental degradation and social inequalities (Global Data, 2021).

The harmonization of these elements presents opportunities for innovative policies and partnerships. Public-private collaborations can foster investments in health care and sustainable development projects, generating positive ESG outcomes. Integrating ESG considerations into health care systems can enhance resource efficiency, patient outcomes, and overall social well-being (Boffo, R., and R. Patalano, 2020).

4. Navigating the Right of Health Care in Asia During the Spread of Covid-19

4.1 "Territory"

The COVID-19 pandemic has disrupted lives and economies across the globe, straining health care systems and underscoring the importance of the right to health care. In Asia, where diverse health care infrastructures coexist, the pandemic has revealed varying degrees of success in upholding this fundamental human right (OECD/WHO, 2020).

The onset of the COVID-19 pandemic originated in Asia, specifically in Wuhan, Hubei, China, and has since spread extensively across the continent (OHCHR, 2020). Among the Asian nations, those with the greatest numbers of confirmed coronavirus cases include India, South Korea, Turkey, Vietnam, and Iran. Although Asia was the initial epicenter of the outbreak, proactive responses from certain Asian countries, notably Bhutan, Singapore, Taiwan, and Vietnam, enabled them to manage the situation relatively effectively. China faced

criticism for initially downplaying the outbreak's severity, yet its comprehensive response has largely contained the disease since March 2020 (Burki T., 2020).

As of July 2021, the countries with the highest death numbers include India, Indonesia, Iran, and Turkey, collectively surpassing 900,000 deaths, with each country reporting more than 90,000 fatalities. Nevertheless, in the cases of Iran and Indonesia, the actual death toll is suspected to be significantly higher than officially reported figures (Allard, T. & Lamb, K*., 2020).* When considering per capita figures, several Western Asian nations have experienced disproportionately high death rates, with Georgia having the highest per capita deaths, closely followed by Armenia, and Iran ranking third. In contrast, China has recorded the lowest per capita death rate (The Johns Hopkins Coronavirus Resource Centre, 2023).

Several Asian countries rapidly mobilized resources to ensure access to health care services amid the pandemic. Governments expanded hospital capacities, established temporary treatment centres, and bolstered telemedicine services. South Korea's efficient testing and contact tracing, for instance, exemplify effective measures to mitigate the virus's spread while safeguarding the right to health care (Túri, G., & Virág, A., 2021).

The Ministry of Health (MOH) and the Malaysian Government's response to the COVID-19 situation encompassed all aspects outlined in the WHO SPRP. This approach comprised five key domains, including (i) a comprehensive whole-of-government strategy, (ii) implementation of a cordon sanitaire/lockdown, (iii) ensuring equitable access to services and support, (iv) establishing effective quarantine and isolation systems, and (v) enacting appropriate legislation and enforcement measures. Notable actions involved the establishment of a centralized multi-ministerial coordination council, with MOH in an advisory role, collaborating with non-governmental organizations and private sectors. This collaboration facilitated a targeted and efficient screening approach. Furthermore, initiatives such as subsidized COVID-19 treatment and screening were introduced. Rigorous protocols were enforced, including the isolation or quarantine of individuals with confirmed cases, close contacts, and those under investigation, without discrimination based on citizenship. These actions were supported by the Prevention and Control of Infectious Diseases Act 1988. Through the effective implementation of these combined measures, the country managed to effectively curtail the COVID-19 outbreak by the conclusion of June 2020 (Ang, Z. Y., Cheah, K. Y., Shakirah, M. S., Fun, W. H., Anis-Syakira, J., Kong, Y. L., & Sararaks, S., 2021).

However, despite these efforts, significant human rights violations have been observed across Asia. One prominent violation is the unequal access to health care, disproportionately affecting marginalized communities. Limited resources, overcrowded living conditions, and lack of information have hindered the ability of vulnerable populations to access testing, treatment, and preventive measures. In countries like India and Indonesia, migrant workers and slum dwellers faced challenges in receiving adequate health care services, highlighting the systemic inequalities within health care systems. Moreover, the confinement of individuals, often without access to proper medical care or due process, raises concerns about human dignity and the protection of civil rights (Downey, L.E., Gadsden T., Vilas V.D.R., Peiris D., Jan S., 2022).

The COVID-19 pandemic has revealed failures in health-care systems. In China, many patients have been turned away from hospitals after hours of waiting because of the high number of patients. Shortages of test and treatment materials have also been reported [3]. China initially faced allegations of suppressing information about the virus, which hindered the global response to the pandemic. Dr. Li Wenliang, an ophthalmologist, was reprimanded by Chinese authorities for warning colleagues about the virus's potential dangers. This not only violated his freedom of expression but also had broader implications for the right to health care as accurate information is essential for effective public health responses (Yu, V., 2020),

In Hong Kong, one of the first places affected by the COVID-19 virus, a local nongovernmental organization indicated that nearly 70% of low-income families cannot purchase the protective equipment recommended by the government, including masks and sterilizers. If states force the use of these items, they must ensure that all people have access to them (Amnesty International, 2020b),

During the early stages of the pandemic in 2020, India implemented a sudden nationwide lockdown. This resulted in the mass exodus of migrant workers from cities to their home villages, as many lost their livelihoods overnight. With limited access to transportation and facing long journeys on foot, these migrants faced dire conditions and were denied their right to health care. Many were left without proper shelter, food, and medical attention, leading to a humanitarian crisis (Aljazeera, 2020).

The Rohingya refugee camps in Bangladesh faced severe overcrowding and limited access to health care services even before the pandemic. With the outbreak of COVID-19, these camps became potential hotspots for the virus due to cramped living conditions. Many Rohingya refugees lacked access to proper medical facilities and were unable to practice social distancing. This situation exposed the violation of the right to health care for a marginalized community (Akter, S. Dhar, T. Abed Rahman, A. & Uddin, M., (2021).

Singapore, heavily reliant on foreign labour, saw a surge in COVID-19 cases among migrant workers living in crowded dormitories. These workers often faced inadequate living conditions and difficulties in accessing health care. Reports emerged of delays in providing medical care and testing for this vulnerable group, highlighting discrimination and unequal access to health care services (Ratcliffe, R., 2020).

Indigenous communities in Indonesia, such as the Dayak people of Borneo, have historically faced limited access to health care services. During the pandemic, these communities were disproportionately affected due to their remote locations and lack of healthcare infrastructure. The right to health care was violated as they struggled to access testing, treatment, and accurate information (Maarif, S., 2021).

In Japan, immigration detention centres faced scrutiny for their handling of COVID-19 cases among detainees. Reports indicated inadequate access to medical care, hygiene, and testing within these facilities, which violated the detainees' right to health care and exposed them to health risks (Slater, D. & Barbaran, R., 2020).

These examples demonstrate the various ways in which the right to health care has been violated during the spread of COVID-19 in Asian countries. It underscores the importance of addressing systemic inequalities, ensuring equitable access to health care, and upholding human rights principles even in times of crisis.

As part of the right to health, governments must ensure health workers are protected from disease and epidemics and provide them with the necessary facilities and equipment. In China, reports illustrated that about 3,000 health-care workers were infected and at least 22 died during the first months of the spread of COVID-19 (Aljazeera, 2020). In Thailand, public health capacity has been weakened by corruption as medical workers lacked surgical masks (Human Rights Watch, 2020).

Indeed, the COVID-19 pandemic has shown the ugly fractures in health-care systems and health inequities (Junior, J.G., Moreira, M.M., Pinheiro, W.R., de Amorim, L.M., Lima, C.K.T., da Silva, C.G.L. and Neto, M.L. R., 2020). as developed countries suffered from shortages of medical materials and equipment. Also, discrimination was observed in the provision of health care for people infected with COVID-19. In addition, some countries suffered from a collapse in the health system, poor quality of medical facilities and gross negligence in health care (Elshobake, M.R.M., 2022).

The violations of the right to health care during the COVID-19 outbreak in Asia have far-reaching implications. Beyond immediate health concerns, these violations can exacerbate existing inequalities and erode trust in public health systems. This can hinder cooperation in future health emergencies and delay economic recovery.

To address these challenges, governments in Asia must adopt a rights-based approach to pandemic response. This includes ensuring equitable access to health care for all, regardless of socioeconomic status or migrant status. Public health policies should be transparent, evidence-based, and consistent with international human rights standards. Additionally, cooperation between governments, international organizations, and civil society is essential to monitor and address human rights violations effectively

5. Conclusion

The COVID-19 pandemic has tested health care systems and governments across Asia, exposing both strengths and weaknesses. While efforts to provide health care services during the pandemic are commendable, significant human rights violations have underscored the urgency of a rights-based approach to public health emergencies. By recognizing the right to health care as a fundamental human right and taking concrete actions to protect it, Asian countries can build more resilient health care systems that prioritize equality, inclusivity, and human dignity.

The outbreak of COVID-19 has laid bare the fault lines within health care systems in Asia. Vulnerable populations, including migrant workers, indigenous communities, and those living in poverty, have borne the brunt of the pandemic's impact, facing unequal access to health care services and resources. Discrimination, lack of information, and inadequate medical infrastructure have exacerbated health disparities. Governments, while grappling with the health crisis, have faced the challenge of balancing the right to health care with measures that restrict individual freedoms, such as lockdowns and quarantine measures.

This paper has underscored the existence of human rights violations in the context of the right to health care during the pandemic. Denial of access to health care, unequal treatment, infringement upon personal liberties, and lack of transparency in information dissemination have been among the notable violations. The cases of migrant workers struggling for basic health care access, the plight of refugees living in cramped conditions, and discrepancies in reporting accurate death tolls have all contributed to a landscape where the right to health care has been eroded in some contexts.

As Asia and the world emerge from the immediate grip of the pandemic, there is an opportunity to recalibrate policies and priorities. The violations and challenges highlighted during this crisis serve as a call for renewed commitment to the right to health care. Governments, international organizations, civil society, and the private sector must collaborate to strengthen health care systems, address systemic inequalities, and build resilience for future challenges.

In conclusion, the status of the right to health care during the spread of COVID-19 in Asia under international law has underscored the complexities of balancing public health imperatives with the protection of

individual rights. By acknowledging the lessons learned and committing to equitable and rights-based responses, Asia and the global community can forge a path toward a more inclusive, resilient, and just future.

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