

THE IMPACT OF THE COVID-19 PANDEMIC ON ‘RIGHT TO HEALTH’. IMPLICATIONS OF FREE HEALTH-CARE VS. HEALTH-CARE INSURANCE SCHEMES: A COMPARATIVE ANALYSIS.

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Abstract

The COVID-19 pandemic has created an unprecedented disruption for the entire civilization on a global scale. On 9th of April 2020, UN General Secretary, António Guterres stated the Security Council that the world faces its gravest threat since the founding of the United Nations Organization.¹ While the deadly epidemic has horrendously spread from a single case in China to a global pandemic, the death toll has exceeded one and half million around the world.² The economic costs of the pandemic will be larger than the damage caused by the economic crisis in 2008.

While the pandemic is rapidly spreading globally, a new discourse on the ‘Right to Health’ has emerged more prominently. Generally, there are two fundamental arguments on ‘Healthcare’. The first one depends on the neo-liberal approach which considers the health-care is not a social right. Therefore, health-care may not be

guaranteed as a Human Right. The concept of health-care insurance schemes mainly based on this neo-liberal argument. The second argument is that health-care, which includes the ‘Right to Healthcare’ and social and other underlying determinants of health, should be protected as a ‘Basic Human Right’. This argument is the basis for the concept of universal free health care.

The main objective of this study is to explore the contradiction between the implications of free healthcare and healthcare insurance schemes with a comparative analysis to find out what is the most appropriate healthcare model to protect the Right to Health as a Human Right.

I. Introduction

According to the French philosopher Bruno Latour,³ “*one thing we have learned from this pandemic is that it is possible in a matter of weeks to slow the economy, which*

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¹<https://www.un.org/sg/en/content/sg/statement/2020-04-09/secretary-generals-remarks-the-security-council-the-covid-19-pandemic-delivered> (Accessed on: 15 October 2020).

² <https://www.worldometers.info/coronavirus/> (Accessed on: 20 December 2020).

³ Bruno Latour is now emeritus professor associated with the médialab and the program in political arts (SPEAP) of Sciences Po Paris.

until now had been considered inconceivable due to the pressures of globalization.”⁴ The whole world has been stopped. All the motorways are cleared and factories have been closed. While mankind is horrendously suffering from the pandemic crisis, nature it seemed, has been increasingly able to breathe more easily. In this Anthropocene era,⁵ the entire civilization is facing a terrible catastrophe that has never occurred before in its written history. Conservative world structure has collapsed. Conventional economic and political parameters have failed to cope with this new challenge. Italian philosopher Giorgio Agamben⁶ says that the wave of panic of the pandemic has paralyzed the world and shows that our society no longer believes in anything but bare life.⁷

II. Global Healthcare and the Challenge of Neoliberal Policies

Liberalism is the political and socio-economic philosophy based on the strong support of the free market economy which associates with private ownership of capital

assets. The classical liberal philosophy was founded by Adam Smith⁸ in the mid-1770s, advocated for a minimal role of government (*the role of night-watchman*) in economic matters so that the market could be free. The classical liberal economic theory remains for almost 200 years and was temporarily replaced by the 1930s economic crisis.⁹ The British economist John Maynard Keynes’ recommendations were used to recover from the consequences of the 1930 great depression.¹⁰ Keynes proposed a measure of government intervention economic recovery policies which were aimed at both spending and social welfare. After 40 years, in the late-1970s, the US economy was hit by the second major post-world war II recession. The impact of this economic downturn caused to amend the liberal economic theory again. This new approach of liberalism was called neoliberalism. The term ‘Neoliberalism’ is comprised of two notions, namely *neo* meaning new and *liberal* meaning free from government intervention.¹¹ As a result of the neoliberal

⁴ Bruno Latour, *What protective measures can you think of so we don't go back to the pre-crisis production model?* This article appeared in AOC on 29th March 2020: <https://aoc.media/opinion/2020/03/29/imaginerles-gestes-barrieres-contre-le-retour-a-la-production-davant-crise/> (Accessed on: 15 October 2020).

⁵ The current geological age, viewed as the period during which human activity has been the dominant influence on climate and the environment.

⁶ Giorgio Agamben is an Italian philosopher and author of the ‘Homo Sacer: Sovereign Power and Bare Life’.

⁷ Giorgio Agamben: “*Clarifications*”, *An und für sich* (English Translation)

<https://itself.blog/2020/03/17/giorgio-agamben-clarifications/> (Accessed on: 15 October 2020).

⁸ The founding philosopher of classical liberal theory, and the author of the ‘*The Wealth of Nations*’ Oxford, England: Bibliomania.com Ltd, 2002.

⁹ The Great Economic Depression of the 1930s which had begun from the USA.

¹⁰ Keynes’ masterpiece was *The General Theory of Employment, Interest and Money* – 1936.

¹¹ Horton, Eleanor S. (2007) *Neoliberalism and the Australian Healthcare System (Factory)*. In Conference of the Philosophy of Education Society of Australasia, Wellington, New Zealand, Proceedings 2007.

reforms, the welfare state was replaced by the concept of the minimal state.¹² UK Prime minister Margaret Thatcher¹³ once said, “*There are individual men and women and there are families and no government can do anything except through people and people look to themselves first.*”¹⁴ This statement gathers the essence of neoliberalism in a nutshell.

The neoliberal fiscal policies have produced the model of austerity state which restrict all social welfare measures. Increase of poverty, social polarization and inequality of wealth distribution can be identified as the consequences of drastic fiscal contractions imposing austerity on the society.¹⁵ The adverse impact of austerity on ‘Economic and Social Rights’ is documented in many reports by UN agencies and many other research institutes.¹⁶ The ‘Report on Austerity Measures and Economic and Social Rights’ prepared by the ‘United Nations High Commissioner for Human Rights’ states that, “*All economic, social and cultural rights, including the right to health, food,*

water, work, social security and education, are directly affected by austerity measures. Such cuts weaken safety nets and hamper the realization of these rights...Consequently, the ability of individuals to exercise their human rights, and that of States to fulfil their obligations to protect those rights, has been diminished.”¹⁷

The classical liberal discourse on healthcare had been mainly based on two approaches : (1) the social justice argument advanced by John Rawls¹⁸ that anyone unaware of his or her position in society would agree with healthcare as a Right because it promotes equality of opportunity and is of the greatest benefit to the least advantaged members of society; and (2) the utilitarian view is that guaranteeing health services increases the welfare of the greatest number of people.¹⁹

However, neo-liberal theorists believe that health is a commodity and each person have to purchase it individually. As a result of globalization, neoliberal theories and practices have spread all around the world. In the 90s health policies in America and

¹² McDonough T, Reich M and Kotz D.M, *Contemporary Capitalism and its Crises*, Cambridge University press, 2010.

¹³ Margaret Thatcher was Prime Minister of the United Kingdom from 1979 to 1990.

¹⁴ Thatcher, Margaret. 1987. ‘Interview for “Woman’s Own” (“No Such Thing as Society”).’ in Margaret Thatcher Foundation, London.

¹⁵ Magdalena S. Carmona, ‘*Alternatives to Austerity: A Human Rights framework for economic recovery*’, oxford university press, 2014.

¹⁶ Sanjaya W. Jayasekara, *Neoliberal Constitutionalism and the Austerity State*, Neptune Publications, p. 53.

¹⁷ No.E/2013/82, UNHCHR Report on Austerity Measures and Economic and Social Rights.

¹⁸ An American moral and political philosopher in the liberal tradition, Author of the ‘*Theory of Justice*’, Harvard University Press, (1971).

¹⁹ N. Daniels, “*Justice, Health, and Healthcare*,” *American Journal of Bioethics* 1, no. 2 (2001): p.2–16.

Europe were shaped by the proposals for 'Health Sector Reforms' widely promoted by the International Monetary Fund (IMF). These policies were promoted and funded to reduce the involvement of the State and facilitate the dominance of the market by increasing the involvement of the private sector and privatize various aspects of health service provisions and introducing health insurance schemes. Privatization of public services is one of the key elements of the neoliberal reforms. This occurs not only in the sense of the transfer of institutional mechanisms from the public to the private sector but also in the conversion of 'Social Rights' such as health-care and education into commodities.²⁰

The free market economy is based on the theory of accumulating profitable capital assets. Health insurance schemes are the main way to turn the health-care system into a profitable venture. The health insurance schemes are aligned with the supply-demand theory in which health insurance decreases the price of health-care services resulting in increased demand.²¹

According to a study done by Department of Health Sciences, University of York, United Kingdom, the private health-care insurance schemes have been the dominant health insurance model amongst high-income countries and some Low and middle-income countries.²²

The private health insurance schemes shift the governments' responsibility to private health-care insurance companies. Private health insurance has historically been characterized as voluntary, for-profit commercial coverage.²³ Therefore, it only covers the person who can afford health-care insurance. This poses a serious obstacle in ensuring equitable access to health care.

The neo-liberal ideology shapes the thinking pattern of the society, on how we should understand healthcare, how healthcare should be structured and how we should respond to health issues, in favour of market-based values.²⁴

²⁰ Oscar Feo, *Neoliberal Policies and their Impact on Public Health Education: Observations on the Venezuelan Experience*, Journal of Social Medicine, Volume 3 No 4, November 2008, p.224.

²¹ Erlangga D, Suhrcke M, Ali S, Bloor K, *The impact of public health insurance on health care utilization, financial protection and health status in low- and middle-income countries: A systematic review*. (2019), p.12.

²² Ibid, p.2.

²³ WHO, *Private Health Insurance: Implications for Developing Countries*, Discussion Paper Number 3 – 2004.

²⁴ A. M. Viens, *Neo-Liberalism, Austerity and the Political Determinants of Health*, Health Care Analysis (2019).

III. 'Right to Health' as a Basic Human Right

'Human Rights' are 'Rights' inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, political view, birth-place or any other status.²⁵ According to the Vienna Declaration and Programme of Action in 1993, "*All human rights are universal, indivisible, interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.*"²⁶

'Right to Life' is non-derogable under any circumstances (which means states can never derogate, even in times of public emergency). 'Right to Health' is an essential part of 'Right to Life'. As human beings, our health and the health of those we care about is a matter of daily concern.

Regardless of our age, gender, socio-economic or ethnic background, we consider our health to be the most prominent and essential asset.²⁷ International Human Rights scholars recognize that the right to the highest attainable standard of health cannot be realized overnight; it is expressly subject to both progressive realization and resource availability.²⁸ The Universal Declaration of Human Rights laid the foundations for the 'Right to the highest attainable standard of health.' This 'Right' is vital to the creation of equitable health-care systems.

Society frequently connects the 'Right to Health' with access to healthcare. But the 'Right to Health' extends further. It includes a wide range of factors that can help us to sustain a healthy life. The Committee on Economic, Social and Cultural Rights, the body responsible for monitoring the International Covenant on Economic, Social and Cultural Rights (ICESCR),²⁹ identifies these factors as the "underlying determinants of health". Safe drinking water and adequate sanitation; Safe food; Adequate nutrition and housing; Healthy working and environmental conditions; Health-related education and

²⁵ United Nations Definition on Human Rights.

²⁶ World Conference on Human Rights, Vienna, 1993, Vienna Declaration and Programme of Action, para:5.

²⁷ Office of the United Nations High Commissioner for Human Rights, The Right to Health, Fact Sheet No. 31.

²⁸ Article 2 of the ICESCR and the general comment of the committee ESCR.

²⁹ The Covenant was adopted by the United Nations General Assembly in its resolution 2200A (XXI) of 16 December 1966.

information; and Gender equality can be considered as the fundamental factors in this regard.³⁰

Right to the highest attainable standard of health is a 'Basic Human Right' recognized under 'International Human Rights Law'. According to Article 25 of the Universal Declaration of Human Rights (UDHR),³¹ every person has a 'Right to achieve an adequate standard of living, including guarantees for health and well-being.' This Article acknowledges the interconnection between the 'Right to Health' and other Human Rights, such as the 'Right to Food' and the 'Right to Housing', as well as 'Medical and Social Services'. Therefore, this Article has created a broad interpretation of the 'Right to Health' as a Human Right.

IV. State Parties' Obligations Under International Human Rights Law

Under the Article 12 of the International Covenant on Economic Social and Cultural Rights (ICESCR), 'The State Parties should recognize the Right of everyone to the enjoyment of the highest attainable standard of physical and mental health.' That Article identifies some of the

measures the state should take to achieve the complete realization of this Right.³² Articles 23 and 24 of the Child Right Convention (CRC) recognizes the 'Right to Health' for all children and identify several steps for its realization.³³ Also in the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) establishes the obligations for the state parties to adopt adequate measures to guarantee access of women to health and medical care, with no discrimination whatsoever, including access to family planning services and reproductive rights.³⁴

The 'Right to Health' is also recognized in several regional Human Rights instruments. Article 16 of the African Charter on Human and Peoples' Rights (1981) enshrines the Right to the highest possible level of health, to which end "necessary measures" will be taken, while also guaranteeing medical services in case of illness.³⁵ Article 10 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, known as the Protocol of San Salvador (1988) has confirmed that 'Everyone shall have the 'Right to Health', understood to mean the

³⁰ Office of the United Nations High Commissioner for Human Rights & World Health Organization, The Right to Health Fact Sheet No. 31, p.5.

³¹ "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..."

³² Article 12(2) of ICESCR.

³³ Article 24 of CRC.

³⁴ Article 11 (1) (f), 12 and 14 (2) (b) of CEDAW.

³⁵ Article 16 of ACHPR.

enjoyment of the highest level of physical, mental and social well-being.³⁶ Article 11 of the European Social Charter (1961) provides for a series of Rights to enable persons to enjoy the highest possible standard of health attainable.³⁷ Also, The American Convention on Human Rights (1969) and the European Convention for the Promotion of Human Rights and Fundamental Freedoms (1950) contain provisions related to health, such as the ‘Right to Life’, ‘Right to Humane Treatment’, and the ‘Right to Family and Private Life’.

States have the primary obligation to protect and promote Human Rights. Human Rights obligations which are defined and guaranteed by customary international law and international treaty laws create binding obligations on State parties that have ratified them to give effect to these Rights. State obligations fall into three main categories, namely the obligations to ‘Respect’, ‘Protect’ and ‘Fulfil’. According to the World Health Organization, the *obligation to respect* means to refrain from interfering directly or indirectly to obstruct the ‘Right to Health’. The *obligation to*

protect requires States to prevent third parties (private sector) from interfering with the ‘Right to Health’. Finally, the *obligation to fulfil* requires States to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures to fully realize the ‘Right to Health’.³⁸

Accordingly, the state has an inalienable responsibility to ensure and uplift the ‘Right to Health’ of the people.

V. Actual Crisis of Health-care Insurance Schemes

Community-Based Health Insurance (CBHI), Social Health Insurance (SHI) and Private Health Insurance (PHI) are the world's leading health insurance models.³⁹ According to the World Health Organization, among all these models, private health insurance schemes have played a significant role in the healthcare industry after the 1980s.⁴⁰

Community-based health insurance (CBHI) is the most common form of healthcare financing in many developing countries.⁴¹ This kind of insurance scheme covers the informal sector and rural population, and

³⁶ Article 10 of the Protocol to ACHR.

³⁷ Article 11 of ESC.

³⁸ Office of the United Nations High Commissioner for Human Rights & World Health Organization, *The Right to Health*, Fact Sheet No. 31, p.25,25,27.

³⁹ Maximilian Kolbe Domapielle, *Health insurance and access to health care services in developing countries*,

Journal of Government and Politics Vol.5 No.1 February 2014, p.81.

⁴⁰ WHO, *Private Health Insurance: Implications for Developing Countries*, Discussion Paper Number 3 – 2004, p.1.

⁴¹ Normand, C. and Weber, A. (2009) *Social Health Insurance: A Guidebook for Planning*. Geneva.

secure healthcare protection for groups of individuals and households not covered by the existing insurance schemes.⁴² However, the coverage of the community-based insurance schemes has only extended to a small percentage of the population. Social Health Insurance schemes (SHI) are often financed through mandatory earnings-related contributions on formal sector workers. Therefore, informal sector workers have not been covered by these social health insurance schemes. In some cases, people contributing to different schemes may have different entitlements from one another. It creates inequitable access for health care.

Wealthy countries in the Europe region and the North American continent, are unique in explicitly encouraging private health insurance (PHI) schemes as a strategy for a complement to public financing for healthcare. The main crisis with the private health insurance scheme is that it always tries to transform healthcare into a commodity. Lack of an adequate regulatory framework for private health insurance schemes exacerbates inequalities in access to healthcare.⁴³

The three pillars which are essential to uplift any health-care system can be

identified as '*Prevention*', '*Diagnosis*' and '*Treatment*'. Prevention of diseases can only be done by a community-based healthcare system. Health-Care Insurance schemes do not consider disease-preventing mechanisms, because it does not make any profit. Also, the private sector does not have any accessible mechanisms and asset to maintain the prevention methodologies. By considering each healthcare insurance model, the common crisis which can be identified is that none of these insurance schemes can guarantee the universal equal access to health care.

VI. Why does the American Healthcare System Fail?

Healthcare system of the United State is unique among other states in two significant ways. Firstly, the system does not provide universal healthcare coverage for all citizens. Secondly, for most Americans, access to healthcare coverage is linked to their employment. (Insurance Basis)⁴⁴ The U.S. healthcare system is built on the concept of private-sector competition, with the government playing a more limited role.⁴⁵

The federal healthcare framework is mainly regulated under Income Security Act

⁴² Ibid.

⁴³ Ibid, p.7.

⁴⁴ American Health Policy Institute, Understanding Health Care Reform, ©2019, p.2.

⁴⁵ ibid, Table 1, p.39.

(ERISA)⁴⁶ and the Affordable Care Act (PPACA).⁴⁷ The Affordable Care Act was introduced by the Democratic administration in 2010 and it was included some progressive reforms to ensure public health care. However, after the election victory of 2016, the Republicans try to repeal and replace the Affordable Care Act. On December 2018, Texas federal district court held that the Affordable Care Act (ACA) is unconstitutional.⁴⁸

According to the reports of Physicians for a National Health Plan (PNHP), there were 27.9 million US citizens without any health insurance.⁴⁹ ‘The Guardian’ says that, at the same time, the 16 million people who have lost their jobs in the first three weeks on the impact of COVID19 pandemic will put an increased burden on the national healthcare system.⁵⁰ Meanwhile, the United States holds the highest number of COVID19 infected deaths in the world.

In consideration of all these facts, it can be concluded that the United States has not able to guarantee the ‘Right to Health-Care’ as a fundamental right of citizens because

of the profit-based health insurance schemes.

VII. Why does the Cuban Healthcare System Succeed?

Cuba ensures the ‘Right to Health’ as a Fundamental Right. According to the fundamental rights chapter of the Constitution of Cuba, all citizens have the right to life, physical and moral integrity, justice, security, peace, health, education, culture, recreation, sports, and to their holistic development.⁵¹ The Cuban Public Health Law of 1983,⁵² ensure the protection and improvement of the health of the citizens as a fundamental and permanent obligation of the State. Cuba has a free healthcare system. The Cuban healthcare system has been praised by a significant proportion of the global public health experts for decades.

Cuba provides free immunity vaccination coverage for all. According to the statistics of the world bank, there are 8.2 physicians & 8 nurses per 1000 people in Cuba.⁵³ Cuba has the lowest infant and maternal mortality rate in the entire Latin American region.

⁴⁶ Employee Retirement Income Security Act of 1974.

⁴⁷ The Patient Protection and Affordable Care Act 2010.

⁴⁸ *Texas v. Azar*, 2018, Texas Federal District Court, 2018/12/14.

⁴⁹ Physicians for a National Health Program - pnhp.org

⁵⁰ Amanda Holpuch, *Profit over people, cost over care: America's broken healthcare exposed by virus*, 16/04/2020.

⁵¹ Article 46 of the Constitution of Cuba 2019 (approved by the national referendum on February 24, 2019).

⁵² Public Health Law No. 41 of 1983.

⁵³ Data.worldbank.org 2019, <https://data.worldbank.org> (Accessed on 2020 October 20).

In 2005 former Cuban leader Fidel Castro said, *"We weren't offering money. We were offering doctors to save lives. That offer stands today and tomorrow and represents CUBA's attitude towards any of the world's people"* ⁵⁴ During the COVID-19 pandemic, Cuba has so far sent over 1000 doctors and paramedical professionals to 17 countries around the world.⁵⁵

Cuba has able to detect, test, isolate and quarantine every COVID-19 case and trace every contact, because of the adequate community-based public health-care capacity of the country.⁵⁶ Accordingly, the Cuban public healthcare structure provides a fine example to the world, how to protect the universal 'Right to Health' by imposing a free health-care system.

VIII. Conclusion

Mike Davis argues the neoliberal socio-economic system is threatening the human existence in three ways. First, global unemployment; Second, climate change; and Third, direct production of pandemics of the kind we are currently facing. The contemporary neoliberal economic and political structure is collapsing as a result of the intense impact of the SARS-CoV-2

global outbreak. This pandemic situation has uplifted a new discourse of 'Right to Health'. It suggests that healthcare should be a public domain which focuses on public interest with ensuring free and equal access for everyone. Healthcare insurance schemes fail to guarantee everyone's right to health care in an equal manner. Free healthcare is the only way to protect people's right to health as a basic human right.

According to the 'COVID-19 Guidelines' issued by the Office of the United Nations High Commissioner for Human Rights, *"Treatment should be available to everyone without discrimination, including the most vulnerable and marginalized. This means ensuring that no one is denied timely and appropriate treatment because they lack the means to pay for it, based on age, or because stigma prevents them from getting treatment."* These Human Rights standards can only be achieved through a free and equal healthcare system. The universal 'Right to Healthcare' should be understood as a 'Basic Human Right' that every person must be equally received. Accordingly, this global pandemic has already proven why healthcare should not be a commodity.

⁵⁴ Before sending Cuban medical aids to help the victims of Hurricane Katrina in New Orleans areas US in 2005.

⁵⁵ Ministry of Public Health (Cuba) <http://www.sld.cu>, (Accessed on 2020 October 20).

⁵⁶ <https://www.who.int/countries/cub/en> - (Accessed on 2020 October 20).