

## Human Rights to Health and Equity in India with Special References To Union Territory of Jammu & Kashmir

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### How to cite this article:

Md Zafar Mahfooz Nomani, Ajaz Afzal Lone/Human Rights to Health and Equity in India with Special References To Union Territory of Jammu & Kashmir/Indian J. Forensic Med Pathol. 2021;14(1):43-48.

### Abstract

Health is not merely the absence of disease but a state of physical, mental and social well-being. It encompasses all facets of human right, including the right to health automatically. In the erstwhile Jammu and Kashmir state and now Indian Union Territory (UT) has been under conflict situation resulting in assaults on health by conventional and rubber bullets, tear gas shells and pellet firearms in crowd control and security. The security forces during the last three decades to quell the discontentment and uprising have used power to the detriment of the people's health and well being. The access to health care and delivery assumes importance in conflict and peace situations equally being inalienable human right to life and health. The paper takes a legal stance on security-driven health issues and diseases in the human rights perspective in Kashmir.

**Keywords:** Physical Health; Mental Health; Conflict Situations; Human Rights; Emergency Preparedness.

### Introduction

The human rights to health mean physical, mental and spiritual health.<sup>1</sup> The access to medical services, sanitation, food, housing, healthy working conditions and the environment is inclusive to the concept of the right to health.<sup>2</sup> The Supreme Court in *Vincent Panikulangara v. Union of India*,<sup>3</sup> observed that the 'maintenance and improvement of public health deserve top priority and indispensable to individual, community and society.' Article 47 of the Constitution of India, 1950 recognizes nutrition security, the standard of living,<sup>4</sup> and improvement of public health as the paramount principle of governance. In *Consumer Education and Resource Centre v. Union of India*,<sup>5</sup> the Supreme Court envisaged that 'the right to health and medical care' metaphor in the vocabulary of fundamental and human right.<sup>6</sup> The judicial interventions

under Article 21 of the Constitution of India, 1950 witnessed streak of health entitlements in normal and epidemic-pandemic situations.<sup>7</sup> However, the use of force by security personnel, curfew and lockdown in conflict situations in the union territory of Kashmir in India led to depression, anxiety and PTSD and gross violation of health-related human right.<sup>8</sup> The health care system must be guided by human rights standards, which ordain that everyone must have access to health care under public health law and governance.<sup>9</sup> The human right to health care means that hospitals, clinics, medicines, and doctors' services must be accessible for everyone on an equitable basis for the public good. According to human rights organizations and media reports,<sup>10</sup> people with chronic diseases such as diabetes, epilepsy, heart ailments, and liver and kidney failures are finding it extremely challenging to reach health-care units under curfews, strikes and cessation of information system. Sometimes ambulances are frisked and held up having a detrimental effect on patient and treatment.<sup>11</sup> Recently, members of the security forces made a pregnant woman in her last stage of birth walk about 6 km to reach a hospital.<sup>12</sup> The

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high frequency of penetrating eye injuries among young adults (nearly 75% of the injuries occurred below 23 years of age underscores the economic and social costs of ophthalmological trauma.<sup>13</sup> The paper is devoted to the health-related human rights violations in conflict situations in the Union Territory of Kashmir in India.

## Material & Methods

The material and methods for the study include the analytical method of legal research by undertaking the legislative survey and scrutiny of health and human rights laws at international, national, state and regional levels.<sup>14</sup> It also employs Brint and Williams' pragmatism along with the health behavioral and determinants approach<sup>15</sup> in socio-legal context of Union Territory of Jammu and Kashmir care system, health delivery services, patient satisfaction and utility, doctor-patient relationship.<sup>16</sup> The empowerment for the right to health and 'most significant change' (MSC) methodology employed in measuring the impact of state interventions to foster understanding in conflict situation of Union Territories of Jammu and Kashmir.

The MSC methodology applied in the Philippines, Palestine, Congo, and El Salvador between 2010 and 2013 to observe a significant change in the realization of the human right to health.<sup>17</sup> The comparative study of human rights laws and health in Kashmir based on international conventions, federal rules adopted by the nation through various conventions and India's obligations to protect the rights to life and health, enabled by its constitution.<sup>18</sup> The right to health widely recognized in international human rights law. There is a plethora of laws and catena of cases to buttress the right to health in human liberty and humanitarian laws context. However the real world implementation in the context of Union Territories of Jammu and Kashmir is highly relevant in the healthy right and health equity studies.

## Results

After the declaration of J&K as UT and consequential lockdown resulted in gross human rights violations by the state, the Human Rights Watch estimates revealed that more than 50,000 people had been killed there since 1989. The people of Kashmir need healing touch and no further subjugation and alienation.<sup>19</sup>

*Health Right & Medical Care System:* The health care service in Jammu and Kashmir since last three

decades discerns uneven health profiling. The inadequacy of preventive and curative system is adversely affecting health equity as well as quality.<sup>20</sup>

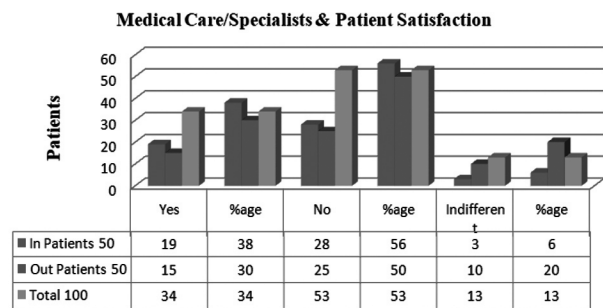


Fig. 1: Medical Care/Specialists & Patient Satisfaction.

Source: Field Work

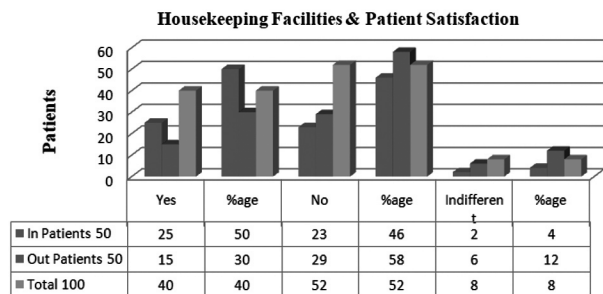


Fig. 2: Housekeeping Facilities & Patient Satisfaction.

Source: Field Work

The health care delivery system in conflict situations demands emergency preparedness which involves acute injury or illness, surgeries and trauma prevention in short and long term health effects.

The patient satisfaction is an essential and commonly used indicator for measuring the quality in health care. So far as this question is concerned, based on data received, 34% respondents said that they are quite satisfied and 53% respondents said that they are partially happy.

*Therapeutic Dimension & Patient Satisfaction:* This becomes a quite daunting task to meet the expectations of patients in conflict situations. Therefore when 13% of respondents said that they were not satisfied with the medical care they received, it did not surprise much to health delivery system but negates the human right to health. The housekeeping staff must have specialized knowledge specific to the health care site and unit where they work. They are required to follow complex and exacting cleaning protocols. So far as this question is concerned based on data received

40% respondents said that they are quite satisfied and majority 52% respondents said that they are partial satisfied and 08% said that they were not happy with the housekeeping facilities.

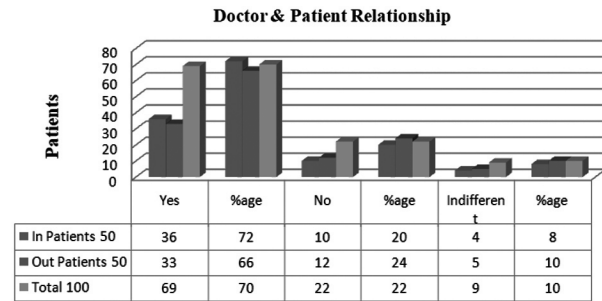


Fig. 3: Doctor & Patient Relationship.  
Source: Field Work

The doctor-patient relationship is one those built-in terms of mutual respect, knowledge and trust. So far as this question is concerned based on data received the majority of 69% respondents says yes doctors always give their best 22% respondents disagree with the fact. Less number of respondents 09% remain indifferent related the services provided by doctors.

*Equity & Access To Health Care:* The equity and access to health care is manifested from the staggering cost and affordability by the people. The medical bill is patients responsibility, and patients have a hard time while paying their medical bills for availing medical services like registration fee, test bills and medical bills.

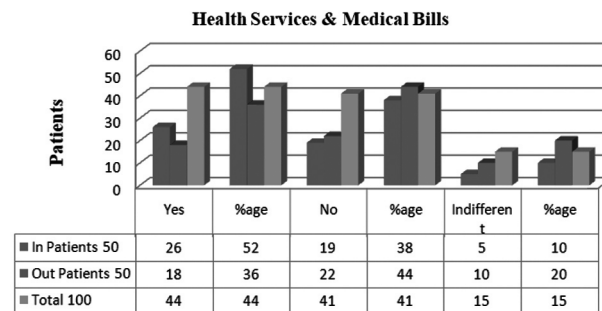


Fig. 4: Health Services & Medical Bills.  
Source: Field Work

The medical bill is patients responsibility, and patients have a hard time while paying their medical bills for availing medical services like registration fee, test bills and medical bills.<sup>21</sup> The above table shows that bulk of 44% respondents were worried about paying outrageous medical bills. In comparison, 41% respondents were satisfied with paying their medical bills and 15% respondents didn't say anything about Medical bills.

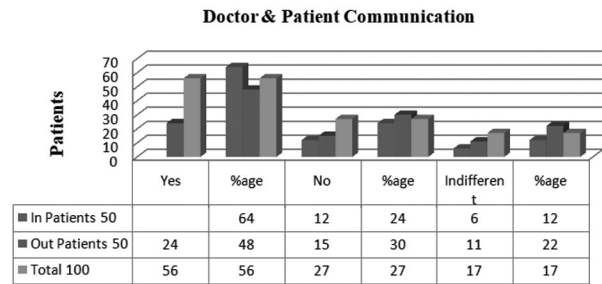


Fig. 5: Doctor & Patient Communication.  
Source: Field Work

A question put to respondents regarding showing respect and cooperation to patients reveals that 56% of respondents agreed with this fact, 27% respondent choose to disagree, and 17% of respondents were such who didn't say anything. Thus the therapeutic perception of access to medicines and health care in government hospital of Union Territories of Jammu and Kashmir remains to be seen in times to come on human right front.

### Discussion

Article 12 of International Covenant on Economic, Social, and Cultural Rights (ICESCR) provides for the right to the enjoyment of the highest attainable standard of physical and mental health.<sup>22</sup> The right to health widely recognized in international human rights law and supported by the catena of cases. The Figure below vividly depicts the health-related human right provisions under the international and regional human rights instruments:

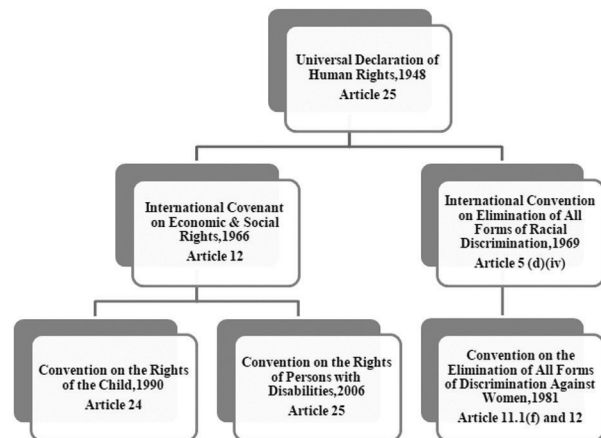


Chart 1: Right to Health Provision under Human Rights Instrument.

The United Nations, human rights mechanisms, provide that the right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead for a healthy life.

*Pellet Guns Induced Injuries:* The violation of right to health is commonly attributed and reported by use of pellet shotguns. The pellet-firing shotguns have been responsible for blinding, killing and traumatizing hundreds of people in Kashmir. It ostensibly considered a less-lethal or non-lethal weapon is having a rubber or plastic-coated non-live rounds. That is why it is used across the world to manage agitating mobs to cause no severe injury or death. While the government projects the pellet gun hits one or two organs but a pellet damages multiple organs that too with various perforations. The Amnesty International India report on Losing Sight In Kashmir, The Impact Of Pellet-Firing Shotguns. It mentioned that 88 people eyesight damaged by metal pellets fired from pump-action shotguns used by the Jammu and Kashmir Police (JKP) and Central Reserve Police Force (CRPF) between 2014 and 2017.

A study conducted by doctors of Department of Ophthalmology at Government Medical College, Srinagar reveals that out of 604 patients, both eyes were involved in 16 (5%) patients, left eye in 48% and right eye in 47% of patients. Making a total of 636 eyes studied. The mean age of the patients was  $22.5 \pm 7.73$  years with a range of 5 to 59 years.<sup>23</sup> The use of pellet guns to control the crowds has left nearly thousands of people injured<sup>24</sup> and duly corroborated by studies across the world<sup>25</sup> and Kashmir.<sup>26</sup> An analysis of ocular pellet gun injuries in Kashmir showed that one-third of the survivors permanently lost their eyesight.<sup>27</sup> SMHS Hospital, which has received the largest number of referrals from district hospitals, reported to the media that, between July 8 and August 9, 2016, it received 933 people injured by pellets, including several who died from their pellet injuries. The hospital also treated 67 bullet injury cases, and 35 people wounded by tear gas canisters.<sup>28</sup>

*Human Right & Mental Health Problems:* The chronic violence in conflict situations has resulted in a 33% increase in mental health problems. While mental health is a now well-recognized problem in Kashmir, the medical services remain above nominal. The use of these non-lethal weapons often leads to lasting injuries, permanent disability and death.<sup>29</sup> Clinical studies on survivors and victims of pellet gun injuries in Kashmir show that only one-third of the injury sites were the lower limbs, the remaining affected other parts of the body with more than one-fourth hitting the head region.<sup>30</sup> The use of force by JK police and the CRPF against protesters in Kashmir has violated the human right to health like depression, anxiety and PTSD were

significantly higher in women than men. Nearly 30% of Kashmiri adults use tobacco as a coping strategy. People suffering from stress tension (89.4%), over two-thirds (68%) did not know about the counselling remedy.<sup>31</sup> The suicidal ideation in communities flagged by the MSF researchers as a worrying indicator of the level of despair and hopelessness.<sup>32</sup> In areas where MSF operates, community-based mental health care services implemented.<sup>33</sup> In all other Kashmiri districts, community-based mental health services are almost non-existent, despite the intentions set out in the Indian Mental Health Policy to implement such services.<sup>34</sup>

*Emergency Health Preparedness in Conflict Situations:* The emergency health preparedness in conflict situations is more critical in the realization of the human right to health. The security forces at times obstructed access to urgent medical care for protesters and harassed medical workers and prevented doctors from reaching the hospitals.<sup>35</sup> There were stops by the security forces every 100 to 200 meters to access to the hospital for trauma prevention.<sup>36</sup> Impositions of days-long curfews and police presence in hospitals impeded access to medical care and innovation technologies for the patients.<sup>37</sup> The hospital staff are from far off areas, particularly from south Kashmir is not able to report for work, as strict restrictions placed there.<sup>38</sup>

The Doctors Association of Kashmir said that police had fired tear gas canisters around hospital premises at SMHS and some district hospitals and took videos of the injured and family members accompanying them inside and outside of the hospital emergency room.<sup>39</sup> In situations of unrest and violence, authorities obligated to ensure access to emergency health care as well as to refrain from interfering with health care workers' ability to provide care for all.<sup>40</sup> The right to health in both peacetime and in times of armed conflict or internal unrest ensure equitable access to the highest attainable standard of care without discrimination based on socio-economic status, geographic location, ethnicity, or any other factor.

## Conclusion

The violations of human right and humanitarian law in conflicts situations are stupendous in defending the freedom of civilians and combatants to receive medical care. The protection of health professionals who are victims of human rights abuses and to prevent physician complicity in torture and other human rights abuses is also paradoxical to the health delivery system. The hope for peace

and security has engulfed in Kashmiri people collective memory and often seems elusive. The health outcomes of these injuries are amputations, permanent disability or loss of life. The human rights to health and equity in Union Territory of Jammu & Kashmir calls for a robust mechanism of right based approach under humanitarian laws. The central and JK government should immediately stop the use of pellet-firing shotguns and ensure that the use of all other weapons is in line with international human rights standards on the use of force. The authorities should also provide full reparation in line with international standards to those injured by pellet-firing shotguns and to the families of those killed. The doctors from across India asked the government to ease restrictions on communication and travel failing, which is nothing short of a denial of the right to health care and the right to life.

Ethical Clearance: Not Required

Source of Funding: No

Conflict of Interest: No

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