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Examining Access to Emergency Healthcare through Human Right Theories

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Abstract
Access to emergency healthcare takes the front burner in Nigeria as a result of the recent Covid 19 pandemic and other security challenges arising from increase wave of banditry, insurgencies as a result of the operations of the Boko haram and if recent the ISWAS group, not leaving out the IPOB group, cultism leading to an increase in gunshots wound victims needing urgent medical attention thus stretching the thin resources available to make provisions for this. This article discussed the concept of access to health and of course emergency health as a right. It went on to further takes a look at various human right theories and the effect they have on the process of allocating resources to healthcare emergency taking into consideration the role which health plays and the position of the WHO on the health of the people.

Keywords: Access, Health, Emergency, Human right, Rights, Theories

Introduction

Access to emergency healthcare has assumed a universal dimension especially taken into consideration the importance 'health' plays in the life of a nation. According to the World Health Organization 'Health is a state of complete physical, mental and social well-being and not merely absence of diseases or infirmity.[1] Underlying the importance of this definition led to the same WHO classifying health as a fundamental right and commits to ensuring the highest attainable level of health for all[2]. Right to health is an internationally agreed human right standard which every human is entitled to and to which all comity of Nations agreed to protect under the international human right law.

To achieve the objective of a health as a right, it beholds that demand for an improve health environment grew and eventually became to be treated as an important aspect of the fundamental and basic human right that everyone is entitled to[3] , right to health having been adjudged as a fundamental right is expected to set a clear principle for setting and evaluating health policy and services with the intention to eradicating discriminatory practices and unjust use of power associated with inequitable results. Human rights are universal and inalienable, to achieve a human right based approach to health certain core principles must be put in place such as accountability, equality and participation.

This article examines access to health from the perspective of Penchasky and Thomas and as well as focus on access to health as a right and equally examines the different human right theories on access to health albeit emergency healthcare especially in determining.

Access to Health as a Right

Access has been conceptualized in numerous ways. While the term access is often used to describe factors or characteristics influencing the initial contact or use of services, opinions differ regarding aspects included within access and whether the emphasis should be put more on describing characteristics of the providers or the actual process of care.[4] Penchansky and Thomas[5] defined access to health from the concept of availability, accessibility, acceptability and affordability as follows;

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[1] Preamble to the constitution of the World Health Organisation as adopted by the International Health Conference, New York,19-22 june, 1946, signed on 22July 1946 by representatives of 61 state(official record of World Health Organisation 2, 100) and entered into force on 7 April 1948 as cited by Cheluchi Onyemelukwe in Access to anti- retroviral drugs as a component of right to health in international law: Examining the application of the in Nigerian jurisprudence

[2] ibid

[3]Anishajhawar in health as a part of fundamental right under Article 21; A pursuit by Indiahttp://www.legalserviceindia.com/legal/article referring toAart Hendriks, the right to health in national and international jurisprudence, European journal of health law 5 (1998)

[4] Frenk J: The concept and measurement of accessibility. Health Services Research: An Anthology. Edited by: White KL, Frenk J, Ordonez C, Paganini JM, Starfield B. 1992, Washington: Pan American Health Organization, 858-864..

a) Availability: refers to the need for a sufficient quantity of functioning public health and healthcare facilities, goods and services, as well as programmed for all. Availability can be measured through the analysis of disaggregated data to different and multiple stratifies including by age, sex, location and socio-economic status and qualitative surveys to understand coverage gaps and health workforce coverage.

b) Accessibility**:** Requires the health facilities, goods, and services must be accessible to everyone. Accessibility has four overlapping dimensions:

1. Non-discrimination
2. Physical accessibility
3. Economical accessibility (affordability)
4. Information accessibility.

Assessing accessibility may require analysis of barriers – physical financial or otherwise – that exists, and how they may affect the most vulnerable, and call for the establishment or application of clear norms and standards in both law and policy to address these barriers, as well as robust monitoring systems of health-related information and whether this information is reaching all populations.

c**)** Acceptability: Relates to respect for medical ethics, culturally appropriate, and sensitivity to gender. Acceptability requires that health facilities, goods, services and programs are people-centered and cater for the specific needs of diverse population groups and in accordance with international standards of medical ethics for confidentiality and informed consent.

d) Affordability: This presupposes that health should not only be available to the members of the public or those that needs it, but it should be at a cost which they can afford, and also take into consideration their ability to pay or their willingness to pay, coupled with the method of payment.

Olomojobi[6] in his book opines that Access to health is the appropriate use of personal health services to accomplish the paramount health outcome. He went further to state that Access to health exists at 3 different levels and this includes;

a. The level at which patients enter into the health care system and this is influenced by the level of financing available coupled with insurance aid.

b. The ability to access the location of the health care facilities and

c. A relationship based on trust and communication between the health care provider and the patients.

A right means that which a person has a just or valid claim to, be it land, a thing, or the privilege of either doing or saying something. It refers to an entitlement which can be asserted. It is an interest recognized and protected by the law; respect

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[5]Penchansky R, and Thomas J, 'The concept of access definition and relationship to consumer satisfaction.' Medicare 1981 in Access to healthcare in developing countries breaking down demand side barriers https//www.scielo.php accessed on 12/5/2021 at 4pm

[6] Yinka Olomojobi, Medical & Health Law; The right to health. Princeton & Associates Publishing co Ltd. 2019. Pgs 32-38

for that which is a duty and disregard of that which is a wrong.[7] The definition of rights has been expounded from different perspectives by many authors[8]. Two prominent schools of thought in this regards are the interest and choice theorists.
The interest theorists[9] opine that a person has a right when others owe him/her the duty to protect his/her interests, hence, they associate human relations with rights.
The choice theorists[10] consider rights as the power to choose to do or not to do something, but this view has been countered because some rights impose obligations which cannot be waived. Rights are also considered by some scholars to be derivable from permissible or impermissible actions based on the ethical or moral philosophies of different societies and codified as law, to be enforced by institutions or governments.[11] According to Burkholder[12], the provision of emergency healthcare worldwide has been recognized as essential especially in the reduction of the numbers of avoidable deaths and injuries.

Nigeria like most other 3rd world countries is faced with lots of problems which arouse from different facets of life ranging from economic imbalance, political instability, social infrastructural decay, bad road, bad governance, environmental pollution, poor health care facilities leading to high mortality rate; low life expectancy and high communicable diseases. All of these have impacted greatly on the ability of the people to have access to emergency health care services. In other to allow individuals to have access to healthcare services, the 1948 WHO Constitution declares health as a fundamental right and commits to ensuring the highest attainable level of health for all.[13] Right to health is an internationally agreed human right standard which every human is entitled to. The attainment of this right is tied to the attainment and realization of other rights such as food, shelter, education, work etc. This right also includes rights to freedom (this includes right to control one's health and body and to be free from torture and non-consensual medical treatment and experimentation) and entitlements (which includes a right to a system of health protection that gives everyone an equal opportunity to enjoy the highest attainable level of health).[14]

Health is an essential fundamental right which every man is entitled to; this position is internationally acceptable by the comity of nations under the

[7] Bird R(ed) osborn's concise law dictionary 7th edition(sweet and Maxwell , London,1983)
[8] See Bamidele I 'Analysis of fundamental legal concepts' in Taiwo A KONI IJ(ed) jurisprudence and legal theory in Nigeria(Princeton and associates, 2019)76-79
[9] See Lyons D Rights,welfare and Mills Moral Theory(Oxford University Press united kingdom 1994)41
[10] See Hart HLA Essays on Bentham;studies in jurisprudence and political philosophy(Clarendon press, Michigan 1982)
[11] Stelzig 1998 university of Pennsylvania law review,901-904
[12] Taylor W. Burkholder et al, in Governing access to emergency care in Africa, African journal of emergency medicine 10(2020)s2-s6 www.elsevier.com/locate/afjem accessed on the 20/6/2021 2pm
[13] ibid
[14] Human rights and health https://www.who.int/news-room/fact-sheets/detail/human-rights-and-health

international human rights law. Right to health is thus refers to as an acceptable level of right which every human is entitled to. As opposed to all other forms of rights, right to health creates an obligation on the part of the state to ensure that right to health is respected, protected and guaranteed to all citizens[15], every right has a corresponding duty to be fulfilled as there can be no right without an element of duty[16]. It is also important to note that there are both positive and negative means of enforcing right to health and this includes the need for adequate protection by the state, provision of equal health facilities to each individual and also creating a conducive atmosphere that can lead to the attainment of the right to health.

Article 25(1)[17] of the UDHR, was the first international instrument that recognized and define right to health. This article states that '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, 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 the circumstances beyond his control.' Similarly, Article 12 of the international covenant on Economic, social and cultural rights recognizes right to health as human right which came into operation in 1966(ICESCR) and states the steps that must be taken by states in realizing this as to include providing 'to the maximum available resources' the 'highest attainable' standard of health by ensuring that parties recognize the right of everyone to a reasonable standard of physical and mental health.[18]

The 1950 European convention for the promotion of Human Rights and fundamental freedom, the 1969 American convention on Human Rights, and the 1981 African Charter on Human and Peoples' Rights all recognized right to health as a human right[19]. It is on record also that before the coming of WHO several countries have recognized health as a fundamental right, this period could be attributed to the advent of the industrial revolution and its attendant effect on the employer employee relationship especially as it relates the working conditions and health of the workers. The demand for an improve health environment grew and eventually became to be treated as an important aspect of the fundamental and

[15]Anishajhawar, in health as a part of fundamental right under Article 21; A pursuit by indiahttp://www.legalserviceindia.com/legal/article referring to Aart Hendriks, the right to health in national and international jurisprudence, European journal of health law 5(1998)

[16] ibid

[17] See A.K.A Kolawole, of the department of private law, faculty of Law, Olabisi Onabanjo University, Ago-iwoye, Nigeria. In the right to life and the right to health: any nexus available at http://www.ssrn.com/link/OIDA-intl-journal-sustainable-dev.html accessed on the 30/9/2021

[18] ibid

[19]See Vaibhav Choudhary, Denial of Treatment to Covid-19 Patients is a Human Right Abuse in Human Rights Pulse at https://www.humanrightspulse.com/mastercontentblog/denial-of-treatment-to-covid-19-patients-is-a-human-rights-abuse accessed on 7/8/2021 at 6pm

basic human right that everyone is entitled to[20] right to health having been adjudged as a fundamental right is expected to set a clear principle for setting and evaluating health policy and services with the intention to eradicating discriminatory practices and unjust use of power associated with inequitable results. Human rights are universal and inalienable, to achieve a human right based approach to health certain core principles must be put in place and they include the followings;

1. Accountability: the states and other stakeholders in the health sector are expected to observe the tenets of human rights.
2. Equality and non- discrimination: this is aimed at guaranteeing the exercise of human rights without any form of discrimination either based on race, gender, color, language, religion, age, and disability, economic or social situation. The principle of non-discrimination stipulated that t access to health care as well as means and entitlement for achieving this should be encouraged. Any form of discrimination which can prevent access to health care as well as the means to achieving this should be prohibited. It has also been adjudged that non-discrimination and equality are essential to address the social determinants affecting the enjoyment of the right to health and this also need an up-to-date data in other to identify the most vulnerable groups with their diverse needs.[21]

c. Participation: this involves the bringing together of all stakeholders in the health sector both private and public especially those who have influence over development of the sector. It should be noted that participation here goes beyond consultation and technical input but must also include explicit strategies to empower the populace, the marginalized population most especially. Participation helps bring about accountability and check and balances within the system. Others include human dignity, empowerment and rule of law all of which are essential to access the available health care services.[22] Having identified the fact that access to health emergency is a right which must not be denied in that the deprivation of one right adversely affects another, it is imperative to take a look at the core elements of what constitute right to health; and these are:

1. It is important for government to put in place modalities to achieve the realization of this right without any form of discrimination, irrespective of the level of resources at the disposal of the government.

[20]Anishajhawar in health as a part of fundamental right under Article 21; A pursuit by Indiahttp://www.legalserviceindia.com/legal/article referring toAart Hendriks, the right to health in national and international jurisprudence,European journal of health law 5(1998)

[21]see CESCR general comment NO 2: Non-discrimination in economic, social and cultural rights.
[22] Siri et al, operationalizing a right based approach to health service deliver at https://www.cmi.no>projects

2. That the government should ensure the protection of the social, economic and cultural right of the people except there is a strong reason to do otherwise. To do this, the state should put in policies and measures that will help achieve this within the available resources.

The right to have access to healthcare is given the most attention in the SA Charter as it covers the following sub-headings: timely emergency care, regardless of ability to pay once the facility is open; treatment and rehabilitation with the knowledge of the patient; provision for special needs, which include patients who are children, women, pregnant, disabled persons, and persons living with HIV or AIDS.[23] Allied to this right healthcare is also the 'right to counseling without discrimination, violence or coercion on reproductive health, cancer, and HIV/AIDS'. A patient, according to the SA Charter, also has a right to palliative care, a right to a positive disposition by healthcare workers following ethical standards of beneficence showing empathy and tolerance. The patient also has a right to health information, in a language he or she understands, which gives him or her knowledge of healthcare facilities and how to use those facilities. Carstens and Pearmain distinguish between the right to healthcare services and the right to health, emphasizing that the right to healthcare is an accumulation of constitutional rights, which include the right to life,[24] dignity,[25] bodily and psychological integrity,[26]privacy,[27] an environment that is not harmful to health,[28] emergency medical treatment, social services, and healthcare services.[29] The authors are of the opinion that the right to access healthcare can only be possible if this collection of rights exists based on the WHO's definition of health that includes physical, mental and social wellness.

Human Right Theories and Access to Emergency Healthcare

It is essential at this stage to take a look at the different theoretical framework underlining the understanding of access to health as a human right. The usefulness of theories in research activities of this nature cannot be overlooked as theories help us in describing, predicting and explaining a phenomenon. Having recognized that access to health is a right which all citizens must be entitled to, the following theories/models shall be examined and they include; utilitarianism theory,

[23] SA Charter s 2
[24] Constitution RSA s 11
[25] SA Charter s 10
[26] SA Charter s 12(2)
[27] SA Charter s 14
[28] SA Charter s 24(a)
[29] SA Charter s 27(1)(a and b)

communitarian theories, libertarian perspective, Rawls's theory of justice and fair equality of opportunities.[30]

A. Utilitarianism Theory:

Utilitarianism is one of the dominant analytical models of health economics and has gained a considerable presence in health policy as a standard framework for health policy analysis. The utilitarian approach is expected to become even more widespread in health policy analysis, given its endorsement in a report delivered by the Panel on Cost-Effectiveness in Health and Medicine[31] which the United States Public Health Service created in 1993 to delineate standardized cost-effectiveness guidelines for use in health and medicine.

Utilitarianism involves producing the greatest happiness for the greatest number of people[32] Utilitarian theories of healthcare justice require allocations and thus social arrangements (and sometimes instrumental rights)[33] that maximize net social utility. Under utilitarianism, a right to health care would be justified if it contributed to the overall maximum of net social utility that is the greatest good for the greatest number. It would also be changeable if utility changed. The types of healthcare services allocated would be those that maximized net social utility. Utilitarianism takes the principle of utility as absolute and does not /necessarily give health a special place in that theory.

Furthermore, utilitarianism considers aggregate wellbeing without taking into consideration distributional concerns about societal benefits and burdens. Measures to promote utility have no moral limitations; utilitarianism tolerates enormous inequities in order to increase total or average net social utility. Utilitarianism also disregards freedom as a good in and of itself, focusing solely on accomplishments; it dismisses values that are not reflected in measurable utility. It is especially limited in the face of entrenched inequalities—situations of persistent deprivation and adversity caused by a person's 'adaptive preferences,' or adjustments to his circumstances—which arise when a person's reduced functioning makes him appear to be not so badly off in terms of utility.[34] The fundamental issue is that desires and subjective preferences (which are related to utility) are easily manipulated. It is also unclear whether people truly understand or realize what makes them happy in such

[30] Jennifer P.Ruger Towards a Theory of a Right to Health; Capability and Incompletely Theorized Agreements in Yale Journal of law & the humanities at www.ncbi.nlm.nih.gov accessed on the 20/3/2022 at 6pm

[31] See Gold Marthe R., editor. Cost-Effectiveness in Health and Medicine. 1996.

[32] https://www.britannica.com/topic/utilitarianism-philosophy

[33] To the extent that utilitarians acknowledge rights at all, they do so instrumentally—rights have no moral basis other than that their protection over time maximizes net social utility. Rights here have an unsubstantiated foundation in that they are contingent upon overall utility maximization. On the application of utilitarianism to health policy and the issue of instrumental rights, see Beauchamp Tom L, Childress James F. Principles of Biomedical Ethics. 1994

[34] See Sen Amartya K. On Ethics and Economics. 1987 [Google Scholar]; Sen Amartya K. The Standard of Living. 1987

circumstances. A person who is deprived of resources may lack sufficient knowledge and education about the world to make accurate statements about her pleasure. In functional terms, comparable utility metrics do not provide us with a good picture of relative well-being. In the context of health policy, this makes inter-personal utility comparisons problematic. In the long run, utilitarianism enables the majority's interests to take precedence over minorities' rights, and it does not imply an unequal distribution of wealth.[35] If the theory is to be applied in health emergency, the concept and practice of justice must be applied which elicit equal and fair treatment of the vulnerable members of the population. Justice, according to the utilitarian definition, entails improving the overall health of the entire population. It is motivated by economic considerations: existing financial resources should be utilised to produce the largest feasible health benefit for the entire population. The health gain is evaluated in years of life gained (typically with a quality of life adjustment), and the greater (average) health gain a particular medical intervention or service delivers, the higher the priority it receives.[36]

B. Communitarian Theories

Communitarian theories of justice, was propounded by Michael Sandel and others,[37] this theory is based on the account of justice, healthcare and public health whereby the provision of health care is justified by the shared expression of values in a given community. According to communitarian theorists there is no single principle of justice that governs the distribution of all social goods. The centrality of the family unit in society is emphasized by communitarianism, which emphasizes each individual's responsibility to serve the 'common good' of the community. Individual rights, according to communitarians, are less important than communal relationships and contributions to the common good in determining a person's social identity and sense of place within the community. It goes to the fact that in communitarian concept, the criterion of justice is based, not on the individual's decision about what healthcare services are desired, but on what society considers to be necessary healthcare[38] In essence, communitarians oppose extreme forms of individualism as well as unrestrained capitalistic laissez-faire "buyer beware" policies that may not contribute to, or perhaps endanger, the community's common good.[39] To the theorist, societies construct principles internally by societies of humans as they evolve politically and constitute distinct 'spheres of justice.' Communitarians take community norms or values as their absolute principles, and health might or might not be included as a special good, depending upon the

35R. Hardin, in International Encyclopedia of the Social & Behavioral Sciences, 2001 at https://www.sciencedirect.com/topics/economics-econometrics-and-finance/utilitarianism

[36] https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2598213

[37] Sandel Michael J., editor. Liberalism and its Critics. 1984. MacIntyre Alasdair. Whose Justice? Which Rationality? 1988, Sandel Michael J. Liberalism and the Limits of Justice. 1982 Walzer Michael. The Communitarian Critique of Liberalism. 18 Pol Theory. 1990;6

[38] Callahan D.Setting limits. medical goals in and ageing society. New York: Simon & Schuster, 1987

[39] https://www.thoughtco.com/communitarianism-definition-and-theories-5070063

community's shared values. According to Emanuel Ezekiel, an ideal system would be to allow deliberative democratic communities to develop shared conceptions of the good life and justice[40] Communitarian theories has applied in the United States, promotes free-market tradition over the principle of equal access to health care.

C. The Libertarian Perspective

Libertarian theories of justice, as advocated by Robert Nozick[41] and others, would deny altogether any societal obligation to provide medical care or health insurance or other health determinants to all because the increased taxes required would infringe on individual liberties. Libertarianism takes the principle of liberty as absolute and does not give health special standing. The 'liberal consensus' in human rights scholarship and practice generally takes a libertarian approach, endorsing the fulfillment of 'negative rights' (civil and political rights) but failing to endorse the fulfillment of 'positive rights.'[42]

The liberal consensus on universal human rights rejects social, economic, and cultural rights outright, claiming that taxing the wealthy to satisfy the positive rights of those who cannot afford to support for themselves erodes the civil liberties or negative rights of wealthier individuals. As a result, a libertarian viewpoint supports national laws that ensure negative liberties, but opposes resource transfer required to fulfill positive rights in general. Individuals are accountable for their own health, well-being, and fulfillment of their life plans, according to the libertarian philosophy. As a result, everyone pays for their own unique medical needs, either directly or indirectly through private health insurance.[43]. It is not a legal obligation to help others with their medical requirements. The state's sole responsibility is to ensure that healthcare services are provided to suit the requirements of all individuals. However, when each person selects what he or she requires communal decisions on how much the entire healthcare expenditure can be limited must be made.[44].

D. Rawls's Theory of Justice

In John Rawls's liberal view, rational agents standing behind a veil of ignorance about their personal circumstances would choose principles of justice that maximize the minimum level of primary goods: goods that are rational to want, regardless of whatever else one wants. Primary goods are allocated to individuals on the basis of fair equality of opportunity due to the disadvantages that have accrued to these individuals through the natural lottery, the distribution of advantageous and

[40] See Emanuel EzekIel J. The Ends of Human Life: Medical Ethics in a Liberal Polity. 1991
[41] See generally Nozick Robert. Anarchy, State, and Utopia. 1974
[42] Evans Tony. A Human Right to Health? 23 Third World Q. 2002;197:199–203
[43] https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2598213
[44] Ibid

disadvantageous attributes by birth, and the social lottery, the distribution of social assets or deficits through family property, school systems, and so on.[45] A major concern with the Rawlsian approach, despite its many advantages, is that it focuses on means rather than ends and does not account for human diversity.

The Rawlsian account does not consider that 'human beings have variable needs for resources, and any adequate definition of the better off and worse off must reflect that fact,' as Martha Nussbaum argues.[46] For instance, two persons holding the same bundle of primary goods, as Sen puts it, 'can have very different freedoms to pursue their respective conceptions of the good.'[47] This critique is especially poignant in assessing the effects of health care and of other resources on health. It is necessary, then, to assess the impact of these resources on health, in order to understand their instrumental effectiveness and to allocate them in an equitable and efficient manner. Rawls's theory, as Nussbaum notes, 'by defining being well-off in terms of possessions alone, fails to go deep enough in imagining the impediments to functioning that are actually present in many human lives.'[48]

Rawls, moreover, expressly avoided focusing on health in his theory because, he suggested, no society can guarantee health to its individuals.[49] Although Rawls later changed his position slightly in The Law of Peoples by including health care as one of the primary goods,[50] his main contention in *A Theory of Justice* is that natural goods like health are not on the list of primary goods—goods that are rational to want. Regarding natural goods, Rawls states in *A Theory of Justice* that 'other primary goods such as health and vigor, intelligence and imagination, are natural goods; although their possession is influenced by the basic structure [of the society], they are not so directly under its control.'[51]

E. Fair Equality of Opportunity

The egalitarian rights-based theory put forward by Norman Daniels[52] and his colleagues—and building on Rawlsian theory—argues for a right to health care on the basis of 'equality of opportunity.' It proposes that

Social institutions affecting health care distribution should be arranged, as far as possible, to allow each person to achieve a fair share of the normal range of opportunities present in that society. The normal range of opportunity is

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[45] Rawls John. A Theory of Justice. 1971;12:15, 90–95.
[46] Nussbaum Martha C. Human Functioning and Social Justice: In Defense of Aristotelian Essentialism. 20 Pol Theory. 1992;202:233
[47] Sen Amartya K. Inequality Reexamined. 1992;8
Nussbaum Martha C. Human Functioning and Social Justice: In Defense of Aristotelian Essentialism. 20 Pol Theory. 1992;202:233 [48]
[49] Rawls John. A Theory of Justice. 1971;12:15, 90–95.
[50] Rawls John. The Law of Peoples. 1999;50
[51] Ibid
[52] Daniels Norman. Just Health Care. 1985;6

determined by the range of life plans that a person could reasonably hope to pursue, given his or her talents or skills.[53]

Under this theory, the social obligation to provide health care is different from and prior to the social obligation to provide other primary goods. Although Daniels claims priority for health care and insulates it from other social goods, his theory does not discriminate among the different types of health care that society is obliged to provide its citizens under an 'equality of opportunity' approach. It is easy to see how this approach can be problematic given the widespread and seemingly limitless array of factors that limit opportunity.

In later works Daniels and colleagues apply Rawls's theory to setting limits in health care[54] and to the social determinants of health,[55] arguing that justice requires 'flattening socioeconomic inequalities in a robust way, assuring far more than a decent minimum,[56]and arguing that, essentially, "health is the by-product of justice.' Sen and others have criticized this view, stating that it 'oversimplifies the demands of health equity vis-à-vis the extensive requirements of justice.'[57] This critique sheds light on the distinction between a "resource-orientation" (Rawlsian) and a "results-orientation' (capability) in public policy.

Moreover, Daniels, like Rawls, expressly avoided universal concerns of social justice with respect specifically to health. Because 'a right claim to equal health is best construed as a demand for equality of access or entitlement to health services,'[58] the notion of a 'right to health' embodies confusion about the kind of thing which can be the object of a right claim.'[59] By giving moral weight only to the resources that may create health, Daniels's theory does not see health and human flourishing as an end itself.

While a focus on fair distribution of primary goods and equal opportunity elevates the importance of the social determinants of health, this view has limitations, especially in acknowledging the intrinsic value of health and other capabilities, in analyzing the relative effectiveness of resources on health and health inequalities,

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[53] see Beauchamp Tom L, Childress James F. Principles of Biomedical Ethics. 1994

[54] Daniels Norman, Sabin James E. Setting Limits Fairly: Can We Learn To Share Medical Resources. 2000

[55] Daniels Norman. Justice, Health, and Health Care. Medicine and Social Justice: Essays on the Distribution of Health Care. 2002;6 [hereinafter Daniels, Health and Health Care] [Google Scholar]Daniels Norman, et al. Is Inequality Bad for Our Health? 2000

[56] Ibid

[57] Ibid

[58] Daniels Norman. Just Health Care. 1985;6

[59] See Fidler, supra note 4; Kickbusch Ilona. Global Health Governance: Some Theoretical Considerations on the New Political Space. In: Lee Kelley., editor. Health Impacts of Globalization: Towards Global Governance. Vol. 192. 2003.Walt Gill. Global Cooperation in International Public Health. In: Merson Michael H, et al., editors. International Public Health: Diseases, Programs, Systems, and Policies. Vol. 667. 2001

and in understanding public policy more broadly.[60]It concentrates on the 'inputs' for health, while paying little heed to the 'output'—whether or not health or health capability is actually achieved. As two well-known medical ethicists have put it, egalitarian theories 'propose that persons be provided an equal share of certain goods such as health care, but all prominent egalitarian theories of justice are cautiously formulated to avoid making equal sharing of all possible social benefits a requirement of justice.'[61]

In contrast, according to the theoretical framework presented here, increasing the supply or access to healthcare, important as that is, would not necessarily achieve justice. Such an approach involves drawing on social and economic analysis, to understand and assess the determinants and consequences of disparities in abilities to achieve good health.

Economic analysis is important to assess the instrumental effectiveness and the cost-effectiveness of the determinants of health capability. From a capability perspective it is insufficient to assume that premature death and avoidable morbidity will necessarily be averted through more and more technologically advanced health care. While health care certainly has an impact on mortality and morbidity,[62]its impact often depends on the type of medical care and is often secondary to or contingent upon the impact of other factors.

For instance, high-technology neonatal intensive care can do much to reduce infant mortality, especially in the United States where this medical technology is of high quality and is often readily available. However, the route through which a fetus and subsequently the newborn becomes at risk for prematurity or prenatal death is often primarily through the impact of the internal and external characteristics of the birth mother—e.g., high stress, poverty, low educational level, lack of prenatal education and information, poor nutrition and sanitation, smoking, alcohol and drug abuse, exposure to pollutants and other external toxins, a lack of basic prenatal and birthing services, a high disease burden or other co-morbid conditions occurring during pregnancy and complications from reproductive technologies. Its goal is to enable individuals to become as equal to others as possible, including in terms of health and well-being. It is an objectively determined healthcare requirement, not an individually experienced healthcare need that is key to the egalitarian paradigm. Patients with a high illness burden are given priority, and determining the disease burden of a certain ailment is an important component of this strategy. It makes no difference whether the disorder is prevalent or uncommon.[63]

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[60] Ruger Jennifer Prah. Ethics of the Social Determinants of Health. 364 Lancet. 2004;1092:1093. [PMC free article]

[61] Beauchamp Tom L, Childress James F. Principles of Biomedical Ethics. 1994

[62] Cutler David. Your Money or Your Life: Strong Medicine for America's Health Care System. 2004 arguing that spending on medical care is worth the cost.

[63]https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2598213

Conclusion

The concept of what constitute access to healthcare and also distinguishes same from what constitute access to emergency healthcare has been taken a look at. Additionally, various theoretical frameworks underlining the understanding of access to healthcare were also examined. The contributions of different scholars relevant to the research topic was examined. In this chapter also, It was argued that the concept of access to health as a right dates back to the Geneva Convention which enjoins member states to provide healthcare for its citizens as a right. The various theories of access to health as a right was equally examined, and the application of this theories has greatly influenced in the process of allocating resources needed in accessing emergency healthcare.