INVESTIGATION TECHNIQUES IN CRIMINAL CASES AND THE RIGHT TO HEALTH IN INDIA

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1. Introduction

What exactly is the human right to health? Is there, as is often asked, really such a thing? There are some variations in the way in which the idea of the right to health is invoked by different individuals. However, the basic concerns behind this articulation may be gleaned by examining not only the contemporary practice in the use of the concept, but also the history of its use over a long period. There are for example a series of ancient Indian authoritative publications which give a glimpse of an ancient system for the protection of the right to health. According to Kautilya’s Arthashastra, the doctor was subject to punishment and a financial penalty for not providing proper information to the patient, for committing a mistake and for negligent treatment.

The right to health has more recently sparked a ferocious debate in relation to the accessibility and affordability of medicines, including lifesaving drugs, in the wake of the introduction of product patents for drugs and the implementation of other provisions under the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement). The history of the protection of right to health under international human rights standards is however a relatively recent phenomenon, and begins in a sense with the first steps towards an international human rights regime.

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with the adoption of the United Nations Charter\(^4\) and the Universal Declaration of Human Rights.\(^5\) A further step was taken with the adoption of the International Covenant on Economic, Social and Cultural Rights\(^6\) in 1966 towards a specific right to health in international law the legally binding law in the human right to health regime. Today, UN agencies are at the forefront in linking health and human rights, and paying increasing attention to health related concerns around the world.

These and other recent developments in the field of human rights and health raise questions about whether the use of certain involuntary interrogation techniques - the narcoanalysis technique, the polygraph examination and the brain electrical activation profile test – for the purpose of investigating criminal cases are valid under existing human rights standards.

The issue has received considerable attention in some quarters since it involves tensions between the desirability of efficient investigation and the preservation of individual liberties. It also raises pertinent questions about the meaning and scope of fundamental rights which are available to all human beings as individuals. This article will examine the implications of the use of these techniques in a variety of settings and analyse these techniques with special reference to the human right to health.

2. The Concept of a Human Right to Health

A large number of international human rights instruments applicable in India recognise a right to health.\(^7\) The 1948 Universal Declaration of

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\(^4\) The Charter of the United Nations was signed on 26 June 1945, in San Francisco, at the conclusion of the United Nations Conference on International Organization, and came into force on 24 October 1945. The references to human rights in the Charter (see Preamble, Articles 1, 55, 56, 62, 68 and 76) have provided the basis for elaboration of the content of the standards and of the machinery for implementing protection of human Rights.


\(^6\) 148 States are party of this Covenant. For the text in various languages, see, 993 UNTS 3, http://untreaty.un.org.

\(^7\) See generally Universal Declaration of Human Rights, 1948 (Article 25); International Covenant on the Elimination of All Forms of Racial Discrimination, 1965 (Article 5 (e)(i)); International Covenant on Economic, Social and Cultural Rights, 1966 (Article 12); the Convention on the Elimination of all Forms of Racial Discrimination Against Women, 1979 (Articles 11 and 12); the European Social Charter (Article 11); the African Charter on