

The Right to Healthcare in Bhutan

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Introduction

The purpose of this paper is to discuss what legal arguments can be made based on the right or entitlement to respect for human dignity to improve access to health care in remote areas in Bhutan. This paper will further discuss the relationship between dignity and health care, and how the lack of healthcare implicates dignity interest.

Dignity

Dignity is often described as an “ethereal concept” which “can mean many things.”¹ Dignity includes the right to autonomy, the possibility of designing one’s life to do as one wish, which is fundamental to human development. The right of autonomy is the ability for one to develop physically, mentally, socially and spiritually.²

However, countries around the globe have described dignity in various ways.³ The Supreme Court of Canada has recognized human dignity as a fundamental value underlying both in Canada's common law and the 1982 Charter of Rights. Dignity has presented a value that “has

¹ Rex D. Glensy, *The Right to Dignity*, 43 COLUM. HUM. RTS. L. REV. 65, 67 (2011) (acknowledging that the concept of dignity is “ethereal” and “inherently vague”)

² *Erin Daly*, *Dignity Rights: Courts, Constitutions, and the Worth of the Human Person* (2012).

³ An example is the Constitution of the Dominican Republic, Art. 38: "The State bases itself on respect for the dignity of the person and organizes itself for the real and effective protection of the fundamental rights that are inherent to it. The dignity of the human being is sacred, innate, and inviolable; its respect and protection constitute an essential responsibility of the public powers."

a communitarian dimension and is accompanied by a number of responsibilities.”⁴ The Canadian courts have expressed the indirect meaning of human dignity in striking down legislation against abortion and assisted suicide.⁵

Many countries have also expressly stated human dignity as a right in their respective constitutions.^{6 7} The Hungarian Constitutional Court has described dignity as a “quality coterminous with human existence...a quality which is indivisible and cannot be limited.”⁸ Germany has simply stated, “Wherever human life exists, it should be accorded human dignity.”⁹ Israel made human dignity a right for its citizens in 1992 when it was included as a constitutional concept.¹⁰ Also, India’s constitution grants broad dignity rights to women and children, but also expresses that “the constitution right to life and liberty enshrines the right to dignity.”^{11 12}

Moreover, South Africa included the following statement in its constitution: “Everyone has an inherent (inborn) dignity and the right to have his or her dignity respected and protected. No person should be perceived or treated merely as instruments or objects of the will of others. Every person is entitled to equal concern and to equal respect. This right is related to our

⁴ Luís Roberto Barroso, *Here, There, and Everywhere: Human Dignity in Contemporary Law and in the Transnational Discourse*, 35 B.C. Int’l & Comp. L. Rev. 331 (2012), <http://lawdigitalcommons.bc.edu/iclr/vol35/iss2/2>

⁵ See *R. v. Morgentaler*, [1988] 1 S.C.R. 30, 164–66, 173–74 (Can.); See also *Rodriguez v. B.C. (A.G.)*, [1993] 3 S.C.R. 519, 521–22 (Can.).

⁶ For example, Belgium’s constitution states the following: “Everyone has the right to lead a life in conformity with human dignity.” Belgium Constitution, Art. 23(1).

⁷ Constitution of Fiji (1988), Section 27: Every person who is arrested or detained has the right... (f) to be treated with humanity and with respect for his or her inherent dignity.

⁸ *Erin Daly*, *Dignity Rights: Courts, Constitutions, and the Worth of the Human Person* (2012).

⁹ *Daly* at 29.

¹⁰ *Barak, Aharon*, “A Constitutional Revolution: Israel’s Basic Laws” (1993). Faculty Scholarship Series. Paper 3697.

¹¹ Constitution of India (1950): WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens: JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and of opportunity; and to promote among them all FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;

¹² *Daly* at 23.

constitutional purpose of establishing a society in which all human beings will be given equal dignity and respect.”¹³

The United States constitution does not expressly state the right to human dignity, but it could be argued that it is part of the core content of fundamental rights mentioned in the constitution.¹⁴ Equality, privacy, freedom, protection from self-incrimination, cruel and unusual punishment, and unreasonable searches and seizures all reflect the concept of human dignity in American law.¹⁵

Right to Healthcare

Human dignity has been understood to require “a certain minimum standard of living, including housing, healthcare, education, and a clean environment.”¹⁶ The World Health Organization has explicitly expressed that “there is a health baseline below which no individuals in any country should find themselves.” The Hungarian Constitutional Court has stated the obligation of the State to secure a “minimum livelihood through all of the welfare benefits necessary for the realization of the right to human dignity.”¹⁷ One of these welfare benefits includes the right to healthcare. This could be interpreted to mean that countries must be able to provide their citizens with adequate doctors, accessible hospitals, and emergency care. Consequently, citizens should have the opportunity to improve their physical and mental health due to the fact that the government provides them with the basic opportunities to do so.

The right to dignity means providing a certain level of healthcare. First, it is imperative that a government determines the minimum level of health, shelter, food, water, recreation that is

¹³ The Constitution of The Republic of South Africa, 1996.

¹⁴ *Erin Daly*, Dignity Rights: Courts, Constitutions, and the Worth of the Human Person (2012).

¹⁵ Neomi Rao, *American Dignity and Healthcare Reform*, Harvard Journal of Law and Public Policy, Vol. 35, No. 1, 171 (2012).

¹⁶ *Id.*

¹⁷ *Id.* See also Christopher McCrudden, Human Dignity and Judicial Interpretation of Human Rights, 19EUR.J.INT’LL.655,693&n.270 (2008).

necessary to assure a dignified life. The Bhutan government has the Gross National Happiness to assess such levels. This should be used to evaluate the minimum health benefits required in urban and rural areas to evaluate what should be provided.

Furthermore, the right to health is not the right to be healthy, but rather the human right to “harbor the hope of recovery and, in effect, to seek relief for her suffering and a life according to her human condition.”¹⁸ A human being needs to maintain certain health levels to function adequately. However, it must be determined what the “certain health levels” consists of. This is a legislative (or perhaps executive) function, but not a judicial one. South African courts have noted that they are capable of review, but they are not capable of deciding what healthcare procedures and medicines are needed.¹⁹ Hence, it might be wise to have governmental authorities determine health needs through research, policy development, and program implementation. But the provision of health care should be tied to people’s capacity to develop those inherent human faculties in a dignified way and determine the course of their lives.²⁰ The Colombian courts have found that the right to health can be “judicially enforced when it is intimately linked to the right to life, integrity and dignity.”²¹ If an individual is refused certain healthcare treatments, his or her right to a dignified life may be violated. Dignity ensures that individuals are able to access basic necessities such as food, shelter and healthcare, to live a dignified life, and to pursue their choices adequately. The Committee on Economic, Social and Cultural Rights (CESCR) has argued that “the right to physical and mental health also implied the right to have access to, and to benefit from, those medical and social services...”²²

South Africa

¹⁸ *Daly* at 57.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² CESCR, General Comment 5, para. 34.

The South African Constitution expressly guarantees a right to healthcare.²³ Section 27 of the South African Constitution provides that everyone has the right to have access to health care services, including reproductive health care.²⁴ Additionally, the South African government has an obligation to protect everyone's life in South Africa.²⁵

Minister of Health v. Treatment Action Campaign was one of the first cases in South Africa to establish “a conceptual and remedial framework for judicial review and enforcement of the obligation to ensure access to healthcare.”²⁶ In this case, Treatment Action Campaign (TAC), a South African HIV/AIDS activist organization, sued the South African Ministry of Health for not making drugs, such as Nevirapine, available to all women who were HIV-positive to prevent mother-to-child transmission of HIV.²⁷

South Africa is faced with a HIV/AIDS epidemic. There are 7 million people living with HIV in South Africa.²⁸ However, South Africa has the largest antiretroviral treatment (ART) program globally. South Africa uses mainly domestic resources to finance the program. Approximately \$1.5 billion is invested to run the HIV & AIDS program.²⁹ This can be correlated to the right of health granted to the South African population.

²³ S. Afr. Const., 1996, §26-29.

²⁴ See S. Afr. Const., 1996, §27. THE RIGHT OF ACCESS TO HEALTH CARE, FOOD, WATER AND SOCIAL SECURITY:

Everyone has the right to have access to: - health care services, including reproductive health care; - sufficient food and water; and - social security, including, if they are unable to support themselves and their dependents, appropriate social assistance. Social security refers to schemes to which workers and employers contribute for old-age pensions, medical and unemployment insurance. Social assistance means assistance from the government to certain groups such as the elderly, children in foster care, etc. Examples of such assistance are old-age grants, disability grants, child support grants and foster care grants. • No one may be refused emergency medical treatment. This means that a person who suffers from a sudden catastrophe, which calls for immediate medical attention, should not be refused ambulance or other emergency services that are available and should not be turned away from a hospital that is able to provide the necessary treatment.

²⁵ *Mohammed v President of the Republic of SA (Society for the abolition of the death penalty in SA intervening)* 2001 (3) SA 893 (CC) 917

²⁶ *Minister of Health v. Treatment Action Campaign*, 2002(5) SA 721 (CC), 19 (S. Afri.)

²⁷ *Id.*

²⁸ <https://www.avert.org/professionals/hiv-around-world/sub-saharan-africa/south-africa>

²⁹ *Id.*

Treatment Action Campaign argued that failure to provide anti-retroviral drugs to all HIV-positive pregnant women in order to prevent woman-to-fetus HIV transmission was a constitutional violation. They alleged a violation of the right to access health care services under the South African Constitution section 27. The Court ordered that Nevirapine be provided to HIV-positive mothers giving birth in state institutions. Additionally, the Court required the government to provide the court an outline of how it planned to extend provision of the medication to its countrywide birthing facilities.

Following the International Covenant for Economic, Social and Cultural Rights, the South African Court “emphasized that the constitutional right is to be determined not by reference to whether individuals have access to the minimum core of the right, but by reference to whether the government’s plan reasonably indicates progressive realization of the right.”³⁰ Hence, the South African government was expected to take action to assure that individuals are able to effectively enjoy the right of health. In discussing the minimum core, the Court said: “This minimum core might not be easy to define, but includes at least the minimum decencies of life consistent with human dignity. No one should be condemned to a life below the basic level of dignified human existence.”³¹ This does not mean that the government is obligated to do everything to ensure that a person is provided with all the best healthcare options that are necessary to assure that the person lives a dignified person. Rather, the government must take reasonable measures to ensure that citizens are provided access to the socioeconomic rights identified in the constitution on a progressive basis.

This case relates healthcare to dignity in the sense that it allowed mothers and unborn children who are exposed to HIV to live with out discrimination based on their health condition.

³⁰ *Daly at 63.*

³¹ *Id.*

It respected individuals right to respect, and right to be free of discrimination, humiliation and embarrassment. Furthermore, it preserved the right of life and liberty of those infected individuals. Allowing those drugs to be provided across the board allowed women from all different socio-economic backgrounds have equal right to healthcare.

The Court's reasoning followed the earlier case *Soobramoney v. Minister of Health, KwaZulu-Natal*.³² Thiagraj Soobramoney suffered from heart disease and other illnesses. As a result, his kidneys failed in 1996, thus to survive he was required renal dialysis. After exhausting his personal resources at a private medical facility, he sought free treatment from a state hospital. The hospital could only provide treatment to 60 patients, but it serviced approximately 85 patients. Due to limited hospital resources, the hospital examined the following factors to access whether a patient would be admitted to the program: (a) automatic admission for acute renal failure that could be treated; (b) the patient's eligibility for a kidney transplant; and (c) whether the patient was free of significant vascular or cardiac disease. Since Soobramoney failed to meet these requirements, he was refused access to the dialysis program. As a result, Soobramoney challenged the hospital's decision and argued that the hospital violated his right "not to be refused emergency medical treatment."³³

Since emergency medical treatments protect life, the South African government protects that right and no one can be refused emergency medical treatment. However, the Court interpreted that right to have a limited meaning – "One who suffers a sudden catastrophe, which calls for immediate medical attention, should not be denied the available emergency services, and should not be turned away from a hospital equipped to administer the necessary treatment."

³² Soobramoney 1997.

³³ South African constitution – Section 27 (3): "No one may be refused emergency medical treatment." Section 11: "Everyone has the right to life."

Accordingly, the Court ruled that Soobramoney's health condition was not an emergency, but better described as an "ongoing state of affairs."³⁴

The population of South Africa is explicitly guaranteed the right to health in its Constitution. However, the cases discussed above refine what that right entails. The South African courts have established where the government should act more or less to ensure that the right of health is not violated and dignity is preserved.

Colombia

Colombia in recent times has also ordered widespread changes to the health care system and adopted a human rights-based approach towards its health ideology for its citizens.³⁵ The Colombian Constitutional Court held that the “right to health—which was not itself considered a fundamental right—had to be protected given that it relates to the rights to life, personal integrity, and dignity: “[The right to health] can be identified as an immediate necessity to the right to life, so that to infringe upon the health of the people is equivalent to infringing upon their very right to life.”³⁶ Therefore, all Colombians citizens are entitled to live in dignity.³⁷

Colombia has been a trailblazer for promoting the right of healthcare as a fundamental right. The changes Colombia implemented to its Constitution and its outlook towards healthcare have been extremely progressive compared to many first world countries.

“Many of these case have arisen when the government health service has declined certain benefits or services, and claimants have argued and the court have often agreed that the denial constitutes not only a deprivation of the right to health, but also of the right to live with

³⁴ *Id.*

³⁵ *Corey Prachniak-Rincón and Jimena Villar de Onís*, HIV and the Right to Health in Colombia.

³⁶ *Id.*

³⁷ *Daly* at 56

dignity.”³⁸ The Colombian court system through its jurisprudence has continually held “the right to health enforceable when the case involved a person or group of people in especially vulnerable circumstances.”³⁹ Colombian courts have granted special protection for the health rights of the displaced, pregnant women and children and elderly.⁴⁰ Additionally, the Colombian government has not only supported the right to advanced healthcare during the prevention of imminent death, but also support a life of dignity and better health options.⁴¹

Colombian courts have used the topic of abortion to discuss dignity and healthcare.⁴² ⁴³If a country prohibits abortions it would resort the women only to be wombs and it would separate her from consciousness.⁴⁴ Thus, putting restrictions on healthcare services, such as prohibiting abortions (especially if it is related to rape) is a crime against human dignity. “The Colombian Constitutional Court in a abortion case has invalidated “norms in which the legislature denies the minimum condition of the human being as being capable of deciding on her own course and life choice.”⁴⁵ Accordingly, the court feels the decision of continuing or terminating a pregnancy for health or personal reasons is a decision that should solely be made by the woman based on her “own criteria...since it is she who will have to live with the consequences of such a decision.”⁴⁶

³⁸ *Id.*

³⁹ Yamn, Judicial Protection, Final Macro, Hastings Int’l & Comp. L. Rev.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Prior to 2006, Colombia’s law banned abortion. http://www.huffingtonpost.com/courtenay-strickland/what-colombia-can-teach-t_b_3634922.html

⁴³ A few statistics from Colombia state that: “(a) An estimated two-fifths (44%) of all unintended pregnancies in Colombia end in an induced abortion. This translates to an estimated 400,400 induced abortions each year; (b) As of 2008, only about 322 (0.08%) of these abortions were reported as legal procedures; (c) The absolute number of abortions rose nearly 40% from 1989 to 2008, largely because there are many more women of reproductive age today than there were two decades ago.” <https://www.guttmacher.org/report/unintended-pregnancy-and-induced-abortion-colombia-causes-and-consequences>

⁴⁴ *Daly*

⁴⁵ *Id.* at 40.

⁴⁶ *Id.* at 41; Sentencia T-009/09, para 3.2 (Colombia Constitutional Court (2009)).

This all resulted from the Colombian Constitutional Court's 2006 decision that legalized abortion.⁴⁷ A mother of three who was pregnant with her fourth initiated this case. She was seeking an abortion after she discovered she had cancer.⁴⁸ The abortion would have allowed the mother to obtain cancer treatment and ultimately be healthy and alive for her living three children. The Court decided that abortion is legal in Colombia. Unfortunately, the decision did not help the mother since the cancer spread rapidly and ultimately took her life.

However, this case is essential in that fact that it recognized the violation of human dignity. "The Court's decision specifically highlights the fact that pregnancy is often used as a pretext for curtailing or suspending women's human rights, a practice that flagrantly violates: The right to dignity, liberty and free development of the individual person, the right to health, life, bodily integrity and reproductive autonomy, and the right to equality with men."⁴⁹ Hence, the protection and advocacy of sexual and reproductive rights of women is important in maintaining women's' dignity rights.

In another case, the Court ordered an insurance company to pay for HIV medications after the insurer refused to cover HIV medications.⁵⁰ In response, the Court ordered the insurer to provide the medication to the patient. This establishes the connection between the rights to health and to life was particularly clear with respect to HIV, which at the time was marked by high mortality.⁵¹

When a country refuses a healthcare treatment for a citizen, the country also violates that citizen's right to a dignified life. The purpose of medical treatments is to ensure that individuals

⁴⁷ SENTENCIA C-355/06 Referencia: expedientes D- 6122, 6123 y 6124 Demandas de inconstitucionalidad contra los Arts. 122, 123 (parcial), 124, modificados por el Art. 14 de la Ley 890 de 2004, y 32, numeral 7, de la ley 599 de 2000 Código Penal.

⁴⁸ *Id.*

⁴⁹ *Id.* <https://rewire.news/article/2007/04/03/colombia-s-abortion-decision-abortion-as-a-matter-of-human-rights/>

⁵⁰ cite case - The first tutela to claim a violation of the right to health was T-484 of 1992, brought by a person living with HIV whose medication had been suspended by the public insurer Seguro Social de Tuluá.

⁵¹ *Supra at 18.*

heal from medical conditions, so they can continue with their lives. However, “the right to health is compromised where government action diminishes people’s capacity to develop those inherent human faculties in a dignified way and determine the course of their lives.”⁵²

All of these countries have noted that guaranteeing a life of dignity includes the ability to give citizens the right to healthcare. It has been suggested that “there is no subject more than health that shows how inexorably interdependent our societies, and world, really are.”⁵³ The right to health allows one to have power over his or her own life “that is required to live life with dignity calls for rights to protect against affronts on people’s bodily or moral integrity, whether in the public or the private sphere.”⁵⁴

Ideally, healthcare should be provided as a public good for all. It should be financed publicly and equitably. The human right to healthcare means that, “hospitals, clinics, medicines, and doctors’ services must be accessible, available, acceptable, and of good quality for everyone, on an equitable basis, where and when needed.”⁵⁵ However, it is not always as easy as that. Providing healthcare to citizens in urban cities might be simpler and quicker and be of better quality than in the remote regions of such country.

United States

The United States does not explicitly use the term “dignity” in their Constitution. However, certain Supreme Court cases do indirectly and directly discuss dignity and the right to health care. Some of these cases are related to female reproductive rights. In *Roe v. Wade*, the Supreme Court of the United States made it illegal for states to forbid women from obtaining

⁵² *Daly* at 57.

⁵³ Alicia Ely Yamin, *Power, Suffering, and the Struggle for Dignity: Human Rights frameworks for health and why they matter* (Philadelphia: University of Pennsylvania Press, 2016), pp. 234.

⁵⁴ *Id.*

⁵⁵ *Id.*

abortions.⁵⁶ The decision provided women with the ability to control their reproductive lives. The court held that a women’s right to abortion fell within the rights of privacy protected by the Fourteenth Amendment.⁵⁷ The Supreme Court stated that the Constitution through its first, fourth, ninth and fourteenth Amendments support and protect an individuals “zone of privacy” against state laws.⁵⁸

Further, the U.S. Supreme Court addressed dignity in *Planned Parenthood v. Casey*. In *Casey*, the issue presented to the Court asked whether a state could require a woman who want an abortion to obtain informed consent to wait 24 hours thus challenging several of Pennsylvania’s state statutory provisions regarding abortions?⁵⁹ Ultimately, the Court reaffirmed *Roe v. Wade* with some limitations.⁶⁰ The plurality in *Casey* stated that “These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy are central to the liberty protected by the Fourteenth Amendment. At the heart of liberty is the right to define one’s own concept of existence, of meaning, of the universe and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the state.”⁶¹

It is noted that such words reinforce the link between dignity and the choices individuals make as to who they are and how they want to live their life.⁶² Thus, many cases in American law have further stated, “that an individual who cedes control of the decision to another has lost

⁵⁶ *Roe v. Wade*, 410 U.S. 113 (1973).

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Planned Parenthood v. Casey*, 505 U.S. 833 (1992).

⁶⁰ *Id.*

⁶¹ *Daly* at 92.

⁶² *Id.* at 93.

his or her dignity to that extent...the authority to make such traumatic and yet empowering decisions is an element of basic human dignity.”⁶³

Peru

Socio-economic rights are essential to preserving an individual’s dignity rights. Economic, social and cultural rights are identified as socio-economic human rights. These rights encompass the right to housing, healthcare, right to science and culture and the right to education and the right to adequate standard of living. In order to connect dignity with socio-economic rights it is important to figure out the “minimum core of health, shelter, food, water, recreation and so on that is necessary to assure a dignified life.”⁶⁴ Accordingly, “violations of economic, social and cultural rights – such as failure to protect the land rights of indigenous peoples, denying minorities’ education rights and inequitable provision of health care – are often linked with civil and political rights violations in pattern of denial.”⁶⁵ In general, regardless of one’s economical and social background and status, people across the world should all have the same socio-economic rights.

In the name of dignity, Peru's court has been highly assertive in securing an individual's right to a social or economic good while at the same time insisting that these rights are social rather than individual.⁶⁶ The Peruvian Constitutional Tribunal, in a pivotal case concerning the distribution of medicine to indigent people living with HIV/AIDS, reframed social, economic, and cultural rights as "collected responsibilities."⁶⁷ The Tribunal explained that "[r]ecognizing social rights like collective obligations make it so that, in turn, each individual focuses his

⁶³ *Id.*

⁶⁴ *Daly at 61.*

⁶⁵ Salgado, Sebastiao, A pipeline carries drinking water to the wealthy parts of Mumbai through the centre of the shantytown of Mahim, India, 1995. Amnesty International Publication.

⁶⁶ *Daly at 121.*

⁶⁷ *Id.*

maximum energies in obtaining those goods that represent social rights, superseding in this way the paternalistic vision that insists that the satisfaction of needs be concentrated in the hands of the state.⁶⁸ For this court, ensuring well being at a level for a dignified life is a collective obligation, as much of the society as for the particular individual, and the state, but not exclusively the latter."⁶⁹ Furthermore, every individual has a role to play in ensuring the collective dignity of every other individual.⁷⁰

Canada

Canada provides universal healthcare to its citizens. Canada has a combination of big cities, such as Toronto, Vancouver, Montreal, Calgary, and remote towns. Health care facilities in northern and rural areas are fewer and further away than in big cities. Due to such circumstances, citizens in northern and rural regions “typically travel great distances to obtain services that cannot be obtained in their local communities. It is not uncommon for persons requiring specialized health services or diagnostic testing to travel 200 kilometers or more to the nearest regional hospital.”⁷¹ As a result, families and individuals are uprooted from their communities when they are forced to travel great distances to seek adequate and fast healthcare. This creates financial burdens, stressful events, and it affects not only families but also the community as a whole.

A recent study has shown that rural Canadians are found to be less healthy than their counterparts in urban areas. Rural Canadians experience higher mortality rates and lower life expectancies. Additionally, chronic diseases like arthritis/rheumatism, high blood pressure and diabetes are significantly higher in rural populations than in urban populations. Consequently,

⁶⁸ *Id.*

⁶⁹ *Id.*; *Meza Garcia v. Ministry of Health*, Exp.N. 2945-2003 – AA/TC , Resolution & 2 (Apr. 20, 2004) (Peru Constitutional Tribunal), para 25.

⁷⁰ *Id.*

⁷¹ *Id.*

the place of residence, health behavior and attitude toward health contribute to weaker health prospects in rural communities.⁷²

To ameliorate the disparities, Canada has turned to new technologies to improve healthcare throughout the country. An example of the new program was the creation of Telehealth. Telehealth allows the practice of medicine at a distance. Originally, it started with a telephone service between clients and clinicians, but it has turned into an elaborate, highly digital, informational pathway involving use of computers/videoconferences/satellite communications. In order for the telehealth system to be successful, it is important that certain criteria are met in rural communities, including the readiness of the environment; Information technology and equipment availability; and the ability to recruit and retain qualified personnel.

Bhutan's Healthcare

Since 1970, the Ministry of Health of Bhutan provides universal healthcare to the citizens of Bhutan. The basic healthcare provided is free and it is a constitutional right in Bhutan. The Constitution of Bhutan states: *the State shall provide free access to basic public health services in both modern and traditional medicines.*⁷³

Currently, there are 32 hospitals and 206 basic health units in Bhutan. Approximately 203 doctors and 799 nurses serve the 700,000 plus population of Bhutan. These doctors have mostly been educated/trained in other south Asian countries, such as India, Thailand, Sri Lanka, Bangladesh, etc. Nonetheless, Bhutan continues to make progress: In the last 50 years, life expectancy has risen by 18 years, and the infant mortality rate has fallen from 102.8 to 49.3 per

⁷² Kulig, Judith & Williams, Allison, Health in Rural Canada, 2012.

⁷³ Kannika Damrongplasit, Tshering Wangdi; Healthcare utilization, bypass, and multiple visits: the case of Bhutan, *International Journal of Health Economics and Management*, 2016; see also Tobgay, T., Dorji, T., Pelzom, D. and Gibbons, R. V. (2011), Progress and delivery of health care in Bhutan, the Land of the Thunder Dragon and Gross National Happiness. *Tropical Medicine & International Health*, 16: 731–736. doi:10.1111/j.1365-3156.2011.02760.x; see also Adhikari D. Healthcare and happiness in the Kingdom of Bhutan. *Singapore Medical Journal*. 2016;57(3):107-109. doi:10.11622/smedj.2016049.

1000 live births from 1984 to 2008. Communicable diseases are decreasing; however, cardiovascular, diabetes, and mental health diseases are on the rise.⁷⁴

Bhutan's national gross happiness index includes: (1) psychological well-being; (2) health; (3) education; (4) time use and balance; (5) cultural diversity and resilience; (6) good governance; (7) community vitality; (8) ecological diversity and resilience; and (9) living standards.⁷⁵ As a result, there are four pillars of Gross National Happiness, which combine the equitable and socio-economic development, preservation, and promotion of cultural and spiritual heritage, conservation of environment and good governance that are interwoven, complementary and consistent.⁷⁶ Psychological well-being and health are essential parts to Bhutan's national gross happiness. Based on those factors, Bhutan citizens have prioritized their happiness to their mental and physical well-being.

However, not everyone in Bhutan might be getting the same healthcare access. Some of the remote areas in Bhutan are not immediately accessible to roads, major highways or transportation. It was noted that it can take up to three days for citizens living in the remote areas to access a road. This obviously creates challenges for the population to be able to access decent quality of healthcare and in some cases; a 1-3 day delay can be a matter of life or death. While on the other hand, the urban cities have easier access to hospitals. It can be argued since the healthcare is vastly different in the rural areas compared to the urban areas each person in Bhutan is not given the same quality of healthcare. Therefore, their right to health is either limited or violated and it further violates their dignity rights because it limits their options in choosing how to go about their health and make personal choices about their well being. Human dignity

⁷⁴ *Id.*

⁷⁵ Tashi Delek, Vol. XV, Issue 1,

⁷⁶ <http://www.tourism.gov.bt/about-bhutan/the-four-main-pillars>

requires each person to recognize each individual in society as a member with equal rights and their own individual value.

Human Dignity & Right to Health

As noted throughout this paper, dignity provides the access to healthcare as a basic right. Furthermore, that basic right to health should be determined in terms of what is reasonable and normal in Bhutan. However, the normal and reasonable standards must ensure that individuals are still able to carry out a dignified life in accordance with human dignity. Dignity is said to be personal and subjective. However, there is a common outlook as to the picture of what human dignity possesses. A person's dignity depends on equality and autonomy. Thus, "social and economic rights, such as the right to social security, public health, life, education and other public services, represent the social purposes of the state through which the individual can develop his or her full self-determination."⁷⁷

The right to life with dignity encompasses a broader outlook on physical, social and mental well-being. Hence, if a person is not provided the options with minimum healthcare rights to live an equal and independent life, then there is a violation of human dignity. Each citizen should be afforded and treated to equal rights. Thus, any citizen that resides in rural Bhutan should have the same rights as a Bhutanese living in the city. However, living an independent life might be different. Independence to an urban Bhutanese could be different compared to a rural Bhutanese. Independence could entail the right to privacy, right to autonomy, and further being a healthy member of society.

Accordingly, Bhutan must determine: (a) what are the basic health care needs of Bhutanese citizens in remote areas to live a dignified life; and (b) what health-related resources

⁷⁷ *Daly* at 58.

can be implemented in the remote areas to ensure those individuals live a dignified life? It is crucial for the state to take into account the minimum core of health, shelter, food, water that is necessary to a dignified life in the rural areas.

Because dignity is connected with human life, the right to health should as a result be connected with human life. Many constitutions and cases have noted that dignity comes into play as soon as someone starts living; hence, at that point, one's health becomes a major concern of that person. Accordingly, if there are violations of one's right to health then that person's dignity is violated.

CONCLUSION

In general, dignity includes the right to material conditions of life and the right to live well as a member of society. Dignity allows an individual to make personal choices about themselves in regards to their housing, health, and education. These options should be provided to citizens equally regardless of their socio-economic status. Additionally, there is a minimum standard of health, housing, education, etc., that must be provided to people so their dignity rights are not violated. In discussing the minimum core, the Court said: "This minimum core might not be easy to define, but includes at least the minimum decencies of life consistent with human dignity. No one should be condemned to a life below the basic level of dignified human existence."⁷⁸ Accordingly, this does not mean that the government is obligated to do everything to ensure that a person is provided with all the best healthcare options that are necessary to assure that the person lives a dignified person. Rather, the government must take reasonable measures to ensure that citizens are provided access to the socioeconomic rights identified in the constitution on a progressive basis.

⁷⁸ *Id.*

As discussed earlier, the right to health is not the right to be healthy, but rather the human right to “harbor the hope of recovery and, in effect, to seek relief for her suffering and a life according to her human condition.”⁷⁹ Individuals must have access to health care options, such as adequate doctors, hospitals and treatment that will preserve their hope of recovery and allow them to live a healthy lifestyle and be a functional member of society. This does not mean that all of the options have to be affordable or within reasonable distance or accept every individual that seeks them. However, it does mean that those options are open for everyone to access and that such healthcare options be catered based upon the location one resides and the relevant customs and traditions that situated in that location.

If one’s access to health care is obstructed, they cannot participate in society and improve themselves mentally and physically. Thus, one’s dignity rights are violated. Having poor health and not being able to improve one’s health, will allow individuals to be less reliant on themselves. Dignity includes the right to autonomy, the possibility of designing one’s life to do as one wishes, which is fundamental to human development. The right of autonomy is the ability for one to develop physically, mentally, socially and spiritually.⁸⁰ If one is not allowed to access a certain minimum of health care then their right of autonomy is infringed upon, and that in return would hinder one to develop physically, mentally, socially and spiritually.

Dignity involves around governments recognizing and respecting “people’s capacity to fully develop their personalities and to control the course of their lives.”⁸¹ Adequate health care allows one the options to choose treatments, doctors and hospitals that will develop their

⁷⁹ *Daly at 57.*

⁸⁰ *Id.*

⁸¹ Daly, Erin and May, James, *Environmental Dignity Rights* (December 14, 2016). *The Effectiveness of Environmental Law*, (Ed. Sandrine Maljean-Dubois), 2017 Forthcoming; Widener University Delaware Law School Legal Studies Research Paper Series No. 17-02. Available at SSRN: <https://ssrn.com/abstract=2885500>

personalities, mental wellbeing and physical well-being. Consequently, the control over choosing proper health care options for one's needs is the way one's dignity can be upheld.