

RIGHT TO HEALTH

This chapter examines measures taken by the Government regarding access to health care services, its regulatory role, and responses, etc.

The year saw continuing concerns with the inadequate allocations for health in the national budget, as well as a lack of effective regulation in public services and denial of access to appropriate, adequate and effective health care. An important step in improving the regulatory framework resulted in the promulgation of the Consumer Rights' Protection Ordinance 2008. Several public health scares resulted from the lack of prompt or adequate state steps to address bird-flu, the continuing availability of melamine-adulterated milk, medication on *kala azar* and the arrival of a toxic ship.

The State's obligations under the Constitution and international instruments include ensuring the right to health without discrimination of any kind, in particular the provision of health services and improvement of public health.¹ The Government's commitments under the Millennium Development Goals (MDG's) include, among others, reducing the rates of infant and maternal mortality and fulfilling a number of objectives including the distribution of clean drinking water, by 2015.²

Government intervention

In the national budget of 2008-09, it was claimed that considerable success had been achieved in securing progress towards the MDG's.³ For example, the coverage of safe drinking water in villages and towns has improved by 87 and 60 per cent respectively. Sanitation coverage, which the Government promises to guarantee up to 100 per cent by 2010, has improved by 81 per cent in villages and 85 per cent in cities. Pure water is being distributed through pipelines in 300 arsenic affected villages. Sources of arsenic free, safe water are being constructed in a further 200 villages and five Pourashabhas.⁴ Amendments to the National Health Policy, Medical Waste Management and Administration Rules, Private Treatment Services Act and the list of necessary medication are at the final stages.⁵

Noteworthy progress has been made in terms of reducing fertility rate by almost a third (down to 2.7 per woman, from 6.3 between the years of 1971-75)⁶ and slashing the under-five mortality rate (by 50 per cent since 1990)⁷.

However, health advocates continue to emphasize the inadequate budget and infrastructure available for delivery of health services. The health sector allocation in the 2008-09 financial year budget, amounts to Taka 58,620 million for expenditure in relation to development and establishment sector, which is taka 363⁸ per person per year, although the budget for 2008-09 financial year specifies with regard to public health and nutrition that the Government is implementing a seven year Health, Nutrition and Population Sector Programme (HNPS), of Taka 324,500 million.⁹ Only one hospital bed is available per 2,732 persons

1 Articles 15 and 18 of the Constitution, Art. 32 (right to life) and the International Covenant on Economic, Social and Cultural Rights.

2 The 2nd PRSP, for the three year period from 2008-11, approved on 2 October 2008, emphasizes achievement of the various MDGs related to the health sector.

3 Budget 2008-09, paragraph 56.

4 Budget 2008-09, paragraph 113.

5 Budget 2008-09, paragraph 141.

6 The primary report of the *Bangladesh Demographic and Health Survey 2007*, quoted: Fertility rate comes down to 2.7 from 6.3: Niport survey; *The Daily Star*, 3 February 2008.

7 UNICEF report, quoted: "Under-5 mortality rate falls by 50pc", *The Daily Star*, 13 September 2008.

8 According to *World Population Report 2008*, population of Bangladesh is 161.3 million.

9 *Ibid.*, paragraph 140.

and only one doctor per 3,125 persons.¹⁰ The scarcity of doctors, nurses and health related technologists in the country has been estimated to stand at 60,000, 280,000 and 480,000 respectively.¹¹

Medical Negligence

Until 23 September, press reports indicated that some 52 persons had allegedly died due to medical negligence. There were no reports of investigations by any organization into any of these allegations. Notably, the medical practitioners' licensing body, Bangladesh Medical and Dental Council (BMDC), which has issued over 37,000 licenses since its foundation in 1973, has to date only punished one practitioner for medical negligence.¹²

Quality of Medicine

The effectiveness of public health, nutrition and treatment services depends to a great extent on the manufacture, distribution, quality and cost of medicines. Repeated concerns have been expressed in the media regarding the quality control of available medicines and the availability of adequate facilities or regulatory mechanisms for this purpose.¹³ There are only two drug testing labs for monitoring the quality of medicines produced by a total of 836 allopathic, homeopathic, *Yunani*, and *Ayurvedic* medicine companies.

Spread of terminal diseases

A further outbreak of the life-threatening illness, *Kala azar* occurred in 45 districts of the country (with some 10,000 people affected annually).¹⁴ Reports of seven deaths in Mymensingh from use of the preventive capsule 'Miltefosin' led to a Government investigation into the quality of the medicine. It was tested at a WHO approved testing facility in the Netherlands, and found to be inadequate, but no further reports were available regarding this inquiry.¹⁵

There is a reported increase in sufferers of terminal illnesses which require expensive treatment, such as cancer (currently there are reportedly 1.3-1.5 million cancer sufferers, with the number increasing by at least 200,000 annually)¹⁶ and HIV/AIDS (current figures at 1207, of whom 365 are AIDS sufferers including a good number of children).¹⁷ Till date 123 persons have died of AIDS.¹⁸ For its geographical position (high infliction of HIV/AIDS in the adjacent India and Myanmar), higher rate of injected drug receivers etc Bangladesh is at potential risks from AIDS. Government's initiatives to mitigate these threats are not sufficient as treatment is not available in all cases in the country, which makes it expensive and inaccessible.

Corruption and Mismanagement in Medical Care

A Ministry of Health appointed Monitoring and Supervisory Committee was established on 31 August 2008¹⁹ in response to complaints from patients and reports published in newspapers. One hundred and four personnel in several Government hospitals found responsible for mismanagement and corruption leading to the suffering of patients were penalised.²⁰ This means that Government itself was anxious about the public health care system.

National Health Policy

10 *Bangladesh Statistical Year Book, 2007*.

11 *Ibid*.

12 BMDC punished only one doctor in 35 years, *New Age*, 15 March 2008.

13 "Coarse flour, flour and talcum powder found in the medicines of some companies", *Ittefaq*, 15 September 2008.

14 "Govt concerned as kala zar spreads to 45 districts", *New Age*, 13 October 2008.

15 "The government investigating the Kala Azar medication scandal", *Shamokal*, 11 October 2008, noting that the government had bought around taka 45 million worth of this medicine from a pharmaceutical company.

16 Bangladesh Cancer Foundation, "Cancer attacks about 2 lakh people annually in country", *New Age*, 16 March 2008.

17 "Number of children suffering from AIDS on the rise, Irene Niazi Manna", *Shamokal*, 5 September 2008.

18 *Ibid*.

19 "Government concerned at the quality of services at government hospitals", *Prothom Alo*, 22 September 2008.

20 *Ibid*.

The proposed National Health Policy (Current) 2008 has drawn a negative reaction among the general public, as it proposes to minimize the Government's role as health care provider and watch dog. A programme currently being tested involves private sector management of 342 Community Clinics and 130 union health and family welfare centers and hospitals.²¹ The proposed Self-Governing Hospital Ordinance also aims to convert government hospitals to self-governing hospitals,²² to cover, in an initial phase, six district and 15 upazila level hospitals. Other than vulnerable group feeding (VGF), elderly and widowed card holders, extremely poor, indigent and freedom fighters, all patients would need to pay for treatment facilities. Fierce criticism of these proposals from health rights advocates, and continued contestation of the possible content of the National Health Policy 2008 and the Self-governing Hospitals Ordinance, meant that neither was adopted by year end.

Toxic Ship

The High Court, on 30 November 2008, issued stay order on dismantling of the Greenpeace-blacklisted vessel *MT Enterprise*. The order was passed in a public interest litigation by Bangladesh Environmental Lawyers Association (BELA), following no-objection certificate issued by the Ministry of Environment even after it was informed of the toxic content of the ship.

Melamine in Milk

World-wide reports of babies having died, and infants having been taken ill from ingesting melamine mixed powdered milk drew protests in Bangladesh. A major public health concern arose from the lack of effective action by the Government to regulate or restrict the availability of melamine-affected milk. Due to public pressure the Government was forced to carry out tests on eight popular brands namely Diploma, Red Cow, Dano, Yashlee-1, Yashlee-2, Sweet Baby-2, Nido and Enlene. The Government obtained three different results from three testing labs. The Dhaka University Chemistry Department, in its tests, found that melamine had been spotted in all eight brands. However, the Bangladesh Standard and Testing Institute (BSTI) and the private testing lab *Plasma Plus* found melamine in only one brand (Yashlee-1). The Government, with the aid of World Food and Agricultural Organisation, again sent samples of eight brands for testing to a research lab in Bangkok and to the Bangladesh Council of Scientific and Industrial Research (BCSIR). However, given its inaction the High Court, on hearing a public interest petition by HRPB, filed on 23 October 2008, stayed the sale and display of the eight brands of powdered milk in consideration of public health until the publication of the test result and issued a *Rule Nisi* upon the Government to show cause within four weeks why their failure to stop the sale should not be declared illegal.²³

On 3 November, after receiving three reports, and results obtained by the Bangkok Research Institute, the Government banned three brands, Yashlee-1, Yashlee-2 and Sweet Baby-1.²⁴ The rest of the five brands are now available in market.

Adulteration of Food

Reports of food adulteration are commonly encountered in the press. The consumer protection law specifically addresses issues regarding adulteration.²⁵ The Ordinance provides that failure to exhibit a fixed price list of items to be sold, charging a higher price than the fixed price, creating discrepancies in the weight of goods, attempting to trick consumers with false advertising, etc., would be considered offences under the ordinance.²⁶

21 Budget 2008-09, paragraph 142.

22 "Govt plans autonomy of public hospitals", *New Age*, 16 March 2008.

23 "Ban slapped on 8 brands: HC orders govt to stop sale, display of milk powder till test results from abroad come", *The Daily Star*, 24 October 2008.

24 "Harmful Melamine in three brands of milk", *Prothom Alo*, 4 November 2008.

25 The draft Protection of Consumer Rights Ordinance 2008 received final approval of the Chief Adviser to the CTG at a meeting of the Advisers on 20 August 2008, "Consumer Rights Ordinance Approved at Meeting of Advisers", *Inquilab*, 21 August 2008.

26 *Ibid.*

Enforcement efforts in this regard weakened in 2008, ironically partly as a result of proposed judicial reforms, intended to ensure greater access to effective remedies! In effect, executive magistrates (the then magistrates, exercising judicial power, now part of the administrative cadre), reacted negatively to the separation of the judiciary, refusing to carry out their functions as determinedly as earlier.