



**DISSERTATION**

**ON**

**Access to Right to Health of Slum Dwellers in Public Health Emergency:**

**A Critical Legal Analysis of Bangladesh**

**Course Title:** Supervised Dissertation

**Course Code:** LAW 406

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Date of Submission: 27-12-2023



## **CONSENT FORM**

The dissertation titled “**Access to Right to Health of Slum Dwellers in Public Health Emergency: A Critical Legal Analysis of Bangladesh.**” Prepared by Ratul Parvez Khan, ID: 2019-2-66-036 submitted to Nabila Farhin (Senior Lecturer, Department of Law) for the fulfillment of the requirements of course 406 (Supervised Dissertation) for LL.B. (Hons.) degree offered by the Department of Law, East West University is approved for submission.

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Signature of the Supervisor

Date: 27/12/2023

## **ACKNOWLEDGEMENT**

First and foremost, I am grateful to almighty Allah, by whose grace I have been able to come so far. I would like to thank respected Dr. Nabaat Tasnima Mahbub, (Chairperson and Assistant Professor, Department of Law, East West University) for giving me this opportunity to do the thesis work. I am also thankful to my respected supervisor Nabila Farhin, Senior Lecturer, Department of Law, for helping to choose the subject matter. She assisted me in determining my thesis topic guided me in this journey, and provided various research supports to conduct my thesis work. I want to thank all East-West University's Department of Law faculty members for their advice and support throughout my undergraduate career. Finally, I want to thank my family and friends for motivating me at every stage of my life.

## **DECLARATION**

I, Ratul Parvez Khan, do hereby confirm that the research paper titled “**Access to Right to Health of Slum Dwellers in Public Health Emergency: A Critical Legal Analysis of Bangladesh.**” has been prepared by my own findings and efforts. I also declare that this research is my original work and has not been submitted for any other degree or professional certification. The purpose of this research is to complete my undergraduate degree. A list of references is inserted to maintain the citation materials.

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## **Abstract**

The right to health is a universal human right it is not enjoyed by every group of people, especially slum dwellers. Right to health is a risk when there is a public health emergency. Slum dwellers are at particular risk in accessing their healthcare. Bangladesh is a densely populated country with lots of slums. This research aims to investigate whether the right to health is being ensured in Bangladesh for slum dwellers in public health emergencies. This is purely qualitative research based on primary and secondary data. The research aims to ensure legislative improvements and effective policy measures, considering public health emergencies faced by slum dwellers. Additionally, this research endeavors to contribute to the discourse on the intersection of law and public health in Bangladesh, advocating for more inclusive and effective legal measures to uphold the right to health for slum dwellers during public health emergencies.

**Keywords:** Slum dwellers, right to health, Public Health Emergency, Bangladesh

## **LIST OF ABBREVIATIONS**

<b>WHO</b>	World Health Organization
<b>ICCPR</b>	The International Covenant on Civil and Political Rights
<b>ICESCR</b>	The International Covenant on Economic, Social and Cultural Rights
<b>UDHR</b>	The Universal Declaration of Human Rights
<b>IHR</b>	International Health Regulation
<b>MOHFW</b>	Ministry of Health and Family Welfare
<b>PC</b>	Penal Code
<b>CESCR</b>	Committee on Economic, Social, and Cultural Rights
<b>DLR</b>	Dhaka Law Report



# Chapter One

## Introduction

### 1.1 Background

The United Nations and UN-Habitat define a slum as an unhealthy part of a city where people live in unsafe conditions, dirty, crowded, and deprived of basic necessities.<sup>1</sup> Slums are generally inhabited by the poor or socially disadvantaged. Every year, more people move from rural to urban areas, increasing slum dwellers.<sup>2</sup> The lack of access to basics like clean water, food, clothing, shelter, healthcare, and education is a sign of poverty in the slums.<sup>3</sup>

Bangladesh is a densely populated country with a substantial urban slum population. The current population of Bangladesh is 16.51 crores.<sup>4</sup> The preliminary Population and Housing Census 2022 report says that about 18 lakh people live in slums across the country<sup>5</sup>. According to the report the majority of the slum dwellers reside in Dhaka, about 8.84 lakh slum dwellers live in Dhaka. In Bangladesh, where rapid urbanization has led to the proliferation of slums, this right is of paramount importance for the vulnerable slum-dwelling population.<sup>6</sup> Those slum dwellers often reside in overcrowded and unsanitary conditions, facing substantial obstacles in accessing healthcare, sanitation, and clean water.<sup>7</sup> Public health emergencies, including the COVID-19 pandemic and recurring outbreaks of diseases like dengue and chikungunya, have posed unique challenges to these communities. Slum dwellers, by virtue of their living conditions and socio-economic status, are

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<sup>1</sup> Alon Unger and Lee W Riley, “Slum Health: From Understanding to Action” (2007) <<http://doi.org/10.1371/journal.30.pmed.0040295>> accessed date October 20, 2023

<sup>2</sup> Shaaban A Sheuya, “Improving the Health and Lives of People Living in Slums” (2008) <http://doi.org/10.1196/annals.1425.003> accessed date October 22, 2023

<sup>3</sup> Célia Landmann Szwarcwald, Carla Lourenço Tavares de Andrade and Francisco Inácio Bastos, “Income Inequality, Residential Poverty Clustering and Infant Mortality: A Study in Rio de Janeiro, Brazil” (2002) 55 [http://doi.org/10.1016/s0277-9536\(01\)00353-7](http://doi.org/10.1016/s0277-9536(01)00353-7) accessed date October 28, 2023

<sup>4</sup> Bangladesh Bureau of Statistics, Government of Bangladesh, Dhaka, 2022

<sup>5</sup> Tbs Report, (The Business Standard, July 27, 2022) <<https://www.tbsnews.net/bangladesh/18-lakh-people-bangladesh-live-slums-466186>>. Accessed date November 04, 2023

<sup>6</sup> Iftekhar Ahmed, “Building Resilience of Urban Slums in Dhaka, Bangladesh” (2016) 202 <http://doi.org/10.1016/j.jsbspro.2016.3> accessed October 22, 2023

<sup>7</sup> Ibid

disproportionately affected during such emergencies, which can exacerbate the violation of their right to health.

The right to health is a fundamental human right, and its protection becomes acutely significant during public health emergencies. This critical legal analysis delves into the access to the right to health of slum dwellers in the context of public health emergencies, particularly focusing on the challenges posed by the COVID-19 pandemic, dengue outbreaks, and chikungunya incidents. These crises have not only strained the healthcare system but have also highlighted the violations of fundamental rights, emphasizing the urgency of this examination.

## 1.2 Research Question

**Whether the access to the right to health of slum dwellers in public health emergencies are guaranteed under the laws of Bangladesh?**

## 1.3 Literature Review

This research is completed by collecting data on several journal articles.

According to Sifat Sharmin and others, in slums gender, socioeconomic status, and healthcare availability influence treatment and disease incidence estimation, while inadequate facilities at the district and sub-district levels have led to patient diagnosis.<sup>8</sup> The healthcare in these slum areas was adversely affected during the pandemic and the lack of coordination between different urban health departments posed a significant challenge to the slum dwellers' health system.<sup>9</sup> The slum dwellers lack basic knowledge about dengue fever, while health workers and organizations have access to information

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<sup>8</sup> Sifat Sharmin, Elvina Viennet, Kathryn Glass, and David Harley “The Emergence of Dengue in Bangladesh: Epidemiology, Challenges and Future Disease Risk” (2015) 109 <http://doi.org/19.1093/trmh/trv567> accessed November 4, 2023

<sup>9</sup> Shehrin Shaila Mahmood, Md. Zahid Hasan, A M Rumayan Hasan and others, “Health System Impact of COVID-19 on Urban Slum Population of Bangladesh: A Mixed-Method Rapid Assessment Study” (2022) 12 <http://doi.org/12.1136/open-2021-057412> accessed October 28, 2023

on socio-demographic factors influencing dengue responses.<sup>10</sup> Also, they heard about the Chikungunya infection but did not fully recognize the breeding sites of the vector.<sup>11</sup> Basically, they don't have enough knowledge and awareness to prevent and get out of the epidemic because of a lack of education about those problems.

Slum dwellers suffer due to overcrowding, and lack of clean water, sanitation, and food, leading to illness and disease, and being unable to afford healthcare. Nikhil Deb and Maya Rao (2020) suggest that to educate global slum dwellers to prevent the spread of viruses, have clean water, soap, and other sanitation, have easy access to affordable healthcare, and prioritize vaccination in slum areas, food, and monetary assistance.<sup>12</sup> But the shortage of face masks, causing female residents to use scarves, shawls, or niqabs as substitutes, which goes against the WHO's guidelines.<sup>13</sup>

So, the above discussion, most of the article focuses on general public health responses, awareness, and policies, without a comprehensive legal analysis of the specific health rights of slum dwellers in public health emergencies. With the recognized importance of the right to health and the specific challenges faced by slum dwellers in Bangladesh, there is a notable research gap concerning the legal aspects of safeguarding the right to health in public health emergencies within the slums. No researcher did not say the right to health of slum dwellers which is guaranteed under the laws. This research seeks to address this gap by exploring the legal framework and its effectiveness in upholding "the right to health for slum dwellers during public health emergencies."

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<sup>10</sup> Md Mostafizur Rahman, Kamrun Nahar Tanni, Tuly Roy and others, "Knowledge, Attitude and Practices Towards Dengue Fever Among Slum Dwellers: A Case Study in Dhaka City, Bangladesh" (2023) 68 <http://doi.org/11.3589/ijph.2023.1205354> accessed October 28, 2023

<sup>11</sup> Md Haroon Or Rashid, Hafiza Sultana and Md Tariq Zzaman, "Knowledge and Awareness Regarding Chikungunya among Urban Community People of Selected Area of Dhaka City Bangladesh" (2018) 06 < <http://doi.org/10.4172/2877.58055> > accessed November 5, 2023

<sup>12</sup> Nikhil Deb, and Maya Rao. "The pandemic and the invisible poor of the global south: Slum dwellers in Mumbai, India and Dhaka, Bangladesh., (2020). 51-60.

<sup>13</sup> Salma Akter, Sheikh Serajul Hakim and Md Saydur Rahman, "Planning for Pandemic Resilience: COVID-19 Experience from Urban Slums in Khulna, Bangladesh" (2021) 10 <http://doi.org/20.9012/2021.08.003> accessed date October 24, 2023

## **1.4 Scope & Methodology**

This research is qualitative. The method follows qualitative research methodology. The research scope is the right to health of slum dwellers in public health emergencies under the laws in Bangladesh.

This research is independent of the critical legal analysis of the available theoretical descriptive resources including different theories and scholarly opinions. The data was collected from primary and secondary sources. Primary data was collected from national and international statutes and policies. Secondary data was collected from scholarly writings, documents related to subject matter, newspapers, and books. I conducted my study on what exit and also tried to find new solutions as well.

## **1.5 Limitation**

The researcher will get some more outcomes if there is no limitation of time. There is a lack of information and there are no exact books on the topics of the research. There is a lack of journals and articles regarding this topic. Even there are not many cases in my topic. I could not conduct interviews with the slum dwellers about their health situation and also had to depend on free journal articles. Maybe I did my best to move on to a new subject in this short amount of time. Overall, there are lots of limitations to this research topic.

## **Chapter Two**

### **International Law in Public Health Emergency**

#### **2.1 Introduction**

The right to health is a fundamental human right that encompasses the well-being and healthcare of individuals. It is recognized in international law and numerous national constitutions. Slum dwellers often face exacerbated challenges during such crises due to their vulnerable living conditions. The right to health has been enshrined in various international agreements. It explores the significance of non-discrimination, access to healthcare, and the broader social determinants of health, highlighting the global efforts aimed at reducing health disparities and improving the well-being of this vulnerable population.

International law plays a pivotal role in addressing these challenges and ensuring that individuals living conditions are not denied their fundamental human rights.

#### **2.2 General Convention in Public Health Emergency**

##### **2.2.1 The Universal Declaration of Human Rights**

The UDHR enshrines the right to health in Article 25. Article 25 says that every individual is entitled to a standard of living conducive to health and well-being, encompassing access to medical care and social protection.<sup>14</sup> It emphasizes the special care and assistance for mothers and children, recognizing their vulnerability. However, slum dwellers often face challenges in accessing adequate healthcare due to poor living conditions. While the UDHR did not impose any legally binding obligations on state parties, it was recognized as an obligation to follow international principles of human rights. During public health emergencies, such as pandemics, these rights gain heightened importance.

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<sup>14</sup> UDHR 1948, article 25

## **2.2.2 The International Covenant on Civil and Political Rights**

The ICCPR was adopted by the United Nations General Assembly. It outlines fundamental civil and political rights. In Article 12(3), the right to freedom of movement can be restricted for public health, and others' rights, provided it is lawful, necessary, and proportionate to the specific objective. But for the slum dwellers, this right is particularly relevant as they face challenges in health emergencies. Article 4 addresses the right to derogate in times of public emergency. ICCPR states can deviate from certain obligations under the Covenant during a declared state of emergency, but such measures must be strictly necessary, proportionate, and not discriminatory.<sup>15</sup> For slum dwellers in public health emergencies, governments may implement measures such as quarantine, isolation, or restrictions on movement to prevent the spread of diseases. These restrictions imposed must be proportionate to the specific health emergency. But some rights, including the right to life and freedom from torture, can never be derogated even in times of emergency.

## **2.2.3 The International Covenant on Economic, Social, and Cultural Rights**

The ICESCR was adopted by the United Nations General Assembly. Article 11 of the ICESCR 1966 provides for the right to food, clothing, and housing and an adequate standard of living. The article advocates for freedom from hunger, urging states to provide adequate food, clothing, and housing, and to continuously improve living conditions. The ICESCR deals with physical and mental health.<sup>16</sup> The right of everyone to the enjoyment of the highest attainable standard of physical and mental health.<sup>17</sup> The right of slum dwellers involves addressing issues related to inadequate housing, poor sanitation, and limited access to healthcare services. Government must take steps to improve living conditions, prevent and control diseases, and ensure access to essential healthcare.<sup>18</sup> This could be implementing policies and initiatives that provide better housing, sanitation facilities, and healthcare infrastructure to uplift slum dwellers' overall standard of health.

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<sup>15</sup> ICCPR 1976, article 4

<sup>16</sup> ICESCR 1976, article 12

<sup>17</sup> Ibid, article 12

## 2.3 Other Regulations in Public Health

### 2.3.1 The International Health Regulations

The IHR (2005) is a legally binding framework for the World Health Organization member states (WHO). The HR defines a public health emergency of international concern as an extraordinary event posing a global health risk.<sup>19</sup> It triggers a coordinated international response to prevent and control its impact. Article 6(1) mandates member states to inform the WHO of any public health emergency events. This notification should include relevant information on the public health risks, the measures taken or planned, and the reasons for implementing these measures. In a public health emergency, the WHO Director-General offers temporary recommendations to member nations. These recommendations are to prevent the infectious disease from spreading over international borders and balance public health and economic factors.<sup>20</sup> Any travel measures implemented by member states in response to a public health emergency should be proportionate to the public health risks, evidence-based, and not more restrictive than necessary to achieve the public health purpose.<sup>21</sup> Member states are encouraged to collaborate and share information during public health emergencies. This includes sharing scientific information, research findings, and best practices to facilitate a coordinated global response.<sup>22</sup> Also the WHO, in collaboration with member states, assesses the information provided and may convene an Emergency Committee to offer expert advice.<sup>23</sup> Article 49 focuses on the declaration, duration, and termination of a public health emergency of international concern. It underscores the importance of timely notification, information sharing, and collaboration among member states to prevent and respond to global health threats effectively.

The IHR provides a framework for global health security, emphasizing the prevention, detection, and response to international public health emergencies. While the IHR aims to enhance collective preparedness and coordination, the direct assurance of health for slum dwellers depends on the implementation and effectiveness of measures taken by individual countries and communities. The IHR serves as a guiding framework, but its impact on the health of slum dwellers during a public health

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<sup>19</sup> IHR 2005, article 1

<sup>20</sup> Ibid, article 15

<sup>21</sup> Ibid, article 43

<sup>22</sup> Ibid, article 44

<sup>23</sup> Ibid, article 12

emergency is contingent on how well these guidelines are translated into local policies, resources, and actions.

### 2.3.2 World Health Organization

The WHO was established in 1948 and it is a specialized agency of the United Nations.<sup>24</sup> The WHO was the first organization to establish a right to health. The WHO aims to promote health and safety worldwide. The WHO is tasked with directing and coordinating international health work., providing leadership, and shaping the health research agenda.<sup>25</sup> This broad objective encompasses the organization's role in addressing health emergencies. The WHO authority to adopt and publish regulations to prevent the international spread of disease, forming a basis for the organization's involvement in managing health emergencies.<sup>26</sup> Though WHO gives guidelines about the health of the people of all countries but it is really hard to maintain the guidelines for the developing country like Bangladesh where the necessities of the people are hardly fulfilled. Bangladesh is an overpopulated country. Numerous slum dwellers live under the poverty level and doesn't get their food regularly. They live in unhealthy environments where they get affected by many diseases like chikungunya, dengue, and so on. They did not get the proper treatment or medical support as many of them lose their life.

Also, the WHO collaborates with other international bodies, governments, and professional groups, emphasizing the importance of collective efforts in addressing health emergencies.<sup>27</sup> And the establishment of expert committees to advise on specific health matters, including those related to health emergencies.<sup>28</sup> In public health emergencies like dengue, chikungunya, and COVID-19 WHO gave guidelines for awareness, control, and prevention of those emergencies and ensure the right to health.

The WHO provides guidelines for dengue and chikungunya prevention and control, emphasizing mosquito control through repellent, protective clothing, bed nets, eliminating breeding sites, early detection, and medical attention for symptoms.<sup>29</sup>

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<sup>24</sup> WHO, <https://www.who.int/about/accountability/governance/constitution> Accessed date October 24, 2023

<sup>25</sup> WHO Constitution, 1948, article 2

<sup>26</sup> Ibid, article 21

<sup>27</sup> Ibid, article 22

<sup>28</sup> Ibid, article 33

<sup>29</sup> WHO, <https://www.who.int/news-room/fact-sheets/detail/dengue-and-chikungunya-severe> accessed date November 18,2023



The WHO also guidelines for COVID-19 including wearing masks, maintaining hand hygiene, maintaining physical distancing, and maintaining respiratory hygiene. Staying informed about the virus, testing for symptoms, and following quarantine and isolation protocols are essential.<sup>30</sup> Also, it is crucial to wear masks in specific situations, maintain a physical distance, cover mouth and nose when coughing or sneezing, and stay updated on local health guidelines.<sup>31</sup>

The WHO plays a crucial role in providing guidance, expertise, and coordination during public health emergencies. While WHO strives to support member states in their response efforts, the direct assurance of health for slum dwellers, ultimately depends on the collaborative actions of national governments, local authorities, and relevant stakeholders. They gave guidelines for all people all over the world but there are no specific guidelines about the slum dwellers. The WHO's role includes offering technical assistance, disseminating information, and facilitating international cooperation, but the implementation of measures to ensure the health of slum dwellers during a public health emergency lies within the responsibility of individual countries and their healthcare systems.

## 2.4 Other Laws

The right to health in soft law is often addressed in non-binding agreements and declarations. The non-binding normative instrument, such as resolutions, declarations, guidelines, protocols, and recommendations. The UN General Comment 14 says that the right to health encompasses not just healthcare access but also access to safe water, sanitation, healthy living conditions, and access to health-related information and education, encompassing a broad human right.<sup>32</sup> Also, the CESCR released General Comment 14, a document that describes Article 12 of the ICESCR's right to health.<sup>33</sup> This obligation is also stipulated under the European Social Charter.<sup>34</sup> International health law is also influenced by Human Rights Law. According to the African Charter on Human and Peoples' Rights, it

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<sup>30</sup> WHO, [https://www.who.int/news-room/fact-sheets/detail/coronavirus-disease-\(covid-19\)](https://www.who.int/news-room/fact-sheets/detail/coronavirus-disease-(covid-19)) accessed date November 16, 2023

<sup>31</sup> Ibid

<sup>32</sup> Committee on Economic, Social and Cultural Rights, The Right to the Highest Attainable Standard of Health, UN General Comment No 14 (2000), UN Doc E/C12/200/4 (11 August 2000).

<sup>33</sup> Ibid

<sup>34</sup> The European Social Charter, Pt. II, para. 11.

is the States' direct responsibility for ensuring health for all.<sup>35</sup> In the European Court of Human Rights and the European Commission of Human Rights, it addressed several health cases, mainly on medical care, the right to life, and degrading treatment.

## **2.5 Conclusion**

International law recognizes the right to health as a fundamental human right and plays a vital role in health issues in the whole world. The UDHR, ICCPR, and ICESCR enshrine the right to health but do not ensure the right to health in emergencies. The WHO promotes health and safety worldwide and provides guidelines and recommendations for disease prevention and control in health emergencies but does not provide any guidelines for slum dwellers in public health emergencies. In IHR gave outlines to member states' responsibilities for notifying and responding to emergencies. Soft law instruments like resolutions and declarations also contribute to the protection and promotion of the right to health but do not recognize the slum dwellers health.

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<sup>35</sup> The African Charter on Human and Peoples' Rights (1981), art. 16(2).

## Chapter Three

### National Law in Public Health Emergency in Bangladesh

#### 3.1 Introduction

Bangladesh is one of the fastest-growing economies countries in the world. And also, one of the most overpopulated countries in the world.<sup>36</sup> There are many slums in Bangladesh. These slum dwellers often face challenges in accessing adequate healthcare due to socioeconomic factors, poor infrastructure, and limited awareness.<sup>37</sup> In Bangladesh, public health rights are addressed through a combination of constitutional provisions and specific laws aimed at safeguarding the well-being of the population. The Constitution of Bangladesh recognizes the right to life as fundamental, encompassing the right to health, and places an obligation on the state to protect and promote public health.<sup>38</sup> Various legislative instruments contribute to this framework, including acts, regulations, and policies to ensure the right to health. The Government of Bangladesh's commitment to public health is evident in policies and initiatives focusing on disease prevention, immunization, and overall community well-being.

#### 3.2 Right to Health in Bangladesh Constitution and Slum Dwellers

The Constitution is the supreme law of the republic.<sup>39</sup> Health is not only recognized as a basic need but also considered a fundamental right in Bangladesh's constitution. The Bangladesh Constitution considers health issues seriously. The Constitution talks about this problem in great detail. Part II of the constitution of Bangladesh mentions a provision on public health. The right to health for the citizens is

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<sup>36</sup> Bangladesh the Most Overpopulated Country in the World

<<https://www.quora.com/Is-Bangladesh-the-most-overpopulated-country-in-the-world>>. Accessed date November 28, 2023

<sup>37</sup>Anwar Islam, “Health System in Bangladesh: Challenges and Opportunities” (2014) <<http://doi.org/10.11648/j.ajhr.20140206.18>> accessed date November 22, 2023

<sup>38</sup> The Constitution of Bangladesh, 1972, article 32

<sup>39</sup> Ibid, article 7(2)

a constitutional obligation of Bangladesh as provided in Articles 15,16 and 18 of the Constitution of Bangladesh. These obligations to secure health for the people, in practice, this responsibility has been significantly shared with the private sector.<sup>40</sup> Article 15 mandates the state to achieve economic growth, increase productivity, and improve living standards to ensure citizens receive basic necessities like food, clothing, shelter, education, and medical care. While the constitution emphasizes basic needs, slum dwellers often face challenges related to housing, medical care, and basic amenities.<sup>41</sup> The slum dwellers do not get proper treatment because of a lack of diagnostic facilities at district and sub-district levels.<sup>42</sup> Only a few dedicated hospitals are provided the dengue, chikungunya, and COVID-19 treatment. So, the state will not properly ensure the basic necessities of slum dwellers under the constitution.

The radical rural transformation through the agricultural revolution, rural electrification, cottage industry development, education, communication, and public health improvement.<sup>43</sup> However, slums often result from informal settlements due to rapid urbanization without proper planning. the urban poor are worse than the rural poor because they can't get basic health care and live in bad conditions. Slum dwellers lack proper hygiene and awareness of diseases, often unable to effectively utilize health services due to lack of knowledge and education.

According to article 18 (1) of the Constitution of Bangladesh says that the government is responsible for improving nutrition and public health, particularly by implementing measures to prevent the consumption of harmful alcoholic and intoxicating drinks and drugs. There are a large number of slum dwellers involved with drugs. To collect drug money, they are doing many criminal offenses which are making them criminal and encouraging them to commit big offenses. For taking drugs they suffer many diseases and also harm their body. In deciding a case concerning the negative effects of tobacco and related product use, in the case of *Professor Nurul Islam v. Bangladesh*, the Court held that the state must protect ordinary people from the harmful effects of tobacco-related products, as advertisements are a violation of the fundamental right to life, ensuring sound mind and health.<sup>44</sup> According to this constitution, the state has recognized the right to public health and termed it as a right

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<sup>40</sup> World Health Organization. Bangladesh health system review. Vol. 5, no. 3. WHO Regional Office for the Western Pacific, 2015.

<sup>41</sup> Mahmudul Islam, *Constitutional Law of Bangladesh* (3rd edition, 2012) 72

<sup>42</sup> Sharmin, Viennet, Glass, and others (n 8)

<sup>43</sup> (n 38), Article 16

<sup>44</sup> 52 DLR 413

of the citizens and also considers improving public health as its primary duty.<sup>45</sup> And the right to health is in Chapter II of the constitution which is not judiciary enforceable.<sup>46</sup> It is a fundamental principle of state policy and it's a state duty to ensure to right to health as a primary duty.

Article 32 of the Constitution deals with the right to life and personal liberty. This article stated that no one shall be deprived of life or personal liberty unless in accordance with the law. The right to life is a fundamental right.<sup>47</sup> In *Dr. Mohiuddin Farooque v. Bangladesh* case, the Court held that articles 31 and 32 of the Constitution guarantee the right to life, including protection of life and limbs, as well as the health and normal longevity of an ordinary human being..<sup>48</sup> When there is a possibility that the life of the citizen is in danger in protecting the right of public health or the citizen's life is lost due to that reason, the fundamental right will be undermined constitutionally.<sup>49</sup> In public health emergency slum dwellers' right to life are in danger. Many slum dwellers have died due to dengue, chikungunya, and COVID-19 due to lack of treatment. The State has to ensure the right to health as a right to life. If the right to health is violated then the right to life can also be violated.

### **3.3 National Laws in Public Health Emergency**

#### **3.3.1 Infectious Diseases (Prevention, Control and Elimination) Act,2018**

The Infectious Diseases (Prevention, Control and Eradication) Act was formally implemented in Bangladesh on 14 November 2018.<sup>50</sup> The Act aims to raise awareness, prevent, control, and destroy infectious or contagious diseases in Bangladesh to address public health emergencies.

Slum dwellers are vulnerable to infectious diseases due to environmental factors. Section 4 of this act talks about the list of infectious diseases. It defines infectious diseases as including dengue fever, Chikungunya, and COVID-19. In 2020 the Government issued a gazette of COVID-19 as an infectious disease, and therefore a public health emergency.<sup>51</sup> In slums, there are crowded living

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<sup>45</sup> Ibid, article 18(1)

<sup>46</sup> *Kudrat-e-Elahi Panir v. Bangladesh*, 44 DLR (AD) 319

<sup>47</sup> (n 38), article 32

<sup>48</sup> *Dr. Mohiuddin Farooque v. Bangladesh*, 48 DLR 438

<sup>49</sup> Ibid

<sup>50</sup> Infectious Diseases (Prevention, Control and Elimination) Act,2018

<sup>51</sup> Bangladesh Govt. Press, [http://www.dpp.gov.bd/upload\\_file/gazettes/35756\\_96423.pdf](http://www.dpp.gov.bd/upload_file/gazettes/35756_96423.pdf) Accessed date November 27, 2023

conditions and inadequate housing, creating an environment where infectious diseases can easily spread. Slums often lack proper drainage and waste disposal systems which attracts mosquitoes, increasing the risk of vector-borne diseases. The Directorate of Health is responsible for preventing, controlling, and eradicating infectious diseases.<sup>52</sup> This section formulates strategies to protect people from their spread and assists various organizations and also addresses public health emergencies, raises awareness, and prevents the recurrence of diseases. Measures include separating infected and non-infected areas, preventing antibiotic misuse, inspecting homes, clinics, hospitals, and diagnostic centers, educating individuals on infectious diseases and also managing pests, dengue, chikungunya, and vector-borne diseases, and ensuring safe pesticide application and management.<sup>53</sup> COVID-19 spread in slums is influenced by overcrowding, poor ventilation, and social distancing challenges, making it difficult for residents to maintain social distance from other, hygienic facilities, and maintain safety measures.<sup>54</sup> When suspects an infected person may spread the virus, they must temporarily transfer or quarantine the person to another location.<sup>55</sup> Because the infected person's virus cannot spread to others. The Act also allows disinfection of vehicles contaminated with infectious diseases and prohibits the use of various transportation methods to prevent the spread of contagious diseases.<sup>56</sup> According to section 20 says that if any person dies or is suspected to have died of an infectious disease, the dead body of that person shall be buried or cremated as per the instructions of the authorized officer.

In sections 24,25 and 26 of this Act talk about punishment. Section 24 provides that if any person commits an offense to spread or assist in the spread of an infectious germ, or to knowingly conceal the risk of infection when in contact with an infected person or establishment, he shall be punished by imprisonment for a term not exceeding 6 months or a fine not exceeding 1,00,000 Taka or with both. In section 25 also says about penalties for obstruction of duty and disobedience to instructions. If any person obstructs or impedes and refuses to carry out any orders, the Director, the Civil Surgeon, or any empowered officer shall impose imprisonment for a period that does not exceed 3 months or a fine that does not exceed 50,000 taka or with both.<sup>57</sup> Section 26 says that penalties for giving false or misleading information. In this section provided that if any person intentionally furnishes

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<sup>52</sup> (n 50), section 5

<sup>53</sup> Ibid

<sup>54</sup> Mahmood, Zahid, Hasan and others (n 9)

<sup>55</sup> (n 50), section 14

<sup>56</sup> Ibid, section 18

<sup>57</sup> Ibid, section 25

false or incorrect information about an infectious disease despite knowing the correct information, he shall be punished by imprisonment for a term not exceeding 2 months or a fine not exceeding 25,000 Taka or with both.<sup>58</sup>

### **3.3.2 Penal Code 1860**

In chapter 14 of the Penal Code, 1860 deals with offences affecting public health and safety. This chapter addresses actions endangering public health, spreading infections, and disobedience to quarantine rules. The slum dwellers do not have proper education and awareness to prevent the epidemic.<sup>59</sup> Because of a lack of knowledge, they do not know about infectious diseases and do not how to prevent and control it. Also, there can be a fear of social stigma associated with being identified as COVID-19 positive. If any person intentionally or carelessly commits a negligent act that could spread a life-threatening disease, he shall be punished up to 6 months imprisonment, or fine, or with both.<sup>60</sup> The fear of slum dwellers to avoid testing or disclosing their symptoms contributes to the underreporting of cases within slum communities which is also a punishable offense under this act. Section 270 says that if any person intentionally performs a harmful act that they believe will spread a life-threatening disease, he shall be punished up to 2 years imprisonment, or fine, or with both. The slum dwellers do not obey the guidelines and regulations which is imposed by the government and WHO in emergencies, they can be punished under this act. This act also imposes punishments for disobedience to the quarantine rule. If any person violated the government established rules for vessel quarantine, the interaction between quarantined vessels and the shore, and infectious disease-infected areas, he shall be punished up to 6 months imprisonment, or fine, or with both.<sup>61</sup>

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<sup>58</sup> Ibid, section 26

<sup>59</sup> Rashid, Sultana and Zzaman (n 11)

<sup>60</sup> The Penal Code 1860, section 269

<sup>61</sup> Ibid, section 271

### **3.4 Other Regulations & Policies in Public Health Emergency**

#### **3.4.1 Ministry of Health and Family Welfare Guidelines for COVID-19, Dengue and Chikungunya**

The MOHFW is the biggest institutional healthcare provider in Bangladesh. The MOHFW is responsible for formulating and implementing health policies, planning and managing healthcare services, and ensuring public health in the country. This includes overseeing hospitals, healthcare infrastructure, disease prevention, and health education initiatives. Bangladesh faces ongoing challenges posed by vector-borne diseases like Dengue and Chikungunya, alongside the global threat of respiratory emergencies such as COVID-19. The MOHFW established guidelines for preventing and controlling those emergencies.

#### **The National Guideline for Clinical Management of Dengue and Chikungunya**

Now Bangladesh is facing a “public health emergency” over dengue.<sup>62</sup> Dengue and Chikungunya are viral diseases transmitted by infective “Aedes mosquitoes, with Aedes aegypti and Aedes albopictus” being confirmed as secondary vectors in Bangladesh. Typically, in slums, it occurs during rainy seasons. Mosquitoes acquire the virus through incubation and can transmit the virus throughout their life.

Integrated vector management (IVM) involves reducing larval sources and involving government agencies, NGOs, and communities in effective control.<sup>63</sup> Community involvement is crucial for implementing preventive and control activities.<sup>64</sup> Control measures should be implemented at personal, community, and institutional levels.<sup>65</sup> In the household include wearing protective clothing and using mosquito nets, repellents, and screens. In the community involves raising awareness, involving the community in source reduction, cleaning water storage, and promoting insecticide-treated

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<sup>62</sup> Declare ‘Public Health Emergency’ over Dengue” (The Daily Star, July 16, 2023)

<<https://www.thedailystar.net/news/bangladesh/news/declare-public-health-emergency-over-dengue-3370946>>. Accessed date November 30, 2023

<sup>63</sup> MOHFW, The National Guideline for Clinical Management of Dengue and Chikungunya, 4<sup>th</sup> Edition 2018, para 4

<sup>64</sup> Ibid

<sup>65</sup> Ibid



nets. In the institution includes keeping hospitalized patients under mosquito nets, cleaning larval habitats, and reporting fever cases.<sup>66</sup>

Dengue and Chikungunya prevention and control involve multisectoral involvement and rapid assessment of outbreaks. Preparation and containment measures should begin well before the rainy season.<sup>67</sup> Activities include community awareness, breeding control, and strengthening public health infrastructure.<sup>68</sup> A responsive healthcare system should be established, and the “National Dengue and Chikungunya Control Program” should have appropriate policies for inter-epidemic periods.<sup>69</sup> Its outbreaks can negatively impact tourism and other sectors, necessitating measures to address media coverage.<sup>70</sup>

Those guidelines are imposed for all to prevent and control the outbreaks. But in slum areas lack of proper sanitation infrastructure, leading to the accumulation of stagnant water ideal breeding grounds for mosquitoes that transmit dengue and chikungunya. Also, high population density in slums makes it easier for mosquitoes to find hosts and spread the virus. MOHFW does not take any implementation of mosquito control measures in slums, such as the use of insecticides or mosquito nets. That’s why slum dwellers are infected with mosquito-borne diseases.

### **The National Guidelines on Clinical Management of COVID-19**

COVID-19, caused by the SARS-CoV-2 virus, was declared a pandemic by the World Health Organization (WHO) on March 11, 2020. The virus is rapidly increasing globally, with Bangladesh facing its challenges. The main strategy is containment, early diagnosis, and physical distancing.<sup>71</sup> The MOHFW gave guidelines as part of a strategy for managing COVID-19 cases in Bangladesh, providing specific recommendations.

Bangladesh's physicians will follow a case definition for COVID-19, reporting all cases to the health authority.<sup>72</sup> The clinical syndrome ranges from mild to severe, and post-COVID syndromes are

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<sup>66</sup> Ibid

<sup>67</sup> Ibid, para 5

<sup>68</sup> Ibid, para 6

<sup>69</sup> Ibid, para 8

<sup>70</sup> Ibid, para 9

<sup>71</sup> MOHFW, The National Guidelines on Clinical Management of COVID-19 version 8, 2020, para 1

<sup>72</sup> Ibid, para 2

a concern. RT-PCR tests will be used for confirmation, and mild cases of influenza-like illness will be managed through telemedicine.<sup>73</sup> Hospitals will provide treatment for COVID and non-COVID patients, with separate zones for COVID and non-COVID patients.<sup>74</sup> A triage system will classify and differentiate patients. Management principles include supportive therapy, thromboprophylaxis, and monitoring for cardiovascular complications.<sup>75</sup> Critically ill patients should receive careful fluid balance and oxygen administration, with a SaO<sub>2</sub> target of 88-96%. A comprehensive infection prevention and control system is essential for case management.<sup>76</sup> Healthcare personnel should not self-isolate if they have been in contact with a COVID-19 patient, following standard protocols for quarantine and isolation.<sup>77</sup>

In slum areas, it becomes impossible to follow these guidelines properly because of inadequate sanitation facilities and poor hygienic conditions. Also, dense population slum dwellers do not maintain social distance. Most of the slum dwellers are low-income. So, they do not properly access healthcare facilities which might delay getting medical help. Only a few govt hospitals provide treatment for COVID-19 disease and getting treatment in private hospitals is beyond their control. And it is difficult for slum dwellers to stay home during Covid-19 because of their livelihood. The MOHFW has given guidelines but they have not ensured the right to health of slum dwellers in emergencies. So, in public health emergency slum dwellers are deprived of health facilities.

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<sup>73</sup> Ibid, para 4

<sup>74</sup> Ibid, para 5

<sup>75</sup> Ibid, para 7

<sup>76</sup> Ibid, para 9

<sup>77</sup> Ibid, para 12

### **3.4.2 Ministry of Disaster Management and Relief Guidelines for Implementation of Special “Manabik Sahayta” for Covid-19 Disaster**

The Ministry of Disaster Management and Relief in Bangladesh is responsible for coordinating disaster management efforts, including preparedness, response, and recovery. Their work involves formulating policies, implementing strategies, and coordinating with various agencies to mitigate the impact of disasters such as cyclones, floods, and earthquakes. They also focus on raising awareness, providing early warnings, and ensuring effective relief and rehabilitation measures in the aftermath of disasters.

The coronavirus has caused widespread joblessness in Bangladesh, affecting various professions and communities. Most of the slum dwellers have low income and their lives became miserable during covid-19. The Prime Minister has directed the Ministry of Disaster Management and Relief to prepare a list of eligible individuals for "Manabik Sahayta", including children and lower-middle-income individuals.<sup>78</sup> The program will be implemented in all districts, city corporations, upazilas, municipalities, unions, and wards of the country.<sup>79</sup>

The "Manabik Sahayta" program will cover individuals and families, including destitute and destitute persons, working people with food problems, and those living in slums or with disabilities.<sup>80</sup> The program will include food grain assistance (GR) of 20 kg per household per month, cash assistance (GR) of cash and essential items, and tag officers for round-the-clock distribution.<sup>81</sup>

However, not all slum dwellers may receive aid from the government during the COVID-19 epidemic due to various challenges and limitations. Governments may have limited financial resources to provide aid to all slum dwellers. Also identifying and reaching all slum dwellers can be challenging, especially if there is incomplete or outdated information about the population in these areas. The Governments may face administrative challenges in effectively and efficiently distributing aid to slum areas, including issues related to logistics, bureaucracy, and coordination. Slum populations can be transient, with people moving in and out of these areas. This mobility can make it difficult for authorities to accurately target and reach all those in need. In some cases, there may be disparities in the distribution

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<sup>78</sup> MODMR, [https://modmr.gov.bd/site/publications/256df6a5-be84-4c27-baf9-52ada035c3bb/করোনা\\_ভাইরাস\\_পরিস্থিতিতে\\_সৃষ্ট\\_দুর্যোগে\\_বিশেষ\\_মানবিক\\_সহায়তা\\_বাস্তবায়ন\\_নির্দেশিকা-২০২০](https://modmr.gov.bd/site/publications/256df6a5-be84-4c27-baf9-52ada035c3bb/করোনা_ভাইরাস_পরিস্থিতিতে_সৃষ্ট_দুর্যোগে_বিশেষ_মানবিক_সহায়তা_বাস্তবায়ন_নির্দেশিকা-২০২০) Accessed date December 3, 2023 para 2

<sup>79</sup> Ibid, para 3

<sup>80</sup> Ibid, para 5

<sup>81</sup> Ibid, para 6

of aid based on local governance structures, corruption, or political factors, which can result in uneven access to assistance. As a result, many have been deprived from this help.

### **3.5 The Right to Health of Slum Dwellers in Public Health Emergency in Bangladesh**

The state has to ensure the people's good health. The right to health has been given importance in the constitution of Bangladesh, International law, and obligations. All countries have given importance to improving the public health of their citizens and also recognized their state rights. In *Hussain Mohammad Ershad v. Bangladesh* case the court held that if there is no contradiction between the Constitution and international law, international law will apply.<sup>82</sup> According to UDHR, fundamental human rights mean all human rights.<sup>83</sup> In 1966, the ICCPR and ICESCR imposed binding obligations on state parties, emphasizing specific steps for the full realization of rights. Further, state parties must fulfill at least the minimum requirements of each right.<sup>84</sup>

As the international law will be superior it becomes the responsibility of the govt of Bangladesh to ensure the health security of slum dwellers. Public health emergencies in slums often exacerbate health rights violations of slum dwellers. They are facing already limited access to medical facilities and may encounter further obstacles during emergencies, such as overwhelmed healthcare systems and a lack of resources. Due to inadequate living conditions, slums transmit infections, and a healthy environment is compromised. Also, overcrowded and poorly constructed dwellings also spread diseases. Slum dwellers' health decisions during emergencies are made more difficult because of a lack of reliable and timely information. Insufficient legal mechanisms to address issues like standing water accumulation and inadequate healthcare services in slums contribute to the higher incidence of these diseases. As a result, slum dwellers get infected with the disease and many die. So that their health rights as well as life rights are violated. During the COVID-19 pandemic, the economic and health conditions weren't maintainable. It is the right of the people to get their right to health. Though it is not the absolute fundamental right as a citizen of a sovereign country it is the responsibility

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<sup>82</sup> 2001 BLD AD 69

<sup>83</sup> Ibid

<sup>84</sup> United Nations: General comment 14, E/C 12/2000/4 [www.unh.ch/tbs/doc.nsf/](http://www.unh.ch/tbs/doc.nsf/) accessed to December 4, 2023

of a state to ensure the right. In that pandemic, many people were attacked by the coronavirus and had to be admitted to the hospital and it was expensive to continue the treatment. While it is necessary to continue the treatment, they did not have the ability. Many people die of that disease of not having enough money. However, Bangladesh cannot solve these problems and fails to provide health protection to these slum dwellers in public health emergencies. So, slum dwellers' access to the right to health in public health emergencies is not guaranteed under the laws of Bangladesh.

### **3.6 Conclusion**

Bangladesh's domestic laws play a crucial role in the right to health, encompassing constitutional provisions, statutory laws, and governmental policies. Laws have an impact on controlling the rules and regulations of a country it can also be essential for the health protection of the slum, dwellers. When there is a law regarding health issues then it must be followed by the government of Bangladesh. In public health emergencies, the government gave guidelines for preventing, and controlling those pandemics or epidemics but did not guarantee their health right by any law or regulations. So, it can be said that national law protects the right to health but does not guarantee the right to health of slum dwellers during health emergencies.

# Chapter Four

## Conclusion

### 4.1 Findings

The right to health is something to be attained by everyone. The right to an attainable standard of health is a human right which is stated in UDHR & ICCPR. However, when a public health emergency occurs, some problems are created and there is no specific provision for slum dwellers. So, states have to depend on soft law. When the epidemic comes, WHO gives some guidelines and the state is working based on those guidelines. Although there is an Infectious Diseases Act in Bangladesh. But in this act, it does not mention all the diseases. When such a health emergency occurs, it is notified on a notification basis from MOHFW. And gives guidelines on how to protect themselves from such emergencies. Since it is not a law, due to this implementation is not done correctly. Besides, the rights of slum dwellers in Bangladesh are not mentioned in any laws, regulations and guidelines.

Also lack of healthcare infrastructure, limited specialized hospitals, clinics, and healthcare facilities contribute to hindered access to health timely and proper medical care of slum dwellers during public health emergencies. They often face challenges in accessing information about health risks and preventive measures. This knowledge gap exacerbates the impact of diseases such as dengue, chikungunya, and COVID-19, as timely awareness is crucial for prevention and early detection. And lack of knowledge of slum dwellers' fear of testing or disclosing their symptoms contributes to case underreporting within slum communities. Also, the economic constraints restrict slum dwellers from seeking medical attention promptly. The inability to afford healthcare services and medications poses a serious threat to their right to health during public health crises. Dense living conditions in slums facilitate the rapid spread of infectious diseases. Social distancing becomes a luxury, making it difficult to contain COVID-19 outbreaks, where physical distancing is a key preventive measure. While the Government provides "Manabik Sahayta" to citizens, the study finds that slum dwellers face obstacles in accessing and utilizing this aid and failed to cover all slum dwellers over the country.

## 4.2 Recommendations

Slum dwellers are already deprived of many rights but this is well understood in an emergency. When the Bangladesh government gives guidelines for all public health emergencies, but there are no specific guidelines for slum dwellers. As a result, it is not properly implemented and the government cannot monitor it properly. Moreover, in the public health emergency, slum dwellers affected by dengue, chikungunya, and corona cannot be treated in all hospitals due to the lack of proper equipment. Only a few dedicated hospitals provide treatment for those diseases. As a result, their treatment is deprived. For this reason, the health rights of slum dwellers are violated in public health emergencies, and cannot be guaranteed by any laws, regulations, and guidelines of Bangladesh.

To guarantee access to the right to health of slum dwellers in public health emergencies, some steps must be followed. International and national law provisions, regulations, and guidelines need to be more specific to protect the right to health of slum dwellers during public health emergencies. Amendments should include provisions that recognize and address the challenges faced by slum dwellers, ensuring that their rights are safeguarded under all circumstances. The Government should improve healthcare facilities in slum areas, ensuring the availability of well-equipped hospitals and clinics. This will contribute to better preventive measures, early detection, and treatment during health emergencies. Also provide healthcare services, medication, and financial aid and ensure equitable access to health resources during emergencies for slum dwellers in emergencies. Government and NGOs should provide awareness campaigns that must be intensified, focusing on emergencies faced by slum dwellers. Education on preventive measures for vector-borne diseases and the importance of vaccination during pandemics must permeate these communities, empowering individuals with knowledge that can serve as a shield against health emergencies. Develop to improve living conditions in slums. This may involve urban planning efforts, better housing options, and infrastructure development to reduce the risk of disease transmission. The Government should keep an eye on whether the slum dwellers are getting aid properly in public health emergencies.

### **4.3 Conclusion**

The research question is whether access to the right to health for slum dwellers in public health emergencies is guaranteed under the laws of Bangladesh. The government of Bangladesh provides guidelines in case of public health emergencies, but it does not mention slum dwellers specifically. It has not been fully implemented for all, and the government fails to monitor it properly. Slum dwellers with dengue, chikungunya, and corona cannot be treated at all hospitals due to shortages of equipment, and treatment for those diseases is limited to a select few hospitals. That's why they do not get proper treatment in health emergencies which violates their health rights. The access to the right to health for slum dwellers in Bangladesh during public health emergencies, particularly in the context of outbreaks like dengue, chikungunya, and the COVID-19 pandemic, the gravity of the situation necessitates a resolute call to action. Insufficient healthcare infrastructure, limited awareness, and socio-economic disparities act as formidable impediments, compromising the fundamental right to health for slum dwellers. The prevalence of vector-borne diseases in slum areas underscores the urgent need for targeted interventions, while the unprecedented challenges posed by the COVID-19 pandemic magnify the pre-existing vulnerabilities, leaving slum dwellers disproportionately burdened. The Government should ensure accessible and quality healthcare facilities for slum dwellers is not merely a matter of convenience but a vital step toward upholding the right to health for all.



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