

RIGHT TO HEALTH CARE SERVICES A CONSTITUTIONAL MANDATE: CRITICAL ASSESSMENT OF INDIAN SCENARIO DURING HEALTH EMERGENCY

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ABSTRACT

The first Indian national lockdown in the wake of Covid-19 was announced on 24th March, 2020. The management of the pandemic by the central and state governments is a matter of concern from various perspectives. These governments' far-reaching actions - aimed at controlling the pandemic, but with numerous spill-over effects - raised numerous constitutional issues. These involved, for example, civil rights, access to healthcare, the rights of migrants, and so on. Health being vital indicator of human development and human development being the basic ingredient of economic and social development, the status of health care policy and its implementation is directly connected with the issue of survival. Basically as per Constitution the state exists to coordinate a community's behaviours and achieve a better life for the community's members. It should provide universal coverage of essential health package, increase budgetary outlays for health progressively, correctly set priorities of health interventions, strengthen public health services. With the experience in during pandemic we realised a concern for permanent crisis governance and also it was realised that the right to health cannot be just guaranteed in isolation, it needs concerted action by state, NGOs, Public participation etc.

Keywords – health, health care, human right, pandemic

Right to Health

Health is vital indicator of human development and human development is the basic ingredient of economic and social development.¹ World Health Organization has defined health as a "state of complete physical, mental and social wellbeing and not merely the absence of disease or infirmity" Health is considered as fundamental human right indispensable for the exercise of other human rights.² Basically health of a nation is the sum total of health of its citizens. Even its survival in world is also dependent upon the protection of this right. The right to health is an inclusive right. We frequently associate the right to health with access to health care and the building of hospitals. This is correct, but the right to health extends further. It includes a wide range of factors that can help us lead a healthy life. The right to health contains freedoms. These freedoms include the right to be free from non-consensual medical treatment, such as medical experiments and research or forced sterilization, and to be free from torture and other cruel, inhuman or degrading treatment or punishment etc.

The right to health contains entitlements. These entitlements include:

- ✓ The right to a system of health protection providing equality of opportunity for everyone to enjoy the highest attainable level of health;

- ✓ The right to prevention, treatment and control of diseases;
- ✓ Access to essential medicines;

Health Care Services

Health care services means any medical or remedial care or service, including supplies delivered in connection with the care or service, that is recognized under state law. Health care services” means the furnishing of medicine, medical or surgical treatment, nursing, hospital service, dental service, ophthalmic service, complementary health services or any or all of the enumerated services or any other necessary services of like character, whether or not contingent upon sickness or personal injury, as well as the furnishing to any person of any and all other services and goods for the purpose of preventing, alleviating, curing or healing human illness, physical disability or injury.³

International and national concern over right to health and health care

The concept of a right to health has been enumerated and recognized in various international instruments which include the Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of Persons with Disabilities, the Convention on the Rights of the Child (1989) etc.

The preamble of the 1946 World Health Organization (WHO) Constitution defines health broadly as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.” It is pertinent to mention that the Universal Declaration of Human Rights guarantees the right to adequate standard of living

suitable to the health and wellbeing of individual and his family including food, cloth, housing and medical care and necessary social services and the right to security in case of unemployment, sickness, disability, old-age and other lack of livelihood in circumstances beyond his control. Full text of Art 12 of the International Covenant on Economic, Social and Cultural Rights, 1966 recognizes the right of every person to the enjoyment of the highest attainable standards of physical and mental health. Also it urges’ the state parties to take steps with an object to ensure these rights.

National legal framework and the foundation law of land in our country also provides right to health as basic human right and the judiciary also has also continuously held its significance while interpreting fundamental rights as well directive principles of state policy. The Preamble to the Constitution of India provides strongly to attain the goal of Welfare State with socialistic pattern. It is the duty on the part of state to provide health care as fundamental right. Our state being a party to various international instruments is bound to provide right to health care to all citizens. Art 51⁴ provides for promotion of international peace and security. As well the fundamental right to life and personal liberty i.e Art 21⁵ though does not contain directly and expressly right to health but it has been settled in various cases by the Apex court that it is guaranteed as fundamental right under right to life. Also few provisions in Part IV Directive Principles of State Policy such as 38⁶, 42⁷, 43⁸ and 47⁹ Various legislations on the foundation of the Constitutional philosophy has provided appropriate legislations for health care, such as Consumer Protection Act, 1986, The PCPNDT (Regulation and Prevention of Misuse)

Act, The Transplantation of Human Organs Act, 1994, Prevention of Food and Drug Adulteration Act, 1954, Disaster Management Act of 2005 etc

Health care services being the major responsibility of the Government, the system expects the overall infrastructural facilities and services to every man without his financial capabilities. The Services rendered by the doctor include diagnosis, medical advice, and manipulation, administration of treatment and performance of surgery. In relation to these services a doctor practicing privately or in Government hospitals is bound to provide the treatment to patient. Basically health providers are grouped as primarily government run hospitals including primary health centres and centres at gram level for emergency services, private hospitals nursing homes, charitable hospitals, some which are governed by academic institutions and few are institutional care centres run by the organizations such as Army Navy hospitals or industrial health care centres. For them the statutory framework and supervision in the form of government bodies as medical council etc are working and even assessing the infrastructure and making scrutiny of the services. The health policies in our country have till date revolved upon the timely needs of society and it has not considered health sector with prime importance as seen to have taken care after the recent health emergency. Since the first Five Year Plan government has focussed on sanitation, preventive health care, control of diseases, family planning, progressive improvement of national health thorough nutritional health facilities, immunization, vaccination, provision for treatment centres at rural areas, etc. it also provided for various health schemes for every vulnerable sector and also promoted the infrastructures required.

The country also adopted Health for all by 2000AD¹⁰ as enunciated in the Alma Ata Declaration of 1977. Accordingly, the health care system in the country was restructured and reoriented towards these policy objectives. Until end of Five Year Plan system in our country average investment towards health sector in all the plans was 3.28 per cent of the total budget investment. The highest proportion (3.9%) of the public health investment was during the fourth plan and the lowest (2.4%) was in the tenth plan.¹¹ It was only after Pandemic -19 the realisation about the allocation was seen in the recent budget wherein allocation towards health in the Union Budget 21-22 focussed on mitigating the impact of Covid -1. The budget for health and wellbeing was pegged at rs 2.23, 846 Crore, translating an increase of 137% which includes various ministries of health, family welfare etc. it also declares 'AtmaNirbharSwasth Bharat Yojana of out lay about 64, 180 crores, but still public health experts on allocated funds of Covide-19 find it insufficient. They have also expressed concerns over the situation.

Pandemic situation and its impact on health care services

The regular fabric of Constitutional mandate and the legal framework has recently posed various challenges before government during pandemic of corona-19. It caused serious effects on every sector of society. The commercial establishments, financial projects, education sector and economy of the globe and our country also witness huge impact. The whole national budget was collapsed due to lockdown in the country, it gave set back to every nation and specially caused devastating effects on the developing country like ours. The health

emergency caused by Corona-19 was threat to the normal allocation of financial arrangements, the issues caused heavily to those who were earning on daily wages, migrants who have left their original places and stayed in distant places in search of job. Not a single field was left over, only health care services were constantly working relentlessly to save the lives of masses. The health care services were over-burdened and it posed various challenges due to insufficient staff of health officials, unawareness of masses, absence of strong political will to cope up, also unavailability of required medical instruments, prevention and precautionary medicines, masks, etc. the politicisation of various issues by media and constant pressure on health industry was observed during this period.

The serious concerns realised during Pandemic 19

The first and the most important aspect of hygiene consciousness among the people at large. In India due to poverty other related issues, the people in general were not seriously concerned about the hygiene of their own, family and also community at large. To certain extent it can be said that this emergency taught people to cater to these basic needs of hygiene. Its not time to say that the situation is under control though the vaccine is available but the increasing trend in cases after normal routine has started shows that the people are not still sincere in following the norms laid down by ICMR or government officials.

The budgetary allocations and giving secondary status in planning and services caused a huge breakthrough during pandemic. The State in its Constitutional mandate is actually responsible for all such health care services, but the sufferings of masses, due to lockdown and

consequential circumstances, the vulnerable classes such as migrant workers, labourers, women and children suffered heavily. To make the vaccination available to every citizen is also the State's responsibility. State must make it available at its own expenses but it proved to be inefficient. Even the corruption in medicine prices and its availability was also faced during the lockdown and the patients and their relatives have to face the paucity of medicine, high charges and exploitation in various forms. The health officials who were working day and night were also not left over they also faced many problems like salary not given in time, the unavailability of health kits, its quality, demand –supply ratio, and most serious thing was they have to come on streets for the sake of their rights.

Common man's grievance was notably huge in all strata of society like struggle, due loss of work opportunities, business losses, heavy bank instalments remaining unpaid, the restricted access to the means of transportation caused their life miserably. It was double the sufferings when the medical emergencies were faced by some of their relative, as well financial constraints due to unavailability of beds in Government aided hospitals, institutional quarantine expenses, medicine availability and corruption issues etc. the situation demanded for concerted actions for the general welfare of people not during emergency but regularly in normal times too.

During the lockdown with use of technology in awareness about health risk insurance plans, awareness to bottom line of the society was possible only through the technology, the social networking was the easy mode to connect people in huge number, but at the same time it also posed threats when it was used to spread rumours in society. The need to have

guidelines for these social networking was also realised.

Conclusion

State exists to coordinate a community's behaviours and achieve a better life for the community's members. It should provide universal coverage of essential health package, increase budgetary outlays for health progressively, correctly set priorities of health interventions, strengthen public health services, human resource, procurement and distribution, strengthen medical education with quality to generate adequate workforce, ensure regulation of private providers through legislation and enforcement and build the independent monitoring system to build accountability using information technology. The right to health cannot be just guaranteed in isolation, it needs concerted action by state, NGOs, Public participation etc.

(Footnotes)

- ¹ "Right to Health Care for All- Is it a Distant Dream in India" Dr. P.K Rana Nyayadeep NALSA journal VOL-XIV Issue 4
- ² Mohd Yusuf Bhat, Environment & Human Rights, Reference Press ,New Delhi, 2005
- ³ https://www.oregonlaws.org/glossary/definition/health_care_services
- ⁴ See Art 51(c) of Constitution of India
- ⁵ Art 21 No person shall be deprived of his life or liberty except by the procedure established by law.
- ⁶ For the promotion and the welfare of the people, state shall strive to secure a social order in which justice, social, economic and political shall inform all the institutions of the national life.

- ⁷ The state shall make provision securing just and humane conditions of work for maternity relief
- ⁸ Social security just and humane conditions of work and leisure to workmen are part of his meaningful right to life and to achieve self-expression of his personality and enjoy the life with dignity
- ⁹ It is the primary duty of state to raise the level of nutrition and standard of living and to improve public health.¹⁰Annual plan 1979-80
- ¹¹ The Five Year Plans In India: Overview Of Public Health Policies by Sethuramalingam,, Selwyn Stanley &Sathia (Source Research gate)

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