Role of State in Guaranteeing Right to Health Under Article 21 of the Constitution of India

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Introduction

The Preamble of the Constitution of World Health Organisation (WHO) defines health as "A state of complete physical, mental and social well-being and not merely the absence of disease or infirmity". The Preamble also states that the achievement of any State in the protection and promotion of health is of value to all.[1] State plays a pivotal role in the protection of public health of the people in every society. State provides public health measures and regulates public health system. State acts as a provider, facilitator and regulator of public health system. State is legally bound to ensure that public health systems are available, accessible, affordable, acceptable to the public and of good quality. The objective of a healthcare system is to promote, restore and maintain good health to its citizens and state is bound to ensure that the same is achieved in an effective and efficient manner.

The Supreme Court of India in the case of Vincent Panikurlangara v. Union of India,[2] had dealt with the obligation of the State to ensure the creation and the sustaining of conditions congenial to good health. Importance of a healthy body was also discussed by the Court as the same being the very foundation

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[1] *Constitution of the World Health Organization*, 36(11), AJPH, 1315-1323 (1946).

[2] Vincent Panikurlangara v. Union of India, 1987 AIR 990.

for all human activities. State has the obligation to provide financial and service assistance in the health sector, to strengthen the healthcare system and research of the health-related aspects, to improve the infrastructural facilities, to formulate and implement health policies, etc. Each state is governed by its own laws and regulations when it comes to the responsibilities cast upon it. However, every state has an inherent responsibility to protect the health of the people. States are also bound under numerous international instruments to provide good and adequate health care to the public. Right to health is recognised as a basic right across the globe and the states are responsible to ensure the same. Governments, through the health ministry, other allied ministries and agencies, play a crucial role in the improvement of healthcare by strengthening health systems and generation of human, financial and other resources which in turn permit the healthcare sector to attain their goals of improving public health, reducing health inequalities, securing equity in healthcare financing and responding to population needs.[3]

State as a Benefactor

The major responsibility of the state is to provide good quality healthcare services to the citizens. State formulates different policies and plans for providing efficient healthcare services to the people. It is clear that healthcare services can be provided by public and private sector. It is also true that there are states where private sector provides better and efficient healthcare as compared to public sector. However, private sector can function only under

[3] Regional Committee for the Eastern Mediterranean, World Health Organisation [WHO], *The role of government in health development*, at 3, EM/RC53/Tech.Disc.1 (July 2006), https://applications.emro.who.int/docs/em_rc53_tech.disc.1_en.pdf, [Hereinafter 'Role of government'].

the supervision of the state and state acts as a benefactor by providing healthcare services to the public by ensuring:

- Availability of healthcare services and institutions to everyone
- Accessibility of the services to the public
- Acceptability of the healthcare services

State has to ensure that the healthcare services are available to all and should provide for a fair health system. In a fair health system, there would be same rating of responsiveness on every element for every group in the population.[4] This ensures that there is equitable distribution of healthcare services and no one is discriminated on the basis of sex, religion, caste, financial status, etc. Hospitals owned and managed by the State help to attain this goal to a great extent by providing healthcare services at a subsidised rate as compared to the private hospitals. Accessibility is mainly of three types viz. physical accessibility, economic accessibility and information accessibility. Physical accessibility means that the healthcare services are within safe physical reach for all sections of the public especially vulnerable groups including in rural areas. Economic accessibility or affordability is the measure of people's ability to pay for health services without financial hardship. The price of the healthcare services as well as indirect and opportunity costs are taken into account while considering economic accessibility. Information accessibility includes the right to have all the information and ideas concerning health issues. Availability and accessibility alone cannot guarantee an efficient healthcare system. The state has also a role in ensuring the acceptability of the services provided. This implies that the healthcare services must be of

[4] WORLD HEALTH ORGANISATION, THE WORLD HEALTH REPORT 2000 HEALTH SYSTEMS: IMPROVING PERFORMANCE (2000), [Hereinafter 'World Health Organisation].

good quality, provide patient satisfaction and should take into consideration basic human rights, dignity and confidentiality of the people.

State as a Regulator

State regulates the healthcare system, agencies and institutions by developing norms and standards for quality assurance and ensuring the implementation of policies and strategies formulated by the state. State has to ensure that right to health of the citizens is not violated by these agencies and institutions while providing healthcare services. Hence, healthcare regulations are imposed by the state at all levels. State imposes various regulations on the healthcare providers by way of laws, policies and schemes which contribute to the uninterrupted enjoyment of right to health by the citizens to a great extent if implemented effectively. State passes various laws and establishes regulatory bodies at national, state and local levels for regulating the healthcare services provided to the people. For example, The National Medical Commission Act, 2019[5] regulates the professional conduct of health workers in India. One of the major goals of the said Act is to improve the accessibility to quality and affordable medical education and ensure availability of adequate and high-quality medical professionals in the country. In addition to regulating the services of healthcare providers, state acts as an industrial manager and regulates the production and distribution of drugs including vaccines. This includes regulating the pricing, quantity and equitable supply of goods and services. State has the responsibility of regulating all aspects of public health system in the absence of which, right to health of the people will stand violated.

[5] repealed the Indian Medical Council Act, 1956; The National Medical Commission Act, No. 30 of 2019, [Hereinafter 'The National Medical Commission Act'].

State as a Facilitator

Governments, which levy taxes and benefit from natural resources, have social obligations to provide security and to facilitate socioeconomic development, including education and health development.[6] State acts as a facilitator of healthcare services by way of making laws, formulating policies and schemes which makes it easier for the people in the health sector to function efficiently. Though it is true that the state needs to maintain, improve, and increase the number of public hospitals and primary health centres to provide free of cost healthcare facilities to people living below the poverty line, other measures can also be adopted to let others get better access in the private sector. This can be done through public-private partnerships, compulsory medical insurance and more healthcare facilities in the rural areas by offering incentives to the private sector. State facilitates the providers of healthcare in the private sector to provide good quality services. This is carried out through several plans and policies implemented by the government. The main role of the state as a facilitator is to help the people connected to the public health system to function effectively. This would enable all the sections of the society to get access to good quality healthcare services.

Role in healthcare financing, human resource development and biomedical research

State plays a substantial role in providing for the funds needed for healthcare services by way of mobilizing the necessary resources through public budgets, pooling resources allocated to health development, guiding the process of resource allocation and purchasing health services from various

[6] Role of government, *supra* note 3, at 5.

providers. In high income countries, the structure of public health expenditure denotes that 70% or more of total health spending is from public sources of financing. The high share of social and public health care financing is explained by the level of social protection which in many countries, apart from the United States of America, is almost universal.[7] State must ensure that there is a system of fair financing which means that 'the risks each household faces due to healthcare expenses are distributed as per their ability to pay rather than the risk of illness; a fairly financed system ensures financial protection for everyone'.[8] However, it is based on the 'principle of from each according to ability, but not with the principle of to each according to need'.[9] Hence, the state should ensure that the affordable and quality healthcare services are provided to each person irrespective of their financial status.

Human resources can be considered as the major assets of the public healthcare system and hence, states are responsible for the formulation of appropriate policies for human resource development aimed at meeting the real needs of populations, securing appropriate skills mix, improving equity in distribution of human resources, managing, monitoring and evaluating the national health workforce. Governments set national standards for health personnel education and develop systems for accreditation of training institutions.[10] In India, the National Medical Commission constituted under the National Medical Commission Act, 2019 helps in achieving this goal to a great extent. The major functions of the Commission include formulation of policies for maintaining high quality standards in medical education,

[7] *Id.* at 6.

[8] World Health Organisation, *supra* note 4, at 50.

[9] *Id.* at 53.

[10] Role of government, *supra* note 3, at 6.

regulation of medical institutions, medical researches and medical professionals, assessment of the requirements in healthcare system, including human resources for health and healthcare infrastructure, development of a road map to achieve all these functions, etc.[11]

Research in health and the development of new medical technologies including new techniques, treatments, medicines and vaccines are very essential to meet the dynamic changes in the health concerns and for the effective protection of health of the people. State plays an important role in promoting health, clinical research and development of new medical technologies and drugs through sponsoring research and development related to the technology, regulating the investigational use of medical technology (drugs, biologicals, and medical devices) with human subjects and allowing only those products that have been evaluated as safe and effective to be introduced to the commercial market.[12] Every new technology or drug has to go through several phases of trial and should be proved successful in order to be finally made available to the public. State has the responsibility to ensure that proper procedures are followed and public safety is guaranteed while bringing these inventions to the market. State also grants patent rights to the pharmaceutical companies for new drugs and other inventions in medical field which can be in the form of a product or process.

There is no exhaustive list when it comes to the responsibilities of state with regard to protection of health of its citizens. State plays a vital role in all aspects of health sector and is responsible for providing efficient and effective health care to the people. States play these roles in their respective countries in a distinct manner and each system differs from one another. The structure

[11] The National Medical Commission Act, *supra* note 5, § 10.

[12] JOHN R. HOGNESS et al., THE ARTIFICIAL HEART 152 (National Academy Press 1991).

and organisation of health system, the extent of participation of public sector and private sector, schemes and policies, extent of implementation, etc varies from one state to another. In addition to providing health care services, states also ensure other related services like access to clean and safe drinking water and proper sanitation, right to clean and healthy environment, etc., which are essential for promoting public health in a state.

Right to health in India

In India, health care services are provided by both public and private sector and both sectors have made significant contributions to the health sector. However, India being a welfare state, the government is obliged to provide quality healthcare services to the people. Right to health is an integral part under Article 21 of the Constitution of India. The hospitals and other institutions run by the government provide free or low-cost health care services to the people. The structure and organisation of public health sector in India is derived from the recommendations of the Bhore Committee Report, 1946. Several constitutional provisions and legislations also impose responsibility on the state to provide healthcare services to the people. India has also signed and ratified many international conventions and is duty bound to abide by its obligations under International law by virtue of Article 51 of the Constitution. The Universal Declaration of Human Rights, 1948 mentions health as a component of the right to an adequate standard of living under Article 25. In 1966, International Covenant on Economic, Social and Cultural Rights also recognized right to health as a human right. There are various other international instruments which recognises right to health, right to medical care, other incidental rights as basic human rights and imposes duty on the state to provide for the same. It is the responsibility of the government to prevent and treat illness, provide good quality healthcare facilities like

health centres, hospitals, laboratories for testing, ambulance services, blood bank, etc. It should also be ensured by the state that these services are available, affordable and accessible to all. Various regulations are also formulated and implemented by the state to regulate the functions of healthcare systems and professionals. The constitutional and legal provisions through which these responsibilities are imposed upon the state are discussed below.

Article 21 of the Constitution of India provides for the right to life and personal liberty. Through various judgements, right to health was brought under the wide ambit of Article 21 which imposes a duty on the state to ensure that no person is deprived of his right to health except in a situation that law demands. Though right to health is not expressly guaranteed as a fundamental right in the Constitution of India, the judicial pronouncements regarding the health aspect has now been settled as such. The problem, however, is in the absence of legislative support, one finds it difficult to articulate the content of the right, the circumstances in which one can claim remedies for its violation, the nature of obligations it puts on the duty holders etc.

The judicial decisions regarding right to health can be traced back to 1989 where Supreme Court in Parmanand Katara v. Union of India[13] stated that right to access to emergency medical treatment comes under the ambit of right to life. In the case of Consumer Education and Research Centre v. Union of India,[14] Supreme Court recognised the right as flowing from Article 21 of the Constitution. In Paschim Banga Khet Mazdoor Samiti v. State of West Bengal[15] the court declared that non-availability of services in government

[13] Parmanand Katara v. Union of India, AIR 1989 SC 2039.

[14] Consumer Education and Research Centre v. Union of India, (1995) 3 SCC 42.

[15] Paschim Banga Khet Mazdoor Samiti v. State of West Bengal, AIR 1996 SC 2426.

health centres amounted to a violation of right to life under Article 21. This was a case where the patient was refused treatment at eight state-run medical institutions in succession because of non-availability of beds or insufficient technical capacity. While declaring emergency medical care as a core component of right to health, the court awarded compensatory relief to the person who had to seek medical help at great cost in a private hospital. Hence under Article 21, the government is under an obligation to provide all the assistance to the people to ensure their right to health. In the case of Navtej Singh Johar v. Union of India, the Apex Court held that:[16]

"Article 21 does not impose upon the State only negative obligations not to act in such a way as to interfere with the right to health. This Court also has the power to impose positive obligations upon the State to take measures to provide adequate resources or access to treatment facilities to secure effective enjoyment of the right to health."

Based on the above logic, Supreme Court and High Courts exercising their writ jurisdiction have enlarged the content of right to health to include duty on the part of the State to maintain the quality and safety of blood banks, ensure the establishment of primary health centres in villages, ban of hazardous drugs, control the unhealthy condition in state-run care homes and custodial institutions, prohibit smoking in public places and sale of tobacco products, prevent discrimination in treatment to HIV patients, control pollution from cars in cities, tighten medical negligence standards in assessing deficiency of service by doctors and hospitals etc. Given the fact that the law declared by the Supreme Court shall be binding on all courts as stated in Article 141, these rulings of the Court can be taken as part of the corpus juris binding on all state authorities at the Central, State and local

[16] Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.

levels. These decisions not only remind the executive and the legislature of their Constitutional obligations in respect of right to health of citizens but also empowers citizens for seeking remedies through Constitutional courts pending appropriate legislative enactments on health rights.

In addition to the above provisions and judicial decisions, Article 47 of the Constitution which is a directive principle of state policy imposes a duty on the state to increase the level of nutrition and standard of living and to improve public health. In India, this is the fundamental provision from which the responsibility of the state to protect the health of people is derived from. Article 39 which imposes the duty on the state to formulate policies for ensuring the health and strength of workers, for giving opportunities and facilities to children to develop in a healthy manner, Article 41 which provides for the need of provisions for public assistance in cases of unemployment, old age, sickness and disablement, Article 42 for provisions with respect to securing just and humane conditions of work, maternity relief, etc. cast upon the state the duty to protect and assist the people in all facets of health.

Under the distribution of legislative powers in the Seventh Schedule, entries relating to public health are included in all the three Lists. The Union List (List I) on which Parliament alone can make laws includes entries such as (i) Treaties and agreements and their implementation (Entry 14); (ii) Quarantine and marine hospitals (Entry 28); (iii) Patents, inventions and Trader Marks (Entry 49); (iv) Labour Safety in Mines and Oil fields (Entry 55); (v) Manufacture and Distribution of Salt and Opium (Entry 58-59); (vi) Professional and vocational Training (Entry 65); (vii) Inter-State Migration and Inter-State Quarantine (Entry 81).

Health related entries in the Concurrent List (List III) include items such as (i) Lunacy and Mental Deficiency (Entry 16); (ii) Adulteration of food stuffs and other goods (Entry 18); (iii) Drugs and Poisons (Entry 19); (iv) Economic and Social Planning (Entry 20); (v) Population Control and Family Planning (Entry 20 A); (vi) Social Security (Entry 23); (vii) Welfare of Labour (Entry 24); (viii) Education including Medical Education (Entry 25); (ix) Medical Profession (Entry 26); (x) Prevention of Contagious Diseases (Entry 29); (xi) Price Control (Entry 34); and (xii) Factories and Boilers (Entry 36-37).

On the State List (List II) are such important health subjects such as (i) Public Health, Sanitation, Hospitals and Dispensaries (Entry 6); (ii) Manufacturing and Sale of Intoxicating Liquors (Entry 8); (iii) Relief of the Disabled (Entry 9); (iv) Local Self-Government and Village Administration (Entry 5); (v) Water supplies and Drainage (Entry 17); (vi) Industries (Entry 24). Furthermore, items in the State and Concurrent Lists on which State Legislatures are empowered to make laws are expected to be implemented by the Panchayats and State governments are duly empowered for the purpose by the Constitution under the Eleventh and Twelfth Schedules. These two Schedules empower Panchayats and Municipalities to devote their resources and powers for promotion of public health through management of water resources to make clear drinking water available to everyone, reduction of poverty conditions, ensuring health and sanitation through hospital, primary health centres and dispensaries, take special care of vulnerable sections including women, children, disabled and elderly etc. In short, the Constitutional scheme makes a practical design of a three-level governance to ensure reasonable health care for all citizens across the country to be operationalized through laws and regulations by appropriate governments.

Other legislations such as Epidemic Diseases Act 1897, Disaster Management Act 2005, Indian Penal Code 1860, Code of Criminal Procedure 1973, etc.,

empower the state as well as impose duty on the government to provide quality healthcare facilities to the people and regulate the public health system during epidemics or otherwise. During the COVID-19 pandemic, state was entrusted with powers and responsibilities mainly under the above-mentioned Acts. State also formulated several policies and guidelines acting under the provisions of these legislations for controlling, curing and preventing the disease. However, it was hard to curb the disease and protect public health effectively in the absence of a single comprehensive legislation to deal with a pandemic situation like COVID-19.

Schemes and Missions

The Central and State governments in India have formulated various plans and strategies for the protecting public health. Ministry of Health and Family Welfare regulates most of the heath policy decisions at the national level. The Ministry consists of two departments viz. Department of Health & Family Welfare and Department of Health Research each of which is headed by a Secretary to the Government of India. The Department of Health and Family Welfare plays a crucial role by organising and delivering all national health programs whereas the Department of Health Research has the duty to promote health and clinical research, development of health research and ethics guidelines, outbreak investigations, and provision of advanced research training, etc. The Directorates of Health Services and the Departments of Health and Family Welfare at the state level and Panchayati Raj institutions at the district level are responsible for providing and ensuring quality healthcare services to the people. Some of the major policies and programmes formulated by the government are discussed below:

In 1977, the 30th World Health Assembly resolved that the main social target for Governments in coming decade for the WHO, should be 'the attainment

by all citizens of the world by the year 2000 A.D. of a level of health that will permit them to lead a socially and economically productive life'. In 1978, the Alma Ata World Conference pointed out that Primary Health Care would be the key to achieve 'Health for All' by 2000. WHA endorsed the Declaration of Alma Ata and invited member states to devise their own national policies and strategies to achieve this goal. Each member state was also required to have a National Health Policy.[17] The Ministry of Health and Family Welfare formulated a National Health Policy in 1983 considering India's commitment to attain the goal of 'Health for All' by 2000 through the universal provision of comprehensive primary health care services.[18] Later, other National Health Policies were adopted in the years 2002 and 2017. Various other specific health policies such as National AIDS Prevention and Control Policy, National Policy for Persons with Disabilities in 2006, National Vaccine Policy in 2011, etc., were also formulated by the government.

Despite all the progress made in economic development, health inequalities prevail and the poor have to carry the burden of disease disproportionately. Economic liberalization and globalization have widened the health divide aggravating the inequities. The Government has tried to address the issue through National Health Mission (NHM) which aims at the achieving universal access to equitable, affordable and quality health care services that are accountable and responsive to people's needs. There are two sub-missions under NHM which are the National Rural Health Mission and the National Urban Health Mission. The main programmatic components of NHM include

[17] Ajai R Singh et al., *The Goal: Health for All the Commitment: All for Health*, 2(1), M.S.M, 97- 110 (2004).

[18] MINISTRY OF HEALTH AND FAMILY WELFARE, GOVERNMENT OF INDIA, NATIONAL HEALTH POLICY (1983), at 3.

Health System Strengthening, Reproductive-Maternal-Neonatal-Child and Adolescent Health and Communicable and Non-Communicable Diseases.[19] The National Rural Health Mission was launched in 2005 and it aims to provide accessible, affordable and quality health care to the rural population, especially the vulnerable groups. The National Urban Health Mission mainly focuses on urban poor by making available to them essential primary health care services and reducing their out-of-pocket expenses for treatment. It was approved by the Cabinet in 2013 as a sub-mission of NHM.

The Five-Year Plans formulated by the Planning Commission of India over the years also consisted of plans concerning health sector. For example, the 12th Five-Year Plan (2012-2017) aimed at achieving various objectives in the health sector including establishing a system of 'Universal Health Coverage' in the country, substantial increase in health sector expenditure, strengthening of public health system, redesigning financial and managerial systems to ensure more efficient utilisation of available resources and to achieve better health outcomes.

National Health Bill, 2009[20]

An initiative of a Working Group under the sponsorship of MoHFW in 2009 came up with a Draft National Health Bill providing for right to health and for achieving the goal of health for all conducive to living a life in dignity. The Bill acknowledged that the exercise of all other human rights is intricately linked with getting health recognised as a fundamental human right and there

[19] *National Health Mission*, Ministry of Health and Family Welfare (Apr. 10, 2023, 09:46 AM), https://nhm.gov.in/index4.php?lang=1&level=0&linkid=445&lid=38.

[20] Draft National Health Bill, 2009, Ministry of Health and Family Welfare, (Jan. 2009), https://nhsrcindia.org/sites/default/files/2021-03/The%20National%20Health%20Bill%202009.pdf.

is need to have an overreaching legal framework and a common set of standards, norms and values to facilitate the Government's stewardship of private sector as a partner in future public health related laws to be enacted at the Central and State levels.

Given the fact that nearly 60 per cent of the total family income of average Indian household is spent on health-related expenditure and not even 10 per cent of Indians have some form of health insurance, it is imperative for Governments to address the problem of health inequalities on a priority basis. In this context the legislative proposal under the National Health Bill is to be revived and pushed forward. The Bill does take into account the inter-relationship between health outcomes and related issues like water, nutrition, sanitation and environment. The rights-based, inclusive approach adopted by the Bill aims for a broad-based legal framework to bring the public, private and voluntary sector together.

For a right-based health scheme, it is important to identify the duty holders and set their obligation upfront. This is what the Bill does in the second chapter under the title 'Obligations of Governments in Relation to Health'. The duties are classified into three viz. general obligation, core obligation and specific public health obligations. There are negative obligations too, in the sense that the State and its agencies are expected to refrain from actions extinguishing or interfering with the enjoyment of existing health related rights in the name of development.

The Bill articulates right to health as a bundle of independent rights some of which are individually held while others are collectively enjoyed. Individual rights include right to receive quality health care services, right against discrimination in delivery of services, right to dignity, privacy and confidentiality, right to health information, right to give consent and refuse

treatment etc. Of course, those providing healthcare services also have rights which the users of such services are expected to respect.

The redressal mechanism for health rights stipulated in the Bill apart from the usual civil and criminal remedies include dispute resolution through Public Hearings and Dialogues as well as through in-house Complaints Forums at the institutional level using Alternative Dispute Resolution (ADR) methods.

The implementation mechanism contemplated in the Bill includes National and State Public Health Boards and decentralised implementation authorities at the Village, Block and District Levels. Both Government and Community-based organisations will be responsible for monitoring the implementation. There is to be an independent Health Information System to be put in place.

As a measure to project the Legislative agenda for a right-based approach in health care delivery, the Draft Bill provides a starting point for discussion among States and the Union. Unfortunately, in the changing political and economic scenario prevailing in the country, the Bill seems to have been shelved at least for the time being.

Recommendation of the expert group on Universal Health Care:

An expert committee appointed by the Planning Commission in 2011 made a detailed report for ensuring quality of health care services and making its access universal to the Indian consumer. The focus of the report was securing right to health of citizens highlighting the gaps in the legislative framework and institutional arrangements. It is important to briefly examine the key recommendations of this Committee as it is made after a situational analysis, the Constitutional promises and the advances in health services. The object as articulated by the Committee is to ensure equitable access for all citizens to

affordable health services of assured quality as well as public health services addressing the wider determinants of health delivered to individuals with the government being the guarantor and enabler, although not necessarily the only provider of health-related services. This is what Universal Health Coverage (UHC) is meant to convey in policymaking. Among the recommendations are some new initiatives proposed for UHC to become a reality. These include:[21]

(i) Every citizen will be issued an IT-enabled National Health Entitlement Card (NHEC) so that it will ensure cashless transactions, permit mobility across the country and contains personal health information.

(ii) UHC can be achieved only when sufficient attention is paid to health-related areas like nutrition and food security, water and sanitation, social inclusion to address concerns of gender, caste, religious and tribal minorities, housing, clean environment, employment and work security, occupational safety and disaster management.

(iii) All citizens will be provided with healthcare services through the public sector and contracted-in private facilities participating in the UHC programme. Citizens are free to supplement free-of cost services (both in-patient and out-patient care) offered under the UHC system by paying out-of-pocket or directly purchasing voluntary medical insurance.

(iv) Financing the proposed UHC system will require public expenditures on health to be raised significantly which is from around 1.2% of GDP in 2012 to 2.5% by 2017 and to 3 % by 2022.

[21] High Level Expert Group Report on Universal Health Coverage for India, (Nov. 2011), https://nhm.gov.in/images/pdf/publication/Planning_Commission/rep_uhc0812.pdf.

(v) UHC system should focus on reduction of the disease burden facing communities along with early disease detection and prevention. The emphasis is on investing in primary care networks and holding providers responsible for wellness outcomes at the population level. Through high quality primary care network, UHC is likely to reduce the need for secondary and tertiary facilities.

(vi) The District Hospital has a critical role to play in health care delivery which should be well attuned to the needs of the particular district. It can be backed up by contracting-in of regulated private hospitals which should meet the health care needs of over 90% of the population in the district. This will require the upgrading of district hospitals as high priority over the next few years.

(vii) Adherence to Indian Public Health Standards by all public and contracted-in private health facilities in the starting point of quality assurance in health care services delivery. Such a move should include licensing, accreditation and public disclosure of accreditation status of all public and private health facilities participating in the UHC system.

(viii) A National Council for Human Resources in Health should be set up at the National Level to prescribe, monitor and promote standards of education of health professionals.

(ix) For ensuring effective and affordable access to medicine, vaccines and appropriate medical technologies, Government should enforce price controls on essential drugs, adopt centralised national and State procurement system and strengthen the public sector capacity of domestic drug and vaccines industry.

Given the importance of health services in the scheme of accelerated development envisaged by the present dispensation taking advantage of the demographic dividend in the Indian workforce, it is imperative that legislative

policies take note of some of the policy options proposed by the expert committee. It is a challenge for the proponents of co-operative federalism, to take the states on board for future development of health care policies and share the expenses involved in the Universal Health Care system for the country.

Other initiatives by the government

Some other initiatives by the state to develop the healthcare system and provide healthcare services to the people are as follows:[22]

(i) The Swachh Bharat Mission was launched in 2014 to speed up the process of achieving universal sanitation coverage, focus on sanitation and to make the country open defecation-free through it.

(ii) In 2018, India launched Ayushman Bharat Yojana (Pradhan Mantri Jan Arogya Yojana) for coverage of tertiary care for economically vulnerable populations and Health and Wellness Centres initiative for the delivery of comprehensive and integrated primary care. Health Insurance worth Rs 5,00,000 was provided to over 100 million families every year through the same.

(iii) Intensified Mission Indradhanush 2.0 which aims to immunize children under 2 years of age and pregnant women against eight vaccine-preventable diseases was launched in 2019 across India. The immunisation drive covers vaccines for tuberculosis, meningitis, measles,

[22] Roosa Tikkanen et. al., *International Health Care System Profiles: India*, The Commonwealth Fund (Apr. 10, 2023, 10:30 AM), https://www.commonwealthfund.org/international-health-policy-center/countries/india.; *Healthcare Industry in India*, Indian Brand Equity Foundation (Apr. 10, 2023, 10:35 AM), https://www.ibef.osrg/industry/healthcare-india.aspx, [Hereinafter 'Healthcare Industry in India].

Hepatitis B, tetanus, whooping cough, poliomyelitis and diphtheria and other two diseases namely, Hemophilus influenza and Japanese encephalitis in certain selected areas. It is a successor to the Intensified Mission Indradhanush.

(iv) The Medical Council of India was replaced with the National Medical Commission for setting uniform standards in the medical education field, regulating medical research and medical professionals through National Medical Commission Act, 2019.

(v) The Government created Health Technology Assessment in India under the Department of Health Research to evaluate all medical technologies and to facilitate the process of transparent and evidence informed decision making in the field of health.

(vi) The Government of India aims at increasing healthcare spending to 3% of GDP by 2022.

(vii) Rs 35,600 crore has been allocated for nutrition-related programmes in the Union Budget 2020-21 and Rs 69,000 crore has been announced crore for the health sector including Rs 6,400 crore for Pradhan Mantri Jan Arogya Yojana.

Though some of the schemes mentioned above are yet to be successful, there were significant improvements in the health sector through the implementation of these schemes. As per the reports till July 2019, around 125.7 million families are now beneficiaries under Pradhan Mantri Jan Arogya Yojana. The scheme enrolled 16,085 hospitals including both public and private hospitals. It also included 19 AYUSH packages in the treatment scheme. Around 50 lakh people benefitted from free treatment under the Ayushman Bharat Yojana according to the reports as of September 2019. There was a steady increase in the number of medical colleges in India to 529 in Fiscal year 2019 from 381 in Fiscal year 2013. Since 2013, there has also

been a 26.9% reduction in Maternal Mortality Ratio in India as per the Sample Registration System Bulletin-2016.[23]

In every country, the state is obliged to provide for health care facilities and protecting the health of its citizens. Every country has its own distinct organisation and governance structure which makes the health system of each country different from the other. Hence, the role of the government also varies from state to state. For example, the Canadian health system as compared to United States has lower costs, more services, universal access to health care without financial barriers and superior health status. Though private sector contributes significantly to the health system in many countries, the public sector plays a pivotal role in the administration of health system in every country. Each country has its own challenges and drawbacks with respect to the level of efficiency of health care services provided by it. It has to take measures to improve their health care facilities considering their status as a contributor to the world health. For instance, India should considerably increase its investment in the health sector and promote public health development.

There have been several criticisms against the government of India for not paying health sector the attention it deserves and for not focusing on the healthcare services and healthcare development in an efficient manner. India ranks 112 out of 191 countries with regard to the overall efficiency of health care system as per WHO's ranking in 2000.[24] India has been spending only around 1% GDP for many years now which is significantly low as compared to other countries across the world. It has started spending more in the recent

[23] Healthcare Industry in India, *supra* note 22.

[24] Ajay Tandon et al., *Measuring Overall Health System Performance for 191 Countries,* GPE Discussion Paper Series No. 30, at 19, https://www.who.int/healthinfo/paper30.pdf.

times however the rate is still not enough to manage the health sector in a highly populated country like India. It is true that people are provided free treatment in public health facilities, but most of the facilities are not sufficient to manage serious illnesses and emergency care. Hence, this either deprives the poor of quality healthcare or it leads to them depending on the private sector facilities, spending a huge amount beyond their abilities and eventually becoming homeless trying to pay their debts. Unequal distribution of healthcare services across the rural and urban areas, poor management of the institutions, absence of trained and skilled medical personnel especially in rural areas, inadequate investment in health sector by the government, lack of modern medical techniques and facilities, lack of affordable healthcare services, lack of a single comprehensive legislation dealing with public health are some of the major deficiencies faced by the Indian healthcare system even today. To cure these deficiencies, it is very important that more schemes are devised and implemented by the government focusing on these deficiencies and it must be ensured that these do not remain on paper and are put into practice effectively.

The role of the government in a country can never be ignored and state has the major responsibility for protecting the health of its citizens for the main reason of it being the administrator of the country. However, the obligation of the State in healthcare services is being continuously debated all over the world and there is no uniform pattern discernible in this regard. In its general comment on the right to life, the UN Human Rights Committee articulated the role of the state limited to undertaking measures for eliminating epidemics and malnutrition.[25] It is not clear from this comment as to when the State can

[25] United Nations Human Rights Committee, *General Comment No. 6(16)d*, adopted 22 September 1982, 37th Sess, UN Doc A/37/40, ¶ 5 Annex V.

be made responsible for breach of its obligation in curbing malnutrition. Because of the absence of an enforceable claim upon a government for allocation of a specific amount to health, the amount a nation can afford in this respect is what it chooses to spend!

Conclusion

A report card on health laws and right to health is difficult to make, given the complex nature of issues involved and the nature of developments happening in society technology and governance. Nevertheless, public health, understood as conditions which enable people to live healthy or attain the highest attainable state of health, is engaging the attention of changing governments with varying degrees of emphasis. Meanwhile, right to health, understood as the right to an environment involving the minimum risks to health and the right to have access to health care services that can prevent or alleviate suffering of diseases, has grown under a human rights jurisprudence based on life with dignity and social justice founded on equity and equality.

It is difficult to view right to health as an individual right as it includes not only the right to health care, but also other incidental rights such as access to safe and potable water and adequate sanitation, healthy occupational and environmental conditions, access to health-related education and information, etc. Evidence suggests that improvements in drinking water supply and sanitation, nutrition and environment, housing and employment have been far more beneficial for health status enhancement than preventive and curative healthcare services. The areas of public health responsibility include assuring an adequate local public health infrastructure, promoting healthy

communities, preventing the spread of communicable disease, preparing for and responding to emergencies, etc.[26]

Given the multi-level law making bodies and processes existing in the Federal scheme of governance and divided responsibilities thereunder, it is impossible to present a comprehensive view of the status of right to health in the country. The laws themselves are too numerous to count. Added to them are the ever-increasing regulations, rules and orders by the Central and State administrations. Though numerous policies and schemes were introduced to protect public health and enforce right to health, the extent of effective implementation is always questionable. It is critical that these policies do not remain on paper and is put into practice effectively. It should also be ensured that there is equitable distribution of health care services across the country and no one is deprived of their basic human right to health in the name of caste or financial status. Population and economy play a major role in the public health and hence, state should take measures which is suitable for their population and economic conditions. For instance, in a highly populated country like India, the state needs to substantially increase investments in the health sector as compared to less populated countries. The Government has tried to address the drawbacks of Indian health sector through various programmes, schemes and missions. However, a more comprehensive approach is warranted and the National Health Bill proposed in 2009 is the way forward to make right to health meaningful to the citizens.

[26] *Government's Responsibility for Public Health*, M N Department of Health (Apr. 10, 2023, 11:50AM,
https://www.health.state.mn.us/communities/practice/resources/chsadmin/mnsystem-responsibility.html.