



A NEW PARADIGM TO HEALTH LAWS IN TIMES OF COVID-19

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ABSTRACT

Begun in 2019, the COVID-19 outbreak has given a new outlook to everything from our lifestyle to laws. This article highlights the position of Right to Health laws in our constitution with help of relevant case laws and draws attention towards the significance of the “Rule of Law” in law-making process during a time crisis. No revisions have been made to the Epidemic Diseases Act of 1897, invoked by several State Governments to combat the spread of virus, ever since it was enacted. Moreover, Data from the Government shows a little over 1% of total GDP is spent over public healthcare over last 10 years. Intending to create awareness among readers regarding the complexities faced in these difficult times in the healthcare sector, the author derives a need for new set of Public Health Laws and their quick implementation by the state. Overall, we conclude the one of its kind COVID-19 pandemic has provided us with an opportunity and wide scope to improve our pre-existing policies and health laws.

INTRODUCTION

The pandemic outbreak has exhibited a uniquely interconnected nature in fields of law and medicine. One positive consequence of the present-day pandemic is that, now we have a clearer understanding that health is an important aspect of democracy and health

systems are fundamental social institutions. With a rise in challenges and increase in number of cases in this ultimate quest for human race, a strong legal regime is seen as need of the hour.

The Supreme Court of India as well as International Human Right laws, through its landmark judgements and treaties, have incorporated provisions guaranteeing protection and the highest attainable standard of health to citizens. Further, it has also been held that “the right to health is integral to the right to life and the government has a constitutional obligation to provide health facilities”. Although admittedly, these health rights have often been theorized and limited to on-paper legislations. The recent catastrophe has provided us with an opportunity to reconsider how health laws can be brought into action.

The first-of-its-kind, COVID-19 outbreak, has led the government to expand the scope of its powers and make speedy administrative decisions to combat this disease. While going overboard with efforts and application of special laws, various pressing issues concerning inequality in healthcare benefits have continued to prevail. While problems like high testing prices and uncertainty of true test results have come into concern, equal access to tests, treatments, ventilators and ICU beds have also been major challenges to fight.

Right to health should be made available to everyone in normal as well as in times of crisis. The author, through this article responds to the alarming levels of spread and severity of the outbreak and highlights

¹ *State of Punjab v. Mohinder Singh Chawla* (1997) 2 SCC 83



opinions regarding effective resolution for the same. Firstly, the author points out the difficulties faced as well as the situation of shadow pandemic stating how other health services are being affected by the spread of the virus. Thereafter the article throws light on significant right based imperatives and proposes an idea for a public health bill. A country must always be prepared for an emergency, and with a specific provision not been made for the same, a need for clear laws and their timely implementation during a crisis must be looked upon. Lastly, the author ponders upon various changes made in existing policies and shares views regarding moving forward with new amendments and resolutions. The article ends by drawing out significance of adhering to “rule of law” and understanding the scope of the judiciary in the law-making process in times of crisis.

THE BITTER TRUTH OF DIFFICULT TIMES

The challenge which our country seems to be facing with the onset of this outbreak is far greater than just equal health rights for everyone. With 8.5 hospital beds per 10,000 citizens and eight physicians per 10,000, the country's healthcare sector is not equipped for such a crisis². Added to this, India faces a shortfall in human resource in the health sector. Currently, efforts have been made by the government to build hospitals, buying health facilities, and developing infrastructure although there has been no proportionate attempt on building health professional capacity. The reason for the

same is that human resources cannot be created overnight like other things. The situation and difficulties with an increase in cases have appeared to get direr as the pandemic is surging day by day. The preliminary stringent lockdown did not help enhance an underprepared health system, and the country's health force now finds itself battling to cope with the burden. When the pandemic broke out, the undermanned hospitals were overcrowded with patients with a single oxygen station servicing many. Doctors and healthcare workers who are responding to a global health crisis trying to protect individuals, families and communities in adverse situations with stretched resources, shortage of personal protective equipment (PPE) and other equipment's, have found themselves in unexpected targets in the fight against COVID-19.³

Another health disaster that has been building up is the crippling of both routine and critical health services resulting in interrupted treatment and delayed diagnoses. The fear of contracting the virus has stopped many from continuing with their ongoing health treatment. More than a million children have missed crucial immunizations and hospital births have shown a sharp decline, indicating many women may have gone through unsafe childbirth at home.⁴ Added to this, treatments for critical conditions like cancer and tuberculosis have also faced a downfall.

² Press Trust of India, Lack of medical investment, healthcare infra big challenges for India's COVID-19 fight: Fitch, healthworld.com from The Economics Times, New Delhi, May 14, 2020

³ Health workers become unexpected targets during covid-19. Editorial. Economist, May 11th, 2020

⁴ Alfea Jamal, *Home births, missed vaccinations, lack of critical care: India's health 'time bomb' keeps ticking, and it's not Covid-19*, Hindustan Times, Sep 12, 2020, 13:23 IST



The apex court of our country has previously upheld the “state’s obligation to maintain health services”⁵ in the case of *State of Punjab v. Ram Lubhaya Bagga*⁶ and with that being held, a need for short term and long term incentives and solutions on behalf of the state arises. In the longer term, increasing the expenditure on public health and investments in health structure, ensuring the stability of regular health services, and developing health emergency preparedness is required while quicker methods like increasing testing capacity, financially assisting low-income groups and enabling responsible monitoring can help improve the condition in the short run.

NEED FOR A RIGHT BASED IMPERATIVE

“Of all the forms of inequality, injustice in health care is the most shocking and inhumane”⁷

The current scenario makes it evident that Martin Luther King Jr rightly stated the impacts of health injustice. This pandemic unveils the vulnerabilities and disparities of the country’s healthcare system, revealing the loopholes of the pre-existing laws. Article 21 of the Constitution guarantees the protection of life and personal liberty to every citizen. The Supreme Court in its landmark judgement of *Bandhua Mukti Morcha v. Union of India*⁸ has held that “the right to live with human dignity, enshrined in Article 21, derives from the directive principles of state policy and therefore includes protection of

health”⁹. While taking a closer look at this judgement, one may question “Does that make the right to health a fundamental right?”. The answer to this is unclear as Directive Principles of State Policies are not binding in nature. Although the failure of a government hospital to provide a patient with timely medical treatment results in a violation of the patient’s right to life¹⁰. Thus, it can be implied that the Right to Health has not been explicitly declared as a Fundamental Right, yet there are numerous references in past judgements as to public health and on the role of the state in the providing of healthcare to its citizens.

This emerging humanitarian challenge has urged many states in India to invoke various provisions of the Epidemic Diseases Act which was passed in 1897 to prevent the spread of “dangerous epidemic diseases”. The act was primarily made to fight the bubonic plague that broke out in the Bombay state and it deals with “penalties for violating the regulations”¹¹, “legal protection to the implementing officers acting under the Act”¹² and gives powers to the state and Central governments to take special measures and formulate regulations that are to be observed by the people to contain the spread of disease¹³.

The pre-existing law seems to have outdated its scope to battle the dangers of the COVID-19. Now only a strong legal framework can help build collective resistance to future pandemics and public health emergencies.

⁵ *State of Punjab v. Ram Lubhaya Bagga* (1998) 4 SCC 117

⁶ *ibid*

⁷ Luther King M., Jr Presentation at the Second National Convention of the Medical Committee for Human Rights, Chicago, 25 March 1966

⁸ AIR 1984 SC 802

⁹ *ibid*

¹⁰ *Paschim Banga Khet Mazdoor Samity v. State of West Bengal* [AIR 1996 SC 2426] at 2429 para 9

¹¹ Epidemic Diseases Act 1897, Section 3.

¹² *Ibid*, Section 4

¹³ *Ibid*, section 2



The well-being and good health of its citizens are key determinants for a country's growth and stability. Therefore, this is a just and fair time for India to draft a Public Health Bill and incorporate 'Right to Health' in the list of fundamental rights explicitly.

AMENDMENTS AND RESOLUTIONS: A WAY FORWARD FOR INDIA

“If emergency legislation bypasses the rule of law, then rights are lost and those rights are very difficult to recover”¹⁴

Our nation has undergone a lot of changes lately. But what matters now is how we are coping with all of this. The annual National Health Profile, 2019 (NHP) data released by the government shows India has been spending a little over 1 per cent on Public Expenditure on health as a Percentage of GDP since 2009¹⁵. There is a serious demand for comprehensive improvement of the health system, particularly health infrastructure and human resources, to make quality healthcare available and affordable to everyone. In a meeting with the 15th Finance Commission, the Union Health Minister Dr. Harsh Vardhan, on Monday highlighted that the government aims at gradually increasing the public health expenditure to 2.5 per cent of the nation's GDP by the year 2025¹⁶.

As far as time is concerned, a short-term plan to increase the human resource in the health sector can be utilizing the final year medical students' workforce. The Ministry of Health

and Family Welfare has issued a notice for “Deployment of Residents in Various Facilities Designated for Screening and Management of Patients with COVID-19 and the non-covid area of the hospital”¹⁷. This way we can overcome the shortage of manpower.

Another critical step in my view is subsidizing the rates of COVID-19 testing and access to healthcare to all irrespective of gender, religion, sexual orientation, disability, race, ethnicity, and importantly income and socioeconomic status. In March tests were priced at around Rs 4,500 and have now come down to approximate Rs 2,000 across states while in most government facilities, Covid-19 testing is free. The Indian Council of Medical Research (ICMR) has left it to state governments to decide the cost of Covid-19 tests¹⁸. While there has been a considerable reduction in rates over the months, the current price still seems high for a middle-class household to go for a test in a private lab. If the dignity of each citizen calls equal concern and respect, expanding the medical benefits to the greatest number of people must be our ethical starting point. The bedrock of human rights calls for attentiveness in opposition to discrimination in information, testing, and treatment for COVID-19.

CONCLUSION

The world has been through an unexpected chain of events during this year. While the

¹⁴ Ian McDougall, President of the LexisNexis Rule of Law Foundation

¹⁵ Ministry of Health and Family Welfare, *NATIONAL HEALTH PROFILE 2019*, 14th Issue, [Page. 172]

¹⁶ *Govt aims to increase public health expenditure to 2.5% of GDP by 2025*, DD News, ddnews.gov.in, 14-07-2020, 9:55 am

¹⁷ Ministry of Health and Family Welfare, *SOP for reallocation of residents/ PG students and nursing students as*

part of hospital management of COVID, F.No. V-16020/73/2020-INI-I.

¹⁸ Express Web Desk, *How much do Covid-19 tests cost in India? Here is a state-wise breakup*, The Indian Express, New Delhi, November 3, 2020.



digital medium has become stronger, the healthcare of people has been in plight. COVID-19 outbreak has given us a window of opportunity to recognize our drawbacks in health care and a chance to enhance it by making modifications in the administration and implementation of laws.

The Judiciary plays a vital role in safeguarding rule of law and upholding it throughout these unprecedented times. From the compulsion of facemasks in public to the strict lockdown measures encroaching the freedoms of an individual, judges have not been able to make laws and rulings because courts themselves are restricted due to the pandemic. The outbreak demonstrates the indivisibility of human rights in practical expressions. Good governance framework typically includes setting priorities monitoring outcomes as well as transparency and accountability in working. Government must meet their obligation to frame public health laws in ways that are consistent with human rights obligations. During major disease outbreaks, it must be considered whether the proposed public health is equitable and fair, offering protection and prohibiting discriminations so that the greatest burdens do not fall on the vulnerable, marginalized, and impoverished. The law should ensure just health outcomes, particularly for the least powerful and most disadvantaged society.¹⁹ In conclusion, restoring the trust of people and securing their rights is a must for successfully winning the fight against the virus. With this aim in mind, the state can ensure a healthy and well-working society at the end of the crisis.

¹⁹ International Development Law Organisation, *The Vital Role of Law in the COVID-19 Response: Key*

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