PRIORITISING HEALTH SECTOR IN INDIA – A LONG LOST BATTLE

By, Elizabeth KJ
Government Law College, Kerala

INTRODUCTION

According to the WHO definition, health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.[1] Universal wellbeing and healthy citizens are the assets of a nation. The Indian medical sector has taken new roads amid the pandemic situation to evolve into a more sustainable health culture. The Indian medical system has been criticised for its drastic collapse at the outbreak of the second wave of COVID 19 virus. The catastrophe has marked the need to prioritize the health sector in India. Even though there were lessons learned from the past and future indications of surge in the cases, the government took a slow pace in handling the calamity to triumph over elections and boost the economy. In the past months, (March-April 2021) we witnessed the greatest battle fought by the people to survive. Hospitals inundated with COVID patients, oxygen cylinders bargained and carried by bystanders, brawls for bodies, corpses piled in crematories and screams for kin and kith lying dead chilled our spine and broke our heart. The lofty dreams of a responsive health sector is still on wheels. People's trust has shifted to private hospitals rather than public hospitals in the current scenario where the competition in the health care sector has concentrated more on private entities overtaken by the private hospitals.

THE RIGHT TO HEALTH CARE AND NUTRITION – INDIAN PERSPECTIVE

"It is health that is real wealth and not pieces of gold and silver."

—Mohandas K. Gandhi

The constitution of India guarantees right to life under Article 21, where life does not mean mere animal existence but the right to live with dignity and in a healthy environment. Even though there is no explicit recognition of the right to health care and nutrition under fundamental rights, a wider judicial interpretation of the term "Life" clearly underlined the

[1] World Health Organisation, Constitution, available at: https://www.who.int/about/governance/constitution.

essence of health and nutrition under its ambit. They are inalienable and integral facets of the right to life.

The storyline of the right to health in the Indian Constitution can be traced from the case of *Rakesh Chandra Narayan v. State Of Bihar*[2]. From the inception of the Constitution, the right to health was reined under the DPSP is a state's responsibility. However, it was the first attempt by the Supreme Court to draw a parallel line between fundamental rights and directive principles of state policy. There was no explicit provision covering the right to health in Part III of the constitution but it gained momentum through various judicial interpretations.

In the *State of Punjab v. M.S. Chawla,*[3] it has been held that the right to life enshrined under Article 21 incorporates within its ambit the right to health and clinical consideration. In the case of *Vincent v. Union of India,*[4] the Supreme Court has interpreted the scope of the right to life to cover life with normal amenities ensuring good living that include medical attention, a life free from diseases, and longevity up to normal expectations.

The right to health-forming an inalienable component of the right to life under Article 21 of the Constitution has been settled in two important decisions of the Supreme Court: *Pt. Parmanand Katara v. Union of India,*[5]and *Paschim Banga Khet Majoor Samiti v. State of West Bengal*[6].

In the landmark case of *Laxmi Mandal vs Deen Dayal Harinagar Hospital & others*,[7] the Supreme Court reiterated, "*The right to health is not to be understood as a right to be healthy. The right to health contains both freedoms and entitlements. The freedoms include the right to control one's health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation. By contrast, the entitlements include the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health."*

---

[2] Rakesh Chandra Narayan v. State Of Bihar 1989 AIR 348, 1988 SCR Supl. (3) 306.
[3] State of Punjab v. M.S. Chawla, AIR 1997 SC 1225.
[4] Vincent v. Union of India (1987) 2 SCC 165.
[5] Pt. Parmanand Katara v. Union of India, (1989) 4 SCC 286.
[6] Paschim Banga Khet Majoor Samiti v. State of West Bengal, (1996) 4 SCC 37.
[7] Laxmi Mandal vs Deen Dayal Harinagar Hospital & others, 2010 (172) DLT 9.

In the recent case of *Navtej Singh Johar v. Union of India*,[8] while decriminalizing homosexuality, Justice Chandrachud declared that "*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 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*."[9]

The state is cast with the obligation to protect people's right to health and nutrition. Articles 38, 39, 41, 42, 43, and 47 reflect this ideology of the legislators. Since Schedule 7 of the Constitution provides health and sanitation under the state list, states have control over public health and hygiene. However, this often leads to a dead-end situation while encountering pandemics and emergencies. The Disaster Management Act, 2005 empowers the Union to tackle grave health concerns affecting the large public and bridge the gap in the plight of health emergencies. The ongoing COVID battle is the current picture of how the health sector has become futile with responsibilities being mismanaged by the government. The judiciary has played a pivotal role in the contemporary scenario to address the invasion of the right to affordable healthcare, the right to vaccination, and many other matters connected to health. It has proactively ruled against the commercialization of private entities in an emergency created by the pandemic.

COVID 19 - THE CALL FOR ACTION TURNS OUT TO BE A DEATH CALL

The unprecedented epidemic has exposed the vulnerability of the health sector of India. With about 1.5% of GDP spent on health, the Indian model of health and welfare is far behind the need. Failure to detect the virus outbreak in the early stage threatened the medical stream badly. Further, the national lockdown, which was imposed following the aforementioned, failed to contain the spread. The slow pace of testing coupled with increased test positivity ratios worsened the phase.

The greatest loophole in the shield was the lack of a continuous surveillance mechanism. The country became a graveyard hard hit by the second wave of COVID. With the diminished

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

[9] Larissa Peltola, *2021, Covid 19 in India: Violation of the right to health and the collapse of healthcare infrastructure.* Right views,(Oct, 2021,2:44 am), https://blogs.cuit.columbia.edu/rightsviews/2021/05/17/covid-19-in-india-violation-of-the-right-to-health-and-the-collapse-of-healthcare-infrastructure/.

oxygen supply in 2021, people struggled for their last breath. Patients shifted from door to door to get aid while their relatives are on a chase of oxygen cylinders. Oxygen is one of the important supplements in COVID treatment going out of stock at a predictable stage of the pandemic questions the mismanagement of government. Lack of excessive oxygen production and interruption of distribution channels along with a surge in the cases have doomed the supply. Often the production takes place at scattered places, which makes it difficult to store and channelize oxygen at the destination. Even the globally imported cylinders interrupted at places added fuel to the crisis. Refilling of cylinders, lack of plants, and availability of raw material also stand as a barrier in oxygen supply.[10]

India took a great leap in vaccine development but being one of the largest populations, we face great challenges in vaccinating the entire population and thus acquiring herd immunity. Though a handful of vaccines have obtained sanctions for public use, production hasn't met the demand as the government focused more on export rather than self-sufficiency in the early stage of manufacture. In addition, the vaccine has not been voluntarily licensed to other companies to increase production paving to a vaccine shortage. The central government had guaranteed free vaccines from the age of 45 and above but the rest of the burden was shifted to the state and the public created a chaotic situation. There should be equal protection of the right of an individual to health but this stand of the Central Government took a reverse turn. India can win this battle only if it provides free vaccines to all at the shortest possible time span by licensing maximum manufacturers as possible, continuous research development of vaccines to curb new variants, and importing foreign vaccines to cope with the shortage.

Another area of distress is the hike in prices of hospital rooms, medicines, and other amenities by the private parties. This led to black marketing of drugs and other essentials, leading to the hijacking of the formal market affecting the overall supply chain. The state has lately notified regulations in uniform and has also reduced the rate of services, however, the ambiguity is still persistent in the absence of a detailed structure. VIP culture is also prevalent in the health sector where the wealthy circles are given preference in services of high quality and poor offered with leftovers.

[10] Vikas Pandey, *India Covid: Delhi hospitals plead for oxygen as more patients die,* BBC News,(Oct, 2021,2: 57 am), https://www.bbc.com/news/world-asia-india-56940595.

The rural areas marked the greatest number of cases with reduced sanitation, nutrition, and primary health centers. Only a robust health force equipped with increased hospitals can bring change in rural health. Lack of health education, immunity, accessibility to health centers, and poverty plague the remote villages of India. The informal medical practices, traditional knowledge, and customary beliefs deeply rooted in these areas further decline the formal medical sector.

It is time that India focuses more on stabilizing public health and nutrition that is possible only through increased fund flow, human resource development; technology-linked improvements, health care infrastructure, and an integrated system of management.

THE WAY FORWARD

The health sector in India can be enhanced only by the comprehensive participation of all stakeholders. Special preference needs to be given to rural health care. Proper public health institutions and sanitation facilities should reach out to all corners of the nation. Medical treatment standards need to be upgraded to an international level for which outsource funding and acquaintance is a vital concern. India should give more consideration to the sustainable healthcare goals of the United Nations. It is also imperative that the Government should allocate more money towards health infrastructure, oxygen plants, and primary health centers. Critical care units, paramedical aids, surveillance schemes, and diagnostics centers need to be strengthened. The health sector has taken a paradigm shift from the conventional four corner consultation to virtual and long-distance health consultations, health check-ups at residence, E-pharmacy, and different other mechanisms. It is important to have common legislation to fill in the legal lacuna in this arena.