HEALTH EQUITY & HEALTH ADVOCACY IN NEW INDIA

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ABSTRACT
The basic premise of right to life under the Indian Constitution is aptly clear to include broad interpretation of right to health and right to quality healthcare facility. But in India, the socio-legal obligation to secure right to health and better health infrastructure lie on the government and all stakeholders associated with public & private health administration. Though the obligation must be target oriented towards achieving minimum standard of health equity through fostering health advocacy, health literacy and appropriate legal action should be taken against all barriers in the form of medical disparities and quackery.

Keywords- Health literacy, Vaccine hesitancy, Right to health, Health equity

I. INTRODUCTION
Health is a multi-dimensional concept, encompassing various aspects like physical health, mental health, social health, spiritual health, emotional health, vocational health, philosophical health, cultural health, socioeconomic health, environmental health, educational health, nutritional health, curative health and preventive health. All these concepts overlap or contain each other to some extent. Making health a fundamental right, must ideally include each and every of these aspects. However, in common parlance, when we talk about health, we most often concentrate on the physical aspect. Further, this aspect covers an area where the State is expected to play a major role in making the facilities available and accessible in order for the people to secure this right. In the present article, therefore, focus shall stay on justifiability and viability of right to health as a fundamental right to the extent of securing physical health. The Committee on Economic, Social and Cultural Rights provided a broad interpretation of Article 12 of the Covenant [Paragraph 11 of General Comments No. 14(2000)]: “The right to health is an inclusive right, extending not only to timely and appropriate health care, but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health.” The subject of healthcare and provisions regarding the enforcement of right to health being contained in the Directive Principles of State Policy in the Indian Constitution clearly shows that the intention of the Constituent Assembly was always to keep the subject of healthcare as a positive obligation on the State rather than making it a negative right of the citizens. On a careful examination, such classification seems logical because ensuring the availability of a proper infrastructure to implement and sustain the healthcare delivery system of the country requires positive action on the part of the State rather than adherence to a negative obligation from abstaining to do something that might infringe on a citizen’s right to avail himself/herself of the healthcare delivery infrastructure created by the State.

The Apex Court in Paschim Bange Mazdoor Samiti and Ors. v. State of West Bengal and Anr, Court gave due importance to the right to health and held that: “Failure on part of Government hospital to provide timely medical treatment to person in need results in violation of right to life guaranteed under Article 21. There was a breach of said right on account of denial of treatment in various Government hospitals even though the condition being serious and need for immediate medical attention. State cannot avoid its responsibility for such denial.” Hence, it can be seen that the judiciary has not only given recognition to right to health as a part of Article 21, but has also been generous to enlarge the scope of this right under the Article to the extent of right to instantaneous treatment, obligation of State for provision of health services and proper up-keep of medical infrastructure. However, since independence, the country has achieved a better and stable financial resources and progressive development in
medical science and technology and infrastructure which makes it questionable as to whether an express mention of right to health is really required under Part-III for better assertion and perhaps more effective relief.

**Public Health & Health Equity**

The healthcare delivery structure in India faces certain critical deficiencies in its working. Some of the major issues are the lack of infrastructure and human resources, and their poor quality, particularly at the primary level. This creates a burden for the secondary and tertiary level, which also suffer from infrastructure and workforce shortages. Going to the tertiary level implies more expensive services which the poor sections find difficult to afford, and out of reach when the services are offered by private institutions. Despite the presence of an institution-studded impeccable healthcare policies in India, our country is lagging behind when it comes at the stage of implementation. Some of the major issues with the Indian healthcare system which are of concern and can be seen affecting the vast Indian population are as follows:

1. Deficiency in health delivery infrastructure, particularly for rural population.
2. Imbalanced growth and lack of provision for health facilities in remote areas.
3. Inadequate expenditure on health sector.

Shortage of human resource in medical sector The void created by the shortage of infrastructure and human resource in the public healthcare sector is filled up by the services provided by the private sector. But private healthcare facilities come at a significantly high, and many times unaffordable, cost. Over 80% of Indians have been paying for private healthcare from their own pockets.

It is commonly accepted among leading experts from medical fraternity that public healthcare system needs to be revamped through four significant measures-

1. The structure of subsisting hospitals should be elevated with efficient blueprint. It is important to maintain sustainable supply chain strategy so that there won’t be any compromise to quality healthcare.
2. There is no doubt that it is expected from every efficacious hospital that it must have decorous, competent and devoted medical staffs and experts with better research ability. There is need to socially and economically empower such medical staffs with appropriate professional development having decent salary and other necessary incentives as per standard and in consonance to the guidelines of Medical Counsel of India.
3. With the surge of modern technologies and innovation in medical sector and demand digital healthcare mechanism, it is important that technical and innovation based sustenance in the shape of AI, blockchain and other modern surveillance mechanism must be provided to hospital administration for the methodical health management. Such measures can definitely boost other areas of experimental & clinical learning process apart from capacity building program for staffs. It is expected that such measures can cope up in streamlining & expediting the framework of healthcare system without any roadblock. It has also become important now to enhance public confidence in local hospital and its administration and for such purpose, there is need to instill medical professional ethics for giving priority to hospital- patient relationship. Social awareness and different incentivizing schemes could be quite helpful with technological support.
4. Somehow, it is important to realize that research based testing laboratory facilities must be elevated with the help of modern apparatus & other paraphernalia to support for virologic research, molecular/microscopical examination and regular evaluation and performance based appraisal. The Covid-19 pandemic has taken a big toll on the Indian healthcare system and has highlighted the various shortcomings persisting in the current framework and infrastructure facilities. It has also shown as to how much we could be found wanting while battling epidemics like this one. The difficulties faced during the pandemic would also make one ponder over the fact if it would not be worthwhile to consider the desirability of bringing ‘Public Health’ in the Concurrent List. This also warrants consideration of the matter as to whether making right to health an explicit fundamental right under Part III of the Indian Constitution will be a viable option.

A federal health structure is where the independent government units have the freedom to make decisions on the health policies prevailing in their state or region. Most states in the U.S.A follow a joint federal and state
responsibility for the health policies. In India, there are various provisions in our Constitution, which ensure that the Right to Health and healthy living is bestowed upon all its individuals. Public Health is an item enlisted in the State List; however, more often than not, one can witness the need for intervention from the Centre too. The recent outbreak of the pandemic highlighted the importance of Centre intervention in the state public health policies. Therefore, once again India follows a quasi-federal structure wherein, despite the fact that the power to make, break or amend rules about public health rests with the state. However, the Centre does take charge when necessary. This is the true essence of federalism in our country. Adding on, as aforementioned, U.S.A despite following an absolute federal structure fitting the definition of K C Wheare still witnesses some of the policies that are implemented pan country and are not specific to one particular state. Healthcare Quality Improvement Act of 1986, Medicaid, Medicare, Children's Health Insurance Programme, and the very famous Obamacare (Affordable Care Act, 2010) are a few country-wide policies to name. With the rise of public-private partnerships, we can expect better quality services along with better incentivisation of the personnel working in healthcare sector owing to the better long-term remuneration. Private entities are also now forced to publicly disclose their financial paper under the PPP model. Therefore, there is more transparency, resulting in better accountability on the part of private entities.

Right to Health –Legal Issues

The same right of good health and right to have quality living standard with human dignity are also an essential part of different international legal regimes associated with human rights. It is expected from all the ratifying nations to oblige and ensure the basic right of good health though mere ratification is just endorsement. Attainment of such standard of health is possible with efficacious implementation through protective measure towards vulnerable sections of society including senior citizens, women, children and persons with disability. There is no doubt that there are many dimensions of well-being related to mental health, sanitation, clean environment, health education and proper housing that needs special attention.

An interpretation of public health federalism in the Indian budget in the 21st century indicates a systemic problem in the policy making, funds allocation and per capita income of the country. It was the year 2009, when there is introduction of National Health Bill by Govt. of India. Health being a basic human right was the main characteristic of this bill and right of quality health is inherent for every citizen. Even, from the board interpretation of Article 14 & 21 of the Constitution of India, it is explicitly clear that right to life also refer to right to health. The constitutional provisions also cast responsibility on the state to fulfill and protect such right of quality healthcare facility. This bill highlights the feature of obligation of state and other private bodies for proper execution and fulfillment in the interest of health governance and active role of judiciary to secure health rights for everyone. There is another interesting clause in the bill which asks the doctor to give complete information to his patients related to the treatment including medical precautions/risks, medical expenditure and benefits/side-effects, etc

Thus, it is important that all-inclusive legislation must be introduced which can include different areas of healthcare issue. Time to time different courts and international legal instruments have raised this issue of having a contemporary law and updated healthcare policy addressing all concerns and possible roadblocks in primary, secondary & tertiary healthcare system. There is no doubt that such legislation & updated policy will be expected to have minimum standard of professionalism, transparent medical care administration and accountability of major stakeholders to uplift healthcare regime. In the present pandemic phase, it is also important to formulate code of conduct in the interest of healthcare management and public health advocacy. There can be different complexities around patient-care in medical sector like his appropriate treatment or manageable medical costs, etc. Such complexities may lead to different nature of health inequity. In those circumstances, a mechanism-based health advocacy can nurture any existing health-care system.

Sometimes, it might be important to adopt collaborative approach with different scientific professional institutions so that proper diagnosis and medical research can be done for the assessment of any type of existing contagious disease and how does it create an impact on vulnerable body of a patient having same disease or different co-morbidities. However, there are some major concern like divergence & differentiation existing in health sector that can have detrimental impact on socio-economically under-privileged & vulnerable groups. Such substandard health infrastructure and bad health may create more barriers to the socio-economic upliftment of such under-privileged and poverty-stricken people. But it is important to comprehend the nature of such incongruity in health sector and how health disparity does affect health-care management. The substantiation of such incongruities is essential in the assessment of divergence in health sector. For this purpose, inimical socio-

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economic and political barriers affecting social stratification have to be reduced, because these factors leads to inadequate income, education and employment opportunities.

The Menace of Quackery

Quackery is such a common practice where unsubstantiated medicine or treatment is done/given by an unqualified doctor (sometimes referred as quack) having no scientific proven information. With the passage of time, it has become a typical socio-economic issue and how it become a menace, doesn’t have undetermined reasons. It is true that there is no efficient political will to tackle the existing & rising problem of quackery. There was attempt made by the Supreme Court in the year 1996 to define a “quack” in the case of Poonam Verma v. Ashwin Patel & Ors., where the court has defined it as a person who is treating his patients with medicine without having any knowledge or training. Such kind of so-called doctors usually run clinic and prescribe medicine to patients with having nominal fees of such consultation. Such doctors or healers are usually unqualified and do not have appropriate degree to get it registered, but run their clinic by giving false representation.

In fact, there are no adequate penal provisions to address this problem of quackery. For instance, section 15 of the Indian Medical Council Act, 1956 discusses about rights of licensed medical/health practitioner, but section 15(3) awards to a doctor onlya meagre punishment of 1 year or with fine in case of contravention where the doctor practices without license/registration. With such trivial imprisonment, any such quack can be successful in getting bail and such existing fine won’t cause any deterrence to quacks in the society. Interestingly, there is no amendment as of now in this law of 1956 with regard to nature of imprisonment or fine in case of such violation. Though, there is a presence of punitive provisions in the Indian Penal Code, 1860 where such quacks may be convicted under criminal conspiracy, cheating, cheating through false representation/ impersonation, culpable homicide or conviction for any action jeopardizing life or personal security of other. Interestingly, the National Medical Commission (NMC) Act, 2019 (which repeals the Indian Medical Council Act, 1956) also provides about the conditions of practice of medical practitioner in section 35, where he/she is allowed to practice provided he must be enrolled in the State/ National Register. In case of contravention, the concerned person will be penalized for an imprisonment of 1 year or with fine of 5 lakhs rupees. So, in case of comparison of these two legislations of 1956 and 2019, it is explicit that punishment of imprisonment of 1 year remains the same, but there is substantial increase in penalty amount as fine in the legislation of 2019. Even, though, a limitation of the latter legislation is that it doesn’t clearly define & refer about the offence of quackery so that such practice can be discouraged and prohibited in the society in general. Even, the different medical experts and Indian Medical Association have also raised their concern about section 32 of National Medical Commission Act, 2019 which authorizes community health provider to prescribe modern medicine at mid-level and the definition and nature of community health provider are explicitly mentioned in the legislation.

There is one case which was filed before the Delhi High Court i.e., Ravinder Ram Chander Banshi v. The State of NCT of Delhi, where, a medical practitioner administered a dose of medicine to a child possibly suffering from diarrhea. After consuming the medicine given by practitioner, there was an adverse reaction which took place in the body of child as a result of which he collapsed. As per judgment, the post-mortem report of deceased child makes it very clear that the death was because of anaphylaxis reaction caused due to intake of a particular drug. Later the absconding accused practitioner was arrested and when the trial began, it was found that accused practitioner did not have appropriate degree and license to practice. The court strongly remarked that this act was a serious case of medical negligence and quackery and accused falsely represented himself as doctor in front of his patients and administered certain drugs by taking unreasonable risk knowing that it may cause death to the victim. Indeed, an attempt was made by leading medical experts and certain medical associations to introduce an anti-quackery bill to prohibit the practice of quackery, but no serious attention was made by any government to introduce a separate legislation on the same issue. With the passage of time, bodies like IMA made their concern regarding governmental approach to improve rural health-care system with the help of unqualified medical practitioner. Thus, there is a dire need for official assessment or survey done on the nature and adverse impact of quackery so that appropriate action can be taken against those stakeholders who are involved in preparing and dispensing fictitious degree/certificates. Possibly, it might be further useful, if any kind of inspection committee can be established to identify the cases of medical frauds or different kind of medical disparities for the improvement in health sector.

It is quite important these days because there is an unreasonably high risk if patient is getting any kind of medical treatment or prescription of medicine from a quack or unqualified health practitioner in the present pandemic
While the Indian healthcare sector has been slow in the adoption of digital technology and digital innovation in delivery of health care, however, the COVID-19 pandemic has worked as a catalyst to push through the much-needed behavioural change inpatients and doctors alike. Telemedicine, digital EMR platforms have been accepted with open arms during the pandemic. The healthcare delivery channels have been further strengthened with the adoption of new-age technology in digital innovations. Several healthcare organizations and doctors are making use of AI (Artificial Intelligence) to add value to patient care. There is need to introduce digital healthcare mechanism whereby AI, innovations and machine learning can used for prevention, diagnostics and different type of treatment in rural and semi-urban areas. Health-care ecosystem can flourish when medical consultancy services in the form of tele-medicine, healthcare partnership and medical entrepreneurship can be strengthened. It is also important to boost indigenous medicinal products and process for better healthcare with the help of bringing changes in health policy and empowering indigenous health practitioners. Regular audits provide professional advice to organizations to improve their overall performance through more integrity and

II. CONCLUSION WITH SUGGESTIONS

It is important to build a resilient health system that should be calibrated to collect real-time data from epidemiological and clinical sources, integrate it with data from sequencing and distil it into actionable measures for the public health and policymaking quarters. Robust systems can only thrive with the right mix of institutional and individual mobility, high-level coordination and transparency between various stakeholders, appreciation of the spirit of innovation, and a collective resolve. There is no doubt that anti-Covid vaccination is the only preventive measure to combat the Covid pandemic. However, there are other indispensable actions like increase of hospital beds, oxygen stock, appropriate drugs, etc., which are equally necessary to tackle the pandemic. Hence, an efficacious health policy must include a mechanism to deal with administrative barriers in supply chain management especially related to vaccination. It is pertinent to mention that sustainable healthcare accessibility is required at rural level through process decentralization and public health federalism. There is no doubt that it is significant to strengthen institutional multilateralism vis-à-vis global health diplomacy.

It is equally important to strengthen promotion of appropriate Covid behaviour and re-imposition of restrictions wherever it is required. Though, the central and state governments have devised different Covid protocol guidelines for public places and have updated it from time to time with the reduction of Covid cases, but the real matter of deliberation is stringent compliance of such rules at all public places especially where there is anticipation of contagious virus leading to containment region. Thus, it is consistently essential that appropriate Covid protocol has to be followed and there should be reinstatement of curbs whenever it is immediately necessary for controlling the dissemination of Covid. Considering the rise of dishonest medical practices which created imbalance in healthcare, it is important to make necessary changes and take prompt action on quackery (dishonest medical practices) and fake vaccination drive. It is necessary that the violators are meted out the most stringent punishment as per law. It is also important to introduce a law akin to United State’s Patient Protection and Affordable Care Act, 2010 so that primary health-care can be strengthened, there is a reduction of health frauds and a minimum health insurance coverage can be brought. Health Literacy and community engagement are very much necessary against vaccine hesitancy. There is no doubt that vaccine hesitancy is one of the crucial roadblocks against all-inclusive vaccination process and hence it is necessary to address this issue in the interest of safety and common good principle through health awareness drives. It is also important to address the issue of misinformation and fake news regarding vaccination drive across many regions of the country.

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accountability. The aforesaid suggested measures indeed have a potential to achieve the goal of Bharat especially as regards the Health Care Ecosystem in India

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