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THE NEED OF FUNDAMENTAL RIGHT TO HEALTH AND FREE MEDICAL CARE UNDER INDIAN CONSTITUTION AS TOOL TO COMBAT FUTURE PANDEMICS : A CRITICAL STUDY

Dr. Kashinath S. Neharkar

1. Introduction

It is aptly stated by Winsten Churchill, the healthy citizens are best asset of any country. The development of country is dependent on heath status of its citizens. The country is not mere territory but includes peoples in territory. The concept of state especially welfare state is emerged as solution to protection of common interest of individual through organized governance. Therefore, the such state is under obligation to provide protection to citizen from external aggression as well as from danger of hunger, dirt and disease. The list does not end here. This protection includes protection from disease and treatment of ill-health or disease. The Governments in India are doing well from last 75 years to provide health care facilities to Indians to save them from disease.

The pandemic of COVID-19 emerged as danger to life of citizens and a major challenge to health care system in India.

2 Significance of the study

The pandemic of COVID-19 emerged as danger to life of citizens and a major challenge to health care system in India. It exposed weakness of health care system in India. The cost of weakness was going of lakhs of life in India. It warned governments. This is not the end of pandemic of COVID-19. Nobody in the world is sure that in future there will not be any pandemic like covid. The citizens of country may not be left clueless and without protection about their health status or protection of their health in future. Therefore, state must focus on strengthening health care system to protect health and life of citizens. Right to health included in right to life and personal liberty as a fundamental right under Article 21 of the Indian Constitution. It is the duty of the state to protect the health of citizens.

3 Literature Review

The health of citizen is important issue and subject of interest of medical practitioners' academicians, researchers. The researcher referred following

literature for purpose of present paper.

N. Srinivasan in his work Health Care in India -Vision 2020, published on website of Niti Aayog that is Planning Commission of India[1] expressed his concern over how the governments policy to reduce fiscal deficit reduced governments expenditure on health care. It weakened public health care system. It compelled public to switch between weak and efficient private health care system. It may result in indebtedness due to huge expenditure.

The Human Rights Watch organization expressed a concern at the time of initial outbreak of COVID -19[2] that Indian Government needs to handle health care shortage to handle the covid outbreak in India. Therefore, we can address the lacuna and shortage of health care system in India. This is necessary to extend proper health care poor and needy person on the basis of equality.

According to Tedros Adhanom Ghebreyesus, the director-general of the World Health Organization (WHO) as it is referred in the editorial of online journal Nature[3] there must be universal health care system to provide access to health care facilities every where in world. According to editorial in above journal the lack of reliable health care may render communities vulnerable to such pandemics.

Justice V. Gopala Gowda, former judge of the Supreme Court and Gunjan Jena in their research Article 'By Neglecting Public Health, Govts in India Have Abandoned Their Responsibility' published online journal The Wire[4] expressed concern over exposed weakness in public health care system, which require special attention of Government on public health care.

4 Objectives of the Study

1: To analyze the right to health and free medical care under Indian Constitution.

2: To study and make suggestions for state preparedness for future pandemic.

5 Hypothesis of the Study

The researcher has framed following hypothesis for conduct of present research :

1) Right to health and free medical must be introduced as fundamental right supported with legislative framework to handle future pandemic like COVID 19.

2) Every Indian need access to effective free medical care to save from dangers of disease including pandemic.

6 Research Methodology of the Study

The research methodology plays vital role in conduct of any research. The present research conducted with the help of doctrinal research methodology. The researcher has referred relevant literature, research articles, news on subject published on web sites. The researcher has further referred Indian Constitution and judgments of Supreme Court of India and High Courts in India.

Discussion

Concept of right to health and Free Medical Care

The concept of right to health and medical care or health care are interwoven concept. The right to health is desire of individual to live free from ill-ness, disease which include the physical and psychological health also. It is related to well being in the matters of health.

According to World Health Organization through principles set out in preamble of its Constitution defines[5] health as '...a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity' The WHO further confirms health as fundamental human right of individual.

The Concept of medical care of health care is closely related to facilities and efforts available for restoration of health of individuals in case of disease and ill-health. According to definition by wiki-pedia[6], Healthcare is the maintenance or improvement of health via the prevention, diagnosis, treatment, amelioration, or cure of disease, illness, injury, and other physical and mental impairments in people.

In brief these are the medical services available to secure mental and physical well being.

The Concept of Free Medical Care or Health Care

The medical care is various health services to treat diseases and to restore the health of human being. These efforts may be carried with fund of private individuals or through public or Government fund. Therefore, free medical or health care involve the treatment expenditures to be borne by Government.

The concept of free medical care or health care can be explained with reference to Universal Health Coverage by WHO. It runs as 'Universal health coverage means that all people have access to the health services they need, when and where they need them, without financial hardship. It includes the full range of essential health services, from health promotion to prevention, treatment, rehabilitation, and palliative care[7]'. The concept of free medical care can be construed as medical

efforts to secure health with cost of public fund or Government fund. It will save vulnerable individuals from economic hardship in getting proper treatment.

Provisions relating to right to health and Free Medical Care under Indian Constitution

The Constitution of India is supreme law of land. It contemplates form of polity, the rights and liabilities of different governments in India, it further provides for various institutions like judiciary etc. along with their functioning. The Constitutions further provides fundamental rights of persons and citizens including right to health and medical. Following are the constitutional provisions relating to right to health and free medical care,

1. Preamble of Indian Constitution

The Preamble of Indian Constitution sets out goals to be achieved for Indians. It further provides social, economic and political justice to Indians. The Right to health is integral part of social and economic justice. An individual can not enjoy economic justice unless he is free from disease. The Preamble also provides responsibility to assure dignity of individual. The person cannot enjoy right to life with dignity without good health.

2. Right to life and Personal liberty: Article 21

Right to life and personal liberty is most cherished right of person under Indian Constitution. The right to health is not specifically mentioned in Indian Constitution, but the Hon'ble Supreme Court of India in Consumer Education and Research Centre v. Union of India[8], through its liberal interpretation, held that right to health is integral part of right to life and personal liberty. There are many decisions by apex court directing Governments to secure measures for protection of right to health as fundamental right. It is to be noted that still there is no specific legislation by government to protect right to health as fundamental right as compared to right to education India.

3. Certain principles of policy to be followed by the State. Article 39[9]

The clause (e) of Article 39 of present Article makes reference towards protections of right to health of individuals as the responsibility of State. According to this Clause, The State shall direct its policy towards securing... health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.

This makes clear that the state shall take care of right of health of poor and

vulnerable groups and shall be protected against economic hardship[10]. Right to health is fundamental right under Article 39(e)[11]

4. Right to work, to education and to public assistance in certain cases: Article 41

The Article 41 imposes an obligation on State to provide effective provision to secure right to health through public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

This Article also makes a reference to right to health and free medical care in condition of sickness. There it is responsibility of State to provide and maintain health and medical facilities.

5. Provision for just and humane conditions of work and maternity relief: Article 42

This Article specifically provides state obligation to provide just and humane work conditions at work place for all workers and to provide maternity benefits to women workers in specific period, where special care of health of mother and child is necessary. The benefits are integral part of right to health under Indian Constitution. It will save mother from making compromise with her health.

6. Duty of the State to raise the level of nutrition and the standard of living and to improve public health : Article 47

Article 47 of Indian Constitution runs as The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavor to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

This directive specifically obliges State to raise level of nutrition and level of standard living of its peoples. The Article further directs Government to improve public health as prime duty. It mandates Government to frame its policy to secure right to health and provide free medical care to Indian Citizens.

Brief study of Right to Health and Free Medical Health in India

The Government of India after adoption and Implementation of India Constitution tried its best to secure right to health in India. It Introduced many schemes to established health care facilities in India. The role played by Government in health sector cannot be under estimated, still it requires more attention to cope up with new challenges created by pandemic like COVID-19. This Pandemic brought huge stress and pressure on health care infrastructure and consequently the many

patients to bear cost with their lives.

The health is subject matter within the competence of State Government. The Indian Constitution through Article 245, 246, 248 read with Seventh Schedule entry No. 6[12] of State list empowers State Government to make laws, frame schemes and models to establish, regulates health services and to secure right to health of citizens living in same state.

The State Governments have introduced and established the health care facilities to secure right to health. There is special and ministry in many states to tackle the health policies in the states. The State Governments established government runed hospitals also. The efforts of providing health care are still inadequate in proportion of population.

Government Hospitals and Beds in India

As per the data[13] on website Medicaldialogues.in, the total number of Government hospitals in India is 37725. The bed capacity in these hospitals is 739024. The present population of India is 138 crores. If we compare the population with number of government hospitals the ratio will be 1 hospital for 36580 peoples. The number of hospitals is insufficient. If we compare number of populations with available beds in hospital, the ratio will be 1 bed for 1867 peoples. Therefore, such number of beds are insufficient to provide proper health care in emergency like pandemic.

The infrastructure available to provide right to health and free health care is impossible with insufficient infrastructure. If we want to secure right to health and free medical care, number of Government hospitals and beds must be increased. The pandemic diseases may increase rapidly, therefore we must be prepared to handle the pandemic with all equipped sufficient number of infrastructures.

The diseases like pandemic requires ventilators for oxygen for critical patients. The number of ventilators in very less. As per Data[14] on shown on 24th March 2020 in an article on website brookings.edu, the total number of ventilators was 57000 which was later increased by government by 50000 more ventilators. The number of ventilators is insufficient to match right to health and free medical care in India.

Expenditure on Health and Medical Care in India

The right to health and free medical care requires huge expenditure on health and health care facilities. According to World Bank Data on current health expenditure[15] in percentage of GDP of India is very less. It is shown as 3.54% of GDP. It is very less as compared to countries like USA, Australia and Canada etc. It needs to

increase ratio health expenditure.

Number of Doctors working in Government Hospitals

Doctors play very vital role in medical care facilities. In the country like India, the medical care system requires huge number of doctors to be employed in Government hospitals. The concept of right to health and free medical care will need a greater number of doctors to work with Government. Unfortunately, According to Data from Central Bureau of Health Intelligence as referred in news on the times of India by Chetan Kumar[16] only 1.1 lakh or 10% of 10.8 lakh registered allopathy doctors work with Government. These numbers show a reluctant approach by medical professional to join the Government Hospitals, Therefore the Government must provide better incentives and facilities to attract doctors in Government employment for hospitals.

Various Health schemes for Protection of Right to Health and Free Medical Care in India

Ayushman Bharat Scheme [17]

The Ayushman Bharat Scheme is introduced to address health care system on prevention basis. It includes two important components. First is to provide health and wellness centres. It aimed to strengthen primary health centres to extend health facilities for all and second is Pradhan Mantri Jan Arogya Yojana (PM-JAY). It provides heath assurance scheme of Rs 5 Lakh to eligible family. The both components are proving beneficial to vulnerable peoples for prevention and recovery from diseases. The PM-JAY needs more expansion to extend its benefits to larger number of peoples in India. The sum of rupees 5 lakh must be increased to cover treatment expenses of disease like cancer, kidney diseases and heart disease.

Pradhan Mantri Suraksha Bima Yojana (PMSBY)

The Pradhan Mantri Suraksha Bima Yojana is Adhar and bank account-based scheme. It provides the risk coverage under the scheme isRs.2 lakh for accidental death and full disability and Rs. 1 lakh for partial disability[18].

Mahatma Jyotirao Phule Jan Arogya Yojana (MJP-JAY) [19]

This is health insurance scheme by Government of Maharashtra. This scheme provides for cashless treatment for certain identified diseases. The beneficiary is eligible to for cashless treatment up to 1.50 lakh for family. It provides cashless benefit Rs 2.50 Lakh for Renal Transplant for family.

Need of Fundamental Right to Health and free Medical Care to combat future pandemic

The pandemic of COVID-19 caused more than 4.65 lakh death [26] in India. The number of patients cost their live due to non-access to proper treatment and health care infrastructure. The patients were helpless as they were not able to protect their right as fundamental right. The pandemic is still gong on and in future there can be similar pandemic, where the health of individuals may be in huge risk. There fore there is need an amendment in Indian Constitution to make Right to health and Free Medical Care as Fundamental right by Inserting a separate Article as Article 21- B. This must be done on same footing as right to education is made as fundamental right. This fundamental right will compel Governments to provide adequate health infrastructure and sufficient fund to provide right to health and free medical care. The citizen will get a fundamental right which will be enforceable by writs under Article 32 and Article 226 of Indian Constitution.

Need of Shifting of Health subject from State List to Central List

During the period of COVID-19 pandemic the State Governments faced huge problem of fund to run and maintain health care system. Many states in India faced problem due to less income sources. It affected effectiveness of health care benefits to public at large. The patients to stay without treatment due to insufficient health care facilities. Therefore, to cope up with this problem, the health subject must be shifted from state list to central list under Seventh Schedule of India Constitution.

The Central Government can make statutory provisions for establishment, administration and regulation of right to health and free health care for whole of India. This will bring uniformity in public sector medical service through out the India. The Central Government can have definite source of income through taxation like income tax, health tax, its proceedings of such tax can be properly utilised for catering effective free health care for Indian peoples.

The Central Government can establish hospitals and other infrastructures necessary to provide right to free health and medical care. The free medical care needs huge increase in infrastructure in proportion to the number of Indian Population. The central Government shall take assistance of State Governments for implementation of right to health and medical care in India.

The Central Government and State Governments must act in cooperation, if we want to prepare to combat any future pandemic in India.

Various schemes for Protection of Right to health Care in India :

Conclusion

The health being subject matter withing state competence, the state Governments are responsible to provide health care infrastructure in India. The State Governments in India played important role in providing health facilities in the form of self-owned hospitals and services to secure right to health of Indian citizens. The pandemic of COVID -19 exposed the limitation of public health care system and found inadequate to meet the pressing demand for treatment and health infrastructure. The Pandemic of COVID required more active role of Government in Protection of right to health. Its huge treatment expenditure in private hospitals created need of nationalization of health services at least in pandemic conditions. The unwarranted state expenditure by required states to borrow from center and other financial institutions. Therefore, there is necessity of sufficient fund to meet with need of free medical care.

8 Suggestions

The governments in India cannot escape from liability to provide free right to health and free medical care at least in pandemic in future. The present health care system requires more strength to combat any danger of future pandemic. Therefore, the researcher has suggested following suggestions.

1. The right to health and free medical or health care must be inserted as fundamental right under part III of Indian Constitution.
2. The Subject of health must be shifted from state list to Central List to bring uniformity in right to health and free medical care throughout the India.
3. There is need of nationalization of health services at least in pandemic to require Medical Practitioners to render national services to meet need of right to health and free medical services.
4. There is need of special ministry to handle research and development for invention of various types of vaccination in India.

End Notes

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