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# Public Health Law in India

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## ABSTRACT

*Public health aims at controlling and preventing the spread of diseases by making regimental choices for society, individuals, and private and public sectors. Public health services reduce exposure to various communicable and non-communicable diseases by implementing vector and reservoir control and sanitation. Public health law helps in the refine understanding of the role played by the government in order to ensure that the citizens of the country are healthy. Although there have been consistent interventions in the past to address public health problems, there is a need for a systematic framework that allows the use of 'modern legal tools' for compound health problems. We analyse the past and present healthcare systems and conclude if new ways have brought any societal changes.*

**keywords:** *Public Health, vector and reservoir control, communicable diseases and non-communicable diseases.*

## I. INTRODUCTION

India being the second largest country, succeeding after China which bags as the first largest country in the world in terms of population, it is important for the country to have an efficient and coherent health care system (Jain, et al., 2020). The public health law monitors the activities performed by the government to ensure that the healthcare system of the country is not deteriorating and that the health of the crowd is being taken care of well within the limits and norms of society (S, 2011). The public healthcare system of the country has evolved since independence and the requirement for a successful and effective healthcare system is large. According to the Sample Registration System, the Infant Mortality Rate as of 2020 is 20; which implies that out of 1,000 infants born, only 20 of them live to celebrate their first birthday.

Mediocre public health conditions take economic tolls; investors would not want to invest in another country. Investing in a different country would lead to sky-high expenditures to combat diseases, etc. Rather than investing money in treating diseases, it would be a better step to ensure the prevention of emerging and re-emerging diseases.

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## **II. SCOPE OF PUBLIC HEALTH LAW**

Public health services are invisible to people unlike the medical services. Medicine is a social science which must be understood and implemented to cover all aspects, which abide by the law. Preservation of public health laws is very requisite and laws for ensuring that happens is a key factor. One of the reasons for a poor public health care system in India is because of the absence of a licit framework which includes Right to Health as a fundamental right. Right to health is the intrinsic right of an individual to have access to the services provided by the government when they are in need, without being financially held back. An individual belonging to any caste, ethnicity, status, race or of any age is given the freedom to exercise this right. (Hazarika, et al., 2009).

The Directive Principles of State Policy (DPSP) in Chapter IV have set down in the Indian Constitution, the various duties performed by the state; promote the welfare of its people (Article 38); protect their health and strength from abuse (Article 39(e)); provide public assistance in case of sickness, disability, or “undeserved want” (Article 41) and raise nutrition levels, improve standard of living and consider improvement of the public health as its primary duty (Article 47). 11th and 12th schedules talk about the duties of the Panchayats and Municipalities. These duties include providing clean drinking water to the general public, ensuring that ample health care and sanitation is provided, social welfare is being promoted etc (Sirohi, 2020).

In spite of the fact that the Right to Health is not considered as a ‘fundamental right’ under part III of the Indian Constitution per se, Right to Health has been read into the fundamental Right to Life and Personal Liberty (Article 21). Article 23 which speaks about violence and injustice against women, also indirectly contributes to Right to Health. Under Article 21, Right to Health is a fundamental right that is guaranteed to every individual of the country. In 2019, a ‘high-level’ group argued to make Right to Health as a fundamental right and to shift the subject of health from the State list to the Concurrent list. (Sirohi, 2020)

In the Declaration of Alma-Ata in 1978, health care was endorsed as the key towards attaining health as the worldwide social goal. The New International Economic Order stood as a parameter to judge the health status of different countries. The economic and social status of the developed, developing and under-developed countries varied and thus it was important to reduce this gap to attain health to the fullest. An individual has the right to plan and implement their own health care within the legal and social limits. (Hazarika, et al., 2009)

Majority of the countries in the world are promised or guaranteed to right to public health and

medical care. There are about 86 countries in the world whose Constitutions do not give them the assurance of health protection. A study found that 38% of the U.N member countries promised the right to medical care and 14% aimed to achieve the same in 2011 (Heymann, Cassola, Raub, & Mishra, 2013) (Los Angeles, 2013).

### **III. PUBLIC HEALTH IN COLONIAL INDIA (MUSHTAQ, 2009)**

With the arrival of the East India Company in 1757, Bengal was the first state to have a medical department established in the year 1764. The department constituted of 4 head surgeons, 8 assistant surgeons and, 28 surgeon's mates. Three medical departments were set up in Bengal, Madras and Bombay presidencies which accommodates 234 surgeons in 1785. The Royal Commission (1859) commented on building the Commission of Public Health in each presidency and to ensure that sanitation and hygiene was monitored. This was done to prevent epidemics and to keep the British army's health in check; during the colonial period, public health measures and protocols were chiefly focussed on the British civilians and bivouacs. Deputy Sanitary Commissioners and Health Officers were appointed in 1912, who looked after sanitation work. The vaccination and sanitary staff were given the responsibility for the registration of births and deaths. The sanitary departments issued annual reports which spoke about the disease patterns which were then analysed to find out the root cause for a disease outbreak.

When the Britishers arrived in India, they failed to realise how big and humungous the country was. Right from the northern mountains to the northern plains, and from the equatorial forests to scorching deserts, India is a diverse country. As much as the Britishers were thrilled in establishing their territory here, they failed to realise that with this huge diversity, it also meant an invitation to a myriad of peculiar diseases. The country failed to prevent epidemic diseases like malaria, cholera and plague because it was short on medical officers and funds; Indian Medical Services (IMS) had limited resources. (Gupta, 2005)

Despite the fact that India was a hotspot to various diseases, the British government of India failed to renovate and establish a strong health care system for the country because of the deficit of funds. Had the Britishers had enough funds, the health care system would have been in a much better state; innovation and research would have helped the Britishers revamp the system. Nonetheless, the health care system rose above all the barriers that stood in its way, be it Eurocentric policies, the neglect of the indigenous people or the archetypical design of medical services.

#### **IV. PUBLIC HEALTH IN INDEPENDENT INDIA**

The world has been evolving from the past few years and because of which, the world has seen various new diseases, Covid-19 being one of them. With the emergence of new diseases, it is of utmost importance to prevent these diseases from spreading and risking one's health. A new, better and efficient health care system would ensure that these diseases are contained and do not turn out to be hazardous to an individual's well-being. With the advancement of technology, the country has seen a rather decrease in these diseases. Development integrated with innovation and research has been a major contributor to the decline in the mortality rates.

Even though the healthcare system has seen refinement since the 19th century, it still does not change the fact that there is still immense pressure and strain on the current healthcare system of the country. After India achieved independence, the main causes of death displaced from communicable diseases to non-communicable diseases like cancer and cardiovascular diseases. India is the largest country in the world which has the largest tobacco chewing population and is the second largest population of those who smoke it. The smoking rate in India was 54.50% in 2000 and 27.20% in 2020. Even though there has been a decline in the smoking rate, over 7 million people die due to direct intake of tobacco and 1.2 million non-smokers die as they are exposed to the smoke, every year. A survey conducted by the Ministry of Health and Family Welfare (MHFW), World Health Organisation (WHO), and Tata Institute of Social Sciences stated that the usage of tobacco is the single leading preventable cause of death worldwide. The Indian Council of Medical Research released a programme, National Cancer Registry in 2020 which stated that 27% of cancer patients, are directly linked to the consumption and usage or inhalation of tobacco products. Mental health care was never given priority as it was never talked about and was always shrouded in taboo and stigma. Various experts seek to find answers for a better lifestyle. A healthy living environment and decent medical services are entitled to every citizen of the country. Lack of resources and optimum utilisation of the existing resources results in the disparity of the health among people. (Laxminarayanan, 2011)

In recent years, the health care system has bloomed and ensured that the people can protect themselves from the prospect of epidemics.

#### **V. FRAMEWORK FOR PUBLIC HEALTH LAW: THE ESSENTIAL INDICATORS** (Hazarika, et al., 2009)

When it comes to the framework of public health, the '*four-step impact assessment*'; formulated by Mann, takes two main factors into consideration, public and human rights. These are used to analyse the effectiveness of the law once people have the right to access it.

*Risk to Public Health:* Any disease that is infectious or which poses a threat to the general public can be called a “public health risk”. It is a scenario wherein a virus or an infection which is contagious, effects a large number of people. The higher the risk, the higher are the chances for people to catch these diseases which may or may not be hazardous to health.

*Cost impact on the new legislation:* The health care system must be moulded and built in such a way as to ensure that the costs are reduced to the minimum. The government should invest in areas that would help the health care system move forward and would not have to depend on anything else.

*Magnitude of Risk Factors:* An emerging or re-emerging disease may be a threat to all or may be a threat to a section of society. For example, Hand, Foot and Mouth disease is a disease that is common among the common children and thus proper precautions must be taken for this category rather than the population as a whole. The impact of a disease must also be taken into consideration so that proper actions can be taken at the right time to prevent any damages in the future.

*The use of legislation:* A third person would be a better judge of the risk that would accompany with a new disease or a virus and thus an externality would do the job to identify the magnitude of the risk that is involved.

*The effect of the precautionary principle:* The precautionary principle allows people to take measures when certain things or decisions would result in something hazardous. Promoting public health has always been the goal and to ensure that diseases are contained, necessary precautions need to be taken.

## **VI. THE ROLE OF GOVERNMENT WITHIN THE HEALTH SECTOR**

The National Rural Health Mission aims at providing equitable, accessible and affordable health care facilities for the rural sector, the ones who are more vulnerable to diseases. It focuses on reproductive, maternal, new-born, child health and adolescent services. North Western states, Jammu and Kashmir, and Himachal Pradesh which are also known as Empowered Action Group (EAG) states have been kept on top priority. The goal of the Integrated Disease Surveillance Project (IDSP) was to create an effective surveillance system that would allow for effective policy decisions and ensure that diseases and viruses that were emerging or re-emerging were contained. A good healthcare system coupled with rules and norms implies that the health status of the citizens are kept under check and not something to be worried about. Sanitary codes are a set of established rules and principles put forth by the department of health which are designed to minimise and reduce the environmental conditions that may unfavourably

affect the well-being of the public. Enforcement of sanitary codes help in reducing the exposure to diseases. Some of the sanitary codes include slaughterhouse hygiene, food safety, the proper disposal of contaminated waste etc.

Due to poor financing for public health, lack of resources and community involvement, there is a weak public health system. Restoration of public health can be achieved only when the existing public health laws are rigorously implemented and some of these laws are refurbished and, spreading awareness of enforcement procedures. The public health sector is not fully recognised for their work and thus the sector is in dire need of training facilities that would help specialists in moving forward. The Public Health Foundation of India (PHFI) was a step initiated by the government to ensure that public health is strengthened in terms of training, research and development. An officer in this field must have exceptional management and leadership skills which is yet another reason for the decline in the public health sector. Back in the 1950s, people with zero to little training or experience were given the posts of seniors in the public health sector who at the same time were poorly equipped and poorly motivated to manage all the activities.

Identification and singling out objectives that would help the country achieve a better health care system is a must and thus it is necessary to put out health policies. Public health policies would help in the 'better health for all' which can be implemented by the states, communities and all sectors. Since public health is not under direct jurisdiction of the Ministry of Health, it is very crucial for them to couple with partners and agents that would not only improve the current system, but would also ensure that the outcomes would be beneficial.

## **VII. CONSTITUTIONAL DESIGN OF PUBLIC HEALTH**

The government over the past few years have been arguing whether to shift public health to the Concurrent list from the State list. The Concurrent list which is authorised by the Parliament and State legislatures, shares matters over mental health, drugs, food safety, health related economic and social planning, registration of birth and death and other vital statistics for health etc. Parliament, however has no authority over legislating matters which fall under the State list, which include public health, sanitation and hygiene, etc.

There are 8 states which have drafted a public health law as public health law is a state subject. Since there has to be a uniformity in the public health law, the Central Government has drafted 3 models of Public Health Act; The Model Public Health Bill by Central Bureau of Health Intelligence (1987); The National Public Health Bill by the National Institute of Communicable Diseases (2002); and The National Health Bill by the Ministry of Health and Family Welfare

Task Force (2009). The laws that are put forward today need to be rewritten and a lot of rational thinking needs to be done for the problems faced by the country in the present scenario (Padmanabhan, 2012).

The public health system is famished by funds because of the contrariety of the constitutional provisions. The Prevention of Food Adulteration Act, 1954 is one of the few legislation under public health which is still implemented. However, the act has a lot of flaws; it exclusively talks about food adulteration and is more conditioned in punishing the offenders rather than help businesses implement the same. In India states have been given the authority to legislate their own health laws, but the majority of the states aren't doing so. There are a few legislations which talk about the 1860s which had a vision to protect the citizens in the phase of a pandemic. Post-independence, laws were more effective and outcomes seemed to look promising (Srivastava, 2021)

### **VIII. HEALTH AND THE CORONAVIRUS**

With the SARS Co-2 or Covid-19 striking the world in the most brutal way, the economy took a drastic downfall. By taking necessary precautions and following the protocol, the world is slowly coming back into place. The healthcare system during the pandemic was at its worst. Throughout the pandemic, the health care resources were in shortage; oxygen cylinders, surgical masks, diagnostic kits and the health infrastructure as well.

Even though the pandemic is coming to an end and the world is slowly shifting back to how it was, The National Disaster Management Authority (NDMA) took a key role in controlling and containing the infection and spread of the virus. The 2020 pandemic and disaster preparedness in the Indian healthcare system has shifted from risk mitigation to public health preparedness in disaster management (Byrd & Bialek, 2021)

Ever since the pandemic took a toll on the economic status of the country, it is important to establish new reforms in order to ensure the country's economic growth. The World Health Organisation (WHO) and other health institutions must come up with preventive measures to ensure that when a new disease emerges, it does not go to the extent of a pandemic, where in the whole world quarantines itself.

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