

PUBLIC HEALTH, THE INDIAN CONSTITUTIONAL PERSPECTIVES AND THE ROLE OF GOVERNMENT

***Dr. JAYASHREE.M¹**

INTRODUCTION.

Public health may be explained as the science of protecting the safety and improving the health of communities through education, policy making and research for disease and injury prevention. The definition of public health is different for every person, whether we like to crunch in numbers, conduct laboratory or field research, formulate policy, or work directly with people to help improve their health, there is a place in the field of public health[1]. PH involves, the application of many different disciplines; Biology, Anthropology, public policy, mathematics, engineering education, psychology, computer science, sociology, medicine, business and others.

Duty of public health professionals.

As public health professionals they will be trained to perform one or more of these essential services. Monitor the health status of a community to identify potential problems, diagnose and investigate health problems, and hazards in the community, inform, educate and empower people about health issues, particularly the undeserved and those at risk, mobilize community partnerships to identify and solve health problems, develop policies and plans that support individual and community health efforts, enforce laws and regulations that protect health and ensure safety, link people to needed personal health services and ensure the provision of health care when otherwise unavailable, assure a competent public health and personal health care workforce, evaluate effectiveness, accessibility, and quality of personal and population based health services, research new insights and innovative solutions to health problems. Social, Environmental and individual factors influence our health as well as the opportunity to make healthy choices[2]. Inequities in these factors have greater impact on the health of people. Public health system in India: Health is a positive state of well being in which harmonious development of physical and mental capacities of individual lead to enjoyment of rich and full life. Health is thus vital for concurrent and integrated development of the individual and community for socio-economic development of the country[3].

¹ Assistant Professor, University of Mysore, Mysuru

According to WHO, Health is a state of complete physical, mental, and social well being and not merely the absence of disease or infirmity [4].

PH is the science and art of promoting health, preventing disease and prolonging life through the organized efforts of society as stated by WHO. PH is a social and political concept aimed at improving health, prolonging life and quality of life among whole populations through health promotion, disease prevention and other forms of health intervention.

DEVELOPMENT OF PUBLIC HEALTH SYSTEM IN INDIA.

After Independence, India embarked on a planned effort to raise standard of living of the people and impacts was given to health care, which was made integral part of socio-economic development. Over the past eight decades public health infrastructure and service has undergone remarkable changes and huge expansion in scale and nature based on recommendations by a number of expert committee [5]. Health being a state subject under the constitution, state governments has undertaken various initiatives to improve health care in their respective states. The central government has given the policy direction & thrust to healthcare through national programmes.

Expert committee Reports

BHORE COMMITTEE. Just before Independence Bhore Committee was constituted in 1943 to survey existing health conditions and organisations to make recommendations for future development.

Mudaliar committee. The committee was constituted under the chairmanship of Dr. Lakshman Swamy Mudaliar was set up in 1959 to assess the field of public health and medical relief. The notable features of the recommendations are strengthening of district hospitals, upgrading and strengthening of PHC, Extension of functions of university Grants commission to education in the field of medicine.

Chaddha committee. It has been formed in 1963 under the chairmanship of Dr.M.S.Chaddha to go in to the details of requirements related to planning and functioning of PHC. The committee recommended strengthening of rural health services, vigilance through medical

institutions and developing multipurpose domiciliary health services for all health programmes.

Mukherjee committee; constituted in 1965, appointed this committee to undertake a review of family planning and its strategy.

Jain committee. Constituted under the chairmanship of Sri A.P Jain to look into medical care services. In 1966. The group studied the working of different hospitals in the country to improve the standards of medical care.

Kartar singh committee. This committee was constituted based on recommendation of central family planning council to study the issues of integrated services training and mobile services.

Shrivastava committee. A committee was formed in 1974 to study medical education and manpower. The major courses of action recommended by the committee are organization of basic health services within the community itself and training the personnel for this purpose, creation of national referral services by developing proper linkages between PHC and higher level referral and service centres, creation of administrative and financial machinery to reorganize medical and health education in tune with the objective of national health services.

Some of the recent committees include the Mashelkar committee and the National commission on Macroeconomics and health. The committees and commissions have been headed by eminent public health experts, who have studied the issues in an in-depth manner and provided overarching recommendations for various aspects of the health care system in India. The areas covered by them related to organization, integration and development of health care services, health policy and planning, national programmers, public health, human resources, indigenous system of medicine, drugs and pharmaceuticals amongst others. An examination of these reports reveals the options, lessons and challenges for strengthening India's health system[6].

IMPORTANT PUBLIC HEALTH POLICIES.

1. Alma Ata declaration: the Alma Ata declaration[7]. In 1978 led to the launch of “Health for all by 2000” signed by 137 countries including India. The declaration advocated provision of first contact service and basic medical within the framework of integrated health services. It was declared that PHC is essential for

health care based on practical ,scientifically sound and social acceptable method and technology made universally accessible to individuals and families through participation. The responsibilities of the state to provide comprehensive primary health care as per this declaration led to the formulation of country's first national health policy in 1983.

2. National health policy 1983: the strategy for health care development shifted from committee to policy based approach with the formulation of NHP, 1983. The major goal of policy was to provide universal and comprehensive primary health service. The elements of this policy covered identification of problems requiring urgent attention and recommendations to ameliorate them, population, stabilization, provision of primary health care, medical and health education, role of indigenous and other systems of medicine, medical industry, health insurance and legislation and medical research.
3. National population policy 2000: NPP, 2000 provided overarching policy framework for family planning and child health goals. The immediate objective was to address the unmet needs of contraception, health care infrastructure, health personnel and, to provide integrated delivery of reproductive and child care services. The long term objective was to achieve a stable population by 2045, at a level consistent with the requirements of sustainable economic growth, social development and environmental protection.

To pursue these objectives, the following national socio-demographic goals were formulated to be achieved by 2010: Make school education up to age fourteen free and compulsory, and reduce drop outs at primary and secondary school levels to below 20% for both boys and girls; reduce infant mortalities rate to below 30/1000 live births. Reduce maternal mortalities ratio to below 100/100,000 live births; Achieve universal immunization of children against all vaccine preventable diseases. Achieve 100% registration of births, deaths, marriage and pregnancy; Integrate Indian systems of medicine (ISM) in the provision of RCH services, and in reaching out to households; promote small family norm to achieve replacement levels of TFR; and bring about convergence in implementation of related social sector programmes so that family welfare becomes a people centred programme.

4. MILLENIUM DEVELOPMENT GOALS: the millennium development goals [8], is eight international development goals that all 193 members of United Nation's and many international organizations have agreed to achieve by the year 2015. They included eradicating extreme poverty, reducing child mortality rates, fighting disease epidemics such as AIDS and developing a global partnership for development. MDG are outcome of the most important commitments made at the international conferences and summits in 1990's: to recognise explicitly the independence between growth, poverty reduction and sustainable development [9], to acknowledge the development rests on the foundations of democratic governance, rule of law, respect for human rights and peace security [10]; are based on time bound and measurable targets accompanied by indicators for monitoring progress; and bring together the responsibilities of developing countries with those of .
5. National health policy. 2002. Health care scenario was evaluated as a precursor to new health policy [11]. The public health investment which was already low declined from 1.3% to 0.9% between 1990 and 1999. Only 17% of the aggregate expenditure was public health spending and the balance was out of pocket expenditure. Hence, the issue of resource availability was a key concern in the formulation of new policy.

RECENT NATIONAL HEALTH POLICIES.

National charter for children-2013, home based newborn care operational guidelines 2014, national mental health policy 2014, The National health policy. 2017. The primary aim of the National Health Policy of 2017 [12], is to inform , clarify, strengthen and prioritize the role of the government in shaping health systems in all its dimensions- investments in health , organization of health care services , prevention of diseases and promotion of good health through cross sectoral actions, access to technologies, developing human resources, encouraging medical pluralism, building knowledge base, developing better financial protection strategies, strengthening regulation and health assurance.

LEGAL FRAMEWORK FOR HEALTH CARE AND HEALTH PATHWAY.

One of the fundamental policy questions being raised in recent years is whether to pass a health rights bill making health a fundamental right – in the way that was done

for education. The policy question is whether we have reached the level of economic and health systems development so as to make this a justiciable right- implying that its denial is an offense. Question that need to be addressed are manifold , namely, whether when health care is a state subject , is it desirable or useful to make a central law, and whether such a law should mainly focus on the enforcement of public health standards on water, sanitation, food safety, air pollution etc, or whether it should focus on health rights –access to health care and quality of health care- i.e., whether focus should be on what the state enforces on citizens or on what the citizen demands of the state? Right to health care covers a wide canvas, encompass issues of preventive ,curative , rehabilitative and palliative health care across rural and urban areas, infrastructure availability, health human resource availability, as also issue extending beyond health sector into the domain of poverty, equity, literacy, sanitation, nutrition, drinking water availability, etc.,.

Excellent health care system needs to be in place to ensure effective implementation of the health rights at the gross roots level. Right to health cannot be perceived unless the basic health infrastructure like doctor-patient ratio, patient-bed ratio, nurses-patient ratio, etc., are near or above threshold levels and uniformly spread-out across the geographical frontiers of the country . further, the procedural guidelines, common regulatory platform for public and private sector, standard treatment protocols, etc need to be put in place[13]. Accordingly , the management , administrative and overall governance structure in the health system needs to be overruled. The practice of public health has been dynamic in India, and has witnessed many hurdles in its attempt to affect the lives of the people of this country. Since independence, major public health problems like malaria tuberculosis, leprosy, high maternal and child mortality and lately, human immunodeficiency virus have been addressed through a concerted action of the government. Social development coupled with scientific advances and health care has led to a decrease in the mortality rates and birth rates [14].

CHALLENGES CONFRONTING PUBLIC HEALTH.

The new agenda for public health in India includes epidemiological transition, demographic transition and environmental changes. The unfinished agenda of maternal and child mortality, HIV/AIDS pandemic and other communicable diseases still exerts immense strain on the

over stretched health systems. (role of government in public health: current scenario in India and future scope) the causes of health inequalities lie in the social, economic and political mechanisms that lead to social stratification according to income, education, occupation, gender and race or ethnicity. Lack of adequate progress on these underlying social determinants of health has been acknowledged as a glaring failure of public health.

PUBLIC HEALTH ISSUES – THE STRATEGY.

To meet the challenges with regard to health issues, there is an urgent call for revitalizing primary health care based on the principles outlined at Alma-Ata in 1978. Universal access and coverage, equity, community participation in defining and implementing health agendas and inter sectoral approaches to health. These principles remain valid, but must be reinterpreted in light of the dramatic changes in the health field during the past 30 years. Attempts to achieve “Health for All” have been carried forward in the form of “Millenium Development Goals”[15].Public health is concerned with disease prevention and control at the population level , through organized efforts and informed choices of society, organizations, public and private communities and individuals. However, the role of government is crucial for addressing these challenges and achieving health equity. The ministry of health and family welfare(MOHFW)plays important role in guiding Indias public health system.

Role of Government within the Health Sector.

Important issues that the health system must confront are lack of financial and material resources, health workforce issues and the stewardship challenge of implementing pro-equity health policies in a pluralistic environment[16]. There is a need for strengthening research infrastructure in the departments of community medicine in various institutes and to foster their partnerships with state health services. A good system of regulation is fundamental to successful public health outcomes. It reduces exposure to disease through enforcement of sanitary codes. Revival of public health regulation through concerted efforts by the government is possible through implementation of public health laws, consulting stakeholders and increasing public awareness of existing laws and their enforcement procedures. Development of community wide education programs and other health promotion activities need to be strengthened. Much can be done to improve the effectiveness of health promotion by extending it to rural areas as well; observing days like “diabetes day” and “heart day” even in villages help create awareness at the grass root level.

Human resource development for public health services. There are many deficits that need to be addressed in the development of human resources for public health services. It is necessary to establish training facilities for public health specialists along with identifying the scope for their contribution in the field. The public Health foundation of India is a positive step to redress the limited institutional capacity in India by strengthening training, research and policy development in public health. Pre service training is essential to train the medical workforce in public health leadership and to impart skills required for the practice of public health. In service training for medical officers is essential for imparting management skills and leadership qualities, along with that there is a need to increase the number of paramedical workers and training institutes in India. Identification of health objectives and targets is one of the more visible strategies to direct the activities of the health sector. We need a road map to “better health for all” that can be used by states, communities, professional organizations and all sectors. It will also facilitate changes in resource allocation for public health interventions and a platform for concerted intersectoral action, thereby enabling policy coherence.

THE CONSTITUTIONAL PERSPECTIVE OF PUBLIC HEALTH.

Generally the context in which an individual lives is of great importance to health and equality of life health is the level of functional or metabolic efficiency of a living being. It is the general condition of a person’s mind body and spirit usually meaning to be free from illness, injury or pain law is an important public health tool that plays critical role in protecting the health of general public. Right health is central to all human rights and denial of health right would mean denial of all human rights. The framers of the Indian Constitution incorporated right to health in the Directive Principles of State Policy which enjoins the state to provide comprehensive, creative, preventive, promotional and rehabilitative health service and proper nutrition to all the people of India. Ultimately it is the effort of the Indian judiciary who treats health as a right to life which is fundamental to all human beings under Article 21 of the constitution. Therefore entitlement to health care must be ensured by developing specific statutes, programmes and services.

The Indian constitution eminently indicates the Indian state being a welfare state. Even though health as a sector, does not appear in many places of the Indian constitution, there are indirect and tacit references to health of the people and the role of the state has to play in the

development of health of the people. Here an attempt is made to analyse the various respect of the Indian constitution so far as the health sector concerned.

Aspect of Health in the preamble to the constitution.

The preamble to the constitution which gives a broad direction for the Indian Republic, refers to social, economic and political justice and also equality of status and of opportunity. Under the term social justice, one can bring in the question of access to health care facilities. In the same way equality of status and opportunity. Under the term Social justice one can bring the question of access to health care facilities and the principle of justice involved in the equality of access to these facilities. In the same way equality of status and of opportunity may be taken to refer to the quality of practice of the medical profession, access to the medical educational institutions etc. In order to improve the citizens socio-economic and health status. Article 38 of the Indian Constitution impose liability on state that states will secure a social order for the promotion of welfare of the people[17] but without public health we cannot achieve it. It means that without public health, welfare of people is impossible. Article 39(e) related with workers to protect their health[18]. Article 41 imposed duty on state to public assistance basically for those who are sick and disable[19]. Article 42 makes provision to protect the health of child and mother by maternity benefit[20]. Article 47 consider at the primary duty of the state to improve public health, securing of justice, human condition of works, extension of sickness, old age, disablement and maternity benefits[21] and also contemplated. Further, state's duty includes prohibition of consumption of intoxicating drinking and drugs are injurious to health. Article 48 ensures that state shall endeavour to protect and impose the pollution free environment for good health[22]. Article 47 makes improvement of PH a primary duty of state[23] hence the court should enforce this duty against a defaulting authorities on pain of penalty prescribed by law, regardless of the financial resources of such authority[24]. Under Article 47 The state shall regard the raising of the level of nutrition and standard of living of its people and improvement of public health as among its primary duties none of these lofty ideals can be achieved without controlling pollution in as much as our materialistic resources are limited and the claimants are many[25]. A healthy body is the very foundation of all human activities. That is why in a welfare state it is the obligation of the state to ensure the creation and sustaining of conditions congenial to good health[26].

Panchayat , municipality and health.

State only not responsible to the health issues, the state machineries like panchayat, municipalities liable to improve and protect public health. Article 243-G says “state that the legislature of a state may endow the panchayaths with necessary power and authorities in relation to matters listed in the eleventh schedule”[27]. The entries in these schedule having direct relevance to health are as follows. Drinking , health and sanitation including hospitals, primary health centres and dispensaries, family welfare, women and child development, social welfare, Article 243-W includes public health, sanitation conservancy and solid wastemanagement. Registration of births and deaths. Regulation of slaughter houses and tanneries.

FUNDAMENTAL RIGHTS AND HEALTH.

The directive principles of state policy is only the directives to the state. These are non-justifiable. No person can claim for non-fulfilling of these directives. But the supreme court has brought the right to health under the preview of Article 21. The scope of this provision is very wide. It prescribes for the right of life and personal liberty. The concept of personal liberty comprehended many rights, related to indirectly to life or liberty of a person. And now a person can claim his right of health[28]. Thus the right to health along with numerous other civil, political and economic rights, is afforded protection under the Indian Constitution the debate surrounding the implementation of the human right to health is fresh and full of possibility for the developing the world. In fact, India has been able to create a legal mechanism where by right to health can be protect and enforced. The constitution guarantees the some fundamental rights having a bearing on health care. Article 21 deals with “ NO PERSON SHALL BE DEPRIVED OF HIS LIFE OR PERSONAL LIBERTY EXCEPT ACCORDING TO PROCEDURE ESTABLISHED BY LAW”[29].Right to live means something more, than mere animal existence and includes the right to live consistently with human dignity and decency.

JUDICIAL RESPONSE.

If we look into the judicial role with regard to health matters in 1995 the supreme court held that right to health and medical care is a fundamental right covered by Article 21. Since health is essential for making the life of workmen meaningful and purposeful and compatible with personal dignity. The state has an obligation under Article 21 to safeguard the right to life of every person, preservation of life being a paramount importance. With the recognition that both the Indian constitution and the fundamental right of life emphasize human dignity,

began to address the importance of health to Indian citizen. However in a series of cases dealing with the substantive content of the right to life, the court has found that the right to live with human rights including right to good health[30].the court explicitly held that the right health was an integral factor of a meaningful right to life. The court held that the right to health and medicinal care is a fundamental right under Article 21. The supreme court while examining the issue of the constitutional right and to health care under Articles 21, 41 and 47 of the constitution of India[31].through the analysis of these Articles supreme court has observed that the right of one person correlates to a duty upon another, individual, employer, government or authority[32]. Hence right under Article 21 casts an obligation on the state. This obligation is further enforced under Article 47. The supreme court also ruled that by widening of the scope of Article 21 and governments responsibility to provide medical aid to every person in the country, held that in a welfare state, primary duty of the government is to secure the welfare of the people, providing adequate medical facilities for the people is an obligation undertaken by the government in a welfare state.

CONCLUSION.

With the discussion of the collateral factors whichl play an important role in achieving the goals of healthy society apart from the efforts of central government and state government there is need of implementation of laws strictly and also the awareness among the public in general.