

ACCESS TO PUBLIC HEALTHCARE SYSTEM IN INDIA: A CRITICAL STUDY

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ABSTRACT

The concept of health is defined by the World Medical Association is ‘ a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity. To enjoy the right to health World Health Organization has imposed several duties upon the state to create the favorable atmosphere for the enjoyment of right of the people. Availability, accessibility, acceptability and quality are the four basic elements of the right to health.

Art. 21 of the Indian Constitution deals with right to life and personal liberty. Supreme Court of India categorically held in number of cases that right to life includes right to health. In ‘Paschim Bangal Khet Mazdoor Samity & others v. State of West Bengal & Others, held that in a welfare state, primary duty of the government is to secure the welfare of the people and moreover it is the obligation of the government to provide adequate medical facilities for the people. Also, adequate facilities be provided at the public health centers where patient can be given treatment and his conditions stabilized.¹ Right to health is a fundamental right recognized by the Supreme Court of India in number of cases under article 21 of the Indian Constitution.

Despite of these several provisions in the Constitution, there is no express and specific provision added in the Constitution which imposes express obligations upon the state to provide access to healthcare facilities to people at large. Further, lack of adequate of advanced medical hospitals, short number of specialized medical practitioner such medical hospitals, awareness among the common people about their rights, complex and lengthy procedure to access healthcare systems, deficiency of establishment of primary health care centers in neglected rural remote areas etc are the prominent legal issues prevailing in the access to healthcare systems.

Researcher use doctrinal method for this research study and will an attempt to provide legal solutions to address these identified issues in the research paper.

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AIR 1996 SC 2426.

INTRODUCTION

Right to health includes access to public healthcare system which has been recognized as a fundamental right by the Supreme Court of India in number of cases. The significance of the recognition of right indicates the enormity of the subject matter. Access to public health care system is an integral part and parcel of the right to health. Though 'health' is a state subject, still in the concurrent list, several subject matters relating to health are listed. Consequently, Central and State Government has framed several policies,² schemes and different programs³ to provide access to public healthcare system. Within seventy-five years of Independence, several reforms have been taken place to extend access to public health care system. However, many challenges are being faced by the people to exercise right to access to public health care system though, coverage of the Public Health Care System in India is universal and wider in nature. Merely recognition of any of right is not enough, adequate protection and effective implementation and enforcement of it. The ultimate success of any legal system depends upon the genuine execution of any right. Rather, this is a rationale behind this research paper to identify reasons as well as feasible elucidations to resolve the issues regarding access to public health care system.

RIGHT TO HEALTH AND INTERNATIONAL SCENARIO

In 1948, the concept of health is defined by the World Medical Association is 'a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.'⁴ Further, in 1986, the World Health Organization added and clarified that 'A resources for everyday life, not the objective of living. Health is a positive concept emphasizing social and personal resources, as well as physical capacities. In short, health of human being is a spring to foster the activities in the community. The purpose of the recognition of right to health is described in WHO as, to attain the full enjoyment of life.' 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

² WHO defines Health Policy means decisions, plans and actions that are undertaken to achieve specific health care goals within a society. National Health Policy, 1983, 2002 and recently National Health Policy, 2017 were issued.

³ Ministry of Health and Family Welfare, Government of India, introduced several programs which are available on: <https://main.mohfw.gov.in/about-us/constitutional-provisions> (Last visited on 17th April. 2022).

⁴ World Health Organization, available at: <https://www.who.int/about/governance/constitution#:~:text=The%20Constitution%20was%20adopted%20by,are%20incorporated%20into%20this%20text>. (Last visited on 17th April. 2022).

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.⁵

Art. 25 of the Universal Declaration of Human Rights, 1948 described health as part of the right to an adequate standard of living.⁶ The same was reiterated in Art. 12⁷ of International Covenant on Economic, Social and Cultural Rights.

The right to health was aptly defined in General Comment 14 of the Committee on Economic, Social and Cultural Rights and observed the four essential components of right to health: availability, accessibility, acceptability and quality.⁸ Here, accessibility means access to health care facilities.

⁵ United Nations, *Committee on Economic, Social and Cultural Rights*, Paragraph 11.

⁶ Universal Declaration of Human Rights, 1948, art. 25.

⁷ Art. 12: 1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.”

⁸ World Health Organization, Human Rights and health: Available at: <https://www.who.int/news-room/fact-sheets/detail/human-rights-and-health> ((Last visited on 20th April. 2022).

Availability

Refers to the need for a sufficient quantity of functioning public health and health care facilities, goods and services, as well as programmes for all. Availability can be measured through the analysis of disaggregated data to different and multiple stratifiers including by age, sex, location and socio-economic status and qualitative surveys to understand coverage gaps and health workforce coverage

Accessibility

Requires that health facilities, goods, and services must be accessible to everyone. Accessibility has four overlapping dimensions:

- non-discrimination
- physical accessibility
- economical accessibility (affordability)
- information accessibility.

Assessing accessibility may require analysis of barriers – physical financial or otherwise – that exist, and how they may affect the most vulnerable, and call for the establishment or application of clear norms and standards in both law and policy to address these barriers, as well as robust monitoring systems of health-related information and whether this information is reaching all populations.

Acceptability

The above discussed provisions states that without the access to public health care system, right to health cannot be achieved in true sense.

CONSTITUTIONAL AND JUDICIAL APPROACH TOWARDS RIGHT TO ACCESS TO PUBLIC HEALTH CARE SYSTEM

Under article 21 of the Indian Constitution, the Supreme Court of India has emphasized in *Vincent v. Union of India* that a healthy body is the very foundation of all human activities and maintenance and improvement of public health have to rank high as these are indispensable to the very physical existence of the community and on the betterment of these depends the building of the society of which the constitution makers envisaged. Attending to public health, is of high priority-perhaps the one at the top.⁹ In *Paschim Bangal Khet Mazdoor Samity and Other v. State of West Bengal and Others*¹⁰, Apex court held that in a welfare state, primary duty of the government is to secure the welfare of the people and moreover it is the obligation of the government to provide adequate medical facilities for its people. The court made additional directions to secure medical cases: a) adequate facilities be provided at the public health centers where the patient can be given basic treatment and his condition stabilized. b) Hospitals at the district and subdivision level should be upgraded so that serious cases be treated there. C) Facilities for given specialist treatment should be increased and having regard to the growing needs, it must be made available at the district and sub divisional level hospitals. d) In order to ensure availability of bed in any emergency at state level hospitals, there should be a centralized communication system so that the patient can be sent

Relates to respect for medical ethics, culturally appropriate, and sensitivity to gender. Acceptability requires that health facilities, goods, services and programmes are people-centred and cater for the specific needs of diverse population groups and in accordance with international standards of medical ethics for confidentiality and informed consent.

Quality

Facilities, goods, and services must be scientifically and medically approved. Quality is a key component of Universal Health Coverage, and includes the experience as well as the perception of health care. Quality health services should be:

- **Safe** – avoiding injuries to people for whom the care is intended;
- **Effective** – providing evidence-based healthcare services to those who need them;
- **People-centred** – providing care that responds to individual preferences, needs and values;
- **Timely** – reducing waiting times and sometimes harmful delays.
- **Equitable** – providing care that does not vary in quality on account of gender, ethnicity, geographic location, and socio-economic status;
- **Integrated** – providing care that makes available the full range of health services throughout the life course;
- **Efficient** – maximizing the benefit of available resources and avoiding waste

⁹ AIR 1987 SC 990.

¹⁰ AIR 1996 SC 2426.

immediately to the hospital where bed is available in respect of treatment which is required. etc. Further, in case of *State of Punjab v. Mahinder Singh Chawla*, Supreme Court held that right to life includes right to health under article 21 of the Constitution and it is the constitutional obligation of the Government to provide health facilities by bearing the expenditure incurred by the employees.¹¹

Art. 38 (1) states that the state shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political shall inform all the institutions of the national life and this cannot be achieved without public health.¹² Art. 39¹³, 41¹⁴,42¹⁵,45¹⁶,47¹⁷ emphasized the state's obligation for protecting and promoting right to health. Art. 51A(g) states that it is the fundamental duty of every citizen to protect and improve the natural environment¹⁸ which is favorable for existence of human being. After the analysis of various constitutional provisions as well as judicial pronouncements, it is crystal clear that it is constitutional mandate not only to accord and respect people's right to health but also make it available right to access to health care system.

Thus, these constitutional provisions and judicial pronouncements declared that right to access to public health care system is paramount importance for amusement of right to health.

¹¹ AIR 1997 SC 1225.

¹² INDIA CONST. art. 38.

¹³ INDIA CONST. art. 39: The State shall, in particular, direct its policy towards securing— (a) that the citizens, men and women equally, have the right to an adequate means of livelihood; (f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

¹⁴ INDIA CONST. art. 41: Right to work, to education and to public assistance in certain cases.—The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

¹⁵ INDIA CONST. art. 42: Provision for just and humane conditions of work and maternity relief.—The State shall make provision for securing just and humane conditions of work and for maternity relief

¹⁶ INDIA CONST. art. 45: Provision for early childhood care and education to children below the age of six years.—The State shall endeavor to provide early childhood care and education for all children until they complete the age of six years.]

¹⁷ INDIA CONST. art.47: Duty of the State to raise the level of nutrition and the standard of living and to improve public health.—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.

¹⁸ INDIA CONST. art. 51A (g).

LEGAL FRAMEWORK FOR ACCESS TO HEALTHCARE SYSTEM

Right to health is universal human rights of all citizen. The right to health is to be understood in the context of access to health care system, livelihood, adequate and nutritious food, drinking water etc. Access to health care means having "the timely use of personal health services to achieve the best health outcomes."¹⁹ Indian healthcare system is mainly divided into two categories viz: public and private health care systems. Public health care system is predominantly operated by the government. Several laws such as Clinical Establishments (Registration and Regulations) Act, 2010, Drugs and Cosmetics Act, 1940, Drugs and Magic Remedies (Objectionable) Advertisements Act, 1954 etc are passed by the Parliament and State Legislatures. Private Health Care System includes independent health clinics or hospitals etc.

HISTORICAL ASPECT OF THE PUBLIC HEALTH CARE SYSTEM

India is a large country with around 900 million populations in 25 states and 7 Union Territories. Historically India had a rich public health system as evidenced from the relics of Indus Valley civilization demonstrating a holistic approach towards care of human and disease. The public health system declined through the successive invasions through the centuries, intrusion of modern culture and growing contamination of soil, air and water from population growth. With the establishment of British rule and the initiation of practice of Western medicines in India strong traditional holistic public health practice in India went into disuse bringing disease-doctor-drug orientation. The so-called modern public health practice of the advanced European and industrialized countries was primarily set up around cantonments, district and State Headquarters in British India.²⁰

Present health care system is the gift of the colonial rule. In 1946, Britisher's established Bhore Committee²¹ to study the medical education and constitution of medical hospitals. Afterwards,

¹⁹ ELEMENTS OF ACCESS TO HEALTH CARE, available at- <https://www.ahrq.gov/research/findings/nhqrd/charbooks/access/elements.html> (Last visited on 6th July, 2022).

²⁰ REPORT OF THE EXPERT COMMITTEE ON PUBLIC HEALTH SYSTEM, MINISTRY OF HEALTH AND FAMILY WELFARE, GOVT. OF INDIA, available at- <https://ruralindiaonline.org/hi/library/resource/report-of-the-expert-committee-on-public-health-system/> (Last accessed on 20th July, 2022).

²¹ In 1940, the Bhore Committee (Sir Joseph Bhore) was founded with an object to study the development of comprehensive national programme for health services. Committee submitted report in 1946 and gave several

Sokhey Committee²²(1948), Mudaliar Committee²³(1961), Chadha Committee²⁴(1963), Mukherjee Committee²⁵ (1966) etc were established to strengthen the Public Health Care System in India.

Public health care systems are commonly defined as “all public, private, and voluntary entities that contribute to the delivery of essential public health services within a jurisdiction.” Public health systems can also be described as a network of entities with differing roles, relationships, and interactions as depicted in the picture to the left.²⁶

An overview of Public Health Care System: India has a federal structure of governance with defined jurisdictions for the Central and state governments. The Indian Constitution outlines “Public Health, Sanitation, Hospitals and Dispensaries” as a state subject, while “Population Control and Family Planning”, “adulteration of foodstuff”, control of infectious and contagious diseases across state boundaries and issues governing medical profession are placed under the Concurrent List where both the Central Government and the state governments have jurisdiction.²⁷ Accordingly, Central Government issued visions, guidelines and future plans through the National Health Policies of 1983, 2002 and 2017²⁸.

recommendations such as Establishment of Primary Health Centers, drastic changes in medical education, promotion of health services departments etc. available at- https://www.nhp.gov.in/bhore-committee-1946_pg (Last accessed on 18/07/2022)

²²Committee submitted report in 1948 with major suggestion that medical professionals and medical services should be developed from the grassroot level.

²³ This committee was titled as ‘Health Survey and Planning Committee’ chaired by Dr. A.L. Mudaliar. Major recommendation was made in respect of strengthening the Primary Health Care Centers and curative, preventive and promotive services should be incorporated as prime object.

²⁴NATIONAL HEALTH MISSION, available at- https://www.nhp.gov.in/chadha-committee-1963_pg (Last accessed on 10th July, 2022).

²⁵ NATIONAL HEALTH MISSION, available at- https://www.nhp.gov.in/mukherjee-committee-1965_pg (Last accessed on 10th July, 2022).

²⁶THE PUBLIC HEALTH SYSTEM, available at- <https://www.naccho.org/uploads/downloadable-resources/Programs/Public-Health-Infrastructure/Defining-Terms-The-Public-Health-System.pdf> (Last accessed on 11th July, 2022).

²⁷ Ajay Mahal, *India Health System Review* 35 (World Health Organization, Regional Office for South-East Asia 11 2022).

²⁸ Due to the changes in the health priorities, development in the health care industry, heavy expenses of health care costs and increasing economic growth for fiscal capacity etc were reasons behind the introduction of National Health Policy, 2002. The primary aim of the National Health Policy, 2017, 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 healthcare 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.

Federal Set Up: At the central level, public health system managed by the Ministry of Health & Family Welfare, the Directorate General of Health Services, Government of India and the Central Council of Health and Family Welfare. At the State Level, the state government is responsible for health services. The State Ministry of Health and Family Welfare is headed by a Minister of Health and Family Welfare. The District Level administration is observed by the Collector in the district.

Community Health Centers (CHCs): For the effective implementation of health related programmes, Community Health Centers has been set up with an object to provide all categories of medical services to the community.

Primary Health Care Center (PHC): Bhole Committee recommended and introduced Primary Health Care Center as a primary unit to extend medical services to the rural people particularly and an integrated curative and preventive health care to the rural population with emphasis on preventive and promotive aspects of health care.²⁹

Sub-Center: The Sub-Centre is the most peripheral and first contact point between the primary health care system and the community. Sub-Centres are assigned tasks relating to interpersonal communication in order to bring about behavioral change and provide services in relation to maternal and child health, family welfare, nutrition, immunization, diarrhoea control and control of communicable diseases programmes.³⁰

Urban Primary Health Care Services: Around 30 percent of India's population lives in the urban areas. Due to education, shortage of basic amenities, non-employment etc at rural areas, migration to urban areas has been increased which resulted into urban slum in large numbers. Particularly, these urban slum prefers to visit Urban Primary Health Care Centers to avail medical facilities.

Indian Public Health Standards (IPHS): The overall objective of IPHS is to provide health care that is quality oriented and sensitive to the needs of the community. In order to provide optimal level of quality health care, a set of standards are being recommended for Community Health Centre /Primary Health Centre/sub centre. The IPHS for Primary Health Centres has been prepared keeping in view the resources available with respect to functional requirement for Primary Health

²⁹ <file:///E:/article%20folder/writing/Seminar%20Participation/Data/Healthcare%20Delivery%20in%20India.pdf>
(Last accessed on 14th July, 2022).

³⁰ <file:///E:/article%20folder/writing/Seminar%20Participation/Data/Healthcare%20Delivery%20in%20India.pdf>
(Last accessed on 14th July, 2022).

Centre with minimum standards such as building manpower, instruments, and equipment's, drugs and other facilities etc. These standards would help monitor and improve the functioning of the PHCs. The objectives of IPHS for PHCs are:

- i. To provide comprehensive primary health care to the community through the Primary Health Centres
- ii. To achieve and maintain an acceptable standard of quality of care
- iii. To make the services more responsive and sensitive to the needs of the community

Despite of these attempts by the government, marginal people are deprived from exercising their right to access to public health care system. At least half of the world's population cannot obtain essential health services, according to a new report from the World Bank and WHO. And each year, large numbers of households are being pushed into poverty because they must pay for health care out of their own pockets.³¹ With these reasons, researcher has tried to identify the basic socio-legal issues involved in it and suggested workable solution to address these issues.

CRITICAL ANALYSIS OF LEGAL ISSUES

As discussed earlier, right to health is a fundamental right recognized by the Supreme Court of India in several cases. The right to health is an inclusive right³² which encompasses access to health care and the building of hospitals.³³ The Committee on Economic, Social and Cultural Rights commented on Art. 12 of the International Covenant on Economic, Social and Cultural Rights, 1966 and mentioned the essential elements of right to health such as availability, accessibility, acceptability and quality.³⁴ Without accessing to the health care center, it would be inoperable to adore right to health. To access to public health care system, following are the key issues identified.

³¹ World Bank and WHO, Available at-<https://www.who.int/news/item/13-12-2017-world-bank-and-who-half-the-world-lacks-access-to-essential-health-services-100-million-still-pushed-into-extreme-poverty-because-of-health-expenses> (Last accessed on 14th July, 2022).

³² The right to health covers the right to prevention, treatment and control of diseases, equal and timely access to basic to health services, access to essential medicines

³³ World Health Organization, Available at-
<https://www.ohchr.org/sites/default/files/Documents/Publications/Factsheet31.pdf> (Last accessed on 15th July, 2022).

³⁴United Nations, Economic and Social Council, Available at
<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4sIQ6QSmIBEDzFEovLCuW1AVC1NkPsgUedPIF1>

A. Lack of express provision in the Constitution as a Fundamental Right: Right is an interest recognized, protected and enforced by the law. Merely acknowledgement of any of the right would not be sufficient, unless there is a provision for the effective implementation of the right. Right to access to public health care system is a fundamental right which has been recognized by the Apex Court in several judgments. Apex Court expected that such right should be effectively implemented by the state through the establishment of Public Health Care Centers in each village, adequate number of qualified and professional staff to render medical services as well as establishment of advanced community hospitals at taluka level too. But, the ground reality is totally different than the expectation. The current scenario is right to access to public health care system is recognized as Fundamental Right under article 21 of Indian Constitution.

After seventy five years of the independence, still County is struggling to achieve social justice objective laid down in the preamble as well as fulfillment of basic needs of the common people Due to lack of express provision in the Indian Constitution, effective implementation of this right is not resulted in reality. As a result of the non-incorporation of the express provision in the Indian Constitution, state is not expressly duty bound to ensure the operative and compulsory implementation of the judicial pronouncements for right to access to public health care system. Fundamental Rights are binding upon the Union and the State alike art. 12.³⁵ Therefore, despite of recognition by the Apex Court in number of cases, serious cognizance has not been taken by the State and right to access to public health care system becomes an erroneous scene for the common person. Therefore, it is an essential to amend the Indian Constitution for the insertion of right to access to public health care system for all. Insertion of such provision would make state obligatory to establish public health care system at local level to give effect in real sense. Also, common person will get a right to approach to the higher judiciary for the violation of his

[vfPMJ2c7ey6PAz2qaojTzDJmC0y%2b9t%2bsAtGDNzdEqA6SuP2r0w%2f6sVBGTpvTSCbiOr4XVFTqhQY65auTFbQRPWNDxL](https://www.researchgate.net/publication/361111111/vfPMJ2c7ey6PAz2qaojTzDJmC0y%2b9t%2bsAtGDNzdEqA6SuP2r0w%2f6sVBGTpvTSCbiOr4XVFTqhQY65auTFbQRPWNDxL) (Last accessed on 16th July, 2022).

³⁵ D.D. BASU, *Commentary on The Constitution of India*, 38 (Wadhwa and Company, Nagpur 2007).

right to access to public health care system. The objectives set out in the National Health Policy, 2017³⁶ will be fulfilled.

B. WHO Guidelines and Indian Approach towards public health care system:

Being a member of WHO³⁷, India should observe the WHO Guidelines in respect of Public Health Care System. WHO is engaged in prescribing standards for the governments. As per WHO, the number of hospital beds³⁸ available per every 10 000 inhabitants in a population.³⁹ The Indian approach towards public health care system is not somber in nature. As discussed earlier, the trend to establish community health care center is at district level. In case of Primary Health Centers, there are 156101, 25140 rural SCs and PHCs functioning in the country as on 31st March, 2021, respectively.⁴⁰

There are 5951 Community Health Centers functional in the country, consisting of 5481 rural and 470 urban CHCs.⁴¹ Sub Divisional/ District Hospitals (SDH): There are 1224 Sub Divisional/ District Hospitals functioning in the country which are catering to both rural and urban areas. District Hospital (DH): There are 764 District Hospitals functioning in the country which are catering to both rural and urban areas.⁴²

The figures simply indicate worst scenario of the existing public health care system in India. The population of India is 1408869660.⁴³ Application of WHO hospital ratio to this numbers indicates the gap between the required numbers of hospitals in India. Though,

³⁶ The objective of National Health Policy, 2017 is Improve health status through concerted policy action in all sectors and expand preventive, promotive, curative, palliative and rehabilitative services provided through the public health sector with focus on quality.

³⁷ India became a party of the WHO Constitution on 12th January, 1948. India is a Member State of the WHO South East Asia Region and the WHO Country Office for India is headquartered in Delhi.

³⁸ Hospital beds means the availability of inpatient services.

³⁹ WORLD HEALTH ORGANIZATION, Available at- [https://www.who.int/data/gho/data/indicators/indicator-details/GHO/hospital-beds-\(per-10-000-population\)](https://www.who.int/data/gho/data/indicators/indicator-details/GHO/hospital-beds-(per-10-000-population)) (Last accessed on 20th July, 2022).

⁴⁰ Govt. of India, National Health Mission, 70 (Ministry of Health and Family Welfare, Rural Health Statistics 2020-21).

⁴¹ Id.

⁴² Id.

⁴³ WORLD METER, Available at <https://www.worldometers.info/world-population/india-population/> (Last accessed on 20th July, 2022).

National Health Mission⁴⁴ remarkably progressed in public health care system still adequate number of hospitals and Primary Health Care Centers has to be established to give constructive effect to the right to access to public health care system.

C. Low allocation of budget towards Public Health Care System: The goal of the National Health Policy, 2017 is the attainment of the highest possible level of health and well-being for all at all ages, through a preventive and promotive health care orientation in all developmental policies, and universal access to good quality health care services without anyone having to face financial hardship as a consequence. This would be achieved through increasing access, improving quality and lowering the cost of healthcare delivery.⁴⁵ In response to this, India spent only 1.26% of the total GDP which is the lowest as compare to the United Kingdom, New Zealand, Finland, Australia⁴⁶ etc. Obviously, due to low budget allocation, government can not extend advanced medical services through the existing set up. Therefore, the present public health care system would be used only for the elementary diseases and not for specialized category. Hence, to combat with rare or new diseases, almost all Public Health Care Centers are not full prepared.

D. Lack of Modern Infrastructure, Human Resources and low budget for Advanced Machinery: Particularly, at rural level, modern infrastructure for hospitals is the biggest issue. Unwillingness of the government, low participation of public and ignorant private sector about the social responsibility are the major reasons behind the low development of the medical infrastructure.

In case of Primary Health Centers in rural areas, requirement of buildings is 23236 and available buildings are 22705. The shortfall of the buildings is 1155.⁴⁷ Regarding total number of Community Health Centers in rural areas are 3346 and available buildings are 5350. The number of shortages of the building is 88.⁴⁸ These figures indicates the scarcity

⁴⁴ The National Health Mission is introduced to achieve universal access to equitable, affordable and quality health care services as per needs of people. It missioned the National Rural Health Mission and the National Urban Health Mission.

⁴⁵ Ministry of Health and Family Welfare, "National Health Policy" 4 (2017).

⁴⁶ Such countries spend over 9% of the total GDP in public health care system. United State of America spends above 16% of their GDP in public health care system.

⁴⁷ Ministry of Health and Family Welfare, "National Health Policy" 77 (2017).

⁴⁸ *Id* at 78 (2017).

exists in public health care system. It's a wonder that without proper infrastructure, how right to access to public health care can be delivered.

Qualified and experience holder medical staff, para medical staff are basic components of the any public health care system. Unfortunately, public health care system does not fulfil the medical professionals criterial laid down by the World Health Organization.⁴⁹ In India, per 10000 population only 7.35⁵⁰ medical doctors are available in the country including private sector as well. The numbers indicate the worst situation of the availability of the medical doctors in public health care system. Moreover, qualified and experienced medical staff are not interested to render medical services at rural areas. This is a major concern behind the lack of strengthening the public health care system in India.

- E. Lack of Awareness about the various right to access to public health care system: Many of the people till today are not aware about the right to access to public health care system. Due to unawareness, particularly rural residents and uneducated people in the urban areas are deprived from getting the benefits out of it. Regular advertisement

The above discussed issues are mainly arisen due to nonexistence of independent legislation and do not addressed the right of every person to access to public health care system and obligation of the state to provide the adequate medical infrastructure, human resources etc. as per the standards laid down by WHO.

CONCLUSION

The Public Health Care System is the largest mechanism in rendering medical services to the people in India. Constitution of India enshrines several provisions pertaining to right to health and states obligations towards public health. Access to public health care system is a fundamental right proclaimed by the Apex Court. Despite of it, common people hesitate to access to public health care system due to especially less number of hospitals, poor infrastructure, lack of advancement of medical machineries, poor number of qualified medical practitioners etc. are some of the reasons

⁴⁹ 1:1000 is the ratio of medical doctors prescribed by the WHO.

⁵⁰ World Health Organization, Available at- [https://www.who.int/data/gho/data/indicators/indicator-details/GHO/medical-doctors-\(per-10-000-population\)](https://www.who.int/data/gho/data/indicators/indicator-details/GHO/medical-doctors-(per-10-000-population)) (Last accessed on 20th July, 2022).

behind the poor public health care system in India. To address these issues, following are the suggestions in order to strengthen the public health care system in India.

- Insertion of Provision ‘Right to access to public health care system’ in the Part III of the Indian Constitution: It is recommended that. ‘Right to access to public health care system’ should be incorporated in the Part III of Indian Constitution like Art. 21(A). Addition of such fundamental right in the Indian Constitution shall ensure the enforcement of such right. The state shall be under constitutional mandate to establish at least sub center in each village at rural area to provide access to public health care to every citizen. Eventually, every citizen shall enjoy the right to health in real sense. Effective implementation of access to public health care system shall be possible in such a manner. In addition to this, state should be duty bound to prepare effective policy in this regard.
- Separate enactment for Public Health Care System: Uniform legislation for public health care system is the answer to address all the above discussed issues. Such law shall encompass the establishment of public health centers, sub centers and community health centers etc at rural and urban level. Constitution of such establishment should be as per the WHO standards. Consequently, every citizen should get access to public health care system.
- It should be mandatory to allocate atleast 5% of GDP for strengthening the public health care system by Central and State Government in the budget. Absolut duty should be imposed upon concerned officials regarding the utilization of such budget for public health care system. With this budget, definitely, several issues shall be resolved.
- Special provision should be incorporated in this law which lays down the minimum standards for the infrastructure. State should be duty bound to make it available within one year from the date of the enforcement of this law. Even for this purpose, public or private sector can be promoted for this noble cause.
- It should be made it mandatory to all medical professionals that after receiving medical degree, he/she should serve atleast three years in the public health care system with good emoluments. The scarcity of qualified medical professionals shall be over and people will get adequate medical treatment and assistance through the public health care system.
- Special provision should be made in respect of the right to receive adequate information regarding public health care system, various programs commenced by the Central and State

Government or any other organizations. State should make constant efforts to publish public health care system related information through television or social media or distribution of pamphlets etc. in regional language. Idea of establishment of Facilitation Center could be one of the effort in this regard.

In nutshell, separate provision in the constitution shall fulfill the objective laid down by the WHO and which will enable common person to enforce it against the state. Eventually, public health care system will be effectively functioning to extend medical services to the people at large and objectives set out in the preamble and National Health Policy, 2017 will be fulfilled.