

“Health Care in India- The Legislative Measures”

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Abstract:

In majority of the countries, quality of care provided by the health care delivery system has come into sharp focus. Since quality is a crucial factor in health care, initiatives to address quality of health care have become worldwide phenomena. Many countries are exploring various means and methods to improve the quality of health care services. In India the quality of services provided to the population by both public and private sectors remains largely an unaddressed issue. The current structure of the healthcare delivery system does not provide enough incentives for improvement in efficiency. Mechanisms used in other countries to produce greater efficiency, accountability, and more responsible governance in hospitals are not yet deployed in India State Policy strives to provide a welfare State with socialist patterns of society. It enjoins the State to make the “improvement of public health” a primary responsibility. Furthermore, Articles 38,42,43 and 47 of the Constitution provide for promotion of health of individuals as well as health care. The government is showing enthusiastic approach objective of the Act. It is expected that in the coming years each and every clinical establishment in India will be systemized equipped with all the basic minimum standard of medical care so that the healthcare in India will be an appreciable revolution. India is already outshining itself in the global strata of pharmaceutical market. It is apparently a boon above that for the fact that India is expected to witness a tremendous improvement in its public health as the Government is showing enthusiastic approach towards striving at the objective of the Clinical Establishments (Registration and Regulation) Act, 2010. With the implementation of the diligently drafted standards through this Act, it is expected that in the coming years each and every clinical establishment in India will be systemized and stringently compelled equipped with all the basic minimum standard of medical care and hence, the scenario of healthcare section in India is expected to grow through a tremendously appreciable revolution.

Key Words: Healthcare, Nursing Home, Services, Clinical Establishment, Patients

Health Care in India-The Legislative Measures

1. Introduction

Right to Health is fundamental right in India.ⁱ The Doctor patient relationship in our country has undergone a sea change in the last decade and a half. The lucky doctors of the past were treated like God and people revered and respected them. We witness today a fast pace of commercialization and globalization on all spheres of life and the medical profession is no exception to these phenomena. As a result, the doctor-patients relationship has deteriorated considerably. Earlier too, doctors were covered by various laws, i.e. the Law of Torts, IPC etc., but since the passing of the Consumer Protection Act in 1986, litigation against doctors is on the increase. The medical profession is definitely perturbed by this and a rethink is necessary on standards of medical practice or ‘defensive medicine’.

It is duty of the state to provide adequate health care facility to every person within India.ⁱⁱ In majority of the countries, quality of care provided by the health care delivery system has come into sharp focus. Since quality is a crucial factor in health care, initiatives to address quality of health care have become worldwide phenomena. Many countries are exploring various means and methods to improve the quality of health care services. In India the quality of services provided to the population by both public and private sectors remains largely an unaddressed issue. The current structure of the healthcare delivery system does not provide enough incentives for improvement in

efficiency. Mechanisms used in other countries to produce greater efficiency, accountability, and more responsible governance in hospitals are not yet deployed in India. The for-profit private sector accounts for a substantial proportion of health care in India (50% of inpatient care and 60-70% of outpatient care), but has received relatively less attention from the policy makers as compared to the public sector. Thus the private sector healthcare delivery system in India has remained largely fragmented and uncontrolled, and there is a clear evidence of serious quality of care deficiencies in many practices. Problems range from inadequate and inappropriate treatments, excessive use of technologies, and wasting of scarce resources, to serious problems of medical malpractice and negligence.

2. Constitutional Provisions

State Policy strives to provide a welfare State with socialist patterns of society. It enjoins the State to make the “improvement of public health” a primary responsibility. Furthermore, Articles 38,42,43 and 47 of the Constitution provide for promotion of health of individuals as well as health care. The Constitution of India also enumerates the separate and shared legislative powers of Parliament and State Legislatures in three separate lists: the Union List, the State List and the Concurrent List. The Parliament and State legislatures share authority over matters on the Concurrent List, which include criminal law and procedure; marriage, divorce and all other personal law matters; economic and social planning; population control and family planning; social security and social insurance; employment; education; legal and medical professions; and prevention of transmission of infectious or contagious diseases. Laws passed by Parliament with respect to matters on the Concurrent List supersede laws passed by state legislatures. The Parliament generally has no power to legislate on items from the State List, including public health, hospitals and sanitation. However, two-thirds of the Rajya Sabha may vote to allow parliament to pass binding legislation on any state issue if “necessary or expedient in the national interest”. In addition, two or more States may ask parliament to legislate on an issue that is otherwise reserved for the state. Other states may then choose to adopt the resulting legislation.

Though hospitals, dispensaries, public health centers and other medical facilities are present, they are not sufficient to cater to the growing needs of India’s substantial population. Rural access to quality medical service has to be improved. The inadequate manpower of doctors in public sector hospitals is also a concern for health authorities. Furthermore, the infrastructure required in the hospitals, like medicine, furniture and equipment, are not adequate to serve the population. Compounding the problem, government spending on healthcare services is not up to the World Health Organization (WHO) norms of gross domestic product in healthcare.

3. Problem in Health Care

The health department has issued show-cause notices to about 6,700 nursing homes across Maharashtra for failing to adhere to prevailing rules and regulations, including those on fire safety and disposal of bio-medical waste. Many of them have even been ordered to be shut down after they were found to be operating without registering themselves under the Bombay Nursing Home Registration Act.ⁱⁱⁱ

Dr. Satish Pawar, director of health, Maharashtra, told The Indian Express that till April 11, a total of 17,222 clinical establishments were surveyed. “Our initial findings show that there are at least 2,497 such clinical establishments which have not been able to conform to the standards laid down under the Bombay Nursing Home Registration Act,” said Pawar. In Pune, out of 492 clinical establishments, 123 have not followed the rules laid down under the Act, whereas 123 out of the out of the 320 nursing homes surveyed in Kolhapur showed some irregularities.

4. Legislation in India

a) The Bombay Nursing Homes Act 1949:

Include the registration and inspection of nursing homes in the state (of Bombay). Whereas it is expedient to provide for the registration and inspection of nursing homes in Province of Bombay and for certain purposes connected therewith

b) The Bombay Nursing Home Registration Act (Amendment) 2006

c) The Bombay Nursing Home Registration Rules 2006

d) Duty to raise the standard of living and improvement of health –Article 47 The Clinical Establishment [Registration and Regulations] Act 2010 was enacted to provide for the registration and regulation of the clinical establishment with a view to prescribe minimum standards of facilities and services which may be provided by them so that the mandate of article 47 of the Constitution of India is achieved

e) The Clinical Establishments Act - 2010

Was passed by Parliament on 17th August 2010, to provide for registration and regulation of all clinical establishments in the country with a view to prescribing the minimum standards of facilities and services which may be provided by them so that mandate of article 47 of the constitution for improvement in public health may be achieved.

f) Directive from National Human Rights Commission – 1996

Much later, in 1996 the death of one Ina Raja in a private hospital due to medical negligence was reported to the NHRC. The Commission directed the Govt. of India, MCI and the Delhi Govt. to examine:

- Registration of private hospitals after ensuring availability of minimum facilities
- Monitoring to ensure availability of facilities,
- Framing of regulations,

g) The Maharashtra clinical Establishments (Registration and Regulation) Bill 2014.

The Maharashtra clinical Establishments (Registration and Regulation) Bill 2014. Draft is tabled in the Maharashtra legislative Assembly. The Act in the Preamble clearly states the need for such an act where it says that it is very necessary to provide for the registration and regulation of clinical establishments, to secure the rights of the patients and also the health care providers. This act intends to secure the rights of the patient as well as the health care providers.^{iv}

h) The clinical establishment Act 2010, the government is showing enthusiastic approach objective of the Act. It is expected that in the coming years each and every clinical establishment in India will be systemized equipped with all the basic minimum standard of medical care so that the healthcare in India will be an appreciable revolution.

5. Check legality of nursing homes: High Court

The Bombay High Court directed the state government to find out if nursing homes are functioning with licenses. A Division Bench of Chief Justice Manjula Chellur and Justice G.S.Kulkarni was hearing a public interest litigation filed by Atul Bhosale, a Pune resident whose father died at a nursing home after a wrong treatment. He said that he later came to know the doctor had failed in his exam for the degree and despite that he was running a nursing home. He urged the court to enforce the Maharashtra Nursing Homes Registration Act.^v

The PIL relies upon a RTI query that found only 326 out of 4,500 hospitals or clinics in Pune are registered. The court also questioned the delay in implementing the clinical establishment (Registration and Regulation) Act, which came in to force on August 19, 2010.

“The first Investigative Reports have been filed against 18 bogus doctors and action has been taken against such clinical establishments that have not been registered under the Act. We have also sealed two sonography machines, Patil said”.^{vi}

The Health officers said that among the main reasons for these clinics / nursing homes not having registered themselves were changes in the bio - medical waste regulation made in 2016 and fire safety norms in 2012-13. Maharashtra health dept. pulls up 6,700 nursing homes for not conforming to rules; 791 are in Pune alone

The health department has issued show-cause notices to about 6,700 nursing homes across Maharashtra for failing to adhere to prevailing rules and regulations, including those on fire safety and disposal of bio-medical waste. Many of them have even been ordered to be operating without registering themselves under the Bombay Nursing Home Registration Act.

Criminal cases have been filed against six more nursing homes in the city for functioning without the mandatory licence from the civic body. “The six erring nursing homes we have filed criminal cases are located in Vishrantwadi, Tingrenagar, Dhole Patil Road, Hadapsar, Wanowrie and Katraj,” said S T Pardeshi, medical officer of health, Pune Municipal Corporation (PMC).^{vii} A registration for the nursing home under the Act requires many documents and compliance. “Getting all documentary compliance, such as a no-objection certificate (NOC) from local governing body’s civil department is very difficult”.

6. Legislation and Regulation of WHO:

National laws and regulations are typically developed within the respective country’s constitutional framework and legal regime. Laws to implement environment and health related policies are normally built on scientific findings and assessment, and in consideration of economic, social and environmental conditions. Depending on the nature of the issue, environment and health concerns might be addressed by framework laws (for general categories), sectoral laws (for specific topics), and/or regulations that set standards or administrative requirements for the implementation of a particular law.

Primary legislation, i.e. laws, would typically set forth a policy statement or objective, the scope of the legislation and/or its relationship to existing laws, and name an executive authority to govern the law’s implementation. Such legislation would also identify who and what is to be governed by the law, procedures to be followed, and means of enforcement. Details that are subject to regular review and change might be articulated in secondary legislation, i.e. regulations, ordinances, orders, or ordinances. Overall, laws and regulations provide tools for policy implementation, backed by enforcement, as well as procedures for the redress of damages.

International law requires members of respective treaty regimes or international organizations to take measures, individually or jointly, at the national and/or international level, to achieve common, stated objectives in whatever manner has been collectively agreed, and to establish relevant institutional arrangements or procedures.

7. Judicial approach towards Health care Institutions in India.

The Indian Constitution has incorporated the responsibility of the state in ensuring basic nutrition, basic standard of living, public health, protection of workers, special provision for disabled persons and other health standards, which are described under articles 39, 41, 42 and 47 in the Directive Principles of State Policy. Article 21 of the Constitution of India provides for the right to life and personal liberty and is a fundamental right to health, the Indian Government adopted a national health policy targeted “health for all” by the year 2000. Although the country couldn’t achieve by the targeted date, the Government has set revised date of 2015 by which time it hopes to meet the millennium development goals

The Judiciary, through the process of Judicial activism, has transformed the Indian health scenario. The right to health is now a fundamental right, hospitals are included under the purview of the Consumer Protection Act, ensuring timely and emergency care for patients in all hospitals (the patients can approach the Consumer Forums to redress grievances)

and actions are taken against cases of medical negligence. The media has also played an important role, by bringing the problems of health care sector to the attention of the Government Authorities.

8. Conclusion

India is already outshining itself in the global strata of pharmaceutical market. It is apparently a boon above that for the fact that India is expected to witness a tremendous improvement in its public health as the Government is showing enthusiastic approach towards striving at the objective of the Clinical Establishments (Registration and Regulation) Act, 2010. With the implementation of the diligently drafted standards through this Act, it is expected that in the coming years each and every clinical establishment in India will be systematized and stringently compelled equipped with all the basic minimum standard of medical care and hence, the scenario of healthcare section in India is expected to grow through a tremendously appreciable revolution.

ⁱ Article 21, The Constituion of India, 1950

ⁱⁱ Paramanad Katara Vs Union of India 1989 AIR 2039, 1989 SCR (3) 997

ⁱⁱⁱ indianexpress.com/article/india/Maharashtra

^{iv} <http://deemaqclinic.wordpress.com> 7 Aug 2016

^v The Hindu 11 March2017

^{vi} The IndianExpress Aug. 29 ,2017

^{vii} Times of India 14 Aug