

THE IMPACT OF PANDEMIC COVID -19 AND THE ENVIRONMENTAL CHANGES IN HEALTHCARE FACILITIES – ROLE OF CENTRAL AND STATE GOVERNMENTS

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Abstract: Indian Healthcare Sector has a long illustrious history and dates back more than 5000 years wherein Ayurveda is being used and adopted for all the ailments. The impact of Covid – 19 Pandemic and the present emergence of 2nd wave threatened the very existence of healthcare sector. This pandemic has given rise to many loop holes, drawbacks and insufficient legal system to the floor. In this article it has been discussed about the Covid -19 Pandemic and the present situation of 2nd wave and the expected 3rd wave and the readiness of the Governments in tackling healthcare problems both in private and public and the changes that are needed immediately. In addition the present legal system prevailing in the country and its answer to the Pandemic are also discussed. Though there are laws such as, Epidemic Laws, Infectious Diseases Laws, Consumer Rights, Disaster Management, Right to safety and Health provided by the Constitution of India. The application of such laws in this crisis situation, further titening of the laws for enforcement are also discussed. In addition, the Supreme Court of India has takenup sumoto the case of vaccination and Pandemic situation of Covid -19 have mentioned some observations, and directions to be enforced immediately by the State, Central and Union Territories to combat the epidemic and to save the lives of the people are discussed threadbare. In addition the environmental changes including infrastructure in the healthcare facilities are also discussed. Some suggestions are made to strengthen the healthcare system both the private and government are made. However, the analysis in the article is not complete because the present pandemic situation is a new threat to the life of the people, not in existence any time. Hence, this healthcare sector has to learnt a lot from the pit falls and experience. Also it is necessary to think off third wave which is going to hamper health of children (Kids) as per the scientists in advance so that the mistakes committed till now are not repeated.

Keywords: Covid-19 Pandemic, Disaster Management , Epidemic Laws, 2nd wave , 3rd wave, environmental situation

1. INTRODUCTION:

Indian healthcare sector has a long illustrious history and dates back more than 5000 years wherein Ayurveda is being used and adopted for all the ailments. Patients from different parts of the globe used to visit India in addition to other countries for the purpose of getting cured for their ailments / discomforts. Along with Ayurveda Indian Healthcare Professionals (Vaidyas) used to administer not only Ayurveda but also Siddha, Unani and Naturopathy. The system in those days is between the patient and vaidya to know more about the lifestyle of the patient such as, eating habits, living habits, environmental and geographical and religious faiths. As the days passed by these traditional healthcare procedures losing their importance wherein the allopathic drugs and procedures started overtaking this system.

The History of hospitals in Ancient India starts with traditional treatment by the professionals in the patient's home. If the patients are not having their own facility the state used to arrange places where they were lodged and treated. The Ancient Indian History reveals that in Chola period a detailed account including a description of hospital, a medical school and a hostel for the students. These inscriptions are found on the walls of the temples in Chengalpattu District. As the time progresses from that state of hospitals it has come to the present stage.

The sudden effect of pandemic Covid-19 has brought in see saw change in the healthcare system. The so-called multispecialty / super specialty healthcare facilities that are existing presently have become non functional in the present context. Hence, all the present facilities are required to modify / redesign their facilities both internal and external to suite the present demand of, maintaining physical distance eliminating physical contacts, providing safe healthy pure air, ventilation, bifurcating the visitors patients and the healthcare professionals. Redesigning means additional facilities in the emergency rooms, rooms occupied by the patients, operation theatres and equipments. Installing sanitizers, earmarking places for disposal of waste, sanitization of not only wash rooms but also corridors and other places where the movement is, arrangement of seating in the waiting halls, keeping in-mind physical distancing.

Though everybody says the present pandemic of Covid-19 is a new one but when we look back there are such pandemics like plague, yellow fever, chicken gunia and chicken fox and such other contagious diseases used to make the mankind suffer from time to time. For all these things vaccination has become the order of the day. Coming to Covid-19 Pandemic still it is in the nascent stage of research, and researchers and healthcare professionals are trying to isolate this to find out the root cause that is whether the covid-19 has spread from the animals (living or dead) or through eating of a particular non vegetarian or so. In the initial stages everybody thought this pandemic has spread from Chinese market where live species are being sold (subject to correction).

The sudden outburst of pandemic covid – 19 has brought a see saw change in healthcare system / procedures / environment, Globally with the result the present healthcare facilities are to be remodified / redesigned / relocated to

suite the pandemic situation. In this regard, the healthcare professionals and the World Health Organization have come to a conclusion that few aspects are necessarily to be followed to contain the pandemic. They are,

- 1) Maintaining Physical Distance from person to person whether they are effected with pandemic or not by a minimum of 3 to 5 feet distance.
- 2) Isolation of persons identified as positive (effected with Covid-19) from the rest of the people
- 3) Arrangement of healthcare Isolation Centers within the hospitals and also in other places with necessary beds, infrastructure, equipment and caretakers
- 4) Due to the 2nd wave of Covid-19 Pandemic that has exploded like a volcano throughout the globe without in a slightest warning, the present system of isolation centers have to be remodified and redesigned to meet the challenges
- 5) The 2nd wave of Pandemic has not only changed its character from bad to the worst, the people affected are getting breathlessness with insufficient oxygen in-take and at times this becoming so severe many a people are losing their lives.
- 6) With this all the Governments and the Healthcare providers have to make immediate arrangements for the supply of medical oxygen to the patients who are becoming breathless.
- 7) This sudden increase of utility of oxygen is so high, the authorities are unable to meet the demand. Hence, major steel and metal industries where industrial oxygen is used, is being converted into medical oxygen to meet the demand.
- 8) In this regard, the Central Government has to revamp their EXIM policy to import Cryogenic tankers, oxygen cylinders, oxygen concentrates and the ancillary equipment on war footing.

As Winston Churchill (10th May, 1941) said,

We shape our buildings and afterwards our buildings shape us.

Healthcare facilities includes a wide range of facilities, from a small and relatively simple healthcare clinic to a large complex and costly super specialty / multispecialty facilities. The design and construction of any healthcare facility is governed by rules and regulations and technical requirements in accordance with the laws that are existing in that particular country. The designer of the healthcare facility should be kept in mind regarding patient safety, functional safety, risk assessment and Management, Surgical Centers, Birth Centers, Blood Banks Clinics And Medical Offices, Dialysis Centers, Urgent Care Units Trauma Centers, etc., in addition the architectures and engineers have to follow certain rules and regulations contained in,

1. The Clinical Establishments (Registrations And Regulations) Act, 2010 enacted by the central government to provide, for registration and regulation of all Clinical Establishments in the country with a view to prescribe the minimum standards of facilities and services to be provided by the facilities .
2. Design of healthcare facility with NABH compliant: NABH Standards for hospitals comprises a set of three books – NABH standards, guide book and Annexure. The Standards provide a framework for quality assurance and quality improvement for healthcare facilities. The standards emphasizes on patient safety and quality of healthcare. The Ten chapters and standards reflect two significant aspects of healthcare delivery, i.e., Patient Centered Functions (Chapter 1 to 5) and Healthcare Organization Centered Functions (Chapters 6 to 10). The role of NABH is to ensure a minimum level of quality of healthcare design that includes not just infrastructure, but also operations means how the providers will operate the facility.
3. In the case of Joint Commission International Accreditation (JCI) one has to refer to, the FGI guidelines for design and construction of healthcare facility is the design standard employed by healthcare planners, designers and healthcare providers. On the other hand NABH does not refer to any particular document but requires the compliance with the laws of land only.
4. Indian Healthcare Facility Guidelines: While designing the architectures and Engineers to keep in mind the guidelines given in the Indian Healthcare Facility Guidelines and should adhere with them

II. COMMON POINTS TO BE KEPT IN MIND IRRESPECTIVE OF EVERY FACILITY:

Each healthcare facility have their own unique architectural design in line, as per their requirements, but the most common design aspects are,

1. Exterior design
2. Interior design
3. Entrance design

These three design aspects are essential for any modern healthcare facility in terms of accessibility to the patients and visitors and for better healing outcomes

III. INDIAN HEALTHCARE FACILITY GUIDELINES:

Healthcare facilitators and architectures should keep in mind in designing a facility

1. Establish the minimum acceptable standards
2. Maintain public confidence in the facilities which comply with those guidelines
3. Provide a basis for the approval and licensing of healthcare facilities
4. Provide guidance to designers on the specific needs of healthcare facilities
5. Consider the well being, safety, privacy and dignity of patients, staff and visitors,

6. Eliminate design features that result in unacceptable practices

10 ELEMENTS OF PERFECT HOSPITAL DESIGN:

According to David Staczek having 26 years of experience on healthcare facilities designing there are 10 Elements that are to be kept in mind while designing an healthcare facility.

1. **Architecture and Campus Design:** This is pertaining to the layout of the hospital wherein, how the buildings are to be located and approach roads and entries to the buildings with sign boards giving directions for the movement of vehicles and persons. In addition lighting and materiality for the main entry to the hospital, parking areas, medical office building for the patients and their families to wait, and such other facilities for the patients and families who are coming at night or in the odd hours.
2. **Welcoming design aesthetic:** Any good hospital design should reflect both the region and the visual and cultural ethos of the healthcare facility. These includes valet parking, lobbies, public spaces and wash rooms etc., with comforts. In addition check in services, art and sound to create an atmosphere of welcoming, aesthetic and providing positive distractions on arrival.
3. **Drop-of and Parking:** When you enter the healthcare facility one should feel that you have been taken care of by eliminating all worries of arrival, drop –of and parking. Free valet services that reduces stress of finding a space to accommodate the vehicles.
4. **Internal Designing:** The architecture while designing healthcare facility should keep in mind regarding healthcare planning, interior design, environmental graphics that are harmoniously blended. The architecture should keep in mind the patient's journey from the Main entrance and who passes through interiors such as bold colours or visually distinct changes at elevator banks etc.,
5. **A better waiting area:** The architecture should keep in mind regarding check in desks / help desk and waiting areas with visual identities to help patients navigate the waiting room / hall with one of the most stressful part of a visit to an healthcare facility and it is the duty of the architecture to make it an amazing place to be provided with windows for day light decorated with art and beautiful pictures, comfortable furniture to promote ways of reducing stress to the patient and their families.
6. **Pleasant clinical environment:** Well designed space will benefit the patients and the staff. In addition to the waiting areas and lobbies, clinical areas need much attention. This includes imaging suits, procedure rooms, blood banks with natural day light environment will give more comfort to the patient and the healthcare professionals, because these are the critical areas in creating a calming and healing environment.

7. **On stage / off stage environments** (The Disney effect): It is not uncommon now a days that many healthcare institutions / healthcare facilities take cues from Disney's on stage / off stage concept where impeccable service appears to happen seamlessly. When designing and healthcare facility it is not just about separating experience areas from service areas but designing a circulation and planning diagram which allows the separation of goods and services from patients and their families both vertically and horizontally.
8. **Healthy Building – Healthy Occupants:** Healthcare facility should give an healing environment inside the facility as such designing the facility with red-litters, free material, providing clean and filtered air and offering access to outside experiences with operable windows / terraces where immune systems are not compromised are some of the strategies in building with healthy environments. Also, the architecture should keep in mind mission critical facilities and need to remain open and accessible after events like wild fires tornatos and earthquakes with net zero regilient structure
9. **Personalization and choice:** Personalization and choice goes a long way in creating a comfortable experience and helps the patients and their families have better visit. One should keep in mind that the customarized environment should reflect in room colours lighting, semi private or private rooms for infusion or dialysis etc., Also, the patients should have a choice in selecting such rooms of their choice.
10. **Dignified Discharge:** The most important aspect in healthcare facility is the discharge of the patient as somebody said *“it is easy to get thousand patients but very difficult to discharge a fully satisfied one patient.”*, because when a patient is discharged he should be given a good environment i.e., comfortable and private discharge root that does not go through the main hospital doors.

An architecture / designer while designing an healthcare facility especially after pandemic of covid 19 should pay attention to the above patient centered 10 points to create healthy environment for the population within the healthcare facility. These 10 points are only barest minimum and there may be additions and subtractions to the healthcare facility according to the use and applicability.

Designing of Physical Distancing in the healthcare facilities in addition balancing safety and human connections:

This aspect mainly depends upon in understanding public health, human behaviour and the availability of required space. Maintaining of this Physical distance is entirely different from compared to other social movements and healthcare facilities. The advent of Covid -19 Pandemic has become a challenge from Healthcare Stand point because it is a novel virus and it may contract from person to person through Air, through Physical contact etc. Many people are not having that much biological immunity to protect themselves against this pandemic transmission. Due to Physical Distancing occupancy will fall heavily because requirement of space is more between patient to patient and also healthcare professionals movement. Hence, relocation / redesigning of the existing

healthcare facilities has become a difficult task because a designer has to balance occupancy returns on the amounts spent without disturbing the prime object of maintaining physical distancing.

Covid – 19 Pandemic has brought a standstill to all the sectors globally has given rise to everybody to fight the impact. One has to take the following considerations to combat present and future pandemic situations in healthcare,

- 1) Designing for health
- 2) Designing for wellbeing
- 3) Designing for sustainability
- 4) Designing for Flexibility
- 5) Automation – Touch me not
- 6) Security and Sanitation hand-in-hand
- 7) Hybrid live / work spaces for all
- 8) E - Commerce and home delivery

Can the Indian legal framework deal with covid-19 Pandemic especially in the emergence of 2nd wave and expected 3rd wave:

Globally to contain and control the Covid-19 Pandemic multiple methods are being addressed. Such as Contact Tracing and Testing, Physical – Isolation, quarantine having mask for nose and mouth, avoiding handshake, using sanitizers are some of the methods adopted universally. However, these methods / restrictions have bearing on, the autonomy, liberty and dignity of an individual guaranteed by Indian Constitution. However, these intrusions are legitimized by laws, for the state to be able to act in the interest of the population at large.

Out of all the Acts, the Epidemic Disease Act 1897 is being used to contain Covid-19 Pandemic. However, this law is as old as colonial rule in India needs major changes and provide guidelines to the States to prevent and mitigate epidemics. Under Indian Constitution Public Health and Sanitation are the responsibilities of the state and local governments vide., the Union Government Manages port quarantine, interstate migration and quarantine. Only about 8 states and union territories in India have legislation on public health, like the Tamil Nadu Public Health Act, 1939 etc. In addition to this Act the Government of India is using various measures to contain Covid-19 Pandemic by invoking its powers under the Disaster Management Act, 2005 to enhance the preparedness and containment of Covid-19 in healthcare facilities throughout the country. In March this year the Ministry of Health, advised states to invoke the provisions of Sec. 2 of the Epidemic Disease Act, 1897, whenever it is necessary.

India being a signatory to the International Health Regulations, 2005 (IHR), the country needs to establish an appropriate public health response to international spread of diseases and is being done through the integrated

disease surveillance program (IDSP). The Epidemic Disease Act consists of four sections with wide powers to the Government. However, there are some lacunas which prevent the Governments (State) in taking drastic steps.

IV. THE POWER OF STATES DURING PANDEMIC:

By invoking their powers under the law the states are enabled to undertake non-pharmaceutical interventions to minimize the epidemic spread in the absence of medicines / medical interventions to treat the disease. The NPIs include closing of educational institutions, malls, schools, gyms and advising the public on physical distancing, home isolation and quarantine.

Some regulatory provisions provide extensive power to government officers such as Bihar Epidemic Diseases Covid-19 regulations 2020, Uttar Pradesh Epidemic Diseases Covid-19 regulations 2020, Delhi Epidemic Diseases Covid-19 regulations, 2020; authorize the concerned officers of the respective governments to admit and isolate a person in certain situations.

The officers are also given powers to adopt these regulations forcibly and also powers of surveillance of individuals and private premises. The District Authorities are empowered to impose lockdowns, restraining free speech by not allowing any person to publish information regarding Covid-19 without prior permission of the Government to prevent the spread of fake news. However, it is not uncommon to notice that sometimes these noble functions of protection of the public are being misused or excessively used.

The officers are also empowered to arrest persons spreading fake news on the pandemic, gathering in large numbers without maintaining physical distance, arresting persons not following home quarantine and sharing publicly the list of suspected patients. However, using excessive power without any transparency has shown a negative impact on community participation because, forced into unhygienic quarantines and issues in accessing essential services is deepening between the people and the state. The present pandemic has given powers to the States and Union Territories, to put restriction on movement of the people, free speech, religion, profession and privacy and these restrictions are legal as they are necessary and proportionate to a legitimate aim.

V. REGULATIONS Vs. RIGHT TO PRIVACY:

The Indian Constitution guarantees right to privacy to any person that includes personal autonomy, liberty and dignity. However, the right is subject to reasonable restrictions in furtherance of public interest. In the Puttaswamy judgment the apex court laid down certain tests for limiting the discretion of the state on the fundamental right to privacy.

- (a) The action must be sanctioned by law
- (b) The proposed action must be necessary for a legitimate cause / aim
- (c) The extent of such interference must be proportionate to the need for such interference
- (d) There must be procedural guarantees against abuse of such interference.

As far as the epidemic disease is concerned its function is to spread the dangers of epidemic disease.

COVID-19 PANDEMIC – CENTRAL GOVERNMENTS RULING ON EXIM POLICY

- (i) The Government of India in April, 2021 allowed import of Medical devices for three months with mandatory declarations, immediately after custom clearance and before sale of such products in the domestic markets.
- (ii) Due to the Covid-19 ongoing Pandemic the Government of India has allowed import of medical devices like Nebulizer, Cryogenic Tankers, Oxygen Concentrators, Oxygen Cannister, Oxygen Cylinders, Oxygen Generators and ventilators.

According to Piyush Goyal, Minister for Food and Consumer Affairs,

“Government under the leadership of Prime Minister Narendra Modiji permits imports of Medical devices for making mandatory declarations under legal metrology rules, 2011 after custom clearance and before sale.”

The Ministry in its 28th April, 2021 order said due to prevailing pandemic situation of Covid -19 2nd wave a steep demand for medical devices in this critical conditions on an urgent basis in view of the emergent help concerns to meet the demand of the medical devices, *“hereby permits the imports of medical devices to import the medical devices for three months from the date of this advisory”*

This move comes amid a crippling shortage of supply of oxygen in the wake of raising Covid-19 cases (2nd wave) and dearth of oxygen supply. The Government has also allowed import of oxygen concentrators for personal use through post, courier or e-commerce portals under the gift category. The exemption of oxygen concentrators is allowed only for a short period till July 31st 2021.

An oxygen concentrator is an healthcare device that concentrates oxygen from ambient air and capture and filter the air, unlike oxygen cylinders which can only store fixed amount of oxygen.

Supreme Court of India asks Central Government whether the government intends to frame any Uniform National Policy on admission guidelines to healthcare facilities in this pandemic situation:

As the Apex Court and many a state High Courts received number of complaints regarding admission and treatment in private healthcare facilities and exuberant charges levied by private facilities that are not proportionate to the procedures / interventions and treatments to the Covid patients and collecting the bills before declaring the status of the patient. The Apex Court bench consisting of Justice DY Chandra Chud, Justice L. Nageswara Rao, and Justice

Ravindra Bhatt want to know in addition to the policy the time frame of the policy and if already a policy is framed whether the Central Government taken into confidence all the Stake holders and consented them such as, the Medical Faternity of States and Union Territories. While addressing the Bench, Senior Advocate, Siddhardh Dave, said

“Some hospitals insist on Cowin app registration for hospital admission In Delhi, you need the SDM’s sign in order to be admitted in a hospital. Your Lordships held that the right to medical facilities is a fundamental right and it cannot be denied by this duracracy” the advocate argued.

Another Advocate by name Yatin Oza, had pointed out that two patients had died outside a hospital in Gujarat as they were not admitted on account of arriving in a private vehicle and not the 108 ambulance service.

Another Advocate by name Sachin Patil, pointed that 30% of the test reports are wrong, and even though the patients had all the symptoms of the Covid, just because the report is negative they are not getting admitted for assistance in healthcare facilities.

At this juncture, the Hon’ble Bench indicated to solicitor General Mr. Tushar Mehta that the 108 ambulance may take 24 to 36 hrs to arrive and the Bench posed to him the difficulty of a patient with insufficient resources in arranging the ambulance service.

“That admission to hospitals in Gujarat is possible only the patient arrives in the 108 ambulance is true only in part,. There was only one facility which was insisting on this. This was found to be arbitrary and irrational and now the facilities license has been withdrawn” the SG told the Bench.

In this regard, the Bench also indicated to the Center that many Covid treatment facilities are demanding a positive Covid-19 report before admission and said, the issue of report as a procedural formality is causing difficulty because the test results are taking time and the patients are receiving them very late. The Court also pointed out that existing RT-PCR tests are failing to pick up on the new variants and strains of the Covid virus. The Bench also pointed out that many persons affected with Covid -19 Pandemic are compelled to travel to other states in search of a Covid bed, the bench enquired from the Central Government if it has ensured that such individuals are not denied hospital treatment in such other state / U.T. on the ground they are not residents of that State / U.T.

For this S.G., mentioned that,

“It is personally my stand and also that of the Government that Citizens cannot be denied medical help only because they cannot produce proof of residency in that District or State. It is right of the Citizen to get treatment wherever it is found and this right is not resident – specific. I assure your lordships that rules will be made in this behalf.”

The Hon'ble Supreme Court Bench put the question to SG many Covid treatment centers / healthcare facilities earmarked by the respective Governments in all the states and union territories demanding to deposit heavy amounts before admission is granted.

“How are you monitoring this practice so that the needy citizens are not turned away?”

At this juncture the Hon'ble Bench of Apex Court suggested that a helpline may be put into practice to assist the citizens when they confronted with such situation at the time of admission. The Hon'ble Bench also remarked how the center is regulating the price structure for Covid patients throughout the country. They also pointed out whether fee structure is regulated by the Central Government or left to the discretion of the Union Territories. The Hon'ble Bench also remarked that due to heavy influx of Covid Patients at every healthcare Centre how the centers are managing the other non covid patients, so that they will not suffer for want of healthcare. The Hon'ble Bench also enquired through SG how the Central Government is getting information about Covid treatment centers in every District of the Country and the availability of Covid beds and oxygen beds, quarantine centers and how many are vacant at District Level and How this information is reaching the needy.

Failure of Governance by the Central, State and Union Territory Governments in containing the Pandemic:

Due to the 1st lockdown advanced by all the states throughout the country affected the entire country due to Lakhs and Lakhs of migration workers walking hundreds of miles spreading Covid-19 Pandemic and the inhuman lockdown at various places, the political game of blaming each other (Center to State to Center) are all the causes of misgovernance or failure of governance. When the situation becomes peak and difficult to control then only the Governments will think of human sufferings and immediate reliefs. However, inspite of all these things we failed to understand the monumental failure of the Governance at every stage is nothing but a pity.

The Governments are well aware that handling of this type of Pandemic is not easy and is an herculean task and bound to be mistakes; but the governments should analyse the situation and look out the pit falls so that they can be rectified and make a good governance. Many a researchers who did research on this grave situation have pointed out that there are atleast five instances that must haunt any ruler left with an iota of conscious.

- 1) The Government began without any preparation or advance notice to the public a long and inhuman lockdown. On the face of it the lockdown appears to be good everybody started appreciating. At the same time the life of the daily wage earners that forms majority of the society has become a nightmare.
- 2) If the lockdown in March, 2020 was a knee – jerk reaction, it was supported by a weak legal instrument. Though many people argue that there was no alternative except to invoke the Epidemic Diseases Act and Disaster Management Act, 15 months down the line, there is still no discussion of a more relevant and more human legal framework that will make the Government to handle the epidemics without harassing the public.

- 3) The provisions in the pre-budget and budgetary provisions for economic safety, relief and protection have been far too inadequate and much less no section of the society is pleased. The main failure is this budgetary provisions aid much later, too inadequate and finally unnecessarily Centralized. Added to that there is no clarity by the Central Government about the source of funds / funding and modality of utilization by various Government Agencies. This act of harshness of lockdown and Centre Policy of handling pandemic situation has given rise to many doubts. The primary lesson learnt is that Governance is so called good only when its delivery and its authority or displayed democratically.
- 4) The Government is well aware that vaccination of the entire population is only method to handle and contain the pandemic crises, our Government waited too long to bring out the National Vaccine policy. There is a lot of discussion prior to announcement regarding which vaccine, to whom and when; Nobody knows the details of vaccine diplomacy and the results thereon but our experience shows that it is vaccine chaos. Coupled with a complex multilayered policy (per dose Rs. 150/- for Central Government; 450 for State Governments and 1200 for private parties). This caused the government policy of *free – vaccine – to – all* and the very real scenario of vaccine to the middle class, is a myth.
- 5) Finally, after 15 months, what is the government preparedness in terms of health infrastructure? Many states have taken recourse to temporary Jumbo Facilities which do not even serve the current purpose. Publicity that Railway Coaches and some AC busses are turned into Covid Centers may be good to certain extent, but are not health infrastructure. There should be a collective policy, imagination, determination to improve healthcare infrastructure for the citizens; added to this the second wave that emerged recently is much more fearsome because the earlier temporary infrastructure that were operated were closed down and such infrastructure is not suitable for second wave Pandemic.
- 6) Covid – 19 pandemic 2nd wave has created a situation wherein the requirement of medical oxygen has gone multifold. Since there is no preparedness either by the private healthcare sector or the Government healthcare sector or the governments (State, Centre and U.T.) the present supply chain of medical oxygen has no answer. This shows lack of Governance on the part of all the stake holders in arranging medical oxygen to save the people from death. 2nd wave of Covid -19 has created a panic regarding oxygen because the level of oxygen in the patients is falling so rapidly and unless the patient is put on oxygen the survival of the patient is remote.

The approach of any Government in handling the such type of Pandemic (Covid-19) where resources are required is not a problem. The huge resources flowed into the PM Cares fund is not being used properly and the public are not aware how much money is in the fund, who spends and handles the fund and who decides on its use and for what use it is put to. Though the Central Government's announcement of Atma Nirbhar has not yielded good results except benefiting few pockets of the society.

The last resort of mis-governance is only to penalize the public and the political opponents. It is trying time for the Central and State Governments to take stock of the situation and prepare shorter and long term policies in healthcare.

According to one survey India will need 5 Lakh ICU beds, 3.5 Lakhs healthcare staff and healthcare professionals (PTI April 29th 2021)

However, the reality being India is having only 75000 – 90000 ICU beds and all are already occupied - when the 2nd wave of the pandemic has not even reached its peak yet, the research says, India is reporting about 3.5 Lakh Cases a day and some experts expect the number may go to 5 Lakhs. According to the doctors who are treating the Covid Patients, just admitting a patient in a Covid ICU and giving him some oxygen is not going to save, when the oxygen drops they need proning and somebody has to monitor blood gauges all this done by nurses and Junior Doctors.

1. The Supreme Court, in its order passed recently, criticized Liberalized Vaccination Policy of vaccination by private hospitals.

"The present system of allowing only digital registration and booking of appointment on CoWIN, coupled with the current scarcity of vaccines, will ultimately ensure that initially all vaccines, whether free or paid, are first availed by the economically privileged sections of the society.", the bench headed by Justice DY Chandrachud said in the order.

2. 'Digital Divide Will Have Serious Implications On Right To Equality & Health': Supreme Court On CoWIN Portal

"A vaccination policy exclusively relying on a digital portal for vaccinating a significant population of this country between the ages of 18-44 years would be unable to meet its target of universal immunization owing to such a digital divide. It is the marginalized sections of the society who would bear the brunt of this accessibility barrier",

said the Bench comprising Justices DY Chandrachud, L. Nageswara Rao and S. Ravindra Bhat in its 31st May order.

3. Constitution Doesn't Envisage Courts To Be Silent Spectators When Executive Policies Infringe Citizens' Rights : SC In COVID Vaccine Case

"Our Constitution does not envisage courts to be silent spectators when constitutional rights of citizens are infringed by executive policies", a bench comprising Justices DY Chandrachud, L Nageswara Rao and S Ravindra Bhat observed in the suo moto case In Re Distribution of Essential Services and Supplies During Pandemic.

"Judicial review and soliciting constitutional justification for policies formulated by the executive is an essential function, which the courts are entrusted to perform",

"Courts have often reiterated the expertise of the executive in managing a public health crisis, but have also warned against arbitrary and irrational policies being excused in the garb of the "wide latitude" to the executive that is necessitated to battle a pandemic", the order observed.

In grappling with the second wave of the pandemic, this Court does not intend to second-guess the wisdom of the executive when it chooses between two competing and efficacious policy measures. However, it continues to exercise jurisdiction to determine if the chosen policy measure conforms to the standards of reasonableness, militates against manifest arbitrariness and protects the right to life of all persons", it said.

4. How Rs 35000 Crores Budget Allocation Spent For Vaccines? Why Can't It Be Used To Vaccinate 18-44 Years Group? SC Asks Centre

The Union Budget for Financial Year 2021-2022 had earmarked Rs35000 crores for procuring vaccines. In light of the Liberalized Vaccination Policy, the Central Government is directed to clarify how these funds have been spent so far and why they cannot be utilized for vaccinating persons aged 18-44 years", the Court observed.

This significant observation was made by a bench comprising Justices DY Chandrachud, L Nageswara Rao and S Ravindra Bhat in the suo moto case *In Re Essential Distribution of Essential Supplies and Services During Pandemic*

"If the Central Government's unique monopolistic buyer position is the only reason for it receiving vaccines at a much lower rate from manufacturers, it is important for us to examine the rationality of the existing Liberalized Vaccination Policy against Article 14 of the Constitution, since it could place severe burdens, particularly on States/UTs suffering from financial distress", the Court further observed.

"...it is reiterated that the Union of India should consider utilizing its position as the monopolistic buyer in the market and pass down the benefit to all persons. Even if the States/UTs were to fund the higher-priced vaccines, a burden they were not discharging before the Liberalized Vaccination Policy was introduced and potentially may not have planned in advance for, these funds are expended at the behest of the public exchequer. The Centre and States/UTs, both operate in the service of the Indian population, and raise and disburse funds in their name. The additional funds expended on procuring vaccines against a deadly pandemic are necessary expenditure for any State/UT Government which has battled the public health emergency for over 15 months now".

5. Centre's Policy Of Paid Vaccination For 18-44 Years Prima Facie Arbitrary & Irrational: Supreme Court

"Due to the changing nature of the pandemic, we are now faced with a situation where the 18-44 age group also needs to be vaccinated, although priority may be retained between different age groups on a scientific basis. Hence, due to the importance of vaccinating individuals in the 18-44 age group, the policy of the Central Government for conducting free vaccination themselves for groups under the first 2 phases, and replacing it with paid vaccination by the State/UT Governments and private hospitals for the persons between 18-44 years is, prima facie, arbitrary and irrational", the Court observed.

6. Furnish Complete Data On Vaccine Purchase History; Produce All Documents & File Notings On Vaccination Policy: Supreme Court To Centre

The Supreme Court has directed the Union Government to produce all relevant documents and file-notings which reflected its thinking in the vaccination policy.

The Court ordered that the data should clarify:

- (a) the dates of all procurement orders placed by the Central government for all 3 vaccines;
- (b) the quantity of vaccines ordered as on each date; and
- (c) the projected date of supply.

The Court also asked the Centre to provide an outline for how and when the Central Government seeks to vaccinate the remaining population in phases 1, 2 and 3.

VI. FOLLOWING ARE SOME OF THE SUPREME COURT ORDERS

- 1) During the Supreme Court hearing on Covid – 19 situation Justice DY Chandra Chud said, "If Citizens are voicing concerns and grievances on social media there cannot be any clampdown on them, and said, clampdown on Covid -19 information will be treated as contempt of Court (PTI)"
- 2) "If Citizens are Voicing concerns and grievances on social media, there cannot be any clampdown on them" according to DY Chandra Chud.
- 3) In the words of Justice Chandra Chud "I am flagging an issue of grave concern. If Citizens communicate their grievances on social media or news, there is no reason to presume that is not correct. Hence, there cannot be a clampdown on information"
- 4) Justice DY Chandra Chud also directed that "a strong message go across to all states that we will consider it a contempt of this court if any citizen is harassed for making a plea on social media or media for making a plea for oxygen or beds etc.,"

The Court also suggested that the “*Healthcare Sector*” has come to a breaking point and Retired doctors or officials could be reemployed to help the country battle the second wave of Covid – 19 that has been claiming over three thousand lives on a daily basis.

Role of Private Healthcare during Pandemic / Disaster:

- 1) There are instances of overcharging (exuberant charges) private healthcare providers in this Covid -19 Pandemic raises a question whether the Government can depend on Private Healthcare for public Health.
- 2) Normally the present system of Global Healthcare is major participation by the private houses as such how the Government can balance public and private health
- 3) Weak regulations and poor organization, is incapable for mounting a strong and coordinated response to pandemics / disasters.
- 4) The limited regulatory ability of the Governments will make them compromise during Disasters / Pandemics.
- 5) Many small hospitals healthcare facilities other than multi and super specialty facilities are also unsuitable for meeting disaster / pandemic related healthcare needs.
- 6) Punitive action against non complaint requisitioned healthcare facilities becomes tricklish problem during Disaster / Pandemic because there is dearth of health services.
- 7) The tendency of private healthcare facilities is to prefer lucrative and high end cold cases, especially under insurance as such they are generally averse to infectious diseases and critical cases with unpredictable profiles.

Due to the above cited limitation of the Governments, the Government should provide strong public sector capacities for dealing with disaster / pandemic situations

- 2) The present disaster Management Act does require states and Healthcare facilities to have emergency plans, healthcare preparedness is a matter of policy and therefore gaps are pervasive
- 3) There is a strong case to introduce a legal mandate for strengthening public sector capacities via Disaster / Pandemic Legislation.
- 4) It is necessary to integrate the Disaster Management with Primary Healthcare

5) The Government should act in, multi-sectoral action, community engagement, disease surveillance and essential healthcare provision that are Central to Disaster / Pandemic Management.

6) As one researcher mentioned, *“robust public healthcare system is indispensable for the Disaster preparedness which could be achieved through making the primary healthcare Central to the Disaster Management.”*

VII. CONCLUSION:

The present remedy of overcoming this pandemic situation is to vaccinate the entire public 125 Crores Approx., as the Government of India information only 20 Crores of people are vaccinated. The present production by the two companies will take nearly one year from now to complete the entire population of entire 125 Crores. In this regard the Supreme Court made some serious remarks regarding vaccination policy of the Central Government, huge price structure variation for Central Government and State Government and Private Sector budget allocation of 35000 Crores for procuring / producing vaccines and Governments clampdown on citizens voice of concerns and grievances in social media regarding failure of pandemic situation by the Government. The Supreme Court Bench Consisting of DY Chandra Chud, Justice L. Nageswara Rao and Justice Ravindra Bhatt gone on record asking the Government the policy the time frame on vaccination of the entire population. Though the Government allowed State Governments and Union Territories to import vaccine but the other vaccine producing countries went on record saying that they can deal with the Central Governments. Hence, since the time is running fast the Central Government should have a policy framed regarding doses of vaccination required, how to dispatch and such other formalities so that before the pandemic 3rd wave the entire population should be vaccinated.

REFERENCES:

- [1] *Designing of Social Distancing: Balancing Safety and Human Connection* dated Sep 9 2020
- [2] *Behind the Pandemic's devastation is a monumental failure of governance*
- [3] *India will need Lakh ICU Beds, 3.5 Lakh Medical Staff in next few weeks, says leading surgeon* PTI Apr 29,2021
- [4] *Importance of Patient hand Hygiene Education and Accessibility of Hand Sanitizers* Oct, 22 2020
- [5] *At least 18 Covid-19 Patients die in hospital fire in Gujarat;s Bharuch: PTI May 01, 2021*
- [6] *Strengthening the public Health Capacities in disasters*
- [7] *Four Considerations as we Design Post – pandemic spaces – Kenya Gibson*
- [8] *We are objecting to shifting of liability: Central Government move Delhi High Court against order to ensure supply of oxygen to Delhi by Aditi Singh* May 02, 2021
- [9] *GST: Medicines, Consumables, implants used as Healthcare for Diagnosis or Treatment of Patients is a composite supply rules AAR by Taxscan team* April 16, 2021
- [10] *No patient shall be denied hospitalization, essential drugs for lack of local residential proof: Supreme Court* PTI May 3, 2021
- [11] *Coronavirus Impact on healthcare Sector* dated 22 October 2021
- [12] *What kind of reforms can make India's public health system Atma Nirbhar? By Sudha Ramani*
- [13] *Rethinking Workspace Design for a post-covid Era: A O & A with Farmery's LASSE KARVINEN* dated April 23, 2020
- [14] *Top 5 ways the Built environment will change Post Pandemic*