

THE UNREGULATED PRIVATE HEALTH SECTOR

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The health care service sector in India has come of age. Both in terms of the medical human power and physical size as well as investment and expenditure in health care, this service sector has become vast and vibrant though it is still maldistributed and the average quality of services not commensurate with what it is capable of achieving.

Medical Human-Power

Data collected, especially in last two decades reveals that we do not suffer from paucity of the medical human power. On the contrary, India has now one of the largest medical human-power in the world. At the time of Independence, we had only one doctor for every 6700 persons, we now one for less than 900 persons; this ratio is even better in the urban areas, where we have a doctor for less than 400 persons. According to 1981 Census, 41.2 per cent of all (7,63,437) doctors and only 27.2 per cent of allopathic doctors were located in the rural areas, not more than 14.8 per cent of all registered doctors work in the public sector.ⁱ A recent study done in a socio-economically average district in Maharashtra found only eight percent of all qualified doctors in the public sector. Further, 20,000-30,000 doctors of all systems are trained every year and enter the medical market, chiefly in the private sector.

In 1988 there were 9,831 hospitals and 5,85,889 hospital beds in our country, a 2.8 and 2.2 fold increase respectively as compared to their number in 1974. These numbers are also under-estimations as in a majority of States , private hospitals and beds registration in majority of the states is not done in an exhaustive manner.

Investment in the Health Sector

Although no hard data on investment in the health sector are available (except government investment), the wide-spread setting up of large, hi-tech, corporate and other hospitals and diagnostic centres suggests that a considerable proportion of investment is made in the health care sector. This is buttressed by the findings of various studies, which reveal that health care expenditure in India is very high (anywhere between 6-8% of the GNP, almost four fifth of which is private expenditure, only one fifth being financed

by the state), as compared to its underdeveloped economy and level of poverty.

Health Policy and Planning

Policy and planning in the health service sector suffer from some major drawbacks:

- We are not mistaken in stating that after the Bhole Committee report (1946), no committee or plan document has even attempted a holistic approach towards the health sector. As a result, officially stated plans and policies have only reviewed the public sector in health care.
- Even in their limited coverage of public sector, there has been very little attempt to give policy measures a permanent shape. For instance, the Village Health Guide scheme was introduced as an administrative order and almost withdrawn in the same manner. The NGOs who have successfully continued with the VHGs in their health projects now face a major problem due to the ambiguities in law as regards their status, permission to practice limited medicine etc.
- The absence of holistic approach has led to a lack of comprehensiveness; this is seen in many ways. In the last 40 years of planning, there has not been a single serious attempt to review the size and functioning of the private sector in health care. Thus, today the nation knows very little about a sector, which is consuming 80 per cent of health expenditure. Secondly, no mention in the plan and policies ever made as to how the National health priorities will be implemented in the health sector in its totality. On the one hand, the much talked about and always condemned public sector suffers from excessive physical control and regulations, on the other hand the rest of the health sector never had physical control of any kind and the provisions for regulation, even if in existence, are rarely implemented.
- Lastly, policy segmentation and absence of broader legislative and regulatory framework have created chaotic situation in the health care sector, both among the providers as well as the users. This situation can only upset the National priorities and lower the average standard of health care, not to mention the colossal waste of precious resources due to irrational practices and trade.

Regulations and Laws

Decades of unregulated growth in the health care market have led to a situation, wherein a vocal and powerful section of health care professionals is shamelessly and assertively declaring that the medical profession is accountable only to itself and not to the society. They defend unfair market and trade practices under the garb of professional independence. They have interpreted new economic policy as being one which promotes

market forces without enforcing any regulations and of allows private providers to practice without obligations to ethics and patients/users.

The fact is that health care delivery in the private sector in India is perhaps the least controlled sector in the world today. We present a brief review of the regulation of/ and regulatory bodies for the medical practitioners and hospitals.

Medical Council

Medical practice is covered under the civil and criminal laws. However, the fundamental regulatory mechanism for medical profession is given to the Medical Councils. This is simply because it is recognised that given the special character of medicine and the doctor-patient relationship, the profession should have strict self-regulation so that the direct societal/state interference in its affairs are kept at the minimum.

In India the Medical councils are statutory bodies that maintain register of the recognized practitioners, frame the content of medical education, set the standard of medical practice, `discipline' the profession, monitor their activities and check any malpractice. A person wanting to set up practice has to register with the respective Medical Council in the particular state in which he/she wants to practice. The council is expected to update the register regularly. Renewal of registration has to be made periodically. Those not registered with the Medical Council cannot practice. The doctor is supposed to practice only in the medical system in which s/he has qualified and registered. However, bulk of practitioners in the country are trained in systems of medicine like Homeopathy, Ayurveda, Unani, Siddha, -the majority of them practice Allopathy.

Unfortunately, Medical Councils have failed in their duties they have even failed in their basic duty of maintaining and updating the register of doctors. Secondly, there have been very few instances of doctors being penalised for negligence or violating the code of ethics. The enquiries on misconduct against doctors are held in secrecy. In fact when enquired, the Maharashtra Medical Council (MMC) was unable to produce even a record of action taken against erring doctors.

The Medical Councils' work on medical education has not been better. They have given permission to private medical colleges that are sub-standards, understaffed, not having their own hospitals etc. They have failed to resist the pressure from politicians for opening of new medical colleges that fail to meet elementary standards of medical education.

Recently the elections for the Maharashtra Medical Council (MMC) were held; these clearly brought out the way things are mismanaged in the Council. The elections are held through the postal ballot method. Since the registers of the council were not updated,

many ballot papers were sent to doctors who had died; names of doctors who had registered with the council were not found in the register. Doctors who were facing malpractice cases in the law courts were candidates in the fray. In addition there was massive rigging in the election process; some doctors standing for elections, paid money to the postal department and illegally took the blank ballot papers. In addition, blank ballot papers were collected in an organised manner from doctors across the state and stamped by the candidates or their agents. If this is the state of affairs of the Medical Council in a premier Indian state, one can well imagine the happening in other states.

Hospitals & Nursing homes

Recently, the Bombay group of 'Medico Friend Circle' sent out a letter/cessionaire to the Health Secretaries of all states and union territories to find out whether any law existed in the state for regulation of private hospitals and nursing homes and in the existence or absence of any such law, what exactly were such regulations. After reminders, ten states (Tamil Nadu, Punjab, Andhra Pradesh, Kerala, Goa, Mizoram, Gujarat, Orissa, Sikkim and Manipur) and one union territory (Daman and Diu) responded. To our great shock the responses were identical. None of these states have any laws, rules and regulations or even data for private hospitals and nursing homes. The government of Kerala specifically wrote back "This state government has no control over private hospitals/nursing homes functioning in this state at present, as there is no legislation now for this purpose". In addition to the ten states mentioned above, we know of two more states, Rajasthan and Madhya Pradesh which too do not have any law, rules and regulation over the private hospitals and nursing homes.

To our knowledge only Maharashtra and Delhi are having a specific law for registration and regulation of private hospitals/nursing homes. In Delhi there is the Delhi Nursing Home Registration Act (DNHRA), 1953 while in Maharashtra it is Bombay Nursing Home Registration Act (BNHRA), 1949. Thus the BNHRA was passed in the unified Bombay State, i.e. from 1949 to 1960 the BNHRA was covering both present day Gujarat as well as Maharashtra. Curiously, after bifurcation of the Bombay state in 1960, although many anti people acts (like Bombay Industrial Relation Act) were adopted by Gujarat, it chose not to adopt the BNHRA.

The broad features of the BNHRA and DNHRA acts are somewhat similar. The objectives of these acts are to provide for registration and inspection of nursing homes. The acts stipulate that every year the nursing home and hospitals are required to make an application for registration or renewal of registration to the local supervising authority, which could be the municipal corporation, municipality, district board, district panchayat and other like bodies constituted by the government. The applicant is supposed to provide detailed information on the staff strength and qualification, the availability and

functioning of various instruments, space for accommodating patients, operation theatre and others, sanitation facilities etc. Failure to register under the BNHRA could mean a fine of Rs 500 for the first offence and imprisonment for 3 months. Delhi Administration plans to increase the amount to Rs 5,000/ and imprisonment upto six months.

But having a law does not automatically lead to the proper regulation for the benefit of the people. Why are laws like BNHRA and DNHRA enacted after all ? Ostensibly to safeguard unsuspecting people who would be using hospital/nursing home facilities from the substandard care. In all such laws claiming to be regulatory to safeguard people, we have invariably found the state bureaucrats usurping all authorities while people given no power to help enforce the act and regulation. As a result, a pro people regulatory law, in the final analysis become an instrument of corruption and the people are denied quality care. Such a situation is exploited by the cynical neo liberals for doing away with all regulations. One simply doesn't know when free market combined with regulatory law failed to make hospitals and nursing homes to provide quality care, how would the market alone do the magic. We feel that the question of market votaries "Who will regulate the regulator?" must be answered straight, that in the human society there hasn't been any agency which could replace people forever. That is, people should be the supreme regulators aided by the administration and judiciary.

Realising that the BNHRA was not being implemented properly by the Bombay Municipal Corporation, the Bombay Group of Medico Friend Circle filed a public interest litigation in the Bombay High Court. During the proceedings, our suspicion turned out to be correct. The judges in their order observed that " The writ petition has served the purpose of activating the concerned authorities, who seem to have woken up and taken certain steps in the direction of implementation of the various provisions of the law". The municipal corporation during the hearings admitted that in several wards of the city, the officials had not visited the hospitals for the past two to three years consecutively. Many of the nursing homes were not registered with the local ward office as per requirement. It admitted that for the last three years it had not taken action against any hospital or nursing home nor collected fines. It has not prosecuted a single nursing home upto now. The municipal corporation could not submit a complete list of private hospitals and nursing homes functioning in Bombay to the court. Further it was discovered that although the BNHRA act is applicable to entire Maharashtra, its implementation was found to be restricted to the cities of Bombay, Pune, Nagpur and Sholapur. During the hearing of the case, the State Government issued a directive to all the municipal corporations, councils and municipalities in Maharashtra to remedy the situation but one still doesn't know the state of actual implementation. However while visiting some district head quarters and municipalities we found that the directive was not implemented as the local bodies did not have enough information regarding the Act, (one of them did not have ever a copy of the Act).

In Delhi, in a similar situation, the administration admitted that the DNHRA was not properly implemented and that only 134 out of 545 nursing homes were registered. The figure of 545 is also arbitrary as it is not based on any rigorous investigation. This is borne out by the fact that after the Bombay High Court appointed committees to supervise the Act, the number of nursing homes jumped from 500 odd two years back to 900 odd.

Lastly it must be kept in mind that laws BNHRA and DNHRA are necessary for the simple reason that the competition on the market has led to gross substandard and irrational care being provided in the private sector. However, the BNHRA and DNHRA are themselves deficient in the sense that they make registration mandatory but do not provide sufficient guidelines to make the minimum medical care standards mandatory.

Unplanned and Unregulated Growth:

The growth of private health sector has been unplanned, unregulated and unaccountable. This has been primarily due to the state's reluctance in not taking the responsibility of regulating, monitoring and making the private health sector accountable. The legal framework related to medical care delivery is such that it provides some avenues to consumers to fight cases for compensations but provides no say in deciding the minimum quality of care. Therefore, it is a big myth that the quality of care in private health facilities is the best. This is being spread mainly to discredit the public sector and to keep away all efforts at introducing some minimum and useful regulations over the quality of care and pricing in the private sector.

Nowhere in the developed world, including in the dogmatically pro-market USA, there exists as non-regulated health care market as in our country. The self regulation of providers is known more for its dysfunction and not for its stringency. The professional councils are either defunct as far as implementing ethics is concerned or are misused by the dominant vested interests of the profession or are toothless monsters barking but unable to bite. Although policy makers keep on talking about the maldistribution of services and medical humanpower, the current legislative and licencing provisions for practicing medicine, setting up hospitals and nursing homes etc are never seriously examined. For example, it is assumed that it is simply not possible to have a legislation or regulation to restrict entry of medical professionals into the over-saturated urban health care market (so that more doctors locate themselves in rural areas) simply because ours is a democracy and such legislation would violate freedom of the professionals. However it is conveniently forgotten that in our country the freedoms more fundamental (eg right to speak, organise, assemble) than to practice one's trade anywhere are put under "reasonable" restriction without giving a second thought or that in more developed market economy democracies (eg Canada) the governments have implemented regulations or legislations of that kind without getting labelled anti-democratic.

Same is true for the health care institutions. The state has provided soft loans, given tax benefits, concessions etc to the hospitals and nursing homes but done nothing to ensure that these institutions are properly registered with the appropriate authority, are equipped enough to provide reasonable and average standard of care and that they respect autonomy of the patient. This situation has resulted into gross imbalance between the actual growth of the physical services and the quality of services provided (and thus the benefits derived by the society).

Consumer Empowerment:

In last one and half decades, there have been wide ranging debates on the utility of regulations and legislations in the health care. The Reaganism-Thatcherism policies of extensive deregulations have taken great beating as they made access to care difficult, increased expenditure and lowered the quality. Now there are demands for reforms which could regulate the care and make it more sensitive to consumers.

The experiences of last several decades in direct command regulations as well as wholesale withdrawal of regulations have taught many lessons:

First of all, too many and too few regulations, that is, two extremes are counter-productive. Secondly, the physical controls have often resulted in wide-spread corruption, raising question like "who will regulate the regulators?" and so on. Thirdly, the laws and regulations should not be for increasing powers of the bureaucrats and politicians but for a desired end of making services accessible to the masses, improving quality, reducing cost and prices and to promote rational medical practices. Lastly, the laws and regulations are important primarily to empower people and only secondarily to provide powers to bureaucrats. The empowered people could be the best regulator of the regulators, they could make the services and providers accountable and above all, could promote humanisation of services

Health for the Millions