

# National Public Health Act - A Long-Awaited Legislation

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## Abstract

Every country works to enhance the wellbeing of its people and minimize the risks associated with their health, and this science is called 'Public Health'. Public health professionals try to prevent problems from happening or recurring through various measures. To firm up their perpetual efforts, several attempts have been made in India to formulate a legislative framework, but none corresponded to the re-emerging concerns. This paper attempts to analyse various existing legislations pertaining to the subject of 'public health', to understand the need of the hour.

**Keywords:** Public Health; Public Health Act; Public Health Law

In 1948, the World Health Organization (WHO) defined health with a phrase that modern authorities still apply:

*"Health is a state of complete physical, mental, and social wellbeing and not merely the absence of disease or infirmity."* (1)

In 1986, the WHO made further clarifications:

*"Health is, therefore, seen as a resource for everyday life, not the objective of living. Health is a positive concept emphasizing social and personal resources, as well as physical capacities."* (2)

Thus, health refers to the ability to maintain homeostasis and recover from adverse events.(3) Protection and promotion of the health of people and the communities where they live, learn, work and play is Public Health. While a doctor treats people who are sick, those working in public health try to prevent people from getting sick or injured in the first place. To define, Public Health is *"the science and art of preventing disease, prolonging life and promoting health through the organized efforts and informed choices of society, organizations, public and private, communities and individuals."* (4)

Two of the most fundamental tools that assist states in protecting their populations against threats to health are Public health law and public health policy. Though policy can exist without recourse to law, but where policy has been designed for a long term purpose, and where voluntary compliance has not proved successful, policy may need the heavier hand of law for implementation. (5,6)

In India, the central government provides a broader framework and direction to all programmes to be undertaken like smallpox, malaria, tuberculosis, HIV/AIDS, leprosy and others. These programmes are implemented all over the country uniformly. With respect to missions on health, National Health Mission (NHM), launched in the year 2013 subsuming National Rural Health Mission and National Urban Health Mission, has had significant achievements. Swachh Bharat Mission now Swachh Bharat Abhiyan, launched on October 11, 2014 throughout length and breadth of the country as a national movement, aims to achieve sanitation facilities, cleaner environment and surroundings for all. AMRIT launched in 2015 aims to reduce the expenditure incurred by patients on treatment of noncommunicable diseases like cancer and heart diseases. Government of India launched its flag ship initiative Ayushman Bharat in 2018 with two pillars of Comprehensive Primary Health Care and financial protection to citizens for higher level of care. While the CPHC scheme ensured expansion of coverage to include all citizens through strengthened primary health care by operationalization of AB Health and Wellness centres, this was being complemented by AB Pradhan Mantri Jan Arogya Yojana which promises health cover worth Rs. 500,000 to almost 40% of the population for treatment of serious ailments.

Furthermore, National Health Policy, 2017 (7) has changed context of health in many ways. The policy aims at providing health care in an ‘assured manner’ to all. There is shift from sick care to wellness and wellbeing of individuals. The Make in India model governs the manufacturing of medicines and devices. The wellness component including AYUSH is given special emphasis, especially yoga and similar physical activities. Other than the NHP, many other policies were announced from time to time that are closely linked with improving the health status of people. These are National Population Policy, National Nutrition Policy, National Water Policy and National Environmental Policy, to name a few.

The Constitution of India also charges every state for the improvement of public health among its primary duties (Articles 39(e), 41, 42, 47, etc.). Our Constitution has sufficient provision for the protection, promotion and growth of every individual, worker, groups and vulnerable population in relation to health and nutrition, and to achieve these goals, various acts are adopted. Broadly speaking, there are 124 direct and incidental legislation having a bearing on the public health dimensions. Among these, there are 67 Acts administered by the concerned ministries of the Indian government. These include Births, Deaths and Marriages Registration Act, 1886; Epidemic Diseases Act, 1897; Indian Red Cross Society Act, 1920; Drugs (Control) Act, 1950; and Consumer Protection Act, 1986, etc. (8)

Additionally, the Indian judiciary has been a protagonist in declaring health as an invincible part of fundamental ‘Right to Life’ guaranteed under Article 21 of the Constitution of India in various landmark judgments.(9–11) Furthermore, in another case law(12), the court went on to endorse the state’s responsibility to maintain health services.

Nonetheless, it is prominent that India, being the second most populous country, is undergoing a demographic, epidemiological and environmental transition, adding to the triple burden of unfinished agenda of RMNCHA+N, communicable including emerging/re-emerging infectious diseases and

noncommunicable diseases. Climate change is also increasingly becoming a concern as a factor in the emergence of infectious diseases. (13)

These challenges can be managed by changing the health behaviour through one of the basic approaches like regulatory approach, service approach and health education approach. Though health education is the ideal approach but many times regulatory approach is also necessary considering the seriousness of the issue.

Public health law in India is scattered through many legislative statutes and administrative documents which developed historically. Also, the incidental laws are not specific to any hazard or an entry point, but relevant for containment and mitigation of disease outbreaks. Legal issues in public health, including those that drive litigation, occur when misalignments between such desultory legislations, regulation, and policy cause legislators or their delegates to misuse (either overstep or underuse/neglect) or misinterpret their powers.

Thus, for a greater understanding and enforceability of the many separate pieces of legislation, efforts need to be made to codify public health law. Such reform will enhance understanding in the legislative, judicial, and administrative branches of government as well as in business, nongovernmental organizations, and the community. Furthermore, to strengthen the health care system and achieve India's international commitments under various instruments such as International Health Regulations (IHR), 2005 and the UN General Assembly Resolution on the Prevention and Control of NCDs, 2011, a focused legislative approach, called the '*Public Health Legislation*', is a prerequisite.

The need for legislating Public Health has been long recognized in our country, and the central government also made attempts, twice, in 1955 and in 1987, to persuade states to pass legislations, based on what it called the 'Model Public Health Act'. However, only 8 states made efforts and currently have their own public health laws. Further attempts have also been made by the government to ensure good governance in a welfare state but all in vain.

Standing at the crossroad, the Government of India earnestly realized its constitutional duty of improving public health and passed the Disaster Management Act in 2005 with the primary objective of preparedness, prevention and early planning towards disaster. Although the act undoubtedly filled a huge gap in the scheme of governmental actions towards dealing with disasters, it cannot be ignored that it failed to identify 'disaster prone zones'. The Act portrays every disaster as a sudden occurrence and completely fails to consider that disasters can be progressive in nature as well. Added to that, delayed response, inappropriate implementation of the plans and policies, and procedural lags plague the disaster management scheme in India.

With the International Health Regulations, 2005 coming into force in 2007 as a soft international health law, India acted proactively and drafted the National Health Bill, 2009.(14) Though the Bill provides for protection and fulfilment of the right to health and wellbeing, health equity and justice, and a robust health care system, it entailed significant financial expenditure and was soon discontinued. Further, health being a 'State subject', there was limited adoption by the States of the other model laws. Also, the need for an

enforceable statutory structures to ensure intersectoral convergence on social determinants of health at national, state and district levels remained unfulfilled.

While the ongoing transitions and changes were not enough, the disastrous COVID 19 pandemic further caused tremendous human suffering with serious and long term implications for people's health, wellbeing and quality of life, and exposed the country's healthcare system to glaring inadequacies. It embarked on the Indian government to hone out public health strategy provided under the various national laws and policies. With the incidence and prevalence of COVID 19, the Ministry of Health & Family Welfare (MoHFW), Government of India on March 11, 2020, with no other option at hand, asked the states to invoke the provisions of the Epidemic Diseases Act, 1897 which was promulgated to tackle the epidemic of bubonic plague in colonial India, with the aim of better preventing the spread of "dangerous epidemic diseases". However, it was soon comprehended that the antiquated 'Epidemic Diseases Act, 1897'(15) which merely covered four provisions to prevent the spread of Dangerous Epidemic Diseases, is ineffective in supporting public health surveillance and responding comprehensively to public health emergencies arising from epidemics/disasters and thus, needs to be replaced. Although the act was enforced stringently by a few states to fight the pandemic, the balance between the use of power and the rights of individuals was compromised due to lack of procedural guarantees in the said act. On April 22, 2020, the Government of India announced the promulgation of The Epidemic Diseases (Amendment) Bill, 2020, to amend the Act. However, the amendment merely added the provisions to punish those attacking doctors or health workers.

The government was compelled to clamp the 125 year old Epidemic Diseases Act, 1897, in March 2020 by social distancing and the voluntary public curfew norm in the country. It was the Disaster Management Act, 2005 under which the nationwide lockdown of 21 days was declared on March 25, 2020 by the Indian Government and was then extended until May 31, 2020. The emergency created by COVID 19 pandemic being one of 'grave concern', the same was treated as 'disaster'(16), but such interpretation will not serve any purpose in effectively managing the future epidemics. There are intricacies and technicalities associated with the health emergency that are not covered by this legislation.

Thus, with an assessment of the above and having no national legislation on the subject in place, the retort is quite apparent - a central law on public health.

To ensure nationwide uniformity and applicability, a central legislation needs to be drafted under Entries 13 and 14 of List of Schedule VII and Article 253 of the Constitution of India, with a wise rationale of *having a comprehensive law to deal with essential public health functions, to give these functions and powers a statutory backing, to respond to emerging Public Health Challenges, and to ensure intersectoral convergence on social determinants of health at national, state, district as well as at block levels.*

The legislation shall also address the growing concern of noncommunicable diseases (NCDs) recognized as a major challenge for sustainable development by the 2030 Agenda for Sustainable Development. To lessen the impact of NCDs on individuals and society, a comprehensive approach is needed requiring all sectors, including health, finance, transport, education, agriculture, planning and others, to collaborate for reducing the risks associated with NCDs, and to promote interventions for their prevention and control. A

national legislation can help in effectuating these efforts by providing them legal backing thereby enhancing country's economic and health security, and progress towards the Sustainable Development Goals (SDGs).

The provisions of the act shall be so designed so as to frame a cohesive legislation encompassing all the areas of health including social determinates, developing a nuanced understanding of the role of government in creating the conditions for people to be healthy as well as the reasonable limits that governments may place on personal freedom to promote the health of the population at large. Thus, the Act should aim towards:

- ◆ One Health approach
- ◆ Protecting and promoting public health
- ◆ Controlling the risk to public health
- ◆ Promoting the control of infectious diseases
- ◆ Preventing the spread of infectious diseases
- ◆ Improving the social determinants of health
- ◆ Recognising the role of local governments, along with the centre and state, in protecting public health
- ◆ Monitoring diseases and conditions affecting public health including NCDs. (14,17,18)

The salient provisions shall include:

- ◇ Listing out 'essential public health functions' with specific mention of One Health approach
- ◇ A four tier governing structure: the National Public Health Authority, State Public Health Authority, District Public Health Authority and Block Public Health Units.
- ◇ Provisions pertaining to:
  - Infectious diseases and their prevention
  - Social determinants of health such as water, environment, sanitation, waste management
  - Inclusion of mental health
  - Education & Awareness
  - Non Communicable diseases especially their prevention and control
- ◇ Emergency Preparedness and Response
- ◇ Regulation of Private Sector
- ◆ Penalty Provisions (14,17,18)

In addition to the above, the act should be able to clearly distinguish between the powers of the authorities in regular and pandemic times. Further, being inclusive towards the Indian System of Medicine (AYUSH), the act should also make space for public private partnership for health care service delivery. The Boards/Committees/authorities should include experts from all major areas of health including, environmental health, occupational health, mental health, social determinants of health, public health engineering, rural and urban development, etc. Thus, the act should focus on inter sectoral convergence, however, it should avoid a rights based approach considering the current state of affairs in the country in terms of ground level reality. Nonetheless, a well defined redressal mechanism backed by the principles

of accountability and transparency would enable swift resolution of disputes minimizing the scope of legal issues.

### Conclusion:

Every public health legislation is ultimately aimed at improving the public health standard in the country. But its utility depends on its proper implementation. It is also necessary to emphasize here the fact that no public health legislation can remain stagnant. It has to evolve with the changing health scenario and keep up with the scientific and technological advancements and standards, as well as the evolving socio economic conditions, ethical norms and legal compliances. In a country like India, though there have been consistent interventions to address public health concerns in the past, there exists a need for a contemporary framework to appropriately use modern legal tools for complex health challenges. The laws that are put forward today need to be rewritten and a lot of rational thinking needs to be done for the problems faced by the country in the present scenario. Thus, where the health indicators are yet to reach the desired targets, effective implementation of public health legislations may improve the picture to a certain extent.

Therefore, this subject, which is no more debatable but a necessity, should now be addressed, enacted and implemented striking a balance between ethics, laws, dignity, freedom and yet curtail the outbreak of diseases and promote positive health.

The system is ready for the change and so is the country!

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