

FOREWORD

Dear discerning reader,

The Constitution of India puts an obligation on the government to promote and protect the health and well-being of Indians. We are aware that every incoming government puts tremendous emphasis on the health of its citizens in terms of policy and planning. After all, “health is wealth”, isn’t it?

But how would you feel if I told you that “health” is one of the most neglected areas of law and policy? I will explain.

We have heard stories of lack of facilities in hospitals and want of better (basic) standard of services. Do you know that we don’t have a law that guarantees a common minimum standard of healthcare services? Yes, we have laws which state that a hospital should have a minimum number of beds or equipment, but we don’t have a pan-India law that stipulates how frequently every hospital bed should be cleaned and how often certain equipment should be serviced so that it can provide consistent results. Imagine one of your loved ones on a hospital bed with a life support system, and you will understand why such a law is important.

Let me give you a recent example to which all of you may co-relate instantly. Personal Protective Equipment (basically body clothing, face masks, eye cover, gloves) are the single most crucial article of defence against COVID-19 virus. At the time of writing this (May 2020), no vaccine is available in the market to protect us from the virus. If I ask you to guess which government department is regulating the quality of PPEs, you may say some department in the health ministry, right? You are wrong. If I ask you, whether there are enforceable quality standards in place for manufacturing PPE for everyone, not just the government, I would perhaps get an answer which sounds something like: “Yes, obviously.” Well, you will be wrong again. It is the Ministry of Textiles that is currently regulating (very topically) the quality of PPEs sold in India, and that too only those PPEs that are procured by the government. “But why?” you may ask, after all it defies common sense only to regulate PPEs that are purchased by the government especially since COVID-19 will not differentiate between who is with the government and who is not. What about the safety of the doctors in private hospitals? I don’t intend to stir a controversy, but please know this: Because there was no law to regulate PPEs when COVID-19 virus hit us, our health ministry was helpless. The Ministry of Textiles had to intervene and fall back on an emergency legislation (the Essential Commodities Act, 1955) to regulate the quality of PPEs and this limited how much control it could exercise on PPEs. Our government is only as powerful (or limited) as the laws it makes.

Let me baffle you with some more examples. Indian government regulates the cost of drugs and some medical devices on the ground that they are 'essential' for our patients. But the same government does not regulate the cost of healthcare for life saving medical procedures and essential diagnostic tests; even though several independent surveys have shown that the cost of drugs and medical devices is actually a very small component of total cost of hospitalization. We all know that minor diseases such a cataract of the eye, and even serious diseases such as cancer, can be cured through medicines and devices, but hospitals and companies cannot talk about products that actually help and are effective directly with you, thanks to an anachronistic law (Drugs and Magic Remedies Act, 1954) which explicitly stops them from doing so. A businessman needs a license to sell paracetamol, but he/she does not need a license to sell ayurvedic medicines made out of poisonous substances. Our drug laws regulate quality of medicines given to animals, but our food laws do not regulate quality of food given to animals, including animals some of us consume as food. The list can go on ad-nauseam.

However, there has never been more need, or a better time, than today to deep-dive into laws that are concerned with our health & well-being, which I (fondly) refer to as health laws. The COVID-19 crisis has brought discussion on alcohol hand rubs, vaccines, infra-red thermometers, ventilators, immunity-boosting juices, alternative medicines (ayurveda and homeopathy), hospitals and just basically anything that gives us a hope of a safer tomorrow, into our drawing rooms.

What's more? A new product liability regime is round the corner, our medical device law was overhauled very recently, and telemedicine as a medium of healthcare delivery has now been permitted officially. These developments, to name a few, will bring their own unique challenges and present never-before opportunities for development of new jurisprudence. So now is the time to act, as lawyers or policy and regulatory professionals, and help draft better health laws that protect our today and guarantee our tomorrow. Now is the time to re-look at our policies and challenge the assumption on which they were made, because it directly affects all of our health and well-being.

And it is in this context that I am very pleased to present the sixth volume of this venerable journal to you. This volume has a razor-sharp focus on health laws, and the topics authored by contributors are extremely relevant. I hope that you find them to be as compelling a read as I did.

I have had the pleasure of writing this foreword, and of supporting the publication of this volume, for which I remain grateful to the publishers.

I sincerely hope that this volume, with its carefully curated and excellent content, is able to light a spark that leads to something even greater and more permanent in you, the reader.

My regards and thanks to the hard-working group of editors and researchers!

Anay Shukla

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