

India

# Why is the Private Hospital Sector so Difficult to Regulate?

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31 May 2018

**ge Coutesy: The Indian Express**

News about rampant overcharging of patients and unethical practices in the private medical sector in the National capital Region (NCR) hit the headlines last year after several such incidents were reported from some of the most 'prestigious' corporate hospitals in the NCR. Since then the overall consensus surrounding debates on the issue is that the private medical sector needs to be regulated much more effectively. The catch however lies in determining how effective regulation can be ensured.

## **Clinical Establishments Act of 2010**

The Delhi Government has recently announced some proposals about regulation of the private medical sector (which we come to later). It is important to remember, however, that with precisely such a purpose in mind, the Clinical Establishments Act, 2010, was adopted by Parliament. The Ministry of Health and Family Welfare's website says that: **"The Clinical Establishments (Registration and Regulation) Act, 2010** has been enacted by the Central Government 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 provided by them".

So what happened after 2010? The website of the Directorate General of Health Services says "Clinical Establishments Act 2010 after passage by the Parliament came into force on 1-3-2012 came into force in the States of Arunachal Pradesh, Himachal Pradesh, Sikkim and Mizoram and all union territories except Delhi. Subsequently 6 more States, namely Bihar, Jharkhand, Rajasthan, Uttar Pradesh, Uttarakhand and Assam, have adopted the Act. Thus the Act as on date is applicable in 10 States and 6 UTs. Rest of the States and Government of Delhi have not taken any action so far for adoption of the Act".

Being a Central Act dealing with a subject (health) that is on the concurrent list, the responsible to adopt the Clinical Establishments Act (CEA) or another piece of legislation with the same purpose, lies with states. Clearly passage of the Act (or passage of similar Acts, as in Karnataka and West Bengal) has been painfully slow across the country. However what is much more disturbing is that there is no credible evidence anywhere in the country of the any of these legislations being effectively enforced

## **Active opposition from the medical profession**

A huge stumbling block to both adoption of an Act regulating Medical Establishments and of its implementation, has been the active and strident opposition from the medical profession. These protests have been led by the powerful hospitals sector, increasingly populated by corporate owners. In many places protests have been led by doctors who are prominent in many government appointed committees and task forces. For example Devi Shetty, who was in the forefront of agitations against an amendment to the Karnataka Private Medical Establishments Act, has been recently appointed to a 'High Level' group "to examine the strengths and weaknesses for enabling balanced expansion of health sector". Agitations and strikes by private doctors have obstructed implementation in several states including Karnataka, Haryana, West Bengal, Rajasthan, etc. In almost all states the initial ambition of the Act has been rolled back after protests by private doctors and their front organizations. In Karnataka, where key amendments proposed were rolled Act, the old Act has been in place since 2007, but not a

single complaint has been registered under the Act till date. In many states the respective Acts are in abeyance because of legal challenges.

It needs to be underlined that protests against regulation have been led by corporate hospital chains and do not represent the interests of most doctors in the country. The medical profession faces widespread criticism from different quarters because doctors in the private sector are caught in a web spun by corporate bosses. They are forced to comply with corrupt practices because the system of private medical care is built around a web of corrupt practices – cut practice (where commissions are exchanged between doctors and providers of diagnostic services, or between doctors who refer patients to each other), targets that need to be fulfilled by individual doctors regarding number of procedures that must be done, and rampant overcharging which benefits the hospital management. A few top doctors do make huge amounts of money through such a system but a majority are helpless victims of the system. Several doctors do manage to stay out of this corrupt system and practice ethically, but many are drawn into it. Corporate hospitals are now the biggest threats to the survival of small nursing home and individual general practitioners. Unable to survive they are being forced to become franchisees of the corporate sector and are being forced to adopt the predatory practices of the corporate sector. Individual practitioner now can end up as mere conduits to channelize ‘cases’ into the hospital system.

### **Governments are captive to the market logic**

Why don't Governments, in states or at the Centre, bite the bullet and push through effective regulations? The first reason is that there has been insufficient investment in building regulatory capacity. Cost and quality can be regulated based on notified standard treatment guidelines and standardize methodologies for their application. This requires institutional mechanisms to be robust and have technical expertise as well as integrity. Regulations fail to be effective when doctors in regulatory panels bail out fellow doctors and errant doctors are able to hide behind a maze of technicalities. Computing fair costs of treatments also requires rigor and expertise. It is not enough to regulate the cost of ‘packages’ for specific interventions (though even the Delhi Government advisory doesn't talk of regulating package costs but of transparency) as most life threatening conditions do not come in pre-defined ‘packages’.

Another issue needs to be noted. Wherever legislations have been adopted (including the Clinical Establishment Act, 2010), concreted proposal to cap costs of treatment in private hospitals are missing. At best the different Acts propose that ‘expert committees’ will be set up to review costs and propose ways to regulate costs. It doesn't require a prophet to predict how such proposals will be dealt with. The bottom line is that there is no comprehensive proposal, anywhere in the country, that puts a ceiling on cost of treatment in private hospitals. There are vague proposals, instead, that costs should be ‘transparent’!

However, the prime reason is ideological. Governments, having completely imbibed the ideology that the private sector is efficient and the market is supreme, are complicit in the whole process of the private takeover of hospital based care. The Niti Ayog has been a prominent votary of this ideology and it effected changes to the National Health Policy in order to delete negative references to the Private medical sector. It is thus no mystery why Devi Shetty gets nominated to a high level panel that will shape the future of health care in India. Keeping him company in the panel is Naresh Trehan, of Medanta City – another leading representative of the corporate hospital sector. When the Union Minister of Health urges states to adopt the Clinical Establishment Act, it is clearly not a serious comment as it contradicts several actions of the Central Government that are designed to roll out the carpet for the private sector.

The affinity of the BJP led government for private enterprises is known and doesn't bear repeating here. Its imprint to be seen in the grandiose health insurance scheme, called *Ayushman Bharat*. Apart from the simple fact that the scheme has been announced without allocating any resources for its financing (it would cost anything between Rs.50,000 to Rs.100,000 crores for effective implementation), the entire scheme is based on a model where healthcare is to be provided, overwhelmingly, by private providers through an insurance mechanism. Outsourcing of care, financed by public money, to a corrupt unregulated private sector is the BJP government's prescription for the health sector. It should be remembered that at the height of the agitation against the Karnataka Private Medical Establishments Act,

state BJP State president B.S. Yeddyurappa (and then Chief Minister in waiting!) had said if voted into power in the next election, his government "will scrap the amendments within 24 hours of the BJP coming to power".

### **Proposals by the Delhi Government**

The Delhi Government has recently announced measures to regulate private hospital care, responding to the public uproar against several cases of malpractice and overcharging in the NCR. There are some good proposals, including those which bar charging significantly more than the procurement price in the case of drugs, devices, and other consumables; and the proposal to provide discounts when death occurs in the first 6 or 24 hours of admission. However other proposals are vague and talk of transparency in costs and not actual capping of costs. The biggest issue is that the proposal comes as an advisory, pending amendment of the 'Delhi Nursing Homes Act'. It is not clear why the Delhi Government is not actively considering adoption of a comprehensive Clinical Establishments Act, to replace the Delhi Nursing Homes Act. Probably the ambiguity and some of the vague proposals are escape routes inserted by the Indian Medical Association, whose former President was part of the panel that put together the recommendations.

### **Why are we not discussing public services?**

It would be prudent to step back and ponder that the entire discussion on treatment costs is taking place without any reference to public health systems. People, including the middle classes and poor people, are forced into the private sector because public services are often not easily available. India spends just 1.1% of its GDP on public healthcare services against a minimum of 5% recommended by the WHO. Successive budgets of the BJP government have slashed allocation for healthcare. The Niti Ayog has even proposed that District hospitals in the public sector should be handed over to private entrepreneurs. The best regulator of quality and cost of care in private facilities is a functioning public system. When private hospitals are forced to compete with a functioning public system, both quality and costs improve. That is why in our neighbor, Sri Lanka, 90% of the people get treated in public hospitals and Indian corporate chains have struggled to get a toehold in the hospital sector in Sri Lanka. That is why the National Health Service (NHS) in the UK is still revered as a national institution (and efforts to privatize it are being opposed by the people from all walks of life).

It is important that the discussions on regulation of the private hospital sector are not carried out in isolation. Unless public services improve, the private sector will continue to expand and prey on people's vulnerability when they are sick.