

Tax – A Barrier to Public Health Care Access in India

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ABSTRACT

Access to pharmaceutical drugs is a cornerstone of public health and human welfare, particularly in a diverse and populous nation like India. Despite various government measures, such as the National List of Essential Medicines (NLEM), The Drug Price Control Order (DPCO), and the introduction of the Goods and Services Tax (GST) the issue of affordability and accessibility of medicines still remains unchanged. Out of India's 1.324 billion population, approximately 21.9% live below the poverty line, and out-of-pocket health expenditure (OOP) accounts for 62.6% of total health expenditure, one of the highest in the world. Medicines constitute a significant share of these expenses, leading many households to incur substantial financial risks. This study aims to analyse the impact of tax on the accessibility of health care in India. This research seeks to provide a comprehensive understanding of how taxation policies influence public health outcomes and assess whether GST aligns with the constitutional mandate of ensuring access to health as a fundamental right. By exploring the intersection of taxation, healthcare, and human rights, this study aims to contribute to the ongoing discourse on equitable access to medicines and offer policy recommendations to enhance drug accessibility in India.

Key words: Goods and service tax, Pharmaceutical Drugs, Fundamental rights

I. INTRODUCTION

In India out of 1.324 billion people around 21.96%¹ are below the poverty line and their out-of-pocket health expenditure were about 62.6%² which is one of the highest in the world and this out-of-pocket health expenditure constitute a significant share of total healthcare costs, with many households incurring financial risks due to medical expenses³.

Access to pharmaceutical drugs is a cornerstone of public health and human welfare, particularly in a diverse and populous nation like India. Medicines alleviate human suffering and play a pivotal role in sustaining economic productivity and reducing the burden on healthcare systems. Availability and access to a healthcare facility are a basic fundamental right that is recognised under various international conventions. What does it mean to access medicine? According to WHO (World Health Organization), access to medicines is “having medicines continuously available and affordable at public or private health facilities or medicine outlets that are within one hour's walk from the homes of the population”. The affordability and availability of medicines are directly related to the strength of the health care system, but the high prices of the medicines, prevalence of non-communicable diseases (diabetes, hypertension), and increasing demand of patients are the major obstacles in this regard⁴.

The accessibility of pharmaceutical drugs in India has long been a topic of considerable concern and debate. As a developing nation with a vast population, the Indian healthcare system faces numerous challenges, including the affordability and availability of essential medicines and it is influenced significantly by government policies, particularly taxation frameworks.

This Study aims to analyse how the imposition of tax impacts the accessibility of pharmaceutical drugs in India. By examining the intricate relationship between taxation, pricing, and distribution, this research aims to provide a comprehensive understanding of how economic policies influence public health outcomes. This study is vital for understanding the how the taxing policy affects the affordability and accessibility of pharmaceutical drugs in India, addressing significant public health concerns.

II. CURRENT TAX FRAMEWORK FOR HEALTHCARE IN INDIA

Tax is the compulsory extraction of money by the public authorities for the public services and Article 265 of the Indian Constitution empowers authority of law to levy tax and Schedule VII gives powers to make laws within their respective spheres.

In the healthcare sector before the advent of goods and service tax the pharmaceutical drugs were subjected to numerous taxes like excise duty, sales tax, service tax that has been imposed by the central government and Value added tax, entry tax this has imposed by the appropriate state governments and thus the

pharmaceutical drugs were subject to taxation at each stage of the supply chain, from manufacturing to distribution and retail and this has caused huge burden to consumers and resulted in high household expenditure which affected the people in accessing the essential medicines for their survival.

After the advent of goods and service tax by 101st constitutional amendment Article 246A empowers the parliament and state legislature to make laws regarding supply of goods or services or both by central government or state legislature and the rates for such goods and services will be decided by goods and service tax council (GST Council) as per Article 279A of Indian Constitution and the current rates on pharmaceutical drugs has been decided by GST Council and notified by notification 1/2017⁵. The tax is levied under 5 different rates namely NIL rate, 5%, 12%, 18% and 28%⁶ based on Chapter 30 of the HSN code of the item.

Currently human blood and all components of human blood, Sanitary napkins or tampons, all types of contraceptives, were taxed at NIL rates and Animal or human blood vaccines, Oral rehydration salts, COVID-19 diagnostic kit etc, Insulin, Diagnostic kits for detection of all types of hepatitis, Artificial kidneys, Artificial limbs, Coronary stents/stent systems for use with cardiac catheters were taxed at 5% and ayurvedic, homoeopathic, Unani, Siddha, or biochemical systems medicines, Toothpowder etc.. were taxed at 12% and Nicotine polacrilex gum, Products for oral or transdermal application or application otherwise containing nicotine and intended to assist tobacco use cessation, Hygienic or pharmaceutical articles such as teats, hot water bottles, Ice bags, etc., Preparations for oral or dental hygiene and dental floss, sold in individual retail packages were taxed at 18%.

All Non-Intensive Care Unit (ICU) / Neonatal Intensive Care Unit (NICU) / Critical Care Unit (CCU) / Intensive Cardiac Care Unit (ICCU)/ room rents in a hospital or clinical establishment in excess of Rs 5,000 per day Will be responsible for GST at 5% (without input tax credit).

Import of drugs attract IGST and customs duty. Following is the bifurcation of applicable taxes: Basic Customs Duty: 10% on Customs assessable value, Social Welfare Surcharge: 10% on BCD, IGST: 5%/12%/18% on the value after adding to the assessable value both Customs Duty and Basic Customs Duty and Social Welfare Surcharge.

III. EQUITY IN HEALTHCARE: EXAMINING THE SOCIAL JUSTICE IMPLICATIONS OF TAXING PHARMACEUTICAL DRUGS

The right to access medicines is grounded in various international human rights instruments, like Article 25(1) of the Universal Declaration of Human Rights which says that “Everyone has the right to an adequate standard of living for health like food, clothing, shelter, medical care, and necessary social services for himself and of his family”⁷, Article 12 of the International Covenant on Economic, Social and Cultural Rights states that “Everyone has the right to enjoyment of the highest attainable standard of physical and mental health. It includes right to access medicine under the ambit of health”⁸, Goal 3 of the SDGs aims to “ensure good health lives and well-being for all at all ages”. Target 3.8 specifically addresses “universal health coverage”, including access to essential medicines and vaccines, and Convention on the Rights of the Child (CRC)⁹, and the Convention on the Rights of Persons with Disabilities (CRPD)¹⁰ and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)¹¹, all touch upon the right to health which impliedly include access to medicines as well.

The right to access medicine is a fundamental component of the right to health, recognized globally as a basic human right. In India, this right is enshrined in the Constitution and has been reinforced through various legislative and judicial measures. The right to health, including access to medicine, is implicit in Article 21, which guarantees the right to life and personal liberty, and this has been expansively interpreted by the judiciary to encompass the right to health and medical care. In addition to constitutional provisions, various legislative measures have been enacted to promote access to medicine in India. The Drugs and Cosmetics Act, 1940, regulates the manufacture, sale, and distribution of pharmaceutical drugs, ensuring their safety, efficacy, and quality. The National Pharmaceutical Pricing Authority (NPPA) regulates the prices of essential medicines to make them affordable and accessible to all sections of society. Moreover, the National Health Policy, 2017, emphasizes the importance of ensuring universal access to essential healthcare services, including medicines, as a key priority.

The Supreme Court of India has held that the right to health is an integral part of the right to life under Article 21, thereby affirming the state's obligation to ensure access to healthcare services, including essential medicines in various instances which include

In **Indian Drugs & Pharmaceuticals Ltd. v. Workmen**¹² (2007), in this case, the Supreme Court emphasized the importance of access to affordable medicines for all sections of society. The Court held

that the pricing of essential drugs should take into account the interests of consumers and ensure that medicines are accessible to the general public at reasonable prices.

In **Abdul Jabbar v. Government of NCT of Delhi**¹³ (2008), The Delhi High Court in this case recognized the right to health as an integral part of the right to life under Article 21 of the Constitution. The Court emphasized the government's obligation to provide access to essential healthcare services, including medicines, to all citizens, particularly those from marginalized and vulnerable communities

Taxation is a common tool used by governments to raise revenue for public services, including healthcare. However, when pharmaceutical drugs are subjected to taxation, it can have adverse effects on health equity. Firstly, taxing essential medications places a financial burden on vulnerable populations, including low-income individuals and those with chronic illnesses who rely on regular medication. This financial strain can force individuals to forgo necessary treatments, leading to poorer health outcomes and perpetuating cycles of poverty and ill health.

If we take a closer look at the shift from the earlier VAT regime to the current GST system, and we can find a quiet but troubling change the one that has caused real consequences for those who are already struggling with health and hardship. Under the previous VAT structure, medicines used to treat common but serious conditions like diabetes and malaria were taxed at just 4%. Today, those same medicines fall under a 5% GST slab. Further Ayurvedic medicines, which once attracted 4% VAT and 1.5% excise duty, are now taxed at a 12% GST. Devices like pacemaker that are critical for heart patients were taxed at just 4% earlier, but now they too are subject to a 12% GST rate.

These may look like small percentage changes on paper, but in the real world, they add up and they hit hardest where it hurts most. For patients with chronic illnesses or life-threatening conditions, even a slight increase in cost can mean delaying or forgoing treatment altogether. These are not luxuries; these are essential tools for survival. And yet, they are taxed as though they were optional. The growing tax burden on essential medicines and devices raises an urgent question: Are we doing enough to protect the right to health for all?

What's even more disheartening is that the current classification of drugs into "essential," "non-essential," and "life-saving" fails to reflect the realities of those living with illness. This system, while perhaps administratively convenient but the affordability and accessibility became afterthought as they should be the foundation of healthcare policy.

Furthermore, taxation on pharmaceutical drugs can widen existing health disparities. Marginalized communities, such as racial minorities and socioeconomically disadvantaged groups, are already disproportionately affected by barriers to healthcare access. Taxing medications further compounds these disparities, as those with limited financial resources are less able to afford essential drugs, exacerbating health inequalities along socioeconomic and demographic lines.

The right to access medicines is unequivocally recognized as a fundamental human right, essential for the preservation and enhancement of health and well-being. However, the imposition of taxes on pharmaceutical drugs often presents a significant barrier to the realization of this right.

A) Interaction Between Right to Access Medicines and Taxing Pharmaceutical Drugs

The interaction between the right to access medicines and taxing pharmaceutical drugs is complex and multifaceted. On one hand, the right to access medicines is recognized as a fundamental human right essential for the enjoyment of the highest attainable standard of health. This right encompasses the availability, accessibility, affordability, and quality of essential medicines necessary for the prevention, treatment, and management of diseases. On the other hand, taxing pharmaceutical drugs can impact individuals' ability to exercise this right by increasing the cost of medications and creating financial barriers to access.

Impact on Accessibility:

High taxes imposed on pharmaceutical drugs can exacerbate existing barriers to healthcare access, particularly for vulnerable populations who are already marginalized or economically disadvantaged. The uninsured, underinsured, and marginalized communities often face numerous obstacles in accessing healthcare services, ranging from financial constraints to systemic inequities. When compounded with the additional financial burden of taxation on medications, these barriers become even more formidable, hindering individuals' ability to obtain essential medications. For uninsured or underinsured individuals, the cost of medications represents a significant financial burden, often competing with other essential expenses such as housing, food, and utilities. High taxes on pharmaceutical drugs further escalate the cost of medications, stretching already limited resources to the breaking point. As a result, individuals may be

forced to make difficult trade-offs, sacrificing their health needs to address more immediate financial obligations.

Impact on Affordability:

The impact of taxation on pharmaceutical drugs extends beyond mere economic considerations; it directly affects individuals' access to essential medications and consequently their health outcomes. When pharmaceutical drugs are subjected to taxation, their cost increases, often making them prohibitively expensive for individuals, especially those from low-income backgrounds. This heightened financial burden places significant strain on already limited resources, forcing individuals and families to make difficult decisions about prioritizing their health needs amidst competing financial demands.

For individuals living pay check to pay check or relying on fixed incomes, even a slight increase in the cost of medications can have profound implications. The choice between purchasing essential medications and meeting other basic needs such as food, shelter, or education becomes a daily reality. In many cases, individuals may be forced to forego or ration their medication, leading to suboptimal treatment adherence or discontinuation of treatment altogether. This, in turn, can result in worsened health outcomes, increased frequency of complications, and even preventable hospitalizations.

The consequences of being unable to afford essential medications are particularly pronounced for individuals managing chronic conditions or serious illnesses. For example, a diabetic individual may struggle to afford insulin, a life-saving medication necessary for managing blood sugar levels. Without access to insulin, they are at heightened risk of developing diabetic complications such as kidney failure, blindness, or cardiovascular disease, all of which can significantly impact their quality of life and life expectancy.

The classification of drugs into essential and non-essential categories and taxing at 5%, 12%, 18% and 28% is indeed a complex and multifaceted process that involves various factors, including public health priorities, disease burden, therapeutic value, and affordability. Every person's health condition is unique, and their medical requirements can vary significantly based on factors such as age, gender, genetic predispositions, lifestyle factors, and pre-existing medical conditions. As such, a one-size-fits-all approach to medication classification may not adequately address the diverse healthcare needs of individuals. The diverse healthcare needs of individuals underscore the limitations of a standardized, one-size-fits-all approach to medication classification and management. Tailoring medication regimens to account for age, gender, genetic predispositions, lifestyle factors, and pre-existing medical conditions is essential for optimizing therapeutic outcomes, minimizing adverse effects, and promoting patient-centered care. Embracing a personalized approach to medication management acknowledges the unique biological, psychological, and social dimensions of health and empowers healthcare providers to deliver tailored interventions that address the individual needs and preferences of each patient. Many medical conditions require multi-faceted treatment approaches involving a combination of medications, lifestyle modifications, and therapeutic interventions. For example, individuals with chronic diseases such as diabetes, hypertension, or autoimmune disorders may require different tailored treatment regimens that encompass multiple medications to manage their condition effectively pricing of such drugs at different and high rates disturbs the affordability of medicines.

IV. CONCLUSION

In today's world, the introduction of the Goods and Services Tax (GST) was hailed as a progressive step—meant to simplify our taxation system and fuel economic growth. But amidst these well-meaning reforms lies a troubling contradiction: the taxation of pharmaceutical drugs. It's a policy decision that feels disconnected from human realities. By taxing essential medicines, we are, knowingly or unknowingly, placing a price tag on health that comes at a heartbreaking cost for the most vulnerable among us.

Healthcare, at its core, should be grounded in equity and compassion. Yet, when we impose GST on life-saving drugs, we drift away from these values. For millions of people those who are uninsured, underinsured, or simply struggling to make ends meet this tax isn't just a line item on a receipt. It becomes a real barrier, one that forces impossible choices: medicine or meals, insulin or school fees, antibiotics or rent.

These are not hypothetical scenarios. They are the harsh realities faced daily by countless families across the country. For someone living on the edge of poverty, every rupee matters. And when the cost of essential medicines is inflated by taxes, it's not just an economic issue—it becomes a matter of life and death. This system, in effect, punishes people simply for being poor, further deepening the gap between those who can afford health and those who cannot.

The injustice goes deeper still. Taxing pharmaceuticals is inherently regressive—it hits hardest those who are already marginalized. People with chronic conditions, the elderly, and low-income families often rely on regular medication to survive. For them, affordability isn't a convenience; it's a lifeline. And when that lifeline is taxed, we aren't just raising revenue—we're eroding dignity, compromising health, and amplifying suffering.

If we truly believe in a just and inclusive society, then taxing essential medicines must be reconsidered. It's time for policymakers to acknowledge this moral inconsistency and take corrective action. Eliminating or significantly reducing GST on pharmaceutical drugs isn't just about policy reform—it's about compassion, fairness, and humanity. It's about ensuring that no one has to choose between survival and sustenance. Let us not forget: access to medicine is not a luxury. It is a fundamental right and it is the responsibility of any society that claims to be just, to ensure that this right is protected for all regardless of income, background, or status.

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