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TAXATION OF PHARMACEUTICAL DRUGS: A BARRIER TO HEALTH AND WELL-BEING

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ABSTRACT

The introduction of the Goods and Services Tax (GST) in India has made a remarkable advancement in simplifying the taxing system and promoting economic growth. However, the imposition of taxes on pharmaceutical drugs especially on essential medicines deviates from the fundamental principles of the right to health as guaranteed by the Indian Constitution. This paper examines the dynamic interplay between the right to health and the taxing of pharmaceutical drugs, which exacerbated existing healthcare inequalities. This research article also scrutinises price differentials before and after the imposition of GST, examines the repercussions of inflated costs on marginalised communities, and contextualises the issue within broader public health concerns and it also compares the existing taxing system of pharmaceutical drugs of India with Canada for arriving at potential solutions such as exempting the essential medicines from taxation or subject to lower rate of tax for universal access to essential medicines, irrespective of individual's socioeconomic status.

Keywords: Goods and Service Tax, Pharmaceutical drugs, Public health, Essential medicines.

I. INTRODUCTION

Nearly around 5 million Indian people in every year forgo potentially life-saving treatment annually due to the inability to afford medications, in part worsened by taxes. The landmark introduction of the Goods and Services Tax (GST) in India promised streamlining and efficiency across various sectors. However, in the case of pharmaceutical drugs, which are essential for health and life, require a different approach. Taxing essential pharmaceutical products undermines the ethical principle of health as a fundamental right, which is emphasized in global health frameworks and the Indian Constitution. This practice creates an unacceptable barrier to access to essential medicines. The rising costs of essential medicines pose a serious threat to

individual well-being and worsen health disparities within Indian society. Imposing taxes on pharmaceutical drugs, regardless of their nature, adds a financial burden on those already struggling with illness or chronic conditions. This practice contravenes the fundamental right to health which is emphasised by the Indian Constitution and this highlights urgent need for reform. Pharmaceutical drugs are not mere commodities; they are the foundation of healthcare. Imposing GST on these essential products adds economic strain to consumers and the healthcare system. Accessibility and affordability lie at the heart of universal healthcare. Taxation on medicinal products can have several unintended consequences like increased drug prices, making them less affordable for the general population, particularly those belonging to economically disadvantaged segments. Vulnerable populations, including the poor and marginalised, often face challenges in affording essential medications. To mitigate increased costs, individuals might delay treatment, purchase lower-quality medicines from potentially unregulated sources, or even resort to harmful traditional remedies out of desperation. These outcomes negatively impact health, increase long-term treatment burdens on the healthcare system, and may perpetuate public health threats like antimicrobial resistance.

Though, the government require revenue through taxation, tax exemptions for life-saving drugs and pharmaceutical products would represent a significant investment in the long-term health of the Indian population. Such a move would align with preventive healthcare policies, reducing illness, promoting productivity, and alleviating future medical care costs. India could explore avenues such as implementing progressive taxation models, strengthening social security systems, and exploring targeted taxes on other, less essential goods to make up for a shortfall caused by removing a drug tax.

II. TAXATION'S IMPACT: AFFORDABILITY, ACCESS, AND HEALTH

A. Taxing of Pharmaceutical Drugs Post Implementation of GST

Article 246A of the Indian constitution empowers Parliament, and the Legislature of each State, to make laws concerning goods and services tax that can be imposed by the central or by such state and the rates for such goods and services shall be decided by the GST council in accordance with Article 279A of Indian Constitution. Current GST rates on pharmaceutical drugs were determined by the GST council and it is notified by the central government vide notification

1/2017¹. The tax is levied under 5 different rates namely NIL rate, 5%, 12%, 18% and 28%² based on Chapter 30 of the HSN code HSN code of the item.

Medicines covered under the NIL tax rate are as follows:

1. Human blood and all components of human blood.
2. All types of contraceptives.
3. Services provided by rehabilitation professionals for activities covered under the Rehabilitation Council of India Act, 1992.
4. Sanitary napkins or tampons

Medicines covered under the 5% tax rate are as follows:

1. Animal or human blood vaccines
2. Insulin
3. Oral rehydration salts
4. Diagnostic kits for detection of all types of hepatitis
5. Deferoxamine injection or deferiprone
6. COVID-19 diagnostic kit etc.

Medicine covered under the 12% tax rate is as follows:

1. Animal blood for therapeutic, prophylactic or diagnostic uses
2. Antisera and other blood fractions and modified immunological products
3. Toxins, cultures of microorganisms (excluding yeasts) and similar products
4. ayurvedic, homoeopathic, Unani, Siddha, or biochemical systems medicines
5. Toothpowder
6. Feeding bottles and nipples of feeding bottles etc.

Medicine covered under the 18% tax rate is as follows:

1. Nicotine polacrilex gum.
2. Products for oral or transdermal application or application otherwise containing nicotine and intended to assist tobacco use cessation.
3. Hygienic or pharmaceutical articles such as teats, hot water bottles, Ice bags, etc.
4. Preparations for oral or dental hygiene and dental floss, sold in individual retail packages

¹ Goods and Services Tax Council. <https://gstcouncil.gov.in/> (last visited on 25-02-2024).

² Central Board of Indirect Taxes and Customs, <https://cbic-gst.gov.in/gst-goods-services-rates.html> (last visited on 21-02-2024)

etc.

At present, a 28% tax rate is not imposed on any medicines by the government.

B. Classification Of Essential And Non-Essential Medicines Fails To Ensure Equitable Access To Medicine For All

The World Health Organisation (WHO) introduced the concept of essential medicines in 1977 and it prescribes essential medicines list every year according to the population needs at large. This list of essential medicines is prepared with due regard to the relevance of public health, evidence on affordability, safety, and comparative cost-effectiveness³. Certain medicines like Paracetamol (acetaminophen), Aspirin (acetylsalicylic acid), Ibuprofen, Omeprazole, Metformin, Amlodipine, Atorvastatin, Metoprolol, Insulin, Morphine, Risperidone, Dexamethasone, Furosemide⁴ etc. are named as essential medicines by WHO but in India, these medicines are again classified as essential and non-essential drugs and taxed at different rates.

Every person's health and body conditions and medical requirements vary based on many factors such as age, gender, genetic predispositions, lifestyle factors, and pre-existing medical conditions. The varied healthcare needs of individuals highlight the drawbacks of using a “same size fits all approach”, to medicine classification and control. It is crucial to customize medication plans by considering factors such, as age, gender, genetic tendencies, lifestyle choices and existing medical conditions to enhance treatment effectiveness reduce reactions and prioritize patient-focused care. These differential rates for medicines create a financial burden on vulnerable populations, including low-income individuals and those with chronic illnesses who rely on regular medicines. This financial strain can force individuals to forgo necessary treatments, leading to poorer health outcomes and perpetuating cycles of poverty and ill health. An example can be taken of a person who may be prone to Allopathic medicine and whose body condition suits only Ayurvedic medicines in such cases the medicine that is preferred and deemed essential for their living is Ayurvedic medicines but here the taxing classification suggests that the Ayurvedic medicine be taxed at the rate of 12% which is higher than the Allopathic medicine which is taxed at the rate of 5% which is arbitrary and irrational.

Further, the medicines in the essential category (5% tax rate) list such as Insulin which is very

³ Sitanshu Sekhar Kar, *Concept of Essential Medicines and Rational Use in Public Health*, 35 Indian J. Community Med. Jan (2010), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2888334/>.

⁴ World Health Organization, *World Health Organization Essential Medicines List (23rd Adult List)*, WHO-MHP-HPS-EML-2023.02 (March 2023), <https://www.who.int/publications/i/item/WHO-MHP-HPS-EML-2023.02>.

important for diabetic patients, cyclosporin and artificial kidney, COVID-19 diagnostic kits, Coronary stent or stent systems used with cardiac catheters, and milk food for and medicines mentioned in non-essential medicines (12% tax rate) lists such as Glands and other organs used for organo-therapeutic use, Medical grade oxygen, medical grade hydrogen peroxide, Unani, Siddha medicines are essential for one's survival taxing on such products with different rates imposes a burden on people but also forces them to choose their medicines according to their financial capacity which is violative of Article 21 of the Indian Constitution. This flawed system hurts everyone but with unequal impact.

Access to medicines is a non-negotiable component of the right to health. These medicines represent the basic treatment for disease which is critical to the survival of the population. Ethical governance demands that these medicines need to be made available without any barrier that jeopardises the right to health.

III. RIGHT TO HEALTH V. ETHICAL CONSIDERATION

A. Right To Access Medicine As a Basic Human Right

At the International level, the concept of the right to health has been recognised in various international 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"⁵, 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"⁶, 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)⁷, and the Convention on the Rights of Persons with Disabilities (CRPD)⁸ and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)⁹, all touch upon the right to health which impliedly include access to medicines as well.

In India, the concept of the right to health is not recognised directly under the Indian constitution.

⁵ Universal Declaration of Human Rights, 1948, Article 25(1)

⁶ International Covenant on Economic, Social and Cultural Rights, 1966, Article 12

⁷ Convention on Rights of the Child, 1989, Article 24

⁸ Convention on the Rights of Persons with Disabilities, 2006, Article 25

⁹ Convention on the Elimination of Discrimination against Women, 1979, Article 12

The Hon'ble Supreme Court recognised the right to access health as an integral part of the right to life under Article 21 of the Constitution¹⁰. The right to health also includes the right to access medicines as well, this has been expansively interpreted by the judiciary to encompass the right to health and medicine under the ambit of Art.21, thereby affirming the state's obligation to ensure there is access to healthcare services¹¹ and also in *Paschim Banga Khet Mazdoor Samity v. State of West Bengal*¹² the court held that the right to health also includes the right to access essential medicines and treatment and in *State of Punjab v. Ram Lubhaya Bagga*¹³ the court held that the government has a constitutional obligation to provide medical assistance to those in need, irrespective of their financial status and also National Pharmaceutical Pricing Authority (NPPA), Should regulate the price of medicines to make them affordable and accessible to all sections of society following guideline issued by the apex Court in *Consumer Education and Research Centre v. Union of India*¹⁴ and also in *Indian Drugs & Pharmaceuticals Ltd. v. Workmen*¹⁵, the Supreme Court emphasized the importance of access to affordable medicines for all sections of society and 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. Despite these directions given by the judiciary to ensure the affordability of medicine, the legislature hasn't made any steps to make medicines affordable. In fact, the current taxing structure of pharmaceutical drugs causes social inequity.

B. Taxing of Pharmaceutical Drugs v. Social Equity

Social equity refers to equal and fair share of wealth, opportunities and privileges within the society. It entails that all individuals, regardless of their socio-economic status, and identity have equal access to resources, rights and opportunities. To rationalize the distribution of medicines and to regulate and to reduce the burden on the people GST has been introduced but under the previous tax regime, some drugs were taxed at lower percentages than the current tax system. Example to taken of medicines that are used to treat diabetes, malaria, etc. were taxed at a rate of 4% tax in the VAT tax regime but now these medicines/drugs are taxed at GST of 5% and the Ayurvedic medicines are charged at 4% along with the excise duty of 1.5% in previous VAT system but now it is taxed at the rate of 12% of GST¹⁶ and pacemaker which are implanted in the

¹⁰ Cr. A. No. 1444 of 2013.

¹¹ [1980] 2 SCR 557

¹² [1996] AIR SC 2426

¹³ 1998 (4) SCC 117

¹⁴ [1984] 3 SCC 161

¹⁵ 2007 (1) SCC 4

¹⁶ CreditMantri. GST on Medicines. <https://www.creditmantri.com/gst-on-medicines/>. Accessed on 24-02-2024.

chest was taxed at 4% of tax in previous VAT tax regime but now it was taxed at the rate of 12% of GST, this seemingly increase in tax percentage has significant repercussions for those are struggling to afford medicines and the current classification of essential, non-essential, life-saving drugs fails to adequately prioritize accessibility and affordability.

The heightened tax rates for different products such as 5% for Insulin, cyclosporin, artificial kidney and medical oxygen, glands and organs for organo-therapeutic use were now taxed at a 12% rate¹⁷ which is essential for one's survival pose significant strain, particularly on the vulnerable population who are marginalised or economic disadvantageous groups. For uninsured or underinsured persons, the cost of medicine represents a significant financial burden along with other essential expenses such as clothing, shelter and food. As a result, this forces the individual to make difficult trade-offs by sacrificing their health

The taxation on pharmaceutical drugs not only affects individuals' access to essential medicines it also affects their potential health outcomes. When pharmaceutical drugs are subjected to tax, their cost increases and access to such medicine decreases, especially for those from low-income backgrounds. This heightened financial burden places significant strain on already limited resources and forces individuals and families to make difficult decisions about prioritizing their health needs amidst the competing financial demands. The consequences of being unable to afford essential medications will result in chronic conditions or serious illnesses. For a diabetic individual who is struggling to afford insulin because of the heightened cost which is used to treat blood sugar levels cause kidney failure, blindness or cardiovascular disease this affects their quality of life and life expectancy.

Furthermore, taxation on pharmaceutical drugs can widen existing health disparities. Marginalized communities, such as socioeconomically disadvantaged groups, are already affected by limited financial resources taxing these essential medicines further exacerbates health inequality. The ethical framework underlying the right to health underlines the importance of progressive realization toward the goal of universal health coverage (UHC). While taxation is a legitimate source of state revenue, pharmaceutical taxation can become ethically problematic if it impedes the state's ability to move toward a model where healthcare, including access to essential medicines, is not determined by an individual's ability to pay.

¹⁷ SAG Infotech Blog <https://blog.saginotech.com/gst-impact-healthcare-industry-india> Accessed on 24-02-2024.

IV. COMPARATIVE STUDY OF INDIA AND CANADIAN GST ON TAXING OF MEDICINES

India's adoption of the GST from Canada represents a significant milestone in its tax reform trajectory. GST was Launched in 2017 and it has replaced many intrinsic indirect taxes, simplifying the tax structure and fostering a unified market nationwide. This emulation was fuelled by the success observed in countries like Canada, where the GST has been operational since 1991.

Despite their shared adoption of the GST framework, India and Canada diverge notably in their taxation of pharmaceutical drugs. In India, these drugs are subject to GST rates ranging from 5% to 18%, based on the classification. Typically, essential drugs face lower tax rates, while non-essential or luxury drugs incur higher taxes. Conversely, Canada adopts a contrasting approach to pharmaceutical taxation. In Canada, the drugs were taxed either in zero-rated or subjected to 7% or 15%.

In Canada, drugs supplied which are specified in para 12 and 13 of the Canadian GST are zero-rated and generally, it does not need a prescription when it is supplied to a consumer. However, these drugs can be accessed by consumers only with the prescription of a medical practitioner. Supplies of certain other drugs which are discussed in para 12 and 13 of the regulatory schedule are also zero-rated when supplied under the prescription of a medical practitioner¹⁸. This is generically known as over-the-counter drugs. These drugs are taxed at 7% or 15% when it is not prescribed by the practitioner. The supply of a service for dispensing a drug for human use is zero-rated and also importation of drugs which is specified under Part I of Schedule VI is zero-rated¹⁹.

Medications that are prescribed by doctors are generally exempt from the GST, rendering them more affordable and accessible to the populace. This exemption underscores the vital role prescription medications play in safeguarding public health and well-being, reflecting Canada's commitment to ensuring healthcare access. Whereas, India taxes pharmaceutical drugs at different tax rates such as 5%, 12%, and 18% even though it is essential for human survival which causes a financial burden on the people further it also imposes a duty on the medicines that are

¹⁸ Canada Revenue Agency, *Drugs and Biologicals*, CRA Pub. 4-1 (Feb. 21, 2023), <https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/4-1/drugs-biologicals.html>.

¹⁹ Supra 18

imported from other countries which are already discussed above.

These differing tax policies on pharmaceutical drugs underscore distinct priorities and strategies in healthcare and taxation between India and Canada. While India seeks revenue generation through GST on pharmaceuticals, Canada prioritizes equitable access to essential medications by exempting them from taxation. These disparities reflect broader distinctions in healthcare systems and social policies between the two nations.

V. CONCLUSION AND SUGGESTION

In the contemporary era, the implementation of the Goods and Services Tax has unquestionably marked a notable advancement in simplifying taxation systems and promoting economic growth. Despite these initiatives, the taxing of pharmaceutical drugs especially essential medicines, undermines the fundamental right to health as guaranteed by the Indian Constitution. While state revenue is crucial, current policies prioritize short-term gains over the long-term welfare of the population.

The introduction of GST on pharmaceutical drugs deviates from the fundamental principles of fairness and social equity that are central to healthcare systems globally. By imposing a tax on the medicines that are mentioned by the WHO as essential medicines for human survival under a 5% and 12% tax rate, governments inadvertently create financial barriers that hinder healthcare access, particularly for those most in need. High taxes on pharmaceuticals worsen existing obstacles to healthcare access, hitting vulnerable groups like the uninsured, underinsured, and marginalized communities the hardest. These individuals already struggle to access vital healthcare services and added taxation further restricts their ability to obtain necessary medications. Consequently, many are left with agonizing choices between addressing health needs and covering other essential expenses, perpetuating cycles of illness and financial strain. For marginalized and economically disadvantaged communities, pharmaceutical taxes have tangible consequences: they must decide between buying life-saving medications and fulfilling basic needs like food, shelter, or education.

Additionally, the regressive nature of pharmaceutical taxation worsens current inequalities, hitting hardest those who are already marginalized or living below the poverty line. For these individuals, affordable medications aren't just convenient but essential for maintaining health,

managing chronic conditions, and ensuring a basic standard of well-being. Taxing pharmaceutical drugs only amplifies their socio-economic struggles, perpetuating cycles of illness, poverty, and social exclusion. The ethical obligations stemming from the right to health necessitate immediate reform. Policymakers must adopt a comprehensive approach that ensures life-saving medicines remain affordable while still generating necessary revenue. Some of the suggestions are as follows:

1. **Exempt Medicine from Taxation:** Governments may consider exempting both essential and non-essential medicine from taxation which are specified by the WHO as essential medicines entirely or introduce the same method by which GST has been imposed on pharmaceutical drugs in Canada. This measure ensures the affordability of medicines which are essential for survival, irrespective of socio-economic status, thereby easing financial burdens on the poor and marginalized and promoting equitable healthcare access.
2. **Implement Reduced Tax Rates:** Alternatively, governments could also explore implementing lower tax rates such as 1% or 2% specifically for pharmaceutical drugs, particularly essential medicines. This strategy aims to make medicines more accessible to vulnerable populations while still generating revenue for public health initiatives, striking a balance between fiscal concerns and healthcare accessibility.
3. **Subsidize Medication Costs:** Governments can introduce subsidy programs to alleviate medication expenses for low-income individuals and marginalized communities. These subsidies could be in the form of direct financial assistance or redeemable schemes for both essential and non-essential medications, ensuring that financial constraints do not hinder access to vital drugs.
4. **Facilitate International Cooperation:** Collaboration with international organizations and pharmaceutical manufacturers can enable governments to negotiate reduced prices for medications. Through collective bargaining and bulk purchase agreements, governments can secure more favourable pricing, ultimately lowering costs for healthcare systems and consumers alike.
5. **Promote Research and Development of Affordable Medications:** Governments can incentivize pharmaceutical companies to focus on developing cost-effective treatments for prevalent health conditions. By offering grants, tax incentives, and regulatory support, governments can encourage the production of affordable medications, reducing reliance on expensive proprietary drugs and expanding access to affordable healthcare options.