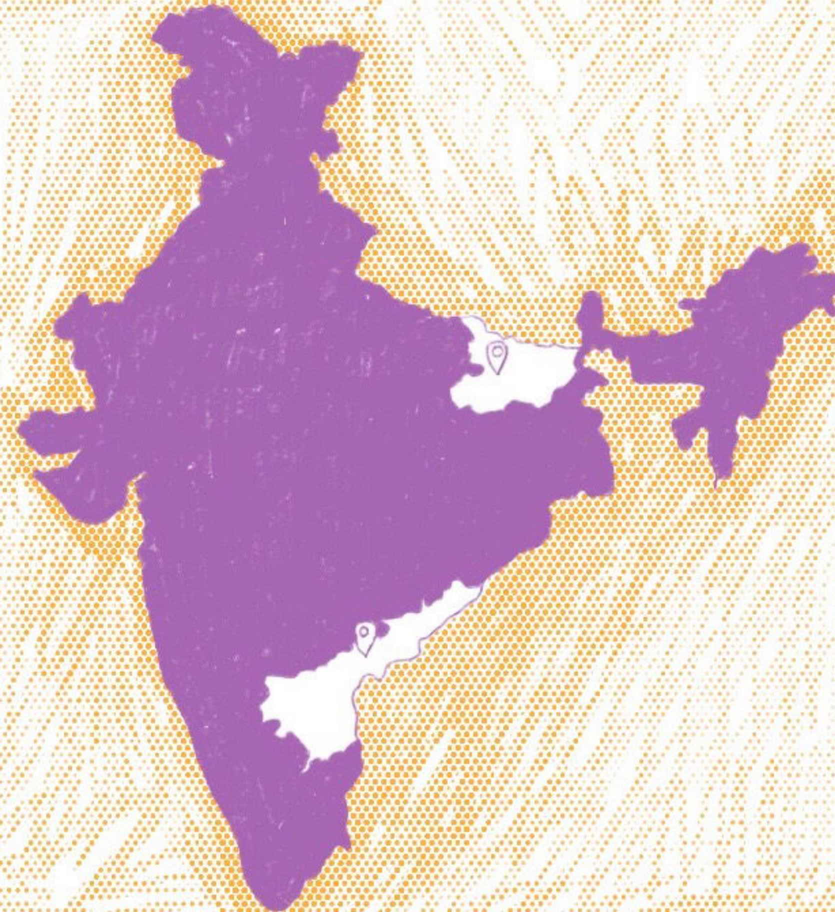
# Availability of Human Resources for Healthcare

(Based on the judgments in Gade Basaveswara Rao and ors. v. Govt. of A.P., (2016) 6 ALT 508 and Ankit Abhishek v. Ravi Ranjan Kumar, 2020 SCC OnLine Pat 669)

## Crystallising the Link Between Service Conditions of Healthcare Workers and the Right to Health

Two cases in two different parts of the country with different factual scenarios brought to light an essential yet unnoticed facet of the Right to Health. These stories originate from the High Courts of Andhra Pradesh and Patna. While the former dealt with outsourcing employees in Government hospitals, the latter dealt with incentives and reservations for healthcare workers in rural or remote areas.

How do service conditions for healthcare workers impact the right to health?



C-HELP

JUSTICE adda

# THE FIGHT AGAINST PRIVATIZING A PUBLIC MISSION

*"...the result is not improvement of services but insecurity of employment and concomitant ills"*

In September 2016, the Andhra Pradesh High Court passed orders in a series of petitions filed over the course of 6 years by nursing and technical staff. The petitioners in the case had been appointed on a contractual basis by the Zila Samakhya at the Government hospital at Guntur in 2000. While a 2011 Government Order enhanced the remuneration of personnel working on contractual and outsourcing basis, this was not applied to the petitioners. The petitioners went to court to enforce the said order in the context of their employment. The State of Andhra Pradesh continued to refuse application of the order to the petitioners. As the proceedings were pending, the State of Andhra Pradesh discontinued the petitioners' employment in 2014, against which writ petitions were filed.

In *Gade Basaveswara Rao & Ors. v Govt. of Andhra Pradesh* the High Court held that the outsourcing system in Government hospitals in respect of nursing and technical staff should be abolished as it impeded the realization of people's right to health under Article 21 of the Constitution.

# THE COURT'S CONSIDERATIONS

The court looked to two sources to reach its findings - the Constitution of India and the relevant statute in this case, which was the *Andhra Pradesh (Regulation of Appointments to Public Services and Rationalization of Staff Pattern and Pay Structure) Act, 1994* ("The 1994 Act").

## CONSTITUTION OF INDIA

The court noted that the right to health is a fundamental right under Article 21 of the Constitution, and the State also has a duty to improve public health under the mandate of Article 47 of the Constitution. The court interpreted Article 21 read with Article 47 to hold that ***"improvement of public health naturally includes employment of trained staff for the work of provision of healthcare services, and further that appointment in regularized service will allow for adequate experience to perform such essential government functions in public hospitals. Ad hoc-ism cannot be countenanced where the State is in the service of providing medical care. Persons employed in the field of healthcare shall have employment security and regulated conditions of service."***

## THE 1994 ACT

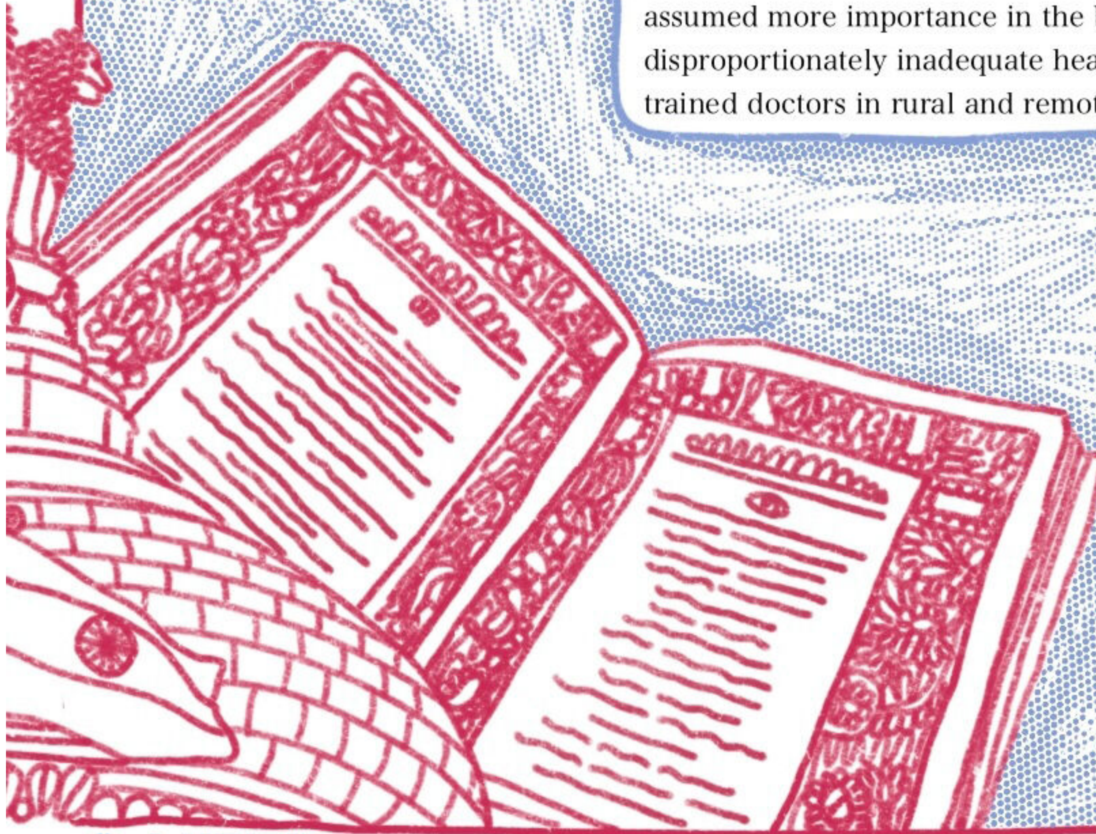
The court noted that nowhere did the Act provide for outsourcing as a method of recruitment.

It ordered: *"The State of Andhra Pradesh is directed to identify permanent sanctioned vacancies in the Government Hospital, Guntur for Petitioners, as well as other Government hospitals across the State, and take appropriate steps for filling-up the vacancies on priority basis, within a period of 6 months, through regular channels of recruitment as per applicable laws."*

# WHAT DOES IT MEAN TO ENSURE HEALTHCARE IN THE REMOTEST AREAS?

Journeying up north, in 2020, the Patna High Court was tasked with a different but related aspect. A group of petitioners - in-service doctors seeking admission to postgraduate medical courses - approached the court against a merit list which did not give weightage of marks as an incentive in computing merit on the basis of the National Eligibility-cum-Entrace Test ("NEET") to doctors posted in rural and remote areas.

The Patna High Court also invoked Article 21 of the Constitution and emphasised that the guarantees under it assumed more importance in the backdrop of disproportionately inadequate healthcare facilities and trained doctors in rural and remote areas of Bihar.



# RESERVATION AS A POLICY MEASURE TO PROMOTE AVAILABILITY OF HUMAN RESOURCES FOR HEALTHCARE

The Indian Medical Council Act, 1956 provides for securing uniform standards of postgraduate medical education in India → Regulations in this regard were notified in December 2012 → Regulation 9 provides the procedure for selection of a candidate for postgraduate courses → It further provides for incentives by way of increased weightage of marks as well as reservations for those that have served in rural/ remote or difficult areas → These provisions providing incentives were challenged and upheld by the Supreme Court in State of Uttar Pradesh vs. Dr. Dinesh Singh Chauhan (2016) 9 SCC 749 → Bihar State through two notifications in 2013 and 2014 identified remote/ difficult and rural areas under Regulation 9.

On what grounds then, did the Health Department of the Government of Bihar justify not extending the benefits of the incentives in preparation of the merit list?

The Department told the court that extending such an incentive would adversely affect the in-service doctors in urban areas and it would therefore not be appropriate to extend the benefits to those that served in rural areas.

# HIGHLIGHTING THE GRIM REALITY

Before proceeding to reason, the court articulated the worrying on-ground reality in Bihar:

*"Undisputedly, in Bihar out of 11645 sanctioned posts of doctors, 8768 are lying vacant, out of which 5674 fall only in the difficult/remote/rural areas. As against 1544 doctors posted in the urban areas only 1333 are posted in the rural areas, reflective of the iniquitous and lopsided welfare health policy of the Department."*

# WHAT DOES 'MERIT' MEAN? TAKING THE HOLISTIC VIEW

With the Supreme Court having established the validity of Regulation 9 in the *Dinesh Singh Chauhan* case, the Patna High Court emphatically stated that the Department was legally bound to enforce the notifications. The court also rejected the stance of the Department that such incentives would disadvantage doctors in urban areas, by reiterating the meaning of merit, especially in health services:

*"Merit of a candidate would also indicate a sense of social commitment and dedication to the cause of the poor. In the absence of grant of any incentives, which doctor, in today's attending circumstances, would want to be posted in the specified areas, thus depriving the poor of their constitutional right of having access to health related infrastructure."*

The court's reasoning is rooted in the values of the Constitution's Preamble - ideas of social, economic and political justice - as it reinforces the power of reservation to mitigate historical injustices against backward sections of society.

The Bihar Combined Entrance Competitive Examination Board was directed to redraw the merit lists strictly in accordance with law by granting benefit of the notifications of 2013 and 2014 issued by the State of Bihar.

While these two cases arising out of two states in India highlight the different intricacies of ensuring sound working conditions for healthcare workers, the COVID-19 pandemic has shown to us that securing safety, security and dignity for healthcare workers is paramount in every society.

The two aspects highlighted - privatisation and neglect of rural and remote areas continue to weaken the healthcare sector in India today.

March 2022 saw country-wide strikes by unions across several industries, including public health, protesting the Government's pro-privatisation policies.

The 2022 Budget continued to apportion a negligible portion of the GDP (0.33%) towards expenditure on public health.

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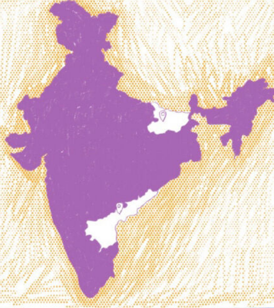

## The fight against privatizing a public mission

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## What does it mean to ensure healthcare in the remotest areas?

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## Reservation as a policy measure to promote availability of human resources for healthcare

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## The 2022 bulletin

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