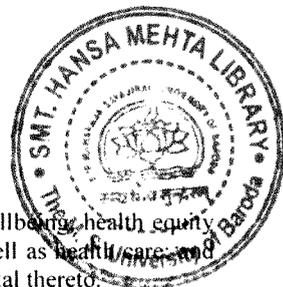


## **Annexure**



## **THE NATIONAL HEALTH BILL, 2009**

A Bill to provide for protection and fulfilment of rights in relation to health and well-being, health equity and justice, including those related to all the underlying determinants of health as well as health care, and for achieving the goal of health for all; and for matters connected therewith or incidental thereto.

Whereas every human being is entitled to enjoyment of the highest attainable standard of health and well-being, conducive to living a life in dignity;

And whereas health is a fundamental human right indispensable for, and intricately linked with, the exercise of all other human rights;

And whereas right to health is an inclusive right extending not only to timely and appropriate health care but also to the underlying socio-economic, cultural and environmental determinants of health;

And whereas the persisting inequities, denials and violations in the matter of health in the country are cause for concern to all;

And whereas there is hence the need to mandate, enable, authorize, guide, and where necessary, limit, health policies and actions by all the relevant stake-holders, including the communities/ civil society, within a rights based approach, so as to lead to actualization of right to health for all;

And whereas there is also the need to set a broad legal framework for providing essential public health services and functions, including powers to respond to public health emergencies, principally through the State and local public health agencies, in collaboration with others in the public health system, including through the cooperation and formal collaborations between the Center and State;

And whereas there is need to have an overarching legal framework and a common set of standards, norms and values to facilitate the Governments' stewardship of private health sector as a partner as well as for more effective operation of other existing and future public health related laws enacted at the Central and State levels and to unite them under;

And whereas the Constitution of India places obligations on the Government to ensure protection and fulfilment of right to health for all, without any discrimination, as a Fundamental Right under Articles 14, 15 and 21 (rights to life, equality and non-discrimination), along with some relevant fundamental rights under Article 17 (abolition of untouchability); Article 23 (prohibition of traffic in human beings and forced labour); and Article 24 (prohibition of employment of children in factories, etc.); and also urges the State, under the Directive Principles of State Policy, to eliminate inequalities in status, facilities and opportunities (Article 38); to strive to provide to everyone certain vital public health conditions such as health of workers, men, women and children (Article 39); right to work, education and public assistance in certain cases (Article 41); just and humane conditions of work and maternity relief (Article 42); raised level of nutrition and the standard of living and improvement of public health (Article 47); and protect and improve environment (Article 48A); and identifies certain concomitant 'Fundamental Duties' like obligating every citizen to denounce practices derogatory to the dignity of women; and to protect and improve the natural environment (Article 51);

And whereas the Union of India has signed various international treaties, agreements and declarations specifically undertaking to provide right to health including but not limited to: Universal Declaration of Human Rights (UDHR): Article 25 (1); International Covenant on Economic, Social and Cultural Rights (ICESCR): Article 12; Convention on the Rights of the Child (CRC): Article 24; Convention on the Elimination of All Forms of Discrimination against Women (CEDAW): Article 12; UN Convention on Rights of persons with disabilities (UNCPRD): Article 25; Declaration of Alma Ata (1978); Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care (1991); Declaration on the Elimination of Violence against Women (1993), Programme for Action of the International Conference on Population and Development, Cairo (1994); Platform of Action for the Fourth World Women's Conference, Beijing (1995) and the Millennium Development Goals (2000); Declaration of Commitment on HIV/AIDS, 'Global Crisis-Global Action' (2001), WTO Doha Declaration on TRIPS

Agreement & Public Health (2001), International Health Regulations, 58th World Health Assembly (2005); WHO Framework Convention on Tobacco Control (WHO FCTC 2005), and several other declarations and conventions on underlying determinants of health;

And whereas it is necessary to give effect to these international treaties and declarations under Article 253 of the Constitution of India; And whereas it is within the constitutional powers of Government of India under Item 14 in List I (Union List) in Schedule VII of the Indian Constitution, to legislate on matters that require to be legislated upon for implementing its international obligations under the international treaties and declarations, that are the principal subject matter of this Act; And whereas the Hon'ble Supreme Court of India has, in several judgments, exhorted the Government of India to accord legal recognition to the health rights as vital component of the fundamental right to life; and the National Human Rights Commission has also directed the Government of India to enact a health law;

And whereas the Union of India is also mandated to legislate on: population stabilization and family planning; mental health; drugs; food safety; labour safety and welfare, including maternity benefits; social security and social insurance; employment; education; legal and medical professions; prevention and control of communicable diseases; registration of births and deaths and other vital statistics for health; port quarantine, seamen's and marine hospitals; and all the other health related social and economic planning

And whereas the Union of India has already enacted several laws in recent times, including, the Environment Protection Act, 1986; Mental Health Act, 1987; Constitution (73rd and 74th Amendment) Act, 1992, setting up Panchayats and urban local bodies, Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995; Constitution (86th Amendment Act), 2002 establishing fundamental right to education; Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003; Protection of Women from Domestic Violence Act, 2005; National Rural Employments Guarantee Act, 2005; Disaster Management Act., 2005; Food Safety and Standards Act, 2006, which have created favourable conditions for the achievement of goal of health for all.

Now therefore it be enacted by Parliament in the 59th year of the Republic of India as follows:

## **CHAPTER I PRELIMINARY**

### **1. Short title, extent:**

- (1) This Act may be called the Health Act, 2008.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.

### **2. Definitions. – In this Act, unless the context otherwise requires:**

- a) "affordable" means that which can be secured by every person without reducing that person's capacity to acquire other essential goods and services, including food, water, sanitation, housing, health services and education, whether or not assured through direct Government provisioning or through subsidization or financing, or other appropriate social security measures commensurate with the basic human needs, especially for those who are unable to meet their basic needs by their own means, for reasons beyond their control, such as age, disability, economic downturn, famine, disaster, or historical or historical discrimination or social vulnerability.
- b) "benchmark" means a point of reference for assessing relative performance of Government's policies, programmes, and other interventions for achieving better health outcomes and health goals.
- c) "Bye-law" means a subsidiary legislation of local or other restricted application and shall refer to the bye-laws framed under and by the mandate of this Act;
- d) "capacity to consent" means ability of an individual, including a minor or a person with mental disability, assessed by the relevant health service provider on an objective basis, to understand and appreciate the nature and consequences of a proposed health care or of a proposed disclosure of health related information, and to make an informed decision concerning such health care or disclosure;
- e) "communicable diseases" means illnesses caused by micro-organisms and transmissible from an infected person or animal to another person or animal.
- f) "endemic" means diseases prevalent in or peculiar to a particular locality, region, or people.

- g) "epidemic" means occurrence of cases of disease in excess of what is usually expected for a given period of time, and includes any reference to "disease outbreak" herein unless specifically stated otherwise;
- h) "Government" means, unless specifically stated otherwise, (i) the Central Government in the case of the territory comprising the whole of India,  
(ii) the State Government in the case of territory comprised in a State,  
(ii) the Union Territory Government, in the case of territory comprised in a Union Territory having its own legislature, and  
(iv) the Central Government, in the case of other Union Territories;
- i) "health care" means testing, treatment, care, procedures and any other service or intervention towards a therapeutic, nursing, rehabilitative, palliative, convalescent, preventative, diagnostic, research and/or other health related purpose or combinations thereof, including reproductive health care and emergency medical treatment, in any system of medicine, and also includes any of these as a result of participation in a medical research programme;
- j) "health care establishment" means the whole or part of a public or private institution, facility, building or place, whether for profit or not, that is operated or designed to provide inpatient and/ or outpatient health care, and a "public health care establishment" shall accordingly refer to a health care establishment set up, run, financed or controlled by Government or Government's authority or instrumentality;
- k) "health care provider" means a medical doctor, nurse, other paramedical professional, social worker or other appropriately trained and qualified person with specific skills relevant to particular health care, nursing, rehabilitative, palliative, convalescent, preventative or other health services, and any reference to "service provider" shall mean the same unless specifically stated otherwise;
- l) "Health Impact Assessment": A combination of procedures, methods and tools for identifying, predicting, evaluating and mitigating potential effects of proposed a law, policy, programme, project, technology or a potentially damaging activity, in relation to health, prior to taking decisions thereon and making commitments thereunder, on the health of the population, and other relevant effects, and the distribution of those effects within the population, and any reference to "HIA" shall mean the same;
- m) "Health Information Systems" means systems, technical and institutional, for collection, processing, analysis, dissemination and utilization of data and information related to health of individuals and populations, and any reference to "HIS" shall mean the same;
- n) "health nuisance" means a situation, or state of affairs, that endangers life or health or adversely affects the well-being of a person or community;
- o) "health research" means any research which contributes to knowledge of:
- i) biological, clinical, psychological or social processes in human beings;
  - ii) improved methods for the provision of health care services;
  - iii) human pathology, causes of diseases, effects of the environment on the human body;
  - iv) development or new application of pharmaceuticals, medicines and
  - v) the development of new applications of health technology;
- And any reference to "research" herein shall mean the same unless specifically stated otherwise;
- p) "health technology" means drugs, machinery, equipment, and other devices or methods that may be used in relation to provision of health care services;
- q) "human body substances" mean substances of human body that may be collected for reasons related to health care like blood, blood products, semen, other body fluids, eggs, sperms, bones, teeth, tissues, organs, embryos and any reference to "substances of body" shall mean the same;
- r) "human rights" means rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the international covenants and enforceable by courts in India;
- s) "IEC" means programmes formulated, instituted and implemented by Governments for information, education and communication on and related to health, such that the evidence based and scientific updated multi-lingual and easily understood information on and related to health is accessible, available and disseminated to people, with their participation and mobilisation, on a continuing and sustained basis, and in a manner that is age-appropriate, gendersensitive, non-stigmatising, non-discriminatory, promotes equality and other human rights, and does not promote gender and sexual stereotypes, including through integration in informal and formal educational settings, at national, State and local levels, and through all forms of media including print, electronic, mass and digital media;
- t) "indicator" means a numeric measure that depicts the status of a population or a health system on a core health care or public health construct;

- u) "informed consent" means consent given, specific to a proposed health care, without any force, undue influence, fraud, threat, mistake or misrepresentation and obtained after disclosing to the person giving consent, either for himself/ herself, or in representative capacity where necessary, all material information including costs, risks, benefits and other significant implications of, and alternatives to, the proposed health care in a language and manner understood by such person;
- v) "institution" means any entity carrying on systematic health related activity by co-operation between two or more persons in the previous twelve months, in one or more places, with functional integrity, for wages, consideration or otherwise, for the production, supply or distribution of health related goods or services;
- w) "least restrictive alternative" means a modified policy, practice or intervention adopted by or on behalf of the Government for the purpose of meeting certain exigencies or legitimate goals of public health or health of community, that directly or indirectly restricts an individual's health rights only to the extent demonstrably justified by objective standards to meet such exigencies or goals, and among the possible alternatives, the one that does so to the least extent;
- x) "life-style related diseases" means diseases associated with the way a person or group of people lives, including lifestyle diseases include atherosclerosis, cardiovascular diseases, strokes, diabetes, hypertension;
- y) "local authority" means, in urban areas, the Municipal Corporation/Mahanagar Palika and its Municipal Commissioner or the Municipal Council/Nagar Palika and its Chief Officer; and in any area in a district, the District Collector/District Development Officer;
- z) "municipality" means an institution of self government constituted for any urban area or an area in rural to urban transition, like, Municipal Council, Municipal Corporation, Nagar Panchayat or by whatever other name called;
- aa) "Order" means subsidiary legislation dealing with specific persons or cases and shall refer to orders issued under and by the mandate of this Act;
- bb) "Panchayati Raj Institutions" means institutions of local self-government established under any of the States' Panchayati Raj laws, at village, block or district levels, like Gram Panchayat, Panchayat Samiti, or Zila Parishad, or by whatever other name called, and any reference to "PRIs" shall mean the same;
- cc) "prescribed" means as prescribed under this Act or under the Rules, Regulations, Bye-laws and Orders framed under and by the mandate of this Act;
- dd) "public health emergency" means an unusual or unexpected occurrence or imminent threat of illness or health condition that requires immediate intervention in the interest of public health to prevent, mitigate or otherwise address large number of deaths, illness, serious or long term disabilities, in the affected population, including teratogenic effects, or widespread exposure to any infectious or toxic agent that poses a significant risk of substantial future harm to a large number of people in the affected population;
- ee) "public health emergency of international concern" means a public health emergency which is determined, under specific procedures under International Health Regulations, to constitute a public health risk to other countries that potentially requires a coordinated international response;
- ff) "Regulations" means subsidiary legislation for laying down procedure and shall refer to Regulations framed under and by the mandate of this Act;
- gg) "right to food" means, at least, right of everyone to be free from hunger and malnutrition, and the right of every person to have regular and permanent access to food which is affordable, adequate, safe and nutritious, for a healthy and active life, and culturally acceptable to the population;
- hh) "right to health" means right of everyone to a standard of physical and mental health conducive to living a life in dignity;
- ii) "right to housing" means at least, right of everyone to an affordable place where a person can live in safety, privacy, dignity, and peace, under healthy conditions, with access to basic facilities, and protection from forced eviction, harassment or other threats;
- jj) "right to sanitation" means at least, right of everyone to access to affordable excreta disposal facilities which can effectively prevent human, animal and insect contact with excreta, and which ensure privacy and protect dignity of all persons, and shall also include provision of sewerage and drainage channels to remove wastewater and excreta and to ensure their safe disposal or treatment;
- kk) "right to water" means at least, right of everyone to adequate, safe, acceptable, physically accessible and affordable water for personal and domestic uses, which would mean access at least to adequate amount of safe water that is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking, personal and domestic hygienic requirements;
- ll) "Rules" means subsidiary legislation of general application and shall refer to Rules framed under and by the mandate of this Act;

mm) "underlying determinants of health" shall mean conditions that are basically necessary for the realization by individuals of the highest attainable standard of health and shall include, without being limited to, adequate levels, in quality and quantity, of food/ nutrition, water, sanitation, and housing;

nn) "universal precautions" means infection control measures that prevent exposure to or reduce the risk of transmission of pathogenic agents and includes education, training, personal protective equipment such as gloves, gowns and masks, hand washing, and employing safe work practices;

oo) "user" means person who seeks, accesses or receives any health care, as outpatient or inpatient, from any health care establishment, facility or provider, public or private, including for profit and not for profit;

pp) "user" means any person who seeks, accesses or receives any health care from any health care facility or health care provider;

qq) "vulnerable and marginalised individuals or groups" means individuals or groups who require special attention due to their physical conditions, or who are marginalised due to their social or economic status or conditions or due to their historical, traditional and/or current exclusion from political power and resources, including but not limited to: women, children, adolescents, older persons, persons with disabilities (mental and physical), persons with stigmatized, communicable diseases (like HIV/AIDS, leprosy), persons from Scheduled Castes (SCs), persons from Scheduled Tribes (STs), people of rural or remote areas, trafficked persons, migrant sections of population, internally displaced persons, persons in conflict situations, refugees.

## **CHAPTER II**

### **OBLIGATIONS OF GOVERNMENTS IN RELATION TO HEALTH**

#### **3. General obligations towards progressive realization of health and well-being:**

Government of India and the State Governments have the following general obligations at all times, within the maximum limits of their available resources, towards the progressive realization of health and well being of every person in the country.

(a) Undertake appropriate and adequate budgetary measures, as per the globally accepted norms, to satisfy, the obligations and rights set out herein, throughout ensuring transparency and equity in the allocation, planning and rational allocation and distribution of resources for health and health related issues and concerns;

(b) Take all measures and steps, for addressing bio-medical determinants as well as the underlying socio-economic, cultural and environmental determinants of health and wellbeing to ensure the enjoyment of right to health and well-being of every person, equally and without any discrimination;

(c) Provide free and universal access to health care services and ensure that there shall not be any denial of health care directly or indirectly, to anyone, by any health care service provider, public or private, including for profit and not for profit service providers, by laying down minimum standards and appropriate regulatory mechanism;

Provided that notwithstanding the above the Governments have an immediate duty to prioritize the most vulnerable and marginalized persons and groups, who are unable themselves to access means for adequate and appropriate health care services, and ensuring them at least the minimum conditions of health care;

(d) Ensure comprehensive involvement of civil society, especially vulnerable or marginalized individuals/ groups, including by enabling them to effectively articulate their health needs and to participate in all health related decision-making processes, including in setting health priorities and goals; and in devising, planning, implementing and evaluating the policies and strategies for health and well-being at every level; also integrally incorporating their roles and participation in the contents of such policies, strategies and plans; and ensuring demonstrably serious consideration to diverse expert views, in the planning of health care;

(e) Where imposition of limitations on right to health of individuals becomes necessary in compelling public health or interest, ensure proportionality of such limitations by adopting the least restrictive alternative, and in any case ensure that they be of limited duration and subject to review against the reference to the rights provided for herein;

(f) Ensure that all their policies, especially the economic, agricultural, industrial, technology related, intellectual properties related, be subject to health and equity impact assessments;

(g) Ensure inter se convergence among programmes of all the sectors related to health and also inter se integration among all health care related programmes, vertically as well at every level of health care, horizontally; and

(h) Take into account its legal obligations regarding the right to health when entering into bilateral or multilateral agreements with other countries, international organizations and other entities, such as development partners, donor organizations and multinational corporations.

4. Core obligations regarding underlying determinants of health:

Within the framework of general obligations mentioned above, the core obligations of Governments towards right to health and well-being shall include the minimum essential levels of the following obligations towards the underlying determinants of health:

- (a) Ensure equitable distribution of and access to essential health facilities, goods, drugs, services and conditions to all, and especially for vulnerable or marginalized groups;
- (b) Ensure access to the minimum essential food which is nutritionally adequate and safe, to ensure freedom from hunger and malnutrition to everyone;
- (c) Ensure adequate supply of safe water;
- (d) Ensure sanitation through appropriate and effective sewerage and drainage systems, waste disposal and management systems, pollution control systems, control of ecological degradation, control of insects and rodents and other carriers of infections, addressing practices resulting in unhygienic disposal of human excreta and refuse, consumption of unhygienic water or food and through other measures;
- (e) Ensure access to basic housing with dignity, access to basic facilities, and protection from forced eviction, harassment or other threats; and
- (f) To devise, adopt, implement, and periodically review, health policies, strategies and plans of action, on the basis of epidemiological, sociological and environmental evidence, addressing the health concerns of the whole population, which shall include methods such as right to health indicators and benchmarks, by which progress can be closely monitored, and evaluate them on the basis of outputs.

Provided that until the policies and plans are notified by the Central Government under this Act, the National Health Plan, (NHP) 2002, National Population Policy (NPP) 2000, National AIDS Control Programme-III (NACP-III), National Rural Health Mission (NRHM) and the National Urban Health Mission (NUHM), or any other existing plans, policies or programmes relating to health shall be deemed to be the plans, policies and programmes under this Act. However, within 6 months of this Act coming into force they would be assessed and where necessary, strengthened and modified, with reference to this Act, especially the rights and obligations provided for herein and its basic framework.

Provided further that within 1 year of this Act coming into force, the Central Government shall adopt and implement national strategies and plans of action for ensuring access to underlying determinants of health: food, water, sanitation and housing, and in the light of the framework laid down in this Act, review, and if necessary, redraft, the currently existing schemes and programmes on them, and within 6 months thereafter, the State Governments shall accordingly adopt and implement compatible State level strategies and plans of action through their respective local bodies.

Explanation: The above obligations shall be 'core' obligations of the Governments in the sense that they shall be non-derogable and the Governments cannot, under any circumstance, justify their non-compliance with these obligations.

5. Obligations to provide access to quality health care services: The Governments shall also carry out the following as their obligations of comparable priority towards right to health and well being of all:

- a) Ensure all the rights related to health care as laid down under this Act;
- b) Take effective measures to prevent, treat and control epidemic and endemic diseases;
- c) Lay down specific standards and norms for safety and quality assurance of all aspects of health care including health care services and processes, treatment protocols, infrastructure, equipment, drugs, health care providers, within the Government, private and other non-government sectors;

Provided that for the above purposes the current Indian Public Health Standards (IPHS) shall be treated as the standards laid down under this Act but within 6 months from the date of this act coming into force, they shall be reviewed within the framework of this Act and further they shall be expanded in scope and contents to lay down the standards to regulate all the aforementioned areas;

- d) Provide education and access to information concerning the main health issues in the communities, including methods of preventing and controlling them, and promoting healthy lifestyles, through sustained, and regularly updated national, State and local level IEC programmes;
- e) Set up health information systems (HIS), provide full and effective access to its process and contents, and ensure that they inform the health related laws, policies, plans of action and programmes;

- f) Provide appropriate training for health personnel, including education and sensitization on health and rights and obligations under this Act;
- g) Ensure women's health including their reproductive health care;
- h) Ensure children's health, including their comprehensive health care services;
- i) Provide appropriate and best available preventive measures against the major infectious diseases occurring in communities;
- j) Take effective measures in situations of public health emergencies; and
- k) Take effective measures to towards occupational safety and industrial hygiene.

6. Specific public health obligations:

(1) Obligations of Central Government: The Government of India shall take appropriate legal steps, including where necessary, enactment of laws, or review/ amendment of existing public health related laws, and/or strict implementation of laws, but in any case, through its powers to issue rules/ regulations/ orders/ bye-laws under this Act, to specifically address the following and/ or any other area that it is competent to legislate upon under the Constitution of India:

- a) Prevention and control of communicable diseases;
- b) Public health emergencies of international concern;
- c) Registration of births and deaths and other vital statistics for health;
- d) Food safety;
- e) Safety, availability and accessibility of drugs; rational use of drugs and monitoring of microbial resistance;
- f) Labour safety and welfare, including maternity benefits;
- g) Port quarantine, seamen's and marine hospitals;
- h) Health related aspects of social security and employment;
- i) Population stabilization and family planning;
- j) Special public health measures for certain vulnerable or marginalized sections of population; All the other health related social and economic planning; and
- k) Coordination of public health policies and actions at the State levels.

(2) Obligations of State Governments: The State Governments shall take appropriate legal steps, including where necessary, enactment of laws, or review/ amendment of existing public health related laws, and/or strict implementation of laws, but in any case, through their powers to issue rules/ regulations/ orders/ bye-laws under this Act, to address the following and/ or any other area that they are competent to legislate upon under the Constitution of India, for their respective States:

- a) Disease outbreaks;
- b) Public health emergencies;
- c) Health establishments and all the facilities providing health services;
- d) Health nuisances and bio-medical waste;
- e) Availability and accessibility of safe drinking water;
- f) Sanitation and environmental hygiene, including waste management for every kind of waste;
- g) Hygiene and safety in places and situations of public health importance including fairs, festivals, cinema, theatres, circuses, markets, shopping places, malls, lodging houses, burial and burning grounds, slaughter houses;
- h) Environmental disasters, environmental safety,
- i) Occupational safety and industrial hygiene;
- j) Health Impact Assessment (HIA) of all new development projects;
- k) Protection from and abatement of hazardous and injurious substances and activities or any other health hazards;
- l) Lifestyle related diseases; mental illnesses, widely prevalent diseases; public health related factors like use of tobacco, alcoholism and other substance abuse, and consumption of unhealthy foods; and promotion of healthy lifestyles like breast feeding, health seeking behaviour, balanced diet, regular exercising, food and water safety, including with regard to their packaging, labeling, advertising and sale and consumer protection, including regulating advertising and taxation and excise polices that have impact on these;
- m) Road and transport safety, accident injuries/ trauma care;
- n) Special public health measures for vulnerable or marginalized individuals and groups of population; and
- o) Any other public health measures towards ensuring health and well being of all, including physical, emotional and mental health.

7. Obligations to respect, protect and fulfill: The Governments shall satisfy all its abovementioned obligations through the following inter-related and partially overlapping obligations:

(a) The obligation to respect which requires the Governments to refrain from denying or interfering, directly or indirectly, with the enjoyment of the right to health mentioned hereunder, by any individual or group;

(b) The obligation to protect which requires the Governments to take measures that prevent third parties from interfering with the health rights mentioned herein; and

(c) The obligation to fulfill which requires the Governments to pro-actively facilitate, provide and promote the health rights mentioned herein, by adopting appropriate legislative, administrative, budgetary, judicial, promotional and other measures.

Explanation: In particular the Central and State Governments shall take appropriate legal steps, including where necessary, enactment of laws, or review/ amendment of existing public health related laws, and/or strict implementation of laws, but in any case, through their powers to issue rules/ regulations/ orders/ bye-laws under this Act, to address and fulfil their respective obligations on any area that they are competent to legislate upon, in accordance and compliance with the rights enumerated under this Act.

Illustrations: Without prejudice to the generality of the provisions of this Act, and without being exhaustive, the illustrations intended to bring clarity to, suggest and emphasise some instances of obligations that flow from the combined effect of Sections 3, 4, 5 and 6 above, with the obligations to respect, protect, fulfil mentioned as mentioned in this Section, are being enumerated in Schedule I of this Act and the Governments shall fulfil their obligations at least in those regards..

### **CHAPTER III**

#### **COLLECTIVE & INDIVIDUAL RIGHTS IN RELATION TO HEALTH**

8. Right to health: (1) Every person has the right to a standard of physical and mental health conducive to living a life in dignity.

9. Right to access, use and enjoy: Every person has the right to access, use and enjoy all the facilities, goods, services, programmes and conditions necessary for ensuring the right to health, including but not limited to at least the following:

(a) Right to food;

(b) Right to water;

(c) Right to sanitation;

(d) Right to housing;

(e) Right to appropriate health care, and health care related functional equipment and other infrastructure, trained medical and professional personnel, and essential drugs;

Appropriate health-related IEC, including on sexual and reproductive health, to be able to make more informed health related choices;

Explanation: The information hereunder, where needed for the purposes of fulfillment of this Act, shall not be limited to, and shall be in addition to, the information receivable under the Right to Information Act, 2005.

(f) Protection from and mitigation during environmental disasters like famines, floods, and earthquakes, disease outbreaks/ epidemics, and other public health emergencies;

(g) Protection from and abatement of hazardous and injurious substances and activities; road and transport safety; industrial hygiene and occupational safety; hygiene and safety in places and situations of large collection of people occasioning mass food production or disposal of biological wastes including at fairs, festivals, cinema, theatres, circuses, markets, shopping places, malls, lodging houses, burial and burning grounds, slaughter houses; and

(h) Health Impact Assessment (HIA) of all new development projects.

Explanation: Right to access, use and enjoy all the facilities, goods, services, programmes and conditions necessary for the realization of the a standard of health conducive to living a life in dignity shall mean that facilities, goods, services, programmes and conditions providing all the above shall be:

(a) available in sufficient quantity;

(b) accessible to everyone, such that 'accessibility' shall mean and entail:

(i) access without discrimination on any of the prohibited grounds;

- (ii) physical access; in case of persons with disabilities further ensuring adequate access to buildings, and infrastructure through reasonable accommodation measures;
  - (iii) economic access or affordability; and
  - (iv) access to information and ideas concerning health issues; in case of persons with disabilities, further ensuring access to information through reasonable accommodation measures.
- (c) acceptable such that the facilities, goods, services, programmes and conditions must be respectful of medical ethics and socio-culturally appropriate, i.e. respectful of the culture of individuals, minorities, peoples and communities; sensitive to gender and lifecycle requirements, as well as designed to respect confidentiality and improve the health status of those concerned; and
- (d) scientifically and medically appropriate and of good quality, requiring, inter alia, trained and skilled medical and para medical personnel, scientifically approved and unexpired drugs and hospital equipment and other infrastructure satisfying the relevant safety standards.

10. Right against discrimination: (1) No person shall be subject to any discrimination in any form or manner, by the Government or any other person or body of persons, whether public or private, in access to facilities, goods, services, programmes, conditions, or rights for health care and for underlying determinants of health, as well as to means and entitlements for their access, use and enjoyment, on one or more of the grounds of sex, class, monetary or other economic status, place of birth, age, marital status, actual or perceived health status, sexual orientation, physical or mental disability, occupation, religion, sect, region, language, political or other opinion, caste, civil, political, social or other status or affiliation, race, or any other arbitrary ground (herein called 'prohibited grounds'), which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to health, and the right to dignity, of that person.

Explanation: "Discrimination" in the above provisions and also wherever else it is mentioned in this Act shall include any act of omission or commission including any policy, law, rule, regulation, any other executive decision; practice, custom, tradition, usage; condition or situation which, in law or in fact, directly or indirectly, expressly or by effect, immediately or over a period of time, distinguishes, excludes or prefers any person or group of persons, to:

- (i) impose burdens, obligations, liabilities, disabilities or disadvantages on; or
- (ii) deny or withhold benefits, opportunities or advantages, from; or
- (iii) compel or force the adoption of a particular course of action, by, such person or group of persons, based on one or more of the prohibited grounds of discrimination.

(2) Notwithstanding the above, with a view to ensuring full equality in practice, Governments shall proactively adopt specific measures by way of affirmative action for the protection, benefit or advancement of vulnerable and marginalised individuals and groups, to eliminate the existing discrimination and promote equality of opportunities with regard to any aspect of health rights mentioned herein, and such affirmative action shall not be construed as discrimination.

11. Right to dignity: Every person has a right to privacy, the right to be treated with dignity and to be free from any inhuman, cruel or degrading treatment, at the hands of Government or any other person or body of persons, whether public or private, in the matter of health rights; especially in the matter of health care this shall mean that every person seeking any health care is entitled to be treated by health care providers with patience, empathy, respect, tolerance for that person's culture and values, and humanness; further, this shall mean that no one shall be subjected to any coercive health measures or subjected to indiscriminate denials.

12. Right of participation, information: Every person has a right to participate in all health-related decision-making and actions at all levels, including at the community level, which shall include right to information about all the health related measures being initiated by the Governments, including information on Health Impact Assessments (HIAs), resource allocation and all health information collected by the Governments, and information that can enhance health seeking and healthy lifestyles.

13. Right to justice: Every person whose right to health is actually or perceived to be violated in any manner, at the hands of anyone; has a right to seek redressal of his/ her grievance through a choice of appropriate dispute resolution and grievance redressal mechanisms, including those especially set up under this Act, against such violation, and for claiming his rights, and/or reparation.

14. Users' Rights to health care (Users' Rights): Following are the rights of users of health care:

(1) Survival, integrity and security: Every person has the right to survival, physical and mental integrity and security of his or her person, such that he/ she shall be entitled to safe and sensitive health care, in accordance with the standards/ protocols prescribed hereunder; and shall be entitled to not be subjected to any service, testing, treatment, procedure or medical intervention or research which endangers or violates such survival, integrity and security in any manner; the right to be free from harm caused by the poor functioning of health services, medical malpractices or negligence; and the right to a clean and healthy environment in the hospital, with least risk of hospital-related infections.

(2) Right to seek: Every person has the right to approach and seek health care facilities, goods, services, programmes and conditions, equitably, without discrimination;

(3) Right to receive: Every user has the right to receive, use and enjoy, and right not to be denied, health care appropriate to that person's health needs;

(4) Right to emergency treatment and care: No person shall be denied, under any circumstance, including inability to pay the requisite fee or charges, prompt and necessary emergency medical treatment and critical care, including emergency obstetric treatment and care, by any health care provider, establishment or facility, including private provider, establishment or facility, that is qualified/ certified to provide such care or treatment;

Further, in a case of medico-legal nature (MLC), no health care provider or health care establishment shall delay treatment merely on the grounds of receiving police clearance or a police report.

Explanation: A medico-legal case means any medical case which has legal implications, either of a civil or criminal nature, and includes but is not limited to cases relating to accidents, assault, sexual assault, suicide, attempt to murder, poisoning, injuries on account of domestic violence, injuries on workers during course of employment, in some of which the service provider may be required to prepare documents in compliance with demands by authorized police-officer or magistrate.

(5) Right to reproductive and sexual health care:

(a) With regard to reproductive health services, every adolescent girl and adult woman has the following rights:

i. right to comprehensive obstetric health care & services with continuum of care, including ante natal care and post natal care;

ii. right to safe abortion/ termination of pregnancy;

iii. right to equality of opportunities in all health matters; and

iv. right against discrimination in all health matters including less favourable treatment of women for reasons of pregnancy and maternity;

(b) In addition to the above, all adolescents and adults, both male and female, shall have the following rights:

i. right to reproductive and sexual self-determination and autonomy and right against all coercive measures in population and family planning; this right would include choice of safe and effective methods of contraception, including emergency contraception and safe, voluntary sterilization; and the right to safe and effective methods of assisted reproductive technologies (ARTs);

ii. right to appropriate counseling and treatment for all sexual and reproductive health related morbidities, including management of sexually transmitted infections (STIs)/ reproductive tract infections (RTIs).

(6) Right to quality of care: Every user has the right to a quality of care in compliance with standards and protocols prescribed under this Act;

(7) Right to rational health care: Every user has the right to receive rational health care and to not be subjected to irrational health care or over-medicalisation;

(8) Right to choice: Every user has the right to choose and change his/her health care provider and health care establishment, and/ or any recognized system of medicine, including Allopathy, Ayurveda, Homeopathy, Unani, Siddha and any other recognized Indian System of Medicine (ISM) and local health traditions, provided that it is available in and compatible with the functioning and competence of the particular health care establishment; and this right shall include the right to refuse to be subjected to any system of medicine or particular medical procedures or medication prescribed thereunder by the health care provider.

(9) Right to be treated by a named health care provider: Every user has the right to know the name of the person who is providing health care to him/ her and therefore must be attended to by clearly identified health care provider/s.

(10) Referral rights: Users who must be referred to another health care establishment or facility, for medical reasons, are entitled to a full explanation by referring establishment or facility before they can be transferred to another health care establishment or facility, and in any case transfer of that user can only take place after another health care establishment has been requested by the referring establishment or facility and has agreed to accept that user; and further, only if and when there is available and accessible referral transport service;

(11) Right to continuity of care: Every user has the right to continuity of care, through close and continuous cooperation between all the health care providers and/or establishments that might be involved in his/ her diagnosis, treatment and care;

(12) Right to fair selection: In circumstances where a choice must be made by health care providers between potential users for a particular treatment which is in limited supply, all such users are entitled to a fair selection procedure for that treatment, based on medical criteria and made without discrimination;

(13) Right to benefits of scientific progress and technology assessment: Every user is entitled to benefits of scientific and technological progress and advancement in relation to health care.

Provided that any new health technology with potential to be used towards health care shall not be brought into use before being subjected to a due Health Impact Assessment (HIA) for its stated benefits and its possible ill effects, and the results of such HIA shall be made available and accessible to public;

(14) Right to terminal care: Every user has the right to humane terminal care and to die in dignity.

(15) Right to information:

a) Every user has the right to information about health care facilities, goods, services, programmes, conditions and technologies, how best to access, use and enjoy them, and such information must be made available to the public by the Government in the most effective manner, in order to benefit all those concerned;

b) Every user has the right to be fully informed about his/ her health status, including the medical facts about his/ her health condition; proposed health care, together with the potential risks and benefits, costs and consequences generally associated with each option of health care; alternatives to the proposed health care, including the implications, risks and effects of refusal of health care; and the diagnosis, prognosis and progress of health care; and any other information that may be pertinent to the user in taking a decision, providing consent or to understand his/ her current and possible future health status.

Provided that any of such information may be withheld from the user but only exceptionally when there is good reason to believe that this information would without any expectation of obvious positive effects cause him/ her serious harm;

c) Every user has the right that the information be communicated to him/ her in a way appropriate to the latter's capacity for understanding, with minimum use of unfamiliar or complicated technical terminology, and where the user does not speak the common language, some effective method of language interpreting should be available;

d) Every user has the right to choose who, if anyone else, should be informed on their behalf.

e) Every user has a right to obtain a second opinion from another health service provider.

f) When admitted to a health care establishment, users have a right to be informed of the identity and professional status of the health care providers providing them services and of any rules and routines of the establishment which would bear on their stay and care.

(16) Right to medical records and data:

(a) Every user has a right that complete medical records pertaining to his/ her case, containing the health status, diagnosis, prognosis, all the details of the health care provided including the line of treatment, be maintained by the service provider and be kept in protected conditions till 2 years of the last date of service/s provided, and any disclosure of the records or information contained in them to anyone else shall be subject to his/ her rights to confidentiality, privacy and disclosure as elaborated herein under sub-section (18);

(b) Every user has the right of access to his/ her medical files and technical records and to any other files and records pertaining to his/ her diagnosis, treatment and care (including X-ray, laboratory reports and other investigation reports) and to receive a copy of his/ her own files and records or parts thereof; and

(c) Every user has a right to request for and to be given a written summary of his/ her diagnosis, treatment and care and in case of an inpatient, the complete discharge report at the time of discharge, which must also include the advised follow-up actions to be taken by the user.

(17) Right to autonomy/ self determination and prior voluntary informed consent:

(a) Every user has a right to consent as a prerequisite for any health care proposed for him/ her, such consent being a prior and fully informed consent formed without the exercise of any influence, duress, coercion or persuasion by the service provider proposing it;

(b) Every user has a right that the service provider empowers and facilitates the exercise of his/ her right to consent in the above manner;

(c) Every user has the right to refuse or to halt a medical intervention and on his/ her exercising such right, the implications of refusing or halting such an intervention must be carefully explained by the service provider to the user, provided that the refusal or halting comes to the knowledge of the provider;

(d) When a user is unable to express his or her consent due to medical reasons and a medical intervention is urgently needed in the user's interest, the consent of the user may be presumed, unless it is clear from a previous declared expression of will within the knowledge of the provider that consent would be refused in the situation;

(e) Every user who lacks the full capacity to give consent, due to his/ her being a minor or due to any mental disability, temporary or permanent, shall, to the extent of incapacity, have the right to supported (or substituted, only where absolutely necessary) decision-making on his/ her behalf, through a de jure or de facto guardian, next friend or personal representative, whose bonafides and credentials are clear to the service provider;

Provided that the service provider shall personally assess in each case if a user lacks the full capacity to consent, by assessing his/ her evolving capacity and intellectual maturity in the case of a minor; and his/ her state of mind at the relevant time of decision-making in the case of person with mental disability, such that there is no per se loss or denial of right to self-determination and voluntary informed consent in all cases of minors and persons with mental disabilities;

Provided further that when a person lacks full legal capacity to consent, and it is not possible to get substituted/ supported consent in time, or the person who can give such consent on behalf of the user unreasonably withholds such support or consent, but the proposed intervention is urgently needed, the service provider may proceed without any consent, to the best of his professional competence and judgment, if he/ she is of the opinion that the intervention is in the interest of the user; alternatively, in cases where there is no urgency, the service provider shall refer the matter to the head of the institution who shall take the decision in consultation with the service provider or through another mechanism that may be duly established at the institutional level for such purposes;

Provided further that even where he/ she lacks full capacity to consent, the user (whether minor or adult) has a right to be involved by the service provider in the decision-making process to the fullest extent and in proportion to which their capacity allows;

(f) Every user also has similar right to consent for the preservation and use of all substances of his/ her body (though consent may be presumed when the substances are to be used in the current course of diagnosis, treatment and care of that user); and for participation in clinical or scientific teaching and/ or research;

Provided that as an exception to the requirement of involvement being in the interest of the user, an incapacitated person may be involved in observational research which is not of direct benefit to his or her health, provided that person offers no objection, that the risk for burden is minimal, that the research is of significant value and that no alternative methods and other research subjects are available; and

(g) In any case, no user shall be provided any health care for experimental or bio-medical or clinical research purposes, except according to guidelines laid down by the Indian Council for Medical Research (ICMR) and unless:

i. It is in association with a health establishment that has been registered with the State Health Board as required therein;

ii. The Institutional Ethics Committee as laid down by the prescribed guidelines, has given prior written authorization for the commencement and continuation of such health care; and

iii. The user has been given prior information in the prescribed manner that the health care is for experimental or research purposes or part of an experimental or research project, and he/ she has given informed consent as per the requirements of relevant earlier provisions herein.

18) Right to confidentiality, information disclosure, privacy:

a) Every user has the right that all information about his/ her health status, medical condition, diagnosis, prognosis and health care and all other information of a personal kind (identified or identifiable to him/ her), must be kept confidential, even after his/ her death, and such confidential information can only be disclosed if the user gives explicit consent or any law expressly provides for this; it may be used for study,

teaching or research only with the authorization of the user, the head of the health care establishment concerned and the Institutional Ethics Committee of the establishment.

Provided that consent may be presumed where disclosure is to other health care providers involved in that user's treatment;

b) Every user has the right that all the identifiable user data must be totally protected, and appropriately stored for protection of the user's confidentiality, including the human substances from which identifiable data can be derived;

c) Every user has a right to privacy such that there can be no information disclosure resulting in or amounting to violation of or intrusion into the user's private or family life, unless and only if it can be justified as necessary to the user's health care, when the user's consent must be taken as per the earlier relevant provisions for consent herein;

d) Every user has a right that he/ she may be subjected to any health care in a manner that proper respect is shown for his/ her privacy and dignity, and that a particular health care intervention may be carried out only in the presence of those persons who are necessary for the intervention, unless the user consents or requests otherwise; and for women users they may be carried out only if a female service provider is also present, unless the user herself waives this right or unless it is not feasible at all in given circumstances;

e) Users admitted to health care establishments have the right to expect physical facilities which ensure privacy and dignity, particularly when health care providers are offering them health care or carrying out examinations of personal nature.

18) Rights towards the application of users' rights:

a) In the exercise of all the above rights, users shall be subjected, where necessary, only to limitations and least restrictive alternatives that are compatible with human rights instruments and in accordance with procedures prescribed by law;

b) The users shall also be protected by adequate due process in all other respects as required by this Act or other applicable State laws;

c) Users must have access to such notice of rights, information and advice as will enable them to exercise the rights set forth in this document;

d) Appropriate, adequate and comprehensive information on the available health care services, written in a manner understandable by a non-technical person and in local language, shall be displayed in a prominent place in the health care establishment or facility, which shall in any case include all the information required to be disseminated under this Act;

e) Users have a collective right to representation and participation within health care institutions at each level of health care in matters pertaining to the planning and evaluation of health care services, including the range, quality and functioning of the services;

f) Where users feel that their rights have not been respected they should be enabled to lodge a complaint and have it investigated, mediated or adjudicated upon, which must entail, in addition to recourse to courts or any quasi judicial mechanism that is available, independent mechanisms at institutional level within the health care establishment where he/ she sought or received health care.

15. Duties of users: Every user has the following duties:

(i) To provide health care providers with the relevant and accurate information for health care, subject to the user's right to confidentiality and privacy;

(ii) To comply with the prescribed health care, subject to the same having been administered after duly observing the user's rights as enumerated above;

(iii) To take care of health records in his or her possession;

(iv) To respect the rights of health care providers by treating them with respect, courtesy, and dignity and refrain from any abuse or violent or otherwise abusive behaviour towards them or the rights provided to them; to similarly respect rights of other users;

(v) To utilize the health care system properly by following all the rules of the relevant establishment or facility, that are brought to the user's knowledge, in all other respects and not indulge in any other abuse or obstructionist action;

(vi) To not lure any care provider or staff in the health care establishment or facility with favours in terms of cash or kind for any personal gains or illegal purpose;

(vii) To sign a discharge certificate or release of liability if he or she refuses to accept recommended treatment; and

(viii) To recognize his/her role not merely as an end-user but as a proactive stakeholder and facilitator of the health care services provided to him/ her.

16. Rights of health care providers vis-à-vis users:

(i) Every health care provider has the right to immunity against and protection from any adverse consequences for providing his/ her services of any kind as long as the provider has acted to the best of his/ her professional capability and judgment, bonafide and in the best interest of the user, and exercised all reasonable care;

(ii) Every health care provider has a right to be treated with respect and dignity by his/ her user and to expect the user to comply with all the duties as enumerated above;

(iii) Every health care provider shall have the right to measures implemented by the health care establishment where he provides his/ her services, to minimize, and protect him/ her, to the best extent possible, from and against any:

(a) injury or damage to the person and property of health care provider at that establishment or any foreseeable security risk or prejudice that may be caused to him/ her by the users or the user's relatives, in the course of work; and

(b) disease transmission or occupational exposure including protection from communicable diseases, through standard universal safety precautions and post exposure prophylaxis, effective infection control measures, personal protective equipment and employment of other safe work practices that prevent exposure to or reduce the risk of transmission of pathogenic agents, and shall include information, education, training, and sensitization for access and use of these;

Provided that the health care institution shall also formulate and notify treatment and compensation policies specifying the rights and procedure for health care providers to claim treatment or compensation or both as provided in sub-section

(3) including the medical records, tests and incident reports required to make the claim;

(iv) No health care establishment shall discriminate against a health care provider in matters concerning employment and conditions of employment on age, sex, economic status, place of residence, religion, caste, physical or mental disability that does not substantially affect his work, or his/ her perceived or potential mental or physical ill-health status;

Provided that, subject to any applicable law, the head of the concerned health establishment or facility may, in accordance with any determined guidelines, impose reasonable conditions on the service that may be rendered by a health care provider on the basis of his or her health status, to the extent it interferes with the discharge of his services;

(v) A health care provider shall not be forced by the Government or any private party to reveal private confidential health information pertaining to any user or perform any act that is against medical ethics, and for this purpose, all information the provider has on the health of a user shall be confidential, unless required by law to be disclosed in public interest or public health;

(vi) A health care provider has the right to, in consultation with the head of the health care establishment, refuse to treat a user who is physically or verbally abusive or who sexually harasses him or her or who acts contrary to the users' duties as enumerated herein;

(vii) A health care provider who faces legal action initiated by any user or the user's representative, either individually or along with the health establishment where he is employed, shall be supported, and the necessary legal costs shall be borne by the employer establishment in his legal defence, in the case initiated by the user or the user's representative, even if the employer establishment may hold him responsible and/or later initiate any separate administrative, disciplinary or legal inquiry/ action against him in that regard.

#### **CHAPTER IV**

#### **IMPLEMENTATION & MONITORING MECHANISM**

17. National Public Health Board: Constitution & Composition: (i) A National Public Health Board shall be set up which shall consist of the following persons:

(a) The Secretary, Ministry of Health and Family Welfare, as chairperson;

(b) The Director General of Health Services, as co-chairperson;

(c) Secretaries or their nominees, from Ministries pertaining to women and child development, rural and urban development, social justice and empowerment, environment, industry, food and agriculture,

Panchayati Raj, finance, information & broadcasting or any other pertinent area; nominee of Planning Commission;

(d) 5 representatives from National Directorate of Health Services;

(e) 5 representatives from the State Governments (who will be appointed by rotation every 3 years so that all States get represented by turns);

(f) 5 representatives of recognized professional associations and statutory councils relating to health at national level; and

(g) 5 expert representatives of national eminence, from various areas of technical expertise or knowledge on health;

(h) 5 representatives of civil society with demonstrated concern with public health issues.

Provided that for the selection of the nominated members under (g) and (h) the Government shall call for nominations from people through widespread advertisements including through national and local print and electronic media and the internet, 60 days prior to the date from which the persons have to be appointed and from the nominated names the final selection shall be made on the principle that they represent the interests of all the classes of persons to the best extent possible and have demonstrated experience in the field of health.

Provided further that special invitees according to need may be included in the Board from time to time.

(ii) The appointment of each member of the National Public Health Board, except the ex-officio appointees, shall be for a period of three years.

(iii) The Board may create sub-committees in order to address specific areas or needs concerning the public health system.

(iv) The Board shall meet at least once in six months.

(v) The Board shall be adequately funded and staffed with full time functionaries to conduct its operations.

(vi) The Board members who are nominated in their individual capacity and who are not ex officio, shall be compensated in accordance with notifications issued under this Act.

(vii) The Board shall lay down the rules for its own functioning and discharge of its responsibilities.

18. Functions: The National Public Health Board shall perform the following functions, which except for health matters that are specifically mandated by Indian Constitution to be under the Central Government, shall be always carried out in the maximum decentralized manner such that the States are empowered to the maximum extent, and least interfered with, in their public health powers and functions, and such that the national board shall mainly ensure effective coordination, national level uniformity in designing of and compliance with standards, norms and prioritization, equitable distribution and utilization of resources, and shall provide financial, technical and human resource assistance wherever needed and possible for effective planning and implementation of the State public health plans:

(a) Formulating, negotiating and adopting the national policy on health and ensuring that there is a national health policy revision every five years and that the plans and policies for health and the public expenditure on health are consistent with this Act;

(b) Formulating, negotiating, adopting and ensuring review of strategies of all national health programmes every five years, in light of changing scientific knowledge and the experience of implementation of the policies and programmes;

(c) Laying down minimum standards for food, water, sanitation and housing, for every person's health and well being and formulating and implementing national strategies and plans of action for these determinants of health;

(d) Laying down and reviewing every 5 years, minimum standards, protocols, norms and guidelines for public as well as private (for profit as well as not for profit) health care providers and establishments towards:

(i) Access to health care services including equitable coverage norms and minimum service guarantees by the public health system and pricing of health care services, drugs, and related technologies;

(ii) Basic quality and safety assurance systems to cover all the performance parameters, financial, physical, human power based as well as processes based;

(iii) Regulation of public and private clinical establishments and other health service providers regarding the other related matters;

(iv) Regulation of clinical research and field trials, and health technology assessment;

(v) Regulation of Health Impact Assessment; and

(vi) Regulation of health care insurance companies and providers; and

- (e) Establishing a national level health service regulatory body to ensure compliance with the aforementioned standards, protocols, norms and guidelines, and lay down the rules/ regulations for its functioning;
- (f) Laying down and reviewing every 5 years, regulations, standards and protocols for: prevention and control of communicable diseases or vectors affecting humans; registration of births and deaths and other vital statistics for health; food safety; access to safe drugs; labour safety and welfare, including maternity benefits; port quarantine, seamen's and marine hospitals; social security and employment; population stabilization and family planning; health related social and economic planning; Assessing and notifying events that may constitute a public health emergency of international concern;
- (g) Designing and adopting national Health Information Systems;
- (h) Planning of national health campaigns and IEC programmes including coordinating between and supervising Government and private institutions carrying out the health campaigns and IEC programmes;
- (i) Issuing of minimum technical and administrative rules with which health care institutions and establishments have to comply in their functioning;
- (j) Supervising and verifying compliance with the Central rules laid down under this Act as well as effectiveness of programmes carried out by health care institutions and establishments; and on such matters as the Government may from time to time refer to it;
- (k) Undertaking compatibility review of the existing laws and policies of Central Government that are related to health/ public health, to determine compliance with this Act and make recommendations for reform, amendment or repeal where necessary;
- (l) Preparing Annual State of the Health Reports;
- (m) Appointing one or more ad hoc or advisory committees on technical aspects of the above matters or any other health matter for which the Central Government is responsible; and
- (n) Appointing any monitoring committees as may be needed to monitor progress on implementation of Act or any aspect of the Act.

#### 19. State Health Board: Constitution & Composition:

(i) A State Public Health Board shall be established by every State Government and shall consist of the following members:

- a) The Chief Secretary, State Government, who shall be the Chairperson;
- b) The Principal Secretary (Health & Family Welfare), who shall be the Co-Chairperson;
- c) The Commissioner of Health and Secretary of Family Welfare, State Government, who shall be the Convener;
- d) The Additional Director of Health Services, who shall be the Secretary;
- e) Secretaries or their nominees, in charge of Departments of Women and Child Development, Public Health Engineering, Water and Sanitation, Panchayati Raj, Rural Development, Social Welfare, Urban Development, Planning, Finance, Social Justice, Tribal Welfare, Information & Broadcasting, Disaster Mitigation/Preparedness;
- f) 5 Nominated elected representatives from the State;
- g) Nominated non-official members (8-10 members) such as public health experts, representatives of medical associations, or Non Government Organizations (NGOs).

Provided that for the selection of the nominated members under (f) and (g) the Government shall call for nominations from people through widespread advertisements including through national and local print and electronic media and the internet, 60 days prior to the date from which the persons have to be appointed and from the nominated names the final selection shall be made on the principle that they represent the interests of all the classes of persons to the best extent possible and have demonstrated experience in the field of health.

Provided further that special invitees according to need may be included in the Board from time to time.

- (ii) The appointment of each member of the State Public Health Board, except the ex-officio appointees, shall be for a period of three years.
- (iii) The Board may create sub-committees in order to address specific areas or needs concerning the public health system.
- (iv) The Board shall meet at least once in six months.
- (v) The Board shall be adequately funded and staffed with full time functionaries to conduct its operations.
- (vi) The Board members who are nominated in their individual capacity and who are not ex officio, shall be compensated in accordance with existing State Laws.

(vii) The Board shall lay down the rules for its own functioning and discharge of its responsibilities.

20. Functions: The State Public Health Board shall carry out the following functions:

- a) Formulating, negotiating and adopting the State policy on health and ensuring that there is a policy revision every five years and that the plans and policies for health and the public expenditure on health are consistent with this Act;
- b) formulating and implementing State level strategies and plans of action for the determinants of health, especially food, water, sanitation and housing;
- c) Identifying the State's health goals to be included in the mandate of Panchayati Raj Institutions (PRIs);
- d) Establishing benchmarks and indicators in relation to each of the obligations under the right to health that apply in a given state, that are specific, time-bound and verifiable;
- e) Developing coverage norms and mechanisms to ensure equitable distribution of public health system and review those norms every 5 years and suggest upward revisions;
- f) Promoting availability of and access to primary, secondary and tertiary health care including acute and episodic care, preventive health services and other public health services, anti-natal, intra-natal and post-natal health care, child health, adolescent health, family planning, school health, chronic disease prevention, child and adult immunization, testing and screening services, geriatric services, dental health, nutrition and food safety, health education and other health promotion services;
- g) Planning and implementing State health programmes for identifying, preventing and addressing conditions of public health importance including epidemics and outbreaks through surveillance; epidemiological tracking, programme evaluation, and monitoring; testing and screening programs; treatment; abatement of hazardous and injurious substances and activities; administrative inspections; or other methods;
- h) Carrying out clinical and medical audits for select conditions of public health importance, and receiving relevant reports;
- i) Instituting systems of confidential inquiry into deaths to identify and analyse the failures of health systems, towards systemic improvements;
- j) Establishing and implementing performance standards, measures, capacities and processes for health care infrastructure, providers, quality or performance improvement that are accessible, affordable, and non-punitive;
- k) Making available, at all levels of health care, essential, rational drugs that are listed in the National List of Essential Medicines and/or the latest Model List of Essential Drugs of WHO, and promoting rational drug use;
- l) Developing public health IEC infrastructure and programmes for mass public health campaigns and activities, with institutionalized involvement of educational institutions, non-governmental organizations, community based organizations, associations of medical providers, traditional health care practitioners, mass media (including privately owned mass media), and all other stakeholders in promotion of public health;
- m) Formulating and implementing health human resource development plans to ensure availability, efficiency and regular capacity building of health care providers, commensurate with the public health needs of the State;
- n) Developing and implementing capacity building plans for all the bodies and committees being set up at various levels under this Act;
- o) Establishing formal or informal relationships between Allopathic, Homeopathy, Ayurveda, Unani, Siddha and all other Indigenous Systems of Medicine within the public health system;
- p) Developing and adopting rules and regulations for recruitment and appointment of technical experts and administrative and technical staff and set compensation packages for such experts and staff to be recruited from the open market and/or on deputation basis;
- q) Developing mechanisms for initiating public-private partnership in implementation of public health programmes that ensure equity and quality of health care services;
- r) Developing mechanisms for creating and empowering the decentralized monitoring committees at all levels, both rural and urban and seeking their feedback in structured manner;
- s) Ensuring coordination between all the public health related authorities and agencies within the district health services in the rural areas and municipal health services in the urban areas;
- t) Ensuring coordination with other Government departments, agencies and with the Central Government, to ensure preparedness for public health emergencies;

- u) Ensuring coordination with the relevant Government departments and agencies to ensure availability and access to adequate and safe food, water, sanitation and housing throughout the State;
- v) Taking steps towards making equitable schemes for risk-pooling for health of persons with different income levels and special needs;
- w) Developing mechanisms for conducting Health Impact Assessment for developmental activities/projects and ensure corrective action by concerned authorities in the State;
- x) Establishing formal and regular mechanisms to facilitate ongoing dialogue with and participation from PRIs and community representatives into State Government policies and programmes including through people's consultative bodies and regular meetings and joint workshops with community representatives on policy, planning and evaluation of State responses, and through mechanisms for receiving written submissions from the PRIs and communities;
- y) Ensuring greater involvement of vulnerable and marginalised individuals and groups in the formulation and implementation of health-related policies, including through initiatives to strengthen their capacities and co-ordination of their community based organisations and networks;
- z) Reviewing the existing laws and policies of State Government that are related to health/ public health, to determine compliance with this act and make recommendations for reform amendment or repeal where necessary; and
- aa) Appointing committees and sub-committees to address technical aspects of specific areas or needs for above or other similarly relevant purposes or any other mandate of State Government, on such terms as it may deem fit, involving dissolving, removing or streamlining any of the existing ones.

21. Decentralization and convergence in District, Block, Village level planning and implementation:

- (a) The State Government shall, within 2 years of notification of this Act, constitute planning and implementation mechanism at the levels of Gram Panchayat, block, and district in coordination with PRIs, in compliance with the their respective PRI Acts, and shall constitute and empower dedicated public health functionaries at those levels;
- (b) After the authorities at the Gram Panchayat, block and district levels are created, the State Governments shall ensure that their health plans are carried upwards from the lowest levels and included in their State level health plans and their implementation, to ensure maximum decentralization and localization of planning and implementation.
- (c) The State Governments shall ensure that at the village, block and district levels there is convergence between the health plans and other development plans and the resources allocated to them.

22. Planning and implementation subject to this Act: Notwithstanding the generality of the above, all the health plans, programmes that are prepared and implemented at the national, State and local levels shall in all circumstances be subject to and guided by the provisions of this Act.

23. Monitoring Mechanism: (1) The Governments shall establish an intensive accountability framework through the following methods of monitoring:

- (a) Health Information Systems (HIS);
- (b) Government monitoring; and
- (c) Community based monitoring;

Provided that (a) and (b) also shall be operationalized in the manners respecting communities' ownership in each of them, such that communities are included therein as active co-facilitators articulating their needs, helping in identification of key indicators and creation of tools for monitoring, providing feedback, as well as validating the data collected by these methods.

(2) The monitoring system shall focus on concurrent monitoring to the maximum possible extent and shall be linked with and based on detailed quality assurance system with specific monitorable indicators and benchmarks;

(3) The monitoring system shall be directly linked, on an ongoing basis, to corrective decision making bodies which shall be constituted by State Governments at various levels such that the information and issues emerging from monitoring are communicated to the relevant official bodies responsible for taking action (from primary health care centre to State level) so that the monitoring results in prompt, effective and accountable remedial action and is also fed into policy making and planning for future improved performance.

(4) The Governments shall ensure an integrated and human rights based approach to monitoring through effective access to and sharing of related information among Government institutions at all levels and among Government, people and nongovernment institutions; multi-sectoral analysis of available data and information; their comprehensive interpretation and analysis from human rights perspective and broad dissemination of monitoring outputs among institutions and within civil society.

#### 24. Health Information Systems (HIS):

a) The Central Government shall facilitate and co-ordinate at national level, the establishment, implementation and maintenance of Health Information Systems by the State Governments, the Panchayati Raj Institutions (PRIs), and the local authorities respectively; and the health service providers from the private health sector, including NGOs and charitable and missionary hospitals and health establishments; and various concerned divisions of the Governments, including health, women and child, social justice and welfare, and the bodies set up under this Act, in order to create a comprehensive national level Health Information System;

b) The Central Government shall, within 6 months of the notification of this Act, for the purpose of creating, maintaining or adapting database within the national level Health Information System contemplated in subsection (1), prescribe categories or kinds of data for submission, data collection, indicators, manner, and formats in which and by whom the data must be compiled or collated and must be submitted to the national department in a technically and institutionally sound manner;

c) Subject to the above, the State Governments, PRIs and local authorities shall have the absolute powers to establish, maintain, facilitate and implement the Health Information Systems at State and local levels as per the local needs and concerns;

d) Every public or private health establishment, facilities and providers, including the rural medical practitioners (RMPs), providing health care or any health service, and every other relevant agency shall establish and maintain a health information system as part of the Health Information Systems envisaged herein, and regularly report thereunder to the concerned State Governments or the authorities authorized by the State Governments in this behalf;

e) All the data, in the form it is collected as well as after analysis through the health information system, in disaggregated as well as aggregated forms, must be fully accessible to all members of the general public and the Governments must also take proactive measures to publish and disseminate it to people so as to enhance their effective participation on the health related decisions.

Provided that all the routine health reports prepared and submitted at every level, along with the forms filled towards that, shall be shared with the PRIs at all times.

f) The Central Government shall lay down specific regulations under this Act for convergence and integration of all health related data; preventing duplication of data collection or other reasons for waste of resources; ensuring maximum access to the data, including through use of web technology and electronic data base and to resolve other related technology issues; cost-effectiveness of the Health Information Systems including through open source software; and for effective dissemination of the health information.

#### 25. Government Monitoring: In addition to the Health Information Systems, monitoring by Government agencies and the national and State boards shall include:

(1) Annual financial audits of the health systems at national, State and district levels by the Comptroller & Auditor General (CAG) as well as by a chartered accountants and any special audit that may be deemed fit by the Governments, by agencies like the Indian Public Auditors, with the help and under the supervision of one or more research and resource institutions in every State, that shall be contracted for this purpose;

(2) System of mandatory audits of medical records by every health care establishment and institution, public or private;

(3) System of mandatory audits into maternal and child deaths as well as any other unusual death, by every health establishment and institution, public or private;

(4) Mandatory requirement for all the health care institutions and establishments to prominently display information regarding the Indian Public Health Standards (IPHS) in various respects; the charter of users' rights; grants received by the institutions; medicines and vaccines in stock; services provided to the users, user charges to be paid (if any), as envisaged in the Right to Information Act; and the monitoring of performance of the institutions and establishments on such parameters;

(5) Establishment of autonomous institutions with professional expertise and functional and administrative autonomy to conduct independent surveys to periodically assess the progress made on key health

parameters; effectiveness of various health initiatives; status in health equity and access to quality health services including costs of health care and impact of health care costs on poverty; track public expenditure on health care; and the Governments, as advised by the respective health boards which shall lay down regulations for their functioning.

26. Community-based Monitoring Framework: The Central and State Governments, on and as per the advice of the respective Health Boards, shall lay down rules for and establish community-based monitoring frameworks, to strengthen the direct accountability of the health system to the community and beneficiaries, through a number of methods that shall include, formation of community health monitoring committees, preparation of annual public reports on health at village, block, district, State and national levels.

Provided that the monitoring structures so created shall have at least one third of its members nominated by PRIs and one thirds nominated by membership based organizations representing user groups.

## **CHAPTER V**

### **DISPUTES RESOLUTION AND REDRESSAL MECHANISM FOR HEALTH RIGHTS**

27. Disputes Resolution through Public Dialogues and Public Hearings (Swasthya Jan Sunwais): The State and Central Governments shall facilitate forums for amicable and non-adversarial disputes resolution at community level by establishing mechanism of public dialogues and public hearings on health (Swasthya Jan Sunwais) in the following manner:

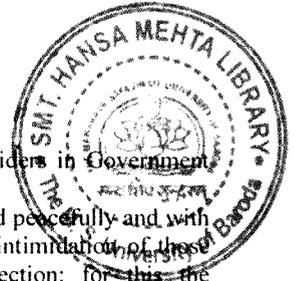
- a) The Swasthya Jan Sunwais shall be conducted at primary health centre (PHC), block and district levels twice in a year, and once a year at State and national level as events open to all citizens, which would enable the general public and various groups and organizations to give free and independent feedback about health care services;
- b) The Jan Sunwais shall be announced with at least one month's public notice, with PRIs and community based organizations being entrusted with the task of publicizing them, preferably preceded by group interviews in some of the concerned villages / PHCs, where both positive incidents and possible negative events should be documented.
- c) The panel for these Jan Sunwais shall include, appropriate level PRIs and nominated civil society representatives (from community organizations, people's organizations, or NGOs involved in monitoring of health services) while the Respondents would be the appropriate level Government health officials whose presence would be mandated as essential and representatives of private health care establishments and providers who volunteer to present themselves to the people's scrutiny and verdict.

28. Issues before Swasthya Jan Sunwais: The Swasthya Jan Sunwais would be the appropriate forums to raise the following, amongst other, kinds of issues through voluntary testimonies presented by individuals or groups:

- (i) People's perceptions, both positive and negative, about existing health care services and providers;
- (ii) Specific experiences of denial of health services or violations of rights enumerated herein;
- (iii) Status of access, availability, acceptability and quality of health care infrastructure and staff and services;
- (iv) Specific problems faced by vulnerable and marginalized individuals and groups in accessing health services;
- (v) Suggestions for improving service delivery, which will make services more accessible;
- (vi) Involvement of community in their health care;
- (vii) People's perceptions about behavior/attitude of health care providers and their availability in the health centers; and
- (viii) Other concerns and health needs of the community.

Provided that advance copies of the testimonies would preferably but not essentially be served on the concerned respondents to enable and facilitate prompt response by the Jan Sunwai Panel

29. Outcome and follow-up of Swasthya Jan Sunwais: After hearing both sides, the Swasthya Jan Sunwais panels would record the issues and where possible immediately recommend actions regarding cases of denial of health care or violation of rights enumerated herein or suggest follow-up actions by the parties; similarly it would recognize service providers acknowledged for providing exemplary good services. All recommendations of the panels would be followed up for appropriate actions, including by entry in the



formal service records and annual evaluation reports of the concerned service providers in Government health care establishments.

The Government shall throughout ensure that the Swasthya Jan Sunwais are conducted peacefully and with the objective of amicably resolving issues in non-adversarial manner, without any intimidation of those presenting their testimonies and where needed providing them necessary protection; for this the Governments shall appropriately educate and sensitise people and service providers.

30. Grievance redressal through In-house Complaints Forums at the institutional level:

(1) Without prejudice to the above rights, and in addition to the above, every user who had accessed the services of health establishment/ institution with more than 10 employees (including contractual and part-time employees) shall in any case have the right to have his/ her complaints examined within such health establishment/ institution internally and to have it dealt with in a thorough, just, effective and prompt way by the establishment/ institution, and to be informed about their outcome.

(2) In case of Government owned or controlled health establishment, the authority under which the establishment functions, and in the case of private health establishment, the head of that establishment, shall:

(a) Set up an "In-House Complaints Forum" for this purpose within the health establishment, but with equal number of independent, outside members from civil society organizations, preferably users' rights groups or consumer groups, or eminent citizens, media persons, respected lawyers, of the area, and shall appoint a person of senior rank with full administrative powers, working full time in the institution, as the Complaints Officer;

Provided that where an institution carries on its activity in one or more places with 10 or more employees in any of such additional places, a separate Complaints Officer shall be appointed for each of such places.

(b) Establish a procedure for the lodging of complaints with the Forum and for its investigation, arbitration or adjudication, including a contact mechanism for emergencies;

(c) Include provisions for the acceptance and acknowledgment of every complaint directed to a health establishment, whether or not it falls within the jurisdiction or authority of that establishment;

(d) Display the names and contact details of Complaints Officer and members of the Forum and the procedure for a complaint resolution in a manner that is visible to any person entering the establishment and such information must be communicated to users on a regular basis;

(e) Where necessary, provide assistance, advice and advocacy on behalf of the user through a panel of independent persons established by the establishment, for consultation regarding the most appropriate course of action for the user to take;

(f) Allow for referral of any complaint that is not within the jurisdiction or authority of the health establishment, to the appropriate body or authority;

(g) The Complaints Officer may order suo moto inquiry into violations of the provisions of this Act by the institution or any person in the institution;

(h) The Forum shall act in an objective and independent manner when inquiring into complaints made under this Chapter;

(i) The Forum shall inquire into and decide a complaint promptly and in any case within seven working days.

Provided that in cases of emergency the Complaints Officer shall decide the complaint within one day.

(3) The Forum, if satisfied, that a violation of the Act has taken place as alleged in the complaint, shall:

a) direct the institution to take measures to rectify the breach or violation complained of; to take specific steps or special measures or both towards compliance with health rights; or to refrain from or discontinue certain action/s amounting to violation of health rights;

b) counsel the person alleged to have committed the act and require such person to undergo training and social service; and

c) upon subsequent violations, recommend to the institution to, and the institution shall, initiate disciplinary action against such person/s responsible for the violation.

(4) The Complaints Officer shall inform the complainant of the action taken in relation to the complaint and shall be responsible for ensuring that the complaints, their nature and number and the action taken are published on the institution's web site or web page where such a web site or web page exists and are reported to the concerned Government on a six-monthly basis.

Provided that the Complaints Officer and the other members of the Forum shall ensure the maintenance of confidentiality of complainants and parties to a complaint.

31. Cause of action for complaints related to health, before designated district courts:

A complaint may be made by any user (or in case of the user's death, by user's representative, or in case of systemic complaints or complaints of violation of any of the health rights of group or class of individuals by any concerned organization with proven bona fide credentials, or the concerned monitoring committee of the district), as enumerated hereinabove, before a district court designated (hereafter referred to as court or designated court) by State Government to hear health related complaints for the district within whose jurisdiction the health care establishment/ provider is situated, or the cause of action, wholly or in part, arises, including:

- (a) Denial or non-provision of guaranteed services by a public health care establishment;
- (b) Denial of emergency treatment and/ or critical care by any health care establishment or provider, public or private, for or not for profit;
- (c) Defective or sub-standard quality of care or guaranteed services by a public health care establishment;
- (d) Inadequate personnel, infrastructure or supplies related to provision of care by a public health care establishment;
- (e) Absenteeism of the health care related staff in any public health care establishment;
- (f) Any medical malpractice, including extortion of money in excess of standard charges, for any health care service, or denial of service in contravention of regulatory mechanism for ensuring access to health care, by any health care establishment or provider, public or private, for or not for profit;
- (g) Costs and financial loss incurred due to non-provision or denial of any guaranteed service by public health care establishment, leading to availing of private medical services under compulsion;
- (h) Costs and financial loss incurred due to medicines or supplies being prescribed by the public health care provider, to be purchased from outside the public health care establishment, where the drug is covered under service guarantee;
- (i) Negligence, with relation to provision of services by any health care establishment or provider, public or private;
- (j) Sexual harassment or any other kind of abuse of the user by health care providers and staff of health care establishment, public or private;
- (k) Non-compliance with or mis-performance of the obligations of the Governments or any of the authorities as enumerated under this Act;
- (l) Any violation of any other rights of users on part of the Government/s, authorities or private sector health service providers.

Provided that except for (f), (g), (h) & (i) above, there shall be no requirement for proof of actual prejudice, damage or loss suffered by the complainant and notwithstanding the absence of such proof. There shall be strict liability on part of the alleged offender/s even if only the allegation/s of the act of commission or omission is/are proved in such cases, which shall be sufficient. However, in case actual prejudice, damage or loss is also proved, that shall be taken into account for the purposes of the reliefs granted or the quantum of relief.

32. Remedies:

(1) Orders of designated district courts: On being satisfied of the correctness of the complaint, the designated court shall issue any of the following orders to the State or Central Government or the concerned health care establishment or provider:

- a) To pay such amount as may be awarded by the court as compensation and damages to the user (or user's legal representatives in case of death of the user), for the violation of his/ her rights, including mental torture and emotional distress;
  - b) To pay such amount as may be awarded by the court as reimbursement to the user of a public health care establishment for having to use private services or for having to purchase medicine or supplies prescribed by the public health care provider, from outside the public health care facility or establishment;
- Provided that in both the above, the alleged offenders may be held jointly and severally liable for any compensatory damages or other costs awarded;

Provided further that a portion of the compensation so awarded may be ordered to be recovered personally from the concerned health care personnel who was/ were responsible for the violation;

- c) Order an inquiry to be carried out in respect of the concerned health care personnel or establishment or Government department or office, and/ or issue notice to the concerned statutory council with which they are registered for appropriate action under the respective statutes, and/or direct criminal action to be

initiated by the police, which may be in addition to and notwithstanding initiation of any internal departmental inquiry;

d) Recommend appropriate disciplinary action to be taken against concerned head of establishment or institution in cases where it is clearly proved that the denial of care was due to non-performance or mis-performance of duties on part of the establishment or institution;

e) Where complications or adverse consequences have been caused to a user due to mismanagement of a health condition, or medical negligence, direct the responsible establishment and/ or provider to take prompt and appropriate steps for its restoration/ correction, at no further cost to the user, including by referral where necessary;

f) Pass order/s directing the person who has committed the violation to undergo a fixed period of counselling related to the violation committed and a fixed period of social service;

g) Direct the Government or the health care establishment or provider to take specific steps or special measures or both to protect or fulfil any of the health rights; or to refrain from or discontinue any law/ policy/ action that may amount to violation of health rights;

h) Direct the Government or the health care establishment or provider to take steps to ensure that the alleged or similar health right violation is not repeated in future;

i) Pass appropriate directions to the concerned health care establishment, with respect to grievances that are systemic and regular in nature;

j) Direct the concerned Government or establishment or institution to make regular reports to the designated court regarding implementation of the court's orders, especially those passed under (h), (i) & (j) above.

k) Pass any interim order or recommendation in nature similar to the above to protect the rights of the complainant during the pendency of the complaint and such that the complaint does not become infructuous;

l) Make such other recommendations as may be necessary for the better implementation of this Act in respect of the concerned health care establishment;

Provided that the designated court may, in cases of emergency, be available and accessible 24 hours and in the interest of justice, pass urgent orders without considering the representations of the parties to the complaints or without hearing them as the case may be, including directing admissions, operations, treatment or any specific medical intervention, and the provision of universal precautions.

Provided that the designated court shall, as soon as may be, after the passing of such urgent orders in emergency, consider the representations of the parties or give them an opportunity to be heard as the case may be, and pass further appropriate orders.

(2) Reasoned order: The designated court shall pass orders that contain brief reasons for the passing of such orders.

(3) Costs: The designated court may, subject to any Rules made in this behalf, make such orders as to costs of complaint as are considered reasonable.

(4) Binding effect: An order of the designated court shall be binding on the parties to the complaint. Further, all authorities including civil authorities functioning within the jurisdiction of the court shall be bound by the orders of the court and shall assist in their execution.

(5) Consequences of Breach of designated court's Temporary Orders: All temporary injunctions and interlocutory orders passed by courts shall be deemed to be orders under Order XXXIX Rule 1 of the Code of Civil Procedure, 1908 and the breach of such an order shall be dealt with by applications to the court which application shall be treated as an application under Order XXXIX Rule 2A of the Code of Civil Procedure, 1908. ]

(6) Appeals: For purposes of appeal the orders or judgment passed by the designated courts shall be treated as orders or judgment of ordinary district court of that level.

(7) Timeframe for designation of courts: The State Governments shall within 60 days of the commencement of this Act designate a particular court in each district to hear the complaints related to death for the district and train and sensitise the judge of that court on people's health and laws related to health, who shall commence hearing all health related cases in the district.

(8) Dispensing of lawyer's appearance and waiver of court fee: There shall be no requirement of the complainants to engage lawyers to appear on their behalf in these courts and there shall be minimum technical requirements of filing and hearing of complaints and a complete waiver of court fee except a nominal amount of processing fee for the filing of complaints, and the State Governments shall lay down the rules for ensuring these.

(9) Information on website: The State Governments shall within 30 days of commencement of exercise of functions of the designated courts, establish a website or web page on the internet which shall provide inter alia information relating to the functioning of the said courts, the procedure for filing and sending complaints, the number, nature and of complaints received, and decisions and directions given by the courts.

Provided that the provision of the information on the website shall ensure the maintenance of the confidentiality of complainants and other parties to the complaints, unless waived by the parties themselves.

33. Enforcement of monetary orders of the courts:

(1) Recovery as arrears of land revenue: Where any amount is due from any person under an order made by the court under this Act, the person entitled to the amount may make an application to such court, and such court may issue a certificate for the said amount to the Collector of the District (by whatever name called), and the Collector shall proceed to recover the amount in the same manner as arrears of land revenue.

(2) Maintenance of insurance cover by private health establishments: Every private health establishment shall maintain insurance cover sufficient to indemnify a person for damages that he or she might suffer as a consequence of a wrongful act by any member of its staff or by any of its employees.

(3) Health Reparation Funds: The Central and State Governments shall, within 1 year of the notification of this Act, set up funds, to be known as National Health Reparation Fund and State Health Reparation Fund, at national and respective State levels, to disburse the amounts awarded as compensation to be paid by the Government or Government body. (The amount of corpus may be fixed and mentioned here.)

## **CHAPTER VI**

### **RESIDUARY OFFENCES, PENALTIES & IMMUNITIES**

34. Criminal Penalties:

(i) Penalty for willful commission of unspecified offences: Any person acting under this Act who willfully violates or obstructs the execution of any provision, regulation, or rule, or order under this Act, in a manner that is not identifiable as a cause of action as listed hereinabove, and/or for which no other penalty is specifically prescribed in this Act, shall be liable to be prosecuted for misdemeanor and upon conviction, shall be punishable by a fine not to exceed Rs. 10,000 or imprisonment for a period not to exceed 3 months, or both.

(ii) Enhanced Penalties: The maximum penalties described above shall be doubled for every subsequent conviction of any person arising out of a violation or violations related to a set of circumstances that are different from those involved in the previous violation or set of related violations.

(iii) Statute of Limitations: Any action under this Section is barred unless the action is commenced within two years after the cause of action accrues.

(iv) Separate Offence: Each violation of this Act which amounts to an offence shall be treated as a separate offence.

35. Immunities

(i) State Immunity. Notwithstanding any other provision of this Act, neither the Central Government nor State Governments, nor, except in cases of gross negligence or willful misconduct, the Government personnel or agents responsible ex officio for any of the matters in this act, or any NGO or civil society representative/ member especially authorized or entrusted by any Government to act under this Act, is liable for the death of or any injury to individuals, or damage to property, or violation of any other law, directly as a result of complying with or attempting to comply with this Act, or any rule or regulations promulgated pursuant thereto. Furthermore, nothing in this Act shall be construed to impose liability on a Central, State or local public health agency for the acts or omissions of a private sector partner unless explicitly authorized by law.

(ii) Personal immunity from civil action:

(a) No action for damages lies or may be brought against any health official of Central or State Governments because of anything done or omitted in good faith: in the performance or purported performance of any duty under this Act, or in the exercise or purported exercise of any power under this Act.

(b) no person who is a superior or supervisory officer over his/ her subordinate official of Central or State Governments who violates any part of this Act, except in cases of gross negligence, shall be subject to civil

remedies under this Act on the theory of vicarious liability, unless such superior or supervisory official had prior actual or constructive knowledge of the violation or actions leading to the violation; and/or was otherwise directly responsible for ensuring against the occurrence of the violation.

Provided that this shall not absolve the Government from vicarious liability for an act or omission for which it would be vicariously liable if this section were not in force.

## **CHAPTER VII MISCELLANEOUS**

36. Power to make Rules, Regulations, Bye-laws and issue Orders:

(a) The Central or State Governments are authorized to promulgate and implement such rules, regulations, bye-laws as are reasonable and necessary to implement and effectuate the provisions of this Act.

(b) The Central or State Governments shall also have the power to enforce the provisions of this Act through the issuance of orders and such other remedies as provided by law.

Provided that this Section does not limit specific enforcement powers enumerated in this Act.

(c) Notwithstanding the generality of the above, the appropriate Governments, in consultation with their respective Health Boards, shall, within 12 months of the notification of this Act frame rules/ regulations with regard to issues/ areas listed in Schedule II.

37. Relationship with other health related laws:

a) Uniformity: This Act shall be applied and construed to effectuate its general purpose to facilitate uniformity of the law/s with respect to the subject matters of this Act among all the States.

b) Relationship with State laws: Notwithstanding the above, this Act does not restrict or limit the rights and obligations under any of the State laws or regulations, so long as the rights and obligations enumerated herein are fully complied with.

c) Overriding effect: In the event of a conflict between this Act and other State or local laws or regulations, or administrative procedures, the provisions of this Act shall apply. However, the existing laws, rules and regulations, at national and State levels, shall continue to prevail to the extent of consistency with this Act and only portions thereof shall become severable and unenforceable to the extent of inconsistency with any provision of this Act.

d) Severability: The provisions of this Act are severable such that if any provision of this Act or its application to any person or circumstances is held invalid judicially, the invalidity shall not affect other provisions or applications of this Act which can be given effect to without the particular invalid provision or application.

e) Compatibility Review: Notwithstanding the above, the Governments shall undertake a comprehensive review of all the laws or provisions of laws related to health, and atleast of the laws enlisted herein under schedule III, within 1 year of this Act coming into force for their compatibility with this Act.

f) Repeals & Savings: Notwithstanding the above, the following Acts, laws, or parts thereof, are explicitly repealed with the passage of this Act: [Names of specific laws to be inserted upon a review and consultation]

38. Reports and Effective Date of Commencement:

(1) Report: The Union Health Minister shall, as soon as possible at the end of each fiscal year and in any event not later than December 31 of the next fiscal year, make a report respecting the administration and operation of this Act for that fiscal year, including all relevant information on the extent to which Central and State Governments have satisfied the criteria and conditions, for payments made under this Act and shall cause the report to be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the report is completed.

(2) This Act shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. Can also give different dates of commencement for different provisions of the Act – to make space for transitional process

## **CHAPTER VIII FINANCIAL MEMORANDUM**

To be done.

This shall also list out the financial agreements between Central and State Governments entailing the health related payments made by the Central Government to State Governments and the States' obligations arising under them.

#### Schedule I

Illustrations of the State's obligations to respect, protect, fulfill health rights (to be read with Section 6 of the Act)

Illustrations of obligation to respect:

- a) Refraining from denying or limiting equal access for all persons or groups, including prisoners or detainees, minorities, asylum seekers and illegal immigrants, to preventive, curative and/ or palliative health services;
- b) Refraining from applying coercive medical treatments (unless on an exceptional basis, but even then with safeguards of applicable international standards);
- c) Refraining from limiting access to contraceptives and other means of maintaining sexual and reproductive health;
- d) Refraining from censoring, withholding or intentionally misrepresenting health-related information, including sexual education and information;
- e) Refraining from preventing people's participation in health-related matters;
- f) Refraining from limiting access to health services as a punitive measure, e.g. during armed conflicts, in violation of international humanitarian law.
- g) Refraining from prohibiting or impeding traditional preventive care, healing practices and medicines;
- h) Refraining from marketing unsafe drugs;
- i) Abstaining from enforcing discriminatory practices as a Government policy; and
- j) Abstaining from imposing discriminatory practices relating to women's health status and needs.

Illustrations of obligation to protect:

- a) Adopting legislation or taking other measures ensuring equal access to health care and health-related services provided by third parties, including individuals, communities, private sector bodies, and non-governmental organizations (national and international);
- b) Regulating public as well as private health sector to ensure availability, accessibility, acceptability and quality of health facilities, goods and services;
- c) Regulating medical practitioners and other health care providers so that they meet appropriate standards of education, infrastructure, skills and practices;
- d) Regulating clinical trials, medical research and scientific experiments on human beings;
- e) Regulating use of technologies that may affect health;
- f) Ensuring that harmful social or traditional practices do not interfere with access to appropriate medical treatment;
- g) Preventing third parties, including individuals, families, communities, organizations, from coercing women to undergo traditional practices, like marriages, devadasi custom, other ways of socially sanctioned forced prostitution;
- h) Preventing violence against vulnerable or marginalized groups of society, in particular women, children, adolescents and older persons; and
- i) Preventing third parties from limiting people's equal access to health-related information and services.

Illustrations of obligation to fulfill:

- a) Giving recognition to the right to health comprehensively, preferably by way of laws on all health related areas; undertaking legislation of new laws and/ or amendment of existing laws;
- b) Adopting health policies and appropriate strategies with plans of action for realizing the right to health;
- c) Laying down equitable coverage norms and ensuring provision of a sufficient number of functional hospitals, clinics and other health-related facilities;
- d) Ensuring provision of guaranteed health services to all persons requiring these services, by public health facilities at various levels including sub-centre, PHC, CHC, Sub-divisional hospital and District hospitals in rural areas and similarly defined levels in urban areas; Laying down standards (like IPHS) and norms towards quality assurance and improvement; protocols for treatment and other medical interventions;
- e) Ensuring appropriate training of doctors and other medical personnel;
- f) Ensuring equal health care access to all, including preventive programmes against major infectious diseases; equal access for all to the underlying determinants of health;
- g) Taking positive measures that enable and assist individuals and communities to enjoy the right to health, when individuals or a group are unable, for reasons beyond their control, to realize that right themselves by the means at their disposal;

- h) Ensuring that public health infrastructures provide for sexual and reproductive health services, including safe motherhood, particularly in rural areas;
- i) Promoting and supporting establishment of institutions providing counseling and mental health services, with due regard to equitable distribution throughout the country;
- j) Promoting medical research and health education, as well as information campaigns, particularly with respect to HIV/AIDS, sexual and reproductive health, traditional practices, domestic violence, healthy lifestyles, consumption of alcohol, cigarettes, drugs and other harmful substances;
- k) Adopting measures against environmental and occupational health hazards and against any other threat as demonstrated by epidemiological data;
- l) Formulating and implementing policies aimed at reducing and eliminating pollution of air, water and soil;
- m) Formulating, implementing and periodically reviewing policies to minimize the risk of occupational accidents and diseases, and ensuring occupational safety;
- n) Fostering recognition of factors favouring positive health results, e.g. health research and provision of health information;
- o) Ensuring that health services are culturally appropriate and that health care staff are trained to recognize and respond to the specific needs of vulnerable or marginalized groups;
- p) Supporting people in making informed choices about their health.

#### Schedule II

(Areas for Rules/ regulations/ bye-laws)

To be done

#### Schedule III

(List of enactments that must be subjected to compatibility review under Section 37)

Births, Deaths and Marriages Registration Act, 1886

Epidemic Diseases Act, 1897

Lepers Act, 1898

Destructive Insects and Pests Act, 1914

Indian Medical Degrees Act, 1916

Indian Red Cross Society Act, 1920

Workmen's Compensation Act, 1923

Trade Unions Act, 1926

Payment of Wages Act, 1936

Drugs and Cosmetics Act, 1940

Industrial Disputes Act, 1947

Indian Nursing Council Act, 1947

Pharmacy Act, 1948

Minimum Wages Act, 1948

Dentists Act, 1948

Employees' State Insurance Act, 1948

Census Act, 1948

Drugs (Control) Act, 1950

Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954

Prevention of Food Adulteration Act, 1954

All-India Institute of Medical Sciences Act, 1956

Young Persons (Harmful Publications) Act, 1956

Slum Areas (Improvement and Clearance) Act, 1956

Indian Medical Council Act, 1956

Immoral Traffic (Prevention) Act, 1956

Maternity Benefit Act, 1961

Personal Injuries (Compensation Insurance) Act, 1963

Beedi and Cigar Workers (Conditions of Employment) Act, 1966

Post-Graduate Institute of Medical Education and Research, Chandigarh, Act, 1966

Insecticides Act, 1968

Registration of Births and Deaths Act, 1969

Contract Labour (Regulation and Abolition) Act, 1970  
 Indian Medicine Central Council Act, 1970  
 Medical Termination of Pregnancy Act, 1971  
 Homoeopathy Central Council Act, 1973  
 Water (Prevention and Control of Pollution) Act, 1974  
 Tobacco Board Act, 1975  
 Cigarettes (Regulation of Production, Supply and Distribution) Act, 1975  
 Bonded Labour System (Abolition) Act, 1976  
 Equal Remuneration Act, 1976  
 Beedi Workers Welfare Cess Act, 1976  
 Beedi Workers Welfare Fund Act, 1976  
 Untouchability (Offences) Amendment and Miscellaneous Provision Act, 1976  
 Lady Hardinge Medical College and Hospital (Acquisition and Miscellaneous), 1977  
 Air (Prevention and Control of Pollution) Act, 1981  
 Cine-Workers Welfare Fund Act, 1981  
 Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981  
 Narcotic Drugs and Psychotropic Substances Act, 1985  
 Indecent Representation of Women (Prohibition) Act, 1986  
 Child Labour (Prohibition and Regulation) Act, 1986  
 Consumer Protection Act, 1986  
 Mental Health Act, 1987  
 Air (Prevention and Control of Pollution) Amendment Act, 1987  
 Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988  
 Destructive Insects and Pests (Amendment and Validation) Act, 1992  
 Rehabilitation Council of India Act, 1992  
 Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992  
 Beedi and Cigar Workers (Conditions of Employment) Amendment Act, 1993  
 Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993  
 Transplantation of Human Organs Act, 1994  
 Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994  
 National Environment Tribunal Act, 1995  
 Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995  
 National Institute of Pharmaceutical Education and Research Act, 1998  
 National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999  
 Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003  
 Protection of Women from Domestic Violence Act, 2005  
 Disaster Management Act, 2005  
 Commissions for Protection of Child Rights Act, 2005  
 Spirituous Preparations (Inter-State Trade and Commerce) Control (Repeal) Act, 2006  
 The Food Safety and Standards Act, 2006