

NATIONAL PUBLIC HEARING ON RIGHT TO HEALTH CARE  
ORGANISED BY NHRC & JSA ON 16-17 DECEMBER 2004, NEW DELHI

NHRC Recommendations for a  
**National Action Plan to Operationalise the Right to Health Care**  
Within the broader framework of the Right to Health

Objectives of the National action plan

- **Explicit recognition of the Right to Health Care**, to be enjoyed by all citizens of India, by various concerned parties: Union and State Governments, NHRC, SHRCs and civil society and other health sector civil society platforms.
- **Delineation of essential health services and supplies** whose timely delivery would be assured as a right at various levels of the Public Health System.
- **Delineation of citizen's health rights related to the Private medical sector** including a Charter of Patients Rights.
- **Legal enshrinement of the Right to Health Care** by enacting a Public health services Act, Public health services Rules and a Clinical Establishment Regulation Act to regulate the Private medical sector.
- **Operationalisation of the Right to Health Care** by formulation of a broad timetable of activities by Union and State Governments, consisting of the essential steps required to ensure availability and accessibility of **'appropriate'** health services to all citizens, which would be necessary to operationalise the Right to Health care. This may include a basic set of Health Sector reform measures essential for universal and equitable access to **appropriate** health care, and guidelines regarding the budgetary provisions to be made available for effective operationalisation.
- **Initiation of mechanisms for joint monitoring** at District, State and National levels involving Health departments and civil society representatives, with specified regularity of monitoring meetings and powers to monitoring committees. In parallel with this, an institutionalised space needs to be created for regular civil society inputs towards a more consultative planning process. These should be combined with **vigilance mechanisms** to take prompt action regarding illegal charging of patients, unauthorized private practice, corruption relating to drugs and supplies etc.

- To monitor unethical and illegal medical practices.
- Functional redressal mechanisms to be put in place at District, State and National levels to address all complaints of denial of health care.

## Recommendations under the action plan

### Recommendations to Government of India / Union Health Ministry

- Enactment of a National Public Health Services Act, recognizing and delineating the Health rights of citizens, duties of the Public health system, public health obligations of private health care providers and specifying broad legal and organisational mechanisms to operationalise these rights. This act would make mandatory many of the recommendations laid down, and would make more justiciable the denial of health care arising from systemic failures, as have been witnessed during the recent public hearings.

This act would also include special sections to recognise and legally protect the health rights of various sections of the population, which have special health needs: Women, children, persons affected by HIV-AIDS, persons with mental health problems, persons with disability, persons in conflict situations, persons facing displacement, workers in various hazardous occupations including unorganised and migrant workers etc.

- Delineation of model lists of essential health services at various levels: village / community, sub-centre, PHC, CHC, Sub-divisional and District hospital to be made available as a right to all citizens.
- Substantial increase in Central Budgetary provisions for Public health, to be increased to 2-3% of the GDP by 2009 as per the Common Minimum Programme.
- Convening one or more meetings of the Central Council on Health to evolve a consensus among various state governments towards operationalising the Right to Health Care across the country.
- Enacting a National Clinical Establishments Regulation Act to ensure citizen's health rights concerning the Private medical sector including right to emergency services, ensuring minimum standards, adherence to Standard treatment protocols and ceilings on prices of essential health

services. Issuing a Health Services Price Control Order parallel to the Drug Price Control Order. Formulation of a Charter of Patients Rights.

- **Setting up a Health Services Regulatory Authority** - analogous to the Telecom regulatory authority- which broadly defines and sanctions what constitutes rational and ethical practice, and sets and monitors quality standards and prices of services. This is distinct and superior compared to the Indian Medical Council in that it is not representative of professional doctors alone - but includes representatives of legal health care providers, public health expertise, legal expertise, representatives of consumer, health and human rights groups and elected public representatives. Also this could independently monitor and intervene in an effective manner.
- Issuing **National Operational Guidelines on Essential Drugs** specifying the right of all citizens to be able to access good quality essential drugs at all levels in the public health system; promotion of generic drugs in preference to brand names; inclusion of all essential drugs under Drug Price Control Order; elimination of irrational formulations and combinations. Government of India should take steps to publish a National Drug Formulary based on the morbidity pattern of the Indian people and also on the essential drug list.
- **Measures to integrate National health programmes with the Primary Health Care system** with decentralized planning, decision-making and implementation. Focus to be shifted from bio-medical and individual based measures to social, ecological and community based measures. Such measures would include compulsory health impact assessment for all development projects; decentralized and effective surveillance and compulsory notification of prevalent diseases by all health care providers, including private practitioners.
- **Reversal of all coercive population control measures**, that are violative of basic human rights, have been shown to be less effective in stabilising population, and draw away significant resources and energies of the health system from public health priorities. In keeping with the spirit of the NPP 2000, steps need to be taken to eliminate and prevent all forms

of coercive population control measures and the two-child norm, which targets the most vulnerable sections of society.

- Active participation by Union Health Ministry in a National mechanism for health services monitoring, consisting of a *Central Health Services Monitoring and Consultative Committee* to periodically review the implementation of health rights related to actions by the Union Government. This would also include deliberations on the underlying structural and policy issues, responsible for health rights violations. Half of the members of this Committee would be drawn from National level health sector civil society platforms. NHRC would facilitate this committee. Similarly, operationalising *Sectoral Health Services Monitoring Committees* dealing with specific health rights issues (Women's health, Children's health, Mental health, Right to essential drugs, Health rights related to HIV-AIDS etc.)
- The structure and functioning of the **Medical Council of India** should be immediately reviewed to make its functioning more democratic and transparent. Members from Civil Society Organisations concerned with health issues should also be included in the Medical Council to conform medical education to serve the needs of all citizens, especially the poor and disadvantaged.
- People's access to emergency medical care is an important facet of right to health. Based on the Report of the Expert Group constituted by NHRC (Dr. P.K.Dave Committee), short-term and long-term recommendations were sent to the Centre and to all States in May 2004. In particular, the Commission recommended:
  - (i) Enunciation of a National Accident Policy;
  - (ii) Establishment of a central coordinating, facilitating, monitoring and controlling committee for Emergency Medical Services (EMS) under the aegis of Ministry of Health and Family Welfare as advocated in the National Accident Policy.
  - (iii) Establishment of Centralized Accident and Trauma Services in all districts of all States and various Union Territories along

with strengthening infrastructure, pre-hospital care at all government and private hospitals.

- Spurious drugs and sub-standard medical devices have grave implications for the enjoyment of human rights by the people. Keeping this in view all authorities are urged to take concrete steps to eliminate them.
- Access to Mental health care has emerged as a serious concern. The NHRC reiterates its earlier recommendations based on a Study “Quality Assurance in Mental Health” which were sent to concerned authorities in the Centre and in States and underlines the need to take further action in this regard.

### **Recommendations to State Governments / State Health Ministries**

- **Enactment of State Public Health Services Acts/Rules**, detailing and operationalising the National Public Health Services Act, recognizing and delineating the Health rights of citizens, duties of the Public health system and private health care providers and specifying broad legal and organisational mechanisms to operationalise these rights. This would include **delineation of lists of essential health services at all levels: village / community, sub-centre, PHC, CHC, Sub-divisional and District hospital** to be made available as a right to all citizens. This would take as a base minimum the National Lists of essential services mentioned above, but would be modified in keeping with the specific health situation in each state. These rules would also include **special sections to recognise and protect the health rights of various sections of the population, which have special health needs: Women, children, persons affected by HIV-AIDS, persons with mental health problems, persons in conflict situations, persons facing displacement, workers in various hazardous occupations including unorganised and migrant workers etc.**
- **Enacting State Clinical Establishments Rules regarding health rights concerning the Private medical sector**, detailing the provisions made in the National Act.
- **Enactment of State Public Health Protection Acts** that define the norms for nutritional security, drinking water quality, sanitary facilities and other

key determinants of health. Such acts would complement the existing acts regarding environmental protection, working conditions etc. to ensure that citizens enjoy the full range of conditions necessary for health, along with the right to accessible, good quality health services.

- **Substantial increase in State budgetary provisions for Public health** to parallel the budgetary increase at Central level, this would entail at least doubling of state health budgets in real terms by 2009.
- **Operationalising a State level health services monitoring mechanism**, consisting of a *State Health Services Monitoring and Consultative Committee* to periodically review the implementation of health rights, and underlying policy and structural issues in the State. Half of the members of this Committee would be drawn from State level health sector civil society platforms. Corresponding **Monitoring and Consultative Committees** with civil society involvement would be formed in all districts, and to monitor urban health services in all Class A and Class B cities.
- **Instituting a Health Rights Redressal Mechanism** at State and District levels, to enquire and take action relating to all cases of denial of health care in a time bound manner.
- **A set of public health sector reform measures** to ensure health rights through strengthening public health systems, and by making private care more accountable and equitable. The minimum aspects of a health sector reform framework that would strengthen public health systems must be laid down as an essential precondition to securing health rights. **An illustrative list of such measures is as follows:**
  1. State Governments should take steps to **decentralize the health services** by giving control to the respective Panchayati Raj Institutions (PRIs) from the Gram Sabha up to the district level in accordance with the XI Schedule of the 73<sup>rd</sup> and 74<sup>th</sup> Constitutional Amendment of 1993. Enough funds from the plan and non plan allocation should be devolved to the PRIs at various levels. The local bodies should be given the responsibility to formulate and implement health projects as per the local requirements within the local overall framework of the health policy of the state. The elected representatives of the PRIs and the officers should be given adequate training in local

level health planning. Integration between the health department and local bodies should be ensured in formulating and implementing the health projects at local levels.

2. The adoption of a **State essential drug policy** that ensures full availability of essential drugs in the public health system. This would be through adoption of a graded essential drug list, transparent drug procurement and efficient drug distribution mechanisms and adequate budgetary outlay. The drug policy should also promote rational drug use in the private sector.
3. The health department should prepare a State Drug Formulary based on the health status of the people of the state. The drug formulary should be supplied at free of cost to all government hospitals and at subsidized rate to the private hospitals. Regular updating of the formulary should be ensured. Treatment protocols for common disease states should be prepared and made available to the members of the medical profession.
4. The adoption of an integrated community health worker programme with adequate provisioning and support, so as to reach out to the weakest rural and urban sections, providing basic primary care and strengthening community level mechanisms for preventive, promotive and curative care.
5. The adoption of a detailed plan with milestones, demonstrating how essential secondary care services, including emergency care services, which constitute a basic right but are not available today, would be made universally available.
6. The public notification of medically underserved areas combined with special packages administered by the local elected bodies of PRI to close these gaps in a time bound manner.
7. The adoption of an integrated human resource development plan to ensure adequate availability of appropriate health manpower at all levels.
8. The adoption of transparent non-discriminatory workforce management policies, especially on transfers and postings, so that medical personnel are available for working in rural areas and so that specialists are

prioritised for serving in secondary care facilities according to public interest.

9. The adoption of improved vigilance mechanisms to respond to and limit corruption, negligence and different forms of harassment within both the public and private health system.
  10. All health personnel upto the district PRI level must be administratively and financially accountable to the PRI at each level from the Gram Panchayat to the District level. Adequate financial resources must be made available at each level to ensure all basic requirements of health and medical care for all citizens.
- Ensuring the implementation of the Supreme court order regarding food security, universalising ICDS programmes and mid day school meal programmes, to address food insecurity and malnutrition, which are a major cause of ill-health.
  - People's access to emergency medical care is an important facet of right to health. Based on the Report of the Expert Group constituted by NHRC (Dr. P.K.Dave Committee), short-term and long-term recommendations were sent to the Centre and to all States in May 2004. In particular, the Commission recommended:
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  - Spurious drugs and sub-standard medical devices have grave implications for the enjoyment of human rights by the people. Keeping this in view all authorities are urged to take concrete steps to monitor and eliminate them.

- Access to Mental health care has emerged as a serious concern. The NHRC reiterates its earlier recommendations based on a Study “Quality Assurance in Mental Health” which were sent to concerned authorities in the Centre and in States and underlines the need to take further action in this regard.

#### Recommendations to NHRC

- NHRC would oversee the monitoring of health rights at the National level by initiating and facilitating the *Central Health Services Monitoring Committee*, and at regional level by appointing *Special Rapporteurs on Health Rights* for all regions of the country.
- Review of all laws/statutes relating to public health from a human rights perspective and to make appropriate recommendations to the Government for bringing out suitable amendments.

#### Recommendations to SHRCs

- SHRCs in each state would facilitate the *State Health Rights Monitoring Committees* and oversee the functioning of the State level health rights redressal mechanisms.

#### Recommendations to Jan Swasthya Abhiyan and civil society organisations

- JSA and various other civil society organisations would work for the widest possible raising of awareness on health rights - ‘Health Rights Literacy’ among all sections of citizens of the country.

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