



MEDICO-LEGAL SOCIETY OF INDIA

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05/04/2023

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Hon'ble Chairperson,
National Medical Commission
New Delhi, 110001

Sub: Issues related to Right to Health Bill passed by Rajasthan Legislature, and proposed to be passed by other states.

Dear Sir,

The strike of doctors from Rajasthan over a period of two weeks has certainly disrupted the healthcare services in the state. Had the draconian Act been imposed on the healthcare providers, the healthcare would have been irreparably disrupted. We are therefore writing to you to request you to look into the matter as the one of the aim of the National Medical Commission (iii) is to promote equitable and universal healthcare that encourages community health perspective and makes services of medical professionals accessible to all the citizens; and (vii) have an effective grievance redressal mechanism.

One of the functions of NMC is to "(c) **assess the requirements in healthcare**, including human resources for health and healthcare infrastructure and develop a road map for meeting such requirements";

By virtue of this draconian Act, both these issues have come into focus. There is no redressal mechanism to handle grievances of the doctors. We sincerely request you to kindly take note of these issues and frame guidelines for all states w.r.t Right to health.

Encl :

1. Article by Dr Rajeev Joshi, founder
Medico Legal Society of INDIA
2. Comments on the Right to health Act
passed by Rajasthan Legislature

Copy to :

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Right to health bill passed by Rajasthan Legislature

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Founder, Medico Legal Society of INDIA,

Right to health bill passed by the Rajasthan legislature has invoked huge reaction from the medical fraternity in the State of Rajasthan as well as across the country. Political leadership of all parties from Rajasthan is speaking in favour of the Act whereas Medical leadership all over the country is speaking against the bill. Some doctors have written against the bill whereas some doctors have welcomed the first of its kind Act. Overall there is a situation of confusion. Government says that the Act will be implemented; doctors in Rajasthan have gone on strike, closing all private medical services. This article gives background of healthcare in Rajasthan and legal issues involved.

It may be recalled that a patient named Asha Bairwa, resident of Lalsot, Rajasthan started having labour pains for which she approached the primary health centre in her village. Since treatment could not be provided in the PHC, she was referred to the District hospital at Dausa. District hospital did not have facilities for caesarean section so she was sent to Jaipur which is about 150 km away. Government hospital in Jaipur insisted that if she agrees to undergo tubectomy, they will do a caesarean section. The woman had two daughters and in case she delivered one more daughter, she wanted to take another chance for having a son. So they called doctor Archana Sharma in Dausa; who had conducted her first delivery. Dr. Sharma said that she will not insist on tubectomy, and do the caesarean section. Patient travelled back 150 odd kilometres, and reached Dr Archana Sharma's hospital. Dr Sharma conducted her operation, but because of 7 to 8 hours spent travelling from Lalsot to Jaipur and back to Dausa, the patient was exhausted. As a complication of the prolonged second stage of labour, the patient had postpartum haemorrhage (PPH). Dr Sharma gave two bottles of blood, but the patient succumbed. Holding the doctor guilty of negligence, the police slapped section 302 of IPC (Murder) . Dr Archana Sharma was stressed out and committed suicide as she was unable to withstand the pressure of impending arrest.

Nothing more needs to be said about the condition of government healthcare machinery and medico-legal situation in the State of Rajasthan. Hon'ble Supreme Court Judgment in case of Jacob Mathews vs State of Punjab (2005) categorically states that no doctor can be harassed and arrested without having an opinion of the expert committee. Hon'ble Supreme Court Judgement in case of Lalita Kumari vs Government of Uttar Pradesh (2014) mandates preliminary inquiry before filing FIR by the police in case of medical negligence. The Rajasthan police did not pay any heed to these orders and slapped section 302 of IPC in the FIR filed by them without the opinion of any expert. During the last 18 years, Neither Government of India, nor the Government of Rajasthan have made any Acts to protect doctors. Naturally doctors in Rajasthan are intimidated due to the possibility of any action by police or government babus; which is likely even in case of frivolous complaint against them under this Act. The Act offers protection only to doctors in government service.

Public health is inefficient, and private healthcare services are the mainstay of healthcare delivery in India in general and Rajasthan in Particular. Government, which did not bring enactments as per Jacob Mathew and Lalita Kumari judgments; is giving justification of Hon'ble Supreme Court order in Parmanand Katara vs Union of India (1990) for the most dreaded clause of the Right to Health Act. It states that patients have the right to emergency care in all hospitals including private hospitals. Parmanand Katara speaks about doing away with the need of paperwork and consent of people who bring the victim of an accident to the hospital. It imposes an obligation on doctors to stabilise the patient without financial considerations. Doctors have a duty to transfer the patient to a facility where required treatment can be provided If necessary. For all these years, such victims of accidents have been transferred to government hospitals after giving first aid. It is a common experience that nobody even asks for the fees for such life saving treatment.

Doctors are anxious that, with such a draconian Act, who will pay for the treatment of patients? These anxieties are not unfounded. Many of the patients who are admitted to hospital are admitted for some emergency. Take an example of a woman in labour, which is an emergency for relatives though the pregnancy is known for almost 9 months. If this woman lands in an emergency caesarean section, then does the Act require the hospital to waive all the bills? Similarly a patient coming to hospital with pain in abdomen may land up in emergency appendectomy. Should the hospital do these surgeries free of cost? The hospitals fear that they will be bankrupt in no time, and it is better to stop the services. Record of Central and State governments for reimbursement of expenses to hospitals is far from satisfactory.

One of the reasons given by the government is that some hospitals which have taken concessional land from the government are not giving free service to patients as per the agreement at the time of grant of the land. It is the failure of the government in enforcing such an agreement with beneficiary hospitals. It is incorrect to hold all private hospitals ransom for this deficiency. Suitable information technology solutions can be developed to supervise implementation of such agreements. By imposing an easy solution, more than 75% of people of Rajasthan will suffer due to lack of proper healthcare in addition to creating difficulty for doctors.

Right to health of citizens under right to life of the constitution of India (Art 21), is being juxtaposed against the right to life with dignity of the doctors. Doctors have been punished for not following the order of Hon'ble Supreme Court in PtParmanand Katara imposing "obligation which is total, absolute and paramount", but there is no punishment for blatantly violating orders of Hon'ble Supreme Court in Jacob Mathews. One doctor can not be expected to provide protection and fulfilment of rights and equity in relation to the health and well-being of 1000 people in India or 10000 people in Rajasthan without support of legislature and judiciary. Hon'ble Supreme Court in IMA vs V. P. Shantha (2006) has played its role in converting the relationship of mutual trust between doctors and patients to a relationship of mutual distrust. It is sincerely hoped that the rules being framed under the Act bring some semblance, and the healthcare in Rajasthan is back on track.

Comments on the
Right to Health Act
Passed by Rajasthan State Legislature
Discussed by Medico Legal Society of INDIA

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Government of Rajasthan
Department of Medical, Health and Family Welfare
Rajasthan Right to Health Care Act 2022

	PREAMBLE	Comment from : members of Medico Legal Society of INDIA
	To provide protection and fulfilment of rights, equity in relation to health and well- being for achieving the goal of health care for all through guaranteed access to quality health care to all the residents of the State, without any catastrophic out-of-pocket expenditure.	Equity should NOT be at the cost of the private healthcare providers, it is the responsibility of the Government to provide healthcare under this Act. If the Out Of Pocket Expenditure is not beyond that limit of catastrophic expenditure, will the service be charged? Does it means the richer have to pay and the poor get it free? What about article 14 right to equality? This adds to confusion and leaves major grey area for exploitation
	And whereas the persisting inequitable accessibility and denials in the matter of health care in the State are a concern to all.	Equitable distribution is the core for the health care system in the country, why has the state lagged in that? Budgetary allocation is persistently inadequate for years.
	The Government of Rajasthan is committed to ensure that people's right to health care is realized. The most important stakeholders in realization of right to health care are the people themselves. Therefore, people's participation is crucial and critical for realization of people's right to health care services.	Without equal participation of all stakeholders any notion prioritising one over other is destined to fail. This assumption that one stakeholder is major while other is minor is in contradiction to the core of a successful service delivery system. Service is run smoothly by a "Systems thinking approach" which depends on the concept of "linkages makes the strength", and all links hold equal importance. What is the participation of people in preventive health? What is being done under this Act for preventive health? State is not focussing on prevention aspects
	The constitution of India. incorporates provisions Article 21 of the constitution	Article 21 guarantees protection of life which in most instances are

	<p>guarantees protection of life and personal liberty to every citizen.</p>	<p>dependent on other factors like Policing, better road safety, better safety to pedestrians, better safety for women etc. By giving all the onus on treatment aspect after some event, the state is setting a wrong example. Social harmony is the most important aspect for prevention of even the majority of lifestyle diseases. Instead of focusing on strengthening infrastructure, the state is focusing on delivery of service through the private sector without paying for it. Do doctors have personal liberty not to treat patients if they are suffering financial losses?</p>
	<p>Chapter-I: Short title, Extent and Commencement- Definitions</p>	
<p>1. Short title, extent and commencement: -</p>		
<p>a)</p>	<p>This Act may be called the Rajasthan Right to Health Care Act, 2022...</p>	
<p>b)</p>	<p>It extends to the entire State of Rajasthan.</p>	
<p>c)</p>	<p>It shall come into force on such date as the Government may, by notification in the official Gazette</p>	
<p>2. Definitions: In this Act, unless the context otherwise requires -</p>		<p>Definition of Pandemic is missing</p>
<p>a)</p>	<p>"Affordable" means that which can be secured by every person without any catastrophic expenditure to obtain health care and reducing that person's capacity to acquire other essential goods and services including food, water, sanitation and health services. Catastrophic household health care expenditures are defined as health expenditure exceeding 10% of its total monthly consumption expenditure or</p>	<p>Until a value based on current CPI or similar indigenous financial figure is given Catastrophic expenditure will change according to time , place and Person . What can be catastrophic for one individual can be a tip amount paid to a waiter in a restaurant. Without a figure based on the current economic situation any talk of catastrophic expense is meaningless. It varies depending on</p>

	40% of its monthly non-food consumption expenditure;	the individual. By forcing such enactment healthcare providers will have to suffer catastrophic expenditure..!! What is the source of this definition may be given by the state in the reference list.
b).	"Basic Primary Healthcare Services" means preventive, promotive and outpatient services as defined from time to time for health & wellness centers at sub-centers. They include consultation, drugs and diagnostics;	Prevention is at various levels. Secondary prevention is early diagnosis and treatment while for successful implementation of primary and primordial level involves, policy, infrastructure, intersectoral co-ordination, involvement of governments, and healthy individuals. Here it seems only one level of prevention is being talked which is not prevention in its entirety. Justification required for outpatients services. Whether it is only at subcenters or any other private hospital also
c)	"Bioterrorism" means the international use of any microorganism, virus, infectious substance (including toxins), or biological product that may be engineered as a result of biotechnology, or any naturally occurring or bioengineered component of any such microorganism, virus, infectious substance, or biological product to causes, death, disease or other biological malfunction in a human, an animal, a plant, or another living organism.	
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d)	"Comprehensive Primary Healthcare Services" means in addition to basic primary healthcare, it would include emergency care, childbirth and other services as defined from time to time for health & wellness centers at Primary Health Centers.	

e)	"Capacity to consent" means the ability of an individual, including a minor or a mentally challenged person, assessed by the relevant healthcare provider on an objective basis, to understand and appreciate the nature and consequences of proposed health care or of a proposed disclosure of health-related information, and to make an informed decision in relation to such health care or disclosure	
f)	"Clinical Establishment" means establishments defined as a clinical establishment under clause c) of section 2 of the Clinical Establishments (Registration and Regulation) Act, 2010.	
g)	"Conditions of public health importance" means a disease, syndrome, symptom, injury, or other threat to health that is identifiable on an individual or a community level and can reasonably be expected to lead to adverse health effects in the community.	
h)	"Communicable Diseases" means illness caused by microorganisms and transmissible from an infected person or animal to another person or animal.	
i)	"Decontamination" means a procedure whereby health measures are taken to eliminate an infectious or toxic agent or matter on a human or animal body surface, in or on a product prepared for consumption or on other inanimate objects, including conveyances, that may constitute a public health risk.	
j)	"Deratting" means the procedure whereby health measures are taken to control or kill rodent vectors of human diseases present in baggage cargo, containers, conveyances, facilities,	

	goods and postal parcels at the point of entry	
k)	" Disaster " means a catastrophe, mishap, calamity or grave occurrence.	Disaster is essentially all named events which are beyond the local control measures. If it can be managed by local available resources it ceases to be a disaster .
l)	" Disinfection " means the procedure whereby health measures are taken to control or infectious agents on a human or animal body surface or in or on baggage, cargo, containers, conveyances, goods and postal parcels by direct exposure to chemical or physical agents.	
m)	" Endemic " means diseases prevalent in or particular locality, region or people.	
n)	" 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.	Epidemic means outbreak of disease extending beyond localised area and includes any reference to "disease outbreak" nevertheless specifically stated otherwise;
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o)	<p>"Essential Public Health Functions" means the following.</p> <ol style="list-style-type: none"> I. Monitor and evaluate health status to identify community health problems and take measures to solve them, II. <u>Monitor and evaluate health status to identify community health problems and take measures to solve them.</u> III. Instituting appropriate and timely response for the prevention and control of outbreaks, IV. Inform, educate and empower people about health issues 	<p>WHO Definition</p> <ul style="list-style-type: none"> ● Monitoring and evaluation of health and well-being, equity, social determinants of health, and health system performance and impact ● Public health surveillance; control and management of health risks and emergencies ● Promotion and management of health research and knowledge ● Development and implementation of health policies and promotion of legislation that protects the health of the population ● Social participation and social

	<p>V. mobile community partnerships to identify and solve health problems</p> <p>VI. Develop policies and plans that support individual and community health efforts,</p> <p>VII. Enforce laws and regulations that protect and ensure public health and safety,</p> <p>VIII. Link people to needed personal health services and assure the provision of health care when otherwise unavailable,</p> <p>IX. Assure a competent public and personal health care workforce,</p> <p>X. Evaluate effectiveness, accessibility and quality of personal and population based health services</p> <p>XI. Research for new insights and innovative solutions to health problems,</p>	<p>mobilization, inclusion of strategic actors, and transparency</p> <ul style="list-style-type: none"> ● Development of human resources for health ● Ensuring access to and rational use of quality, safe, and effective essential medicines and other health technologies ● Efficient and equitable health financing ● Equitable access to comprehensive, quality health services ● Equitable access to interventions that seek to promote health, reduce risk factors, and promote healthy behaviors; and ● Management and promotion of interventions on the social determinants of health.
p)	<p>"Government" means the Government of Rajasthan.</p>	
q)	<p>"Guaranteed health care services" means health services assured through the public health systems.</p>	
r)	<p>"Health care" means medical investigations, treatment, care, procedures and any other service or intervention towards a therapeutic, nursing, rehabilitative, palliative, convalescent, preventive, diagnostic, and/or other health related purpose or combinations thereof, including reproductive health care and emergency medical treatment, in any system of medicines.</p>	
s)	<p>"Health care establishment" means the whole or any part of a public or private institution, facility, building or place, whether for profit or not, that is operated to provide inpatient and/or outpatient health care, and a "public</p>	<p>or privately owned; this shows clear deficit of understanding of what is private and public institution</p>

	health care establishment" shall accordingly refer to a health care establishment set up, run, financed or controlled by the Government or privately owned.	
t.)	"Health care provider" means a person who is authorized by the Government to engage in identifying, preventing and/or treatment of illness and/or disability.	
u)	<p>"Health research" means any research which contributes to knowledge of; -</p> <ol style="list-style-type: none"> I. Biological, clinical, genetic, psychological or social processes in human beings. II. improved methods for health care services. III. human pathology, causes of diseases, effect of the environment on the human body. IV. development or new application of pharmaceuticals, medical devices, medicines vaccines etc; V. the development of new applications of the health technology; and any reference to "research" herein shall mean the same unless specifically stated otherwise. VI. assessment, analysis and formulation of approaches to health systems development. 	
v)	"Health impact assessment" means a combination of procedures, methods, and tools for identifying, predicting, evaluating, and mitigating potential effects of a proposed law, policy, program, project, technology, or a potentially damaging activity, in relation health prior to taking decisions thereon and making commitments thereunder, on the health of the population, and	

	<p>other relevant effects. and the distribution of those effects within the population, and any reference to health impact assessment shall mean the same;</p>	
<p>w)</p>	<p>"Identifiable health information" means any information, whether oral, written, electronic, visual, pictorial, physical or any other form, that relates to an individual's past, present or future physical or mental health status, condition, treatment, service, products, purchased or provision of care, and reveals that identity of the individual, or that of a group of people, whose health care is the subject of the information, or there is a reasonable basis to believe the information could be utilized (either alone or with other information) to reveal the identity of the individual.</p>	
<p>x)</p>	<p>"Information, Education and Communication" means programs formulated, instituted and implemented by government for information, education and communication on and related to health, such that evidence based and scientific updated multi-lingual and easily understood the information on and related to health is accessible, available and disseminated to people, with their participation and mobilization, on a continuing and sustained basis, and in a manner that is age- appropriate, gender sensitive, non-stigmatizing, non-discriminatory, promotes equality and other human rights, and do 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,</p>	<p>Details after word" people" should not be part of definition. Government is not the only single entity doing IEC activities.</p>
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y)	" 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 wherever it is 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;	
z)	" Isolation " means separation of ill or contaminated persons or affected baggage, containers, conveyances, goods or postal parcels from others in such a manner as to prevent the spread of infection or contamination.	
aa)	" Local Authority " includes panchayat raj institutions, municipalities or a district board, cantonment board, town planning authority or Zila Parishad or any other body or authority, by whatever name called, for the time being invested by law, or rendering essential services or, with the control and management of civic services, within a specified local area.	
**	***	<u>Medical Accident needs to be defined in this Act.</u>
bb)	" Medical Emergency " means a sudden injury or serious illness that, if not treated right away, could cause serious consequences amounting to death or serious harm to the individual.	This definition is vague. A medical emergency is an acute injury or illness that poses an immediate risk to a person's life or long-term health, sometimes referred to as a situation risking "life or limb". Word SERIOUS is used indiscriminately.
cc)	" Municipality " means an institution of self-government constituted for any urban area of or an area in rural to urban transition, like municipal council, municipal corporation, Nagar	

	Panchayat or by whatever other name called.	
dd)	"Non-identifiable health information" means any information, whether oral, written, electronic, visual, pictorial, physical, or any other form, that relates to an individual's past, present, or mental health status, condition, treatment, service, product, purchased, or provisions of care and does not reveal the identity of the individual, or a group of people whose health status is the subject of the information, or there is no reasonable basis to believe that such information could be utilized (either alone or with other information that's, or should reasonably be, known to be available to predicable recipients of such information) to reveals the identity of that individual.	
ee)	"Non-communicable diseases" means diseases associated with the <u>way a person or group of people lives</u> , including lifestyle diseases atherosclerosis, cardio-vascular diseases, stroke, diabetes, hypertension, occupational diseases, mental health, injuries and accidents;	LIFESTYLE DISEASE need to be differentiated from non-communicable diseases. Would it be prudent even for government to pay for treatment of diseases which arise out of say chronic alcoholism, excessive smoking or prolonged use of tobacco?
ff)	"Order" means subsidiary legislation dealing with specific persons or cases and shall refer to orders issued under and by the mandate of this Act;	
gg)	"Outbreak" mans an epidemic limited to a localized increase in the incidences of a disease;	Outbreak means occurrence of cases of disease in excess of what is usually expected for a given period of time in a locality.
hh)	"Panchayati Raj Institutions" means institutions of local self-government established under any of the state's Panchayati Raj Laws, at village, block, or district levels, like Gram Panchayat, Panchayat Samiti, or Zilla Parishad, or by whatever other name called, and	

	any reference to "PRI" shall mean the same,	
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ii)	"Prescribed" means as prescribed under this Act or under the Rules, Regulations, Bye-laws and orders are framed under and by the mandate of this Act.	
jj)	"Public Health" means the health of the population, as a whole, especially as monitored, regulated and promoted by the Government.	
kk)	"Public Health Institution" means governmental organizations that is operated or designed to provide in-patient or out-patient treatment, diagnostic or therapeutic interventions, nursing, rehabilitative, palliative, convalescent, preventative or other health services to public;	
ll)	<p>"Public health emergency" means an occurrence or imminent threat of illness or health conditions that</p> <p>I. Is believed to be caused by any of the following;</p> <ol style="list-style-type: none"> 1. bioterrorism, 2. the appearance of a novel or previously controlled or eradicated infectious agent or biological toxin, 3. a natural disaster, 4. a chemical attack or accidental release, 5. a nuclear attack or accident; and <p>II. poses a high probability of any of the following harms;</p> <ol style="list-style-type: none"> 1. a large number of deaths in the affected population; 2. a large number of serious or long term disabilities in the affected population or 3. widespread exposure to an infectious or toxic agent that poses a significant risk of substantial 	

	future harm to a large number of people in the affected population.	
m	"Public health emergency of international concern" means an extraordinary event which is determined, as provided in International Health Regulations (IHR) of World Health Organisation (WHO).	
nn)	"Government funded health care services" are those funded and provided by the government or those provided by the non-government entities but for which government funds part or whole of the costs of care to some or all patients.	
oo)	"Public Health Surveillance" means the continuous, systematic collection, analysis and interpretation of health-related data needed for the planning, implementation, and evaluation of public health practice.	
pp)	"Quarantine" means the restriction of activities and/or separation from others of suspect persons who are not ill or of suspect, baggage, containers, conveyances or goods in such a manner as to prevent the possible spread of infection or contamination.	
qq)	"Regulation" means subsidiary legislation for laying down procedure and shall refer to Regulations framed under and by the mandate of this Act.	
rr)	"Reservoir" means an animal, plant or substance in which an infectious agent normally lives and whose presence may constitute a public health risk.	
ss)	"Rules" means subsidiary legislation of general application and shall refer to Rules framed.	
tt)	"Resident" Person who is a bonafide resident of the state or is currently residing in the state.	

uu)	"State" means state of Rajasthan.	
vv)	"Social audit" is one which is conducted by the community using the social dimension.	
ww)	"Secondary Health Care services" provided through community health centers and through district hospitals. Secondary health care services include complex and referred cases by the primary health care system, which require more complex investigation and specialized services.	
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xx)	"Tertiary Health Care services" provided through Medical colleges and associated hospitals. Tertiary health care services include complex and referred cases by the secondary health care system, which require more complex investigation and super-specialty services.	
yy)	"User" means person who seeks, accesses, or receives any health care services, as an outpatient or inpatient, from a facility or provider whether any public or private health care establishment.	
zz)	"Vector" means an insect or any living carrier that transports an infectious agent from an infected individual or its wasters to a susceptible individual or its food or immediate surroundings.	
	Chapter-II: Collective and Individual Rights in relation to Health Care..	
3.	Right of Residents: -	
a)	Residents will have the right to collect information to make themselves healthy.	
b)	Residents will have the right to free consultation, drugs, diagnostics,	Right to free consultation of what type of problem ?? In which

	<p>emergency transport and emergency care at all public health institutions as may be prescribed. by rules made under this Act;</p>	<p>institutions will the consultation be provided free?. And if it is being provided by existing government institutions what's the reason to reframe this? All public health institutions: does that mean only government organisations? As may be prescribed by rules made under this Act : Are the rules including private provider, establishment or facility,</p>
c)	<p>Residents will have the right to free / affordable care for surgeries at all public hospitals as may be notified by rules made under this Act;</p>	<p>Free or affordable must be clearly defined. As said earlier until a figure based on existing economical standards indigenous to the area or region is not given, this affordable term will vary according to person, time, place and his income. Better to use standard terms such as Below Poverty Line etc already defined.</p>
d)	<p>Residents covered under insurance scheme will have the right to avail free services under the insurance scheme through the empaneled Hospitals as notified in terms and conditions of the insurance scheme when in force and as modified from time to time.</p>	
e)	<p>Residents will have the right to avail free services from the private hospitals established through the land allocation on concession rates as per the terms and conditions mentioned at the time of the allotment of the land.</p>	
f)	<p>Right to receive information, records and reports of self from the health care establishment be it public or private;</p>	
g)	<p>Right to informed consent at all health care establishments be it public or private;</p>	
h)	<p>Right to confidentiality through all health care establishments as may be defined by rules made under this Act.</p>	

i)	Right to safe and quality care according to standards prescribed for different levels of health care establishments run or managed by Government or private institutions.	Prescribed for different levels? What are these levels has not been defined in this Act. Where can this information be obtained from?
j)	Right to proper referral transport by all health care establishments be it public or private as per the procedures detailed in the rules made under the act.	Who will pay for such services is not clear. Is it Detailed in the rules? As per procedures detailed in the rules made under the Act : where are the rules?
k)	Right to take treatment summary in case of patient, leaving against the medical advice.	
l)	Right to be heard and seek redressal from health care establishment in case of any grievance occurred after availing services..	
m)	Right to the family member / authorized person of the deceased to receive the dead body irrespective of payment due status from every health care establishment.	It is not prescribed that who will indemnify or pay the expenses incurred by private health care professionals / institution in treatment of deceased patient whose dead body is to be handed over to relatives in spite of non-payment of bills in pursuance of the provisions prescribed in this section?
4.	Duties of Residents: - Every resident has duties as may be prescribed by rules made under this Act as follows:	Payment of bills should be introduced as a duty of residents OR Government.. The Act DOES NOT STATE PAYMENT AS PER RULES WHERE APPLICABLE. No punishment provided in the Act for violation of these duties, and there is no mechanism of reporting to authorities
a)	Tertiary health care services can be availed by following referral from primary and secondary level institution or a service provider.	
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b)	Provide health care providers with the relevant and accurate information for	

	health care, subject to the user's right to confidentiality and privacy.	
c)	Comply with the prescribed health care.	
d)	Sign a discharge certificate or release of liability if he or she refuses to accept recommended treatment.	
e)	Ensure that the premises occupied by the residents are kept clean and indulge in no activity that pollutes the atmosphere physically or otherwise.	
f)	Refrain from misconduct and misbehavior with any health care providers, and treat them with respect and dignity.	What is the remedy if this is violated?
g)	Refrain from physical assault on any healthcare personnel or damage to property.	
h)	Report illegal or unethical behavior.	
i)	Permit post-mortem to be done in case of unnatural death.	
5.	Rights of Health Care provider: Every health care provider has right to: -	Receiving remuneration against health care provided should be prescribed as right of health care provider as per Article 19(1)g of the constitution of INDIA. This Act blatantly violates this article.
a)	protection from complaints relating to adverse consequences on providing his/her services of any kind as long as the provider has acted bonafide to the best if his/her professional capability through application of standard treatment procedure and judgment, and in the best interests of the residents and exercised all reasonable care;	Does not state where to complain and what are the punishments for violation of rights by patients and attendants.
b)	be treated with respect and dignity by the patient and attendants.	
c)	decent working conditions and training.	

d)	right of physical safety and security at the workplace.	
e)	availability of protective measures for any accidental exposure to harm.	Medical accident insurance cover is the proper solution to this problem.
6.	Duties of Health Care provider:	Informing about expenses expected to be incurred during health care should be the duty of the health care provider.
a)	Follow the standard treatment guidelines, protocols as notified time to time under the rules made under this Act, and using the clinical judgement in the best interest of resident.	
b)	Maintain confidentially, privacy, dignity of residents, and treat them with respect	
c)	.Respect the rights of residents to take a decision for getting either a lab investigation or medicines be purchased from the vendor of his/her choice.	
d)	Ensure informed consent is taken before every procedure. Explain and inform either patient or relatives regarding the diseases severity, progression, treatment and prognosis regularly.	
	Chapter-III: Obligations of the Government	
7.	Government has the following general obligations at all times, by enhancing the quantum of the resources towards the time bound realization of health and wellbeing of every resident in the state;	By enhancing the quantum of the resources in time bound : what is plan of increasing expenditure on health in budget over a period of next 5 years has to be provided to achieve such realization Prevention of violence against health care professionals should be the duty of the government.
a)	Appropriate State budget would be provided.	These provisions should be as annexures of the Act and binding on

		the government. Who will decide what is appropriate?
b)	Within six months of the enactment, develop and institutionalise a Human Resource Policy for Health to ensure availability and equitable distribution of doctors, nurses and other ancillary health professionals and workers at all levels of healthcare as notified in the rules under the act.	
c)	Within six months, set up the social audit and grievance redressal mechanisms as notified under the rules as notified under this Act.	<p>Why take six months to establish a grievance redressal mechanism ?? When the government has decided to implement it should have been the first thing in place for observing grievances coming from all quarters.</p> <p>Who will hear grievances of the doctors about non - payment of fees by government or violence by relatives of the patients</p>
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d)	Within one year, align all health services and schemes to strengthen a system of health services to empower and make residents aware for preventive, promotive and protective health care, not merely an absence of disease.	<p>Why take one year to align all these . This should be an ongoing process . If residents till date are not aware about the preventive aspects related to disease it means other sectors are not doing their work in this regard . Even if they are doing work the results are not there . Or is the government certain that residents are not aware about the various services. Where is the baseline data assessment for this assumption? Any valid study or report for this??</p>
e)	Within one year, lay down and notify standards for quality and safety of all levels of health care as notified under the rules.	<p>Why this delay of one year after implementation? Even after one year if nothing is clear who will be held accountable if people don't receive the services as promised??</p>
f)	Guarantee availability of government funded healthcare services as per distance or geographical area or considering population density which	In cities the population density will be high, in rural areas the distance will be more and the government has all the reasons for not doing their

	will include health care institutions, free medicine, test & diagnostics of notified items and ambulance services as per standards to be notified under the rules.	function. It is convenient to blame private sector for deficiencies of the government
g)	Ensure that there will not be any directly or indirectly denial, to anyone, for any government funded health care services at appropriate health care establishment and as per guaranteed services mentioned in clause(a) of section 4 and clause(f) of section 7.	Direct denial as well indirect denial needs to be defined for clarity. Otherwise there will be grey areas for exploitation. (section 4/a) Tertiary (section 7/f) Government funded
h)	Mobilize and enact any other budget, plan, or policy required to ensure the above guarantees.	
i)	Set up co-ordination mechanisms among the relevant government departments to facilitate nutritionally adequate and safe food, adequate supply of safe drinking water and sanitation.	
j)	Institute effective measures to prevent, treat and control epidemics and other public health emergencies and public health issues notified from time to time under this Act.	Utilisation of Information technology for prevention of outbreak spreading to epidemics is essential for which use of PHR, EMR and PHI is the most advanced technology.
k)	Take appropriate measures to inform educate and empower people about health issues.	
	Chapter-IV: Constitution, Power and Duties of State Health Authority, State Executive Committee and District Health Authority	
8.	Constitution and Duties of State Health Authority: -	Expenditure on the body is likely to be more as compared to expenditure on health delivery.
a)	The Government shall, by notification in the official gazette, constitute an independent body as State Health Authority, to exercise powers conferred on and perform the functions assigned to that Authority under this Act;	

b)	The State Health Authority shall consist of the following members, namely:- I. The Chief Secretary, Government of Rajasthan, -Chairperson,	Why are only IAS or administrative persons in the authority ?? It should be headed by doctors who are trained for this, preferably from Preventive Social Medicine /Public Health /Epidemiology or Non doctors having masters or PHDs. Indian Medical Services has been discussed for long, but not implemented. From these branches . IAS should be serving them regarding administration and taking guidance to sort the grievances coming up .
II.	Secretary in-charge of Medical, Health and Family Welfare Department - Co-Chairperson,	
III.	The Director of Health Services (Public Health), Rajasthan, Member-Secretary	
IV.	Secretary in-charge of the following departments shall be members, namely 1. Medical Education Department, 2. Public Health Engineering, 3. Women & Child Development, 4. Panchayati Raj and Rural Development, 5. Social Justice and Empowerment, 6. Tribal Area Development, 7. Urban Development, 8. Finance, 9. Information and Public Relations, 10. Revenue, 11. Ayurveda, Yoga, Naturopathy, Unani, Siddha, and Homoeopathy, 12. Education department, 13. Relief and 14. Rehabilitation	
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V.	Three members of the Rajasthan Legislative Assembly as nominated by the State Government,	MUST BE DOCTORS

VI.	Three persons from the Government Medical Teachers of the State especially from clinical specialties,	
VII.	Four non-official persons, 1. Public health experts to be nominated by the Chairperson, 2. Representatives of health associations to be nominated by the Chairperson, 3. Civil society organizations to be nominated by the Chairperson, 4. One member from an NGO of repute, preferably working in the state to be nominated by the Chairperson.	NGO? They must be from Healthcare sector for better understanding of the situation.
VIII	Representative of Chairman, State Pollution Control Board, and	
IX.	Three representatives of patient groups - nominated by the Chairperson.	
c	Duration?	
	I. The appointment of each member of the State Health Authority, except the ex-officio appointees, shall be for three years.	
	II. The State Health Authority shall meet at least once in six months; and	
d)	The State Health Authority shall carry out the following functions:- I. To advise the Government on any matter concerning public health, including preventive, promotive, curative, and rehabilitative aspects of health and occupational, environmental, and social determinants of health; II. Formulate State's health goals and get these included in the mandate of Panchayati Raj Institutions and urban local bodies; III. Formulate state level strategic plans for implementation of Right	

	<p>to Health Care Act provisions, including action on the determinants of health - food, water and sanitation;</p> <p>IV. Formulate a comprehensive written State Public Health Policy/plan for prevention, tracking, mitigation, and control of a "public health emergency", as well as situations of "outbreak" or "potential outbreak" in the State;</p> <p>V. To monitor the preparedness of the State for management of public health emergencies:</p> <p>VI. To develop mechanisms and systems for regular medical, clinical, and social audits for good quality of health care at all levels;</p> <p>VII. The State Health Authority may, as and when it considers necessary, constitute one or more committees/scientific panels/technical panels for the efficient discharge of its functions;</p> <p>VIII. The State Health Authority may, as and when it considers necessary, associate with institutions, experts, Non-Government organizations for the efficient discharge of its functions;</p> <p>IX. The State Health Authority through the community-based monitoring methods, as may be prescribed by rules made under this Act, shall involve the communities 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; and</p> <p>X. Carry out other functions as may be defined by rules made under this Act.</p>	
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9.	Constitution and Duties of State Executive Committee: -	
a)	The State Health Authority shall, by notification in the official gazette, constitute an independent body as State Executive Committee, to exercise powers conferred on and perform the functions assigned under this Act;	
b)	The State Executive Committee shall consist of the following members, namely: -	
	I. Secretary in-charge of Medical, Health and Family Welfare Department - Chairperson,	
	II. Secretary in-charge of the following departments shall be members, namely 1. Medical Education Department, 2. Women & Child Development, 3. Panchayati Raj and Rural Development, 4. Ayurveda, Yoga, Naturopathy, Unani, Siddha, and Homoeopathy, and 5. Elementary Education department	
	III. Mission Director (National Health Mission), Rajasthan - Member,	
	IV. The Director Medical and Health Services (Public Health), Rajasthan - Member,	
	V. Additional Director (Hospital Administrator), Rajasthan-Member,	
	VI. Nodal officer (Right to Health Care Act), Rajasthan-Member Secretary,	
	VII. Three persons from the Government Medical Teachers of the State especially from clinical	

	specialties, to be nominated by the Chairperson.	
	VIII. Four non-official persons,	
	1. Public health experts to be nominated by the Chairperson,	
	2. Representatives of health associations to be nominated by the Chairperson,	
	3. Civil society organizations to be nominated by the Chairperson,	
	4. One member from an NGO of repute, preferably working in the state to be nominated by the Chairperson.	
	IX. Representative of Chairman, State Pollution Control Board	
c.	Duration?	
	I. The appointment of each member of the State Executive Committee, except the ex-officio appointees, shall be for three years. II. The State Executive Committee shall meet at least once in three months; and	
d)	The State Executive Committee shall carry out the following functions: -	
	I. Implement state level strategic plans for implementation of Right to Health Care Act provisions, including action on the determinants of health - food, water and sanitation;	
	II. Implement a State Public Health Policy/plan for prevention, tracking, mitigation, and control of a "public health emergency", as well as situations of "outbreak" or "potential outbreak "in the State.	
	III. To ensure the State for management of public health emergencies; .	

	IV. To ensure mechanisms and systems for regular medical, clinical, and social audits for good quality of health care at all levels,	
	V. To monitor population health status to identify and solve community health problems,	
	VI. Carry out other functions as given by Chairperson from time to time.	
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10.	Meeting of State Health Authority:	
a)	The State Health Authority shall meet at least two times in a year, by giving such reasonable advance notice to its members and shall observe such rules of procedure regarding the transaction of business at its meetings as may be prescribed by rules made under this Act.	
	Provided that if, in the opinion of the Chairperson, any business of an urgent nature is to be transacted, he/she may convene a meeting of the authority at such time as he/she thinks fit for the aforesaid purpose.	
(b)	The meetings of the Authority and the mode of transaction of business at such meetings, including quorum etc., shall be governed by such regulations as may be prescribed by rules made under this Act.	
11.	Constitution and Duties of District Health Authority: -	
a)	The Government shall constitute an independent body as District Health Authority. within one month from the date of constitution of State Health Authority;	

b)	The District Health Authority shall consist of the following members, namely:-	
I.	The District Collector - Chairperson,	
II.	Chief Executive Officer, Zila Parishad - Co-Chairperson,	
III.	The CM&HO - Member Secretary,	
IV.	Senior most officers of the district from the departments shall be members, namely 1. Public Health Engineering, 2. Social Justice and Empowerment, 3. ICDS, 4. Women Empowerment, 5. Local Body, 6. Education, and 7. Ayurveda, Yoga, Naturopathy, Unani, Siddha, and Homoeopathy	
V.	Pramukh, Zila Parishad of the district and three Pradhans? of the Panchayat Samitis in rotation, as may be prescribed by rules made under this Act.	
VI.	Four non-official members, namely 1. Public health experts, to be nominated by the Chairperson, 2. Representatives of health associations, to be nominated by the Chairperson, 3. Civil society organizations preferably working in health sector, to be nominated by the Chairperson, 4. One member from an NGO of repute, preferably working in the district in the health sector, to be nominated by the Chairperson,	
c)	The District Health Authority shall carry out the following functions:-	
I.	Ensure implementation of the policies, recommendations, and directions of State Health Authority;	

	II. Formulate and implement strategies and plans of action for the determinants of health, especially food, water, sanitation, and environment.	
	III. Formulate a comprehensive written plan for prevention, tracking, mitigation, and control of a "public health emergency", as well as situations of "outbreak" or "potential outbreak "in the district based on State Plan.	
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	IV. Coordinate with the relevant Government departments and agencies to ensure availability and access to adequate and safe food, water and sanitation throughout the district.	
	V. Organize hearing of the beneficiaries coming to the hospital once in three months with a view to improve the health care services; and	
	VI. District Health Authority through the community-based monitoring methods, as may be prescribed by rules made under this Act, shall involve the communities 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.	
	VII. Carry out other functions as may be defined by rules made under this Act.	
12.	Powers of the State Health Authority and District Health Authority	Health care professionals should have a right and liberty to decide their fees. They may be directed to display and describe the fee in advance before starting treatment. Such fees should be fair and

		reasonable for provider hospitals, physicians and patients.
a)	For purposes of carrying out the inquiry under this Act, the authority shall nominate one or more persons / committees for the efficient discharge of its functions, as may be prescribed by rules made under this Act.	
b)	The authority shall have the power of only official purpose to require any person, to furnish information on such points or matters as may the subject matter of the inquiry and any person so required shall be deemed to be legally bound to furnish such information within the meaning of sections 176 and 177 of the Indian Penal Code (45 of 1860).	
c)	The authority or any other officer authorized on this behalf by the State Health Authority and District Health Authority may enter in any building or place where the authority has reason to believe any document relating to the subject matter of an inquiry may be found, and may seize any such document or take extracts or copies therefrom subject to the provisions of section 100 of the code of Criminal Procedure, 1973, in so far may be applicable.	
d)	Fixing responsibility and accountability of private institutions, facilities, buildings, or places, whether for profit or not, operated to provide inpatient and/or outpatient services. The government shall have the power to regulate prices for the packages and ensure display of rates for each of the packages in public domain, as may be notified by rules made under this Act.	
	I. In case of a pandemic, or any other public health emergency the government shall have the right: -	

	<ol style="list-style-type: none"> 1. to takeover building of private institutions; 2. to takeover facilities of private institutions; 3. to takeover services of private institutions; 4. to takeover duties of human resources working in private institutions; and 5. to prescribe treatment rate of services provided by private institutions during the pandemic, as may be specified in the government notification issued under this Act. 	
e).	Other powers as defined under the rules of the act.	Other powers is a vague term; it should be either omitted or specifically prescribed. As defined under the rules of the Act : Why are these rules not being published?
	Chapter-V: Grievance Redressal and Social Accountability Mechanism	
13.	Grievance Redressal Mechanism:	<p>Already there is a consumer forum , criminal court, civil courts, health department, medical council, etc. for the same purpose. What new goal except harassment of healthcare providers is going to be achieved by this new Act.</p> <p>Similar grievance redressal mechanism is necessary for filing complaints against patients who do not follow their duties</p>
a)	The Government shall constitute in-house complaints forum at an appropriate level within one year from the date of notification of the provisions of this Act,	
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b)	The Government shall define rules, within six months from the date of notification of the provisions of this Act, which may include,-	

I.	On denial of services and infringement of rights provided by the right to health care Act, residents can lodge the grievances for redressal at a specified web-portal and helpline banda,	
II.	On denial of services and infringement of rights provided by the right to health care Act, residents can lodge the grievances for redressal at a specified web-portal and a user-friendly helpline center. The web-portal/ helpline centre will forward the grievances received to the concerned officer and his/her immediate supervisors within 24 hours,	
III.	The concerned officer must respond to the complainant within 30 days. The grievances and their redressals will be noted in the personnel file of the respective staff member,	
IV.	If the complaint is not resolved by concerned officer within 30 days the complaint will be forwarded to District Health Authority, as the case may be,	
V.	District Health Authority will investigate the grievance/complaint and share the summary of the investigation with the complainant and in public domain, within 60 days. District Health Authority will invite the complainant and try to resolve and close the grievance within 30 days.	
VI.	If the grievance is still not resolved within 30 days by the district health authority, then the complainant will be escalated to the State Health Authority within 30 days.	
	Chapter- VI Penalties and Procedures	
14.	Penalties-	
a)	Any contravention due to negligence as defined in detail in rules of any provisions of this Act or any Rule or	

	Order made or issued thereunder shall be punishable with a fine not exceeding Rupees ten thousand for the first contravention and not exceeding Rupees twenty-five thousand for the repeat contravention.	
15.	Appeals -	No need of clause (a) as only one clause
a)	Any person or body aggrieved by order of the District Health Authority passed under the provisions of this Act, can appeal against the said order to the State Executive Committee within 30 days as per the detailed procedure notified under the rules.	
16.	Bar of jurisdiction- No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an Appellate Authority constituted under this Act is empowered by or under this Act to determine, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.	
	Chapter- VII Savings and Immunities	Protection offered only to government officials.
17.	Notwithstanding anything contrary contained under the provisions of this Act, neither the Government nor the Government personnel, experts or agents responsible for the performance of any of the duties and functions under this Act or any member especially authorized or entrusted by the Government to Act under this Act, <u>shall be held liable for the death of or any injury caused to any individual, or damage to property, or violation of any kind, directly as a result of complying with or attempting to comply with this Act or any rule made thereunder.</u> Furthermore,	Govt. is escaping from liability for infringement of right by expressly prescribing it. Thus how the right to health will be enforced with providing remedies for its infringement as "ubi jus ibi remedium" means right without remedy is of no use. Will it be enforced only by imposing penalties of rupees 10,000 and 25,000 on health care professionals. In fact, by forcing the healthcare provider to be part of delivery of healthcare which is duty of the government, government should be vicariously liable for a. Negligence by the doctor

	<p>nothing in this Act shall be construed to impose liability on State or local public health agency for the Acts or omissions of a private sector partner unless explicitly authorized by law.</p>	<p>while providing treatment to the patient.</p> <p>b. Damage to the property of the healthcare provider by a patient or his relatives.</p> <p>This Act will definitely fail to enforce the right to health and will only serve as one more weapon of government for harassment of health care providers, unless time bound financial reimbursement is not provided as duty of the government.</p> <p>Instead of this impunity, in cases of all such occurrences e.g. any deniability or death or causality occurring after this act is implemented, One should hold all authorities equally responsible. They should be liable for punishment as per Indian Penal code for not performing their duties. As said earlier in a system all components are equally important , and if preferential treatment is meted out the authorities in government side including the administrative individuals and political leaders will pass the buck around and would find a number of reasons for not adhering to various timelines and promises.</p>
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<p>a)</p>	<p>No action for damages lies or may be brought against any official of the Government 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,</p>	<p>Why this preference ?? Any rationale behind such preferential impunity ??</p>
<p>b)</p>	<p>No person who is a superior or supervisory officer over his/her subordinate official of the Government who violates any part of this Act, except in cases of gross negligence, shall be subject to civil remedies under</p>	

	<p>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, and</p>	
c)	<p>Within time frame and procedure as may be defined by rules made under this Act.</p>	
18.	<p>Relationship with other health related laws</p>	
a)	<p>Uniformity: This Act shall be applied and construed to effectuate its general purpose to facilitate uniformity of the laws with respect to the subject matters of this Act,</p>	
b)	<p>Relationship with State Laws: Notwithstanding the above, this Act does not restrict or limit the rights and obligations under any of the laws or regulations, as long as the rights and obligations enumerated herein are fully complied with,</p>	
c)	<p>Overriding effect: in the event of a conflict between this Act and other laws or regulations, or administrative procedures, the provisions of this Act shall apply. However, the existing laws, rules and regulations, at the 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,</p>	
d)	<p>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</p>	<p>Good to know that the government understands that some of the provisions of this Act can be held invalid judicially. The Act in its present form is on the verge of being</p>

	other provisions or applications of this Act that can be given effect to without the invalid provision or application, and	violative of article 19(1)g of constitution of INDIA and needs to be amended substantially..
e)	Compatibility Review: Notwithstanding the above the Government shall undertake a comprehensive review of all the laws or provision of laws related to health within 1 year of this Act coming into force for their compatibility with this Act.	
19.	Reports and Effective Date of Commencement:	
a)	Report: the Health Minister shall as soon as possible at the end of each fiscal year and in any event or later than December 31 of the next fiscal year, make a reporting respecting the administration and operation of this Act for that fiscal year including all relevant information on the extent to which the Government has satisfied the criteria and conditions, for payments made under this Act and shall cause the report to be laid before State Legislative Assembly on any of the first fifteen days on which that House is sitting after the report is completed, and	
b)	The Act shall come into force on such date as the Government may, by notification in the Official Gazette, appoint.	
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Contributors: Dr. Rajeev Joshi, Dr. Ashish Khatod, Dr. Rishabh Kumar Rana and members participated in discussions in the online meetings organised by the association on the 21st March, 28th March and 4th April.