GOVERNMENT OF RAJASTHAN

THE RAJASTHAN RIGHT TO HEALTH (CARE) BILL, 2019

A bill

To provide for protection and fulfillment of rights in relation to health and well-being, equity and justice, including those related to all the underlying determinants for achieving the goal of health care for all through guaranteed quality health care to all the citizens of the state without any catastrophic out of pocket financial burden and for matters connected therewith or incidental thereto.

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

And whereas right to health care 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 iniquitous accessibility and denials in the matter of health care in the State are a concern to all;

And whereas there is also a need to set a broad legal framework for providing all essential and life saving health care services and functions with quality, including powers to respond to public health emergencies;

It is hereby enacted in the Seventy second Year of the Republic of India as follows:-

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CHAPTER-I PRELIMINARY

1. (1) This Act may be called the Rajasthan Right to Health Care Act, 2019

(2) It extends to the whole of the state of Rajasthan.

(3) It shall come into force on such date as the Government may, by notification in the official Gazette, appoint.

2. In this Act, unless the context otherwise requires, -

(a) **“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, housing, health services and education;

(b) **"Capacity to consent"** means ability of an individual, including a minor or a person with mentally challenged, 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 in relation to such health care or disclosure ;

(c) **“Civil Society Organisation”** means groups or organisations working in the interest of the citizens specifically for marginalised or excluded on grounds of income, religion, culture, gender, location and differently abled communities but operating outside of the government and not for profit..

(d) **“Codified Systems of Medicine”** means systems of medicine which have written texts such as of Ayurveda, Yoga, Unani, Siddha and Homeopathy.

(e) **"Communicable diseases"** means illness 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";

(h) **"Government**" means the Government of Rajasthan ;

(i) **"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 medicine ;

(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 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 the Government or privately owned ;

(k) **Health care provider”** means a person who is licensed to engage in identifying, preventing and/or treatment of illness and/or disability.

(l) **"Health nuisance"** means a situation, or a state of affairs, that endangers life or health or adversely affects the well-being of a person or community ;

(m) **"Health research"** means any research which contributes to knowledge of;-

(i) biological, clinical, genetic, psychological or social processes in human beings,

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(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., and
(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.

(n) **"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, ova, sperms, bones, teeth, tissues., organs, embryos and any reference to "substances of body" shag mean the same.

(o) **"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 ;

(p) **"Municipality"** means urban local bodies - Municipality and Municipal Corporations existing in different districts of the State ;

(q) **"Non-communicable diseases"** means diseases associated with the way a person or group of people lives, including lifestyle diseases like atherosclerosis, cardio-vascular diseases, stroke, diabetes, hypertension, occupational diseases, mental health, injuries and accidents ;

(r) **"Order"** means subsidiary legislation dealing with specific persons or cases and shall refer to orders issued under and by the mandate of this Act.;

(s) **"Panchayati Raj institution"** means institutions of rural local self-government established under the Rajasthan Panchayati Raj Act, 1994 such as Ward Sabha, Gram Sabha, Panchayat, Panchayat Samiti and Zila Parishad and/or any reference to "PRIs" shall mean the same

(t) **"Prescribed"** means as prescribed by rules made under this Act ;

(u) **"Public health emergency"** means an unusual or unexpected occurrence or imminent threat of illness which affects or likely to affect a

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large population which needs immediate public health intervention to prevent death or disability to a large number of people;

(v) **"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:

(w) **“State”** means state of Rajasthan;

(x) **"Universal precaution”** means infection control measures that prevent exposure to or reduce the risk of transmission of pathogenic agents and includes education, training, use of personal protective equipment such as gloves, gowns and masks, hand washing, and employing work practices;

(y) **"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, which operates for profit or not;

(z) **"Vulnerable and marginalized individuals or groups"** means individuals who require, special attention due to their being disadvantaged on account of physical, social or economic conditions and who are deemed as requiring special attention by virtue of any act in force in the state.

CHAPTER-II

OBLIGATIONS OF THE GOVERNMENT IN RELATION TO HEALTH CARE FOR CITIZENS OF THE STATE

3. (l) Government have the following general obligations at all times, by enhancing the quantum of their resources to globally accepted standards within two years after enactment of this Act, towards the time bound realization of health and wellbeing of every person in the state :

(a) Enhance budget, to the extent possible to Rs. 3000 per capita annually, to satisfy the obligations and rights set out herein, for ensuring planning and rational allocation and attributions of resources for various health care related issues and concerns ;

(b) Guarantee access to health care services without patients incurring any expenditure out of pocket and ensuring that there shall not be any denial of health care directly or indirectly, to anyone, by any health care service public, or private, including for profit and not for profit service providers, by laying down minimum set of standards and appropriate regulatory mechanism;

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(c) Guarantee basic health care services to every citizen of the state within 3 kms *(or 30 minutes of walking distance)*, full range of primary care within 12 kms, services for treatment of serious illnesses within 50 kms (one hour by transport) and access to treatment of critical illnesses within 150 kms by fully skilled human resource with state of the art infrastructure, blood bank, equipments and delivery of services, 24X7 ambulance service that is available to connect home to each level of care.

Provided that notwithstanding the above, the Government may exclude those who themselves may be able to access the means for adequate and appropriate health care services, but ensuring them at least the minimum conditions of health care if required. These persons will not be more than the 10% of the total population of the state.

(2) Government in order to meet its obligation of health care, shall build coordination with relevant departments for providing,-

(a) access to the minimum essential food which is nutritionally adequate and safe ;

(b) adequate supply of safe drinking water ;

(c) 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.

(d) access to basic housing, clean air and other basic facilities.

(3) Government shall also carry out the following as their-obligations to ensure health and well being of all to:

(a) safeguard 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, diagnostics, health care providers within the Government, private and other non-government sectors;

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Provided that the Government shall adopt for itself the Indian Public Health Standards (IPHS)/ National Accreditation Board for Hospitals and Health Care Providers (NABH) for the Health Institutions under its control and the Semi-Government as well as private nursing homes, health establishment etc and may review and expand such standards in scope and contents to suit the needs of the State of Rajasthan;

(d) provide education and access to information concerning the main health issues to the communities, including, methods of preventing and controlling them, and promoting healthy lifestyles, through sustained, and regularly updated State and local level IEC programme ;

(e) expand women and children's health including reproductive health care for universal coverage ;

(f) provide appropriate and best available preventive measures against the major infectious diseases occurring in communities; and

(g) take effective measures in situations of public health emergencies

4. Government shall take appropriate legal steps, including, where necessary enactment of laws, or review or amend existing public health related laws, and/or strict implementation of laws, but in any case, through its powers to issue, rules and orders under this Act, to specifically address the following without violation of basic human rights of citizens.

(a) fixing responsibility and accountability of concerned departments /agencies in case of repeated outbreaks or recurrence of communicable, vector borne, viral and waterborne diseases which are found in a particular area and proved to be due to failure to improve sanitation and safe drinking water facilities;

(b) public health emergencies of national and state concerns ;

(c) registration of births and deaths and other vital statistics for health

(d) food safety in the hospitals and health establishments managed by the Government;

(e) safety, availability and accessibility of drugs and diagnostics including medical devices free to all in all the public health facilities of the state, rational use of drugs, diagnostics and monitoring of drug resistance and adverse drugs reactions ;

(f) access to all kinds of safe and as much as non-hormonal contraceptive devices for spacing or limiting of births ;

(g) regulation of health establishments and all the facilities providing health services ;

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(h) prevention of health nuisances and implementation of bio-medical waste disposal;

(i) availability and accessibility of safe drinking water in the hospitals and health establishments ;

(j) sanitation and environmental hygiene, including waste management for every kind of waste in the hospitals and health establishments

(k) Participatory and inclusive Health Impact Assessment (HIA) of all new development projects;

(l) Widely prevalent non-communicable lifestyle diseases like use of tobacco, alcohol and other substance abuse, and consumption of unhealthy foods, mental illness, environmental and occupational hazards and promotion of healthy lifestyles like breast feeding, health seeking behaviour, balanced diet, regular exercise, food and water safety, including with regard to their packaging, labelling, advertising and sales and consumer protection, including regulating advertising and taxation and excise policies that have impact on these ;

(m) Non-communicable diseases, mental illness and all other widely prevalent diseases and related factors and provision of Geriatric/ Palliative care/Mother and Child care. trauma/emergency care, mental health care and care to the victims of violence:

Provided that all hospitals or health establishments of the state whether Government or private including private nursing homes shall have to provide free health care services maintaining appropriate standard treatment guidelines for first 24 hours to an emergency patient of any kind.

(n) Complete coverage of immunization ;

(o) Formation of Patient Medical Relief Societies for various categories of health institutions ;

(p) Promotion of all different codified systems of medicines and ensuring adequate financial allocation for them;

(q) Devise, adopt, implement and regularly review health policies, strategies and plans of action on the basis of epidemiological, sociological, anthropological, economic and environmental evidence to address the health concerns of the whole population;

(r) Fix remedial measures in case a patient fails to receive due medical attention in a Government hospital/health establishment because or absence of the doctors or any other medical staff.

(s) Suitable schedule of inspection of government/private health institutions by various health functionaries for occupational health

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safety as per national occupational safety guidelines for workers in informal and formal sectors;

CHAPTER-III

COLLECTIVE AND INDIVIDUAL RIGHTS IN RELATION TO HEALTH CARE

5. Every person shall have the right to –
   (a) appropriate health care, and health care related functional equipment and other infrastructure, ambulance services, trained medical, professional personnel, and essential drugs including devices and diagnostics without incurring out of pocket expenditure;
   (b) reproductive health services and sexual health care with special emphasis for women and girls, queer and transgender;
   (c) (i) registration of all births and deaths and other vital statistics,
      (ii) food safety in the hospitals and health establishments managed by government or by private owners.
      (iii) availability and accessibility of all essential and life saving drugs, devices and diagnostics, rational use of drugs and monitoring of drug resistance and adverse effects.
      (iv) devices for temporary and permanent contraception,
      (v) regulate all health establishments and all the facilities providing health services as prescribed by rules,
      (vi) immunity from health nuisances and bio-medical waste,
      (vii) availability and accessibility of safe drinking water in the hospitals and health establishments,
      (viii) sanitation and environmental hygiene, including waste management for every kind of waste.
      (ix) effective measures for prevention, treatment and control of epidemic and endemic diseases,
      (x) effective mechanism in public health emergencies,
      (xi) specified recognized standards and norms for safety and quality assurance of all aspects of health care, education and access to information concerning main public health issues in the community,
      (xii) appropriate and efficacious treatment of patients.

6. Every user shall have the right to
   (a) information about, access to and use of health care facilities, services, programmes, conditions and technologies.
   (b) be fully informed about his/her health status including the medical facts about his/her health condition, required health care, together with the potential risks and benefits, costs and consequences generally asso-

ciated 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 or health care; and any other information that may be pertinent to the user in taking a decision, providing consent or to understand his current and possible future health status. Information is provided in ethical manner and with human approach.

(c) have the information communicated to him/her appropriate to the latter's capacity of understanding with minimum use of unfamiliar or complicated technical terminology.

(d) choose the person to be informed on his/her behalf;

(e) obtain a second and more opinion from another health service provider

(f) when admitted to a health care establishment, every user has a right to be informed of the identity and professional status of the health care provider providing him/her services and of any rules and routines of the establishment which would bear on his/her stay and care.

7. (a) Every user has a right to have the complete medical records of at least two years preceding the last date when the service was used, pertaining to his/her case containing the health status, diagnosis, prognosis, all the details of the health care provided including the line of treatment, to be maintained by the service provider, and disclosure of such records or information to anyone else shall be subject to his/her rights to confidentially, privacy and disclosure as elaborated herein under section 9;

(b) 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 own files and records or parts thereof; and

(c) 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.

8. Every user has a right to

(a) 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.

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

(c) 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 unable to express his/her consent due to medical reasons or his/her authorized representative or close relative is absent or is unable to offer consent and a medical intervention is urgently needed in saving the user's life, the consent of the user may be presumed ;

(e) when 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 be supported or substituted; only where absolutely necessary by a decision-making on his/her behalf, through a *de jure* or *de facto* guardian, next friend or personal representative, whose credentials are clear to the service provider;

(f) consent for the preservation and use of all substances of his body (through 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;

(g) In any case, no user shall be subjected to 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 collaboration with a health establishment that has been authorized by the Government under the appropriate law and *provided*

(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.

9. (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.

10. Every user has the following duties to :-

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

(ii) comply with the prescribed health care, subject to the same having been administered after duly observing the user's rights as enumerated above ; and or to discuss with the provider why he/ she does not want to do so;

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

(iv) ensure that the premises occupied by the user are kept clean and indulge in no activity that pollutes the atmosphere physically or otherwise.

11. Every health care provider has right to

(i) protection from complaints relating to adverse consequences on providing his/her services of any kind as long as the provider has acted bona fide to the best if his/her professional capability through application of standard treatment procedure and judg ment, and in the best interests of the user and exercised all reason able care ;

(ii) be treated with respect and dignity by the user and to expect the user to comply with all the duties as enumerated above.

(iii) decent living and working conditions, training and accreditation especially in the primary health care for their continued nursing and medical education and career advancement.

CHAPTER-IV
IMPLEMENTATION AND MONITORING MECHANISM

12. A State Right to Health Care Board shall be established by the State Government which shall consist of the following, namely :-

(a) The Chief Secretary, Government of Rajasthan, who shall be the Chairperson

(b) The Additional Chief/Principal Secretary Health and Family Welfare Department and the Secretary Medical Education department, Government of Rajasthan, who shall be the Co-Chairpersons

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(c) The Director of Health Services (Public Health), Rajasthan who shall be the Member-Secretary;

(d) Secretaries or their nominees, in charge of departments of Public Health Engineering, Women & Child Development, Panchayati Raj and Rural Development, Social Justice and Empowerment, Tribal Area Development, Urban Development, Finance, Information and Public Relations, Revenue, Relief and Rehabilitation and Education departments- Members;

(e) Three members of the Rajasthan Legislative Assembly as nominated by the Government - Members ;

(f) Three members from the government medical teachers of the state especially from clinical specialities.

(g) Four non-official members such as public health experts, representatives of medical associations, or civil society organizations (CSO members as nominated by the Government) — Members;

(h) Representative of Chairman, State Pollution Control Board - Member.

(i) Three representatives of patients groups

13. (a) The appointment of each member of the State Right to Health Care Board, except the ex-officio appointees, shall be for a period of three years.

(b) The State Right to Health Care Board may create sub-committees in order to address specific areas or needs concerning the health system.

(c) The State Right to Health Care Board shall meet at least once in six months.

14. The State Right to Health Care Board shall carry out the following functions, namely :-

(a) Formulate and implement State level strategic plans for implementation of right to health care provisions including action on the determinants of health - food, water sanitation and housing, ;

(b) Create a Health Intervention and Technology Assessment Committee or Commission of medical experts to reduce the differences in treatment of patients, standardize medical interventions and reduce overall expenditure in patient care including out of pocket expenditure.

(c) Formulate State's health goals and get these included in the mandate of Panchayati Raj Institutions (PRIs) and urban local bodies ;

(d) Get clinical and medical audits carried out on conditions of public health importance, receive relevant reports and initiate necessary action.

(e) Institute systems of inquiry to ascertain causes of premature deaths, rising morbidity and disability to identify and analyse the failures of health systems if there is any, towards systemic improvements;

(f) Establish and implement performance standards with quality, measures, capacities and process for health care infrastructure, service providers, quality or performance improvement that are required for achieving the objectives of this Act ;

(g) Monitor availability of all forms of health care including essential and rational drugs that are listed in the state and/or National List of Essential Medicines and/or the latest Model List of Essential Drugs of WHO, and promoting rational drug use, investigations, use of medical devices and surgical interventions;

(h) Develop public health IEC infrastructure and programmes for mass public health campaigns and activities, with institutionalized involvement of educational institutions, civil society organizations- community based organizations, associations of medical providers, traditional health care practitioners. mass media including privately owned mass media, and all stakeholders in promotion of public health;

(i) Formulate and implement human resources development plans to ensure availability, efficiency and regular capacity building of health care providers commensurate with the public health needs of the State ;

(j) Develop and implement capacity building plans for all the bodies and committees being set up at various levels under this Act;

(k) Develop mechanisms for harnessing non-state partnership in implementation of public health programmes that ensure equity and quality of health care services;

(l) Develop mechanism for creating and empowering decentralized planning and monitoring committees at all levels, both rural and urban and seeking their feedback in structured manner;

(m) Ensure coordination between all the public health related authorities and agencies within the health services in the rural areas and municipal health services in the urban areas;

(n) Ensure coordination with other Government departments, agencies and with the Central Government for handling public health emergencies ;

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(o) Coordinate with the relevant Government departments and agencies to ensure availability and access to adequate and safe food, water, sanitation, housing and healthy environment throughout the State;

(p) Review the existing laws and policies of the Government that are related to health/ public health, to determine compliance with this act and make recommendations for reform amend or repeal where necessary ; and

(q) Appoint 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 the Government, on such terms as it may deem fit, involving dissolving, removing or streamlining any of the existing ones.

15. A District Right to Health Care Boards shall be established by the Goverment which shall consist of the following, namely:-

(a) The District Collector shall be the Chairperson;

(b) Chief Executive Officer, Zila Parishad shall be the Co- Chairperson.

(c) The CM&HO/Joint Director of Health Services of the concerned district shall be the Member Secretary.

(d) Senior most officers of the district from the departments of Public Health Engineering, Social Justice and Empowerment, ICDS, Women Empowerment, Local Body, Education would be members.

(e) Zila Pramukh of the district and three Pradhans of the Panchayat Samitis in rotation would be members.

(f) Four non official members from civil society organisations, health experts as members to be nominated by the Collector/ State Government, as the case may be.

16. The District Right to Health Care Board shall carry out the following functions, namely :-

(a) Monitor delivery of health care services to patients from different health institutions without pushing patients to incur expenditure out of pocket.

(b) Organize hearing of the beneficiaries coming to the hospital once in three months with a view to improve the health care services

(c) Formulate and implement strategies and plans of action for the determinants of health, especially food, water, sanitation and housing for the district

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(d) Ensure coordination between all the public health institutions of the district;

(e) Coordinate with other Government departments and agencies for handling public health emergencies;

(f) Coordinate with the relevant Government departments and agencies to ensure availability and access to adequate and safe food. water, sanitation and housing throughout the district ; and

(g) Carry out such other activities as may be entrusted by the State Right to Health Care Board in order to achieve the objectives of the Act.

17. The Government shall establish an intensive accountability framework through the following method of monitoring :-

(i) Health Information System (HIS) :

(a) The Government shall facilitate and co-ordinate the establishment, implementation and maintenance of health information systems at different levels;

(b) The Government shall, for the purpose of creating, maintaining or adopting database within the state health information system, 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 as well as state department in a technically and institutionally sound manner ;

(c) Every public or Private health establishment, which provides health care or any health services, and every other relevant agency must establish and maintain a health information system as part of the national and state health information system envisaged herein ;

(d) 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 Government 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 and urban local bodies at all times :

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Provided also that State Government may by rules prohibit disclosures of certain category of data information which is not of public interest;

(e) The government may by rules lay down specific provisions 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 electronic data base and to resolve other related technology issues; cost-effectiveness of the health information systems including through appropriate software; and for effective dissemination of the health information.

(ii) **Government Monitoring and Social Audit:** Government shall have a monitoring system to monitor and a social audit mechan ism for verification.

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

(b) system of mandatory audits of medical records of every health care establishment and institution,- public or private

(c) 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 ;

(d) mandatory requirement for all the health care institutions and establishments to prominently display information regarding the Indian Public Health Standards (PHS) compliance; the charter of users' right ; inventory of grants received by the institutions, of medicines and vaccines in stock, and of; services provided to the users, no user charges sign, records of the monitoring of performance of the institutions and establishments on such parameters;

(e) engage 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

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health services including costs of health care and impact of health care costs on poverty; track public expenditure on health care; and the Government, as advised by the respective health boards which shall lay down regulations for their functioning. The data so collected is compared with official records and reading out the findings aloud in public platforms convened for the purposes of community validation.

(iii) **Citizen centric planning and monitoring** : - The planning and monitoring methods under clauses (i) and (ii) shall involve the citizens as active co-facilitators for articulating their needs, help ing in identification of key indicators and creation of tools for monitoring, providing feedback through different kinds of public forums, as well as validating the data-collected by these methods.

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

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

(iii) The Government 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 civil society organisations; 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.

CHAPTER V
DISPUTES RESOLUTION AND REDRESSAL MECHANISM FOR HEALTH CARE RIGHTS

19. Disputes Resolution through Public Dialogues and Public Hearings: The Government shall create forums for disputes resolution at community level by establishing mechanism of public dialogues and public hearings on health (Swasthya Jan Sunwais) through congenial approach in the following manner:

(a) The public hearings shall be conducted at Primary Health Centre (PHC), block and district levels twice in a year, and once a year at State level. These events would be open to all citizens to enable any citizen and citizens groups and organizations to provide independent feedback about health care services and report instances of adverse experiences while seeking health care freely;

(b) The public hearings 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 public hearings shall include, appropriate level elected public representatives and nominated civil society representatives (from community organizations, people's organizations, or civil society organizations involved in monitoring of health services) while the respondents would be the appropriate level Government health officials whose presence would be mandated as essential. Representatives of private health care establishments and providers who volunteer to present themselves to the people's scrutiny and verdict may also participate.

20. Issues before Public Hearings: Public hearings 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 on positive and negative aspects 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

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(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 panel of the public hearing.

21. Outcome and follow-up of Public Hearings: After hearing both sides, the public hearing 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 Public Hearings 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.

22. Grievance redressal through In-house Complaints Forums at the instutional 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 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 whereas an institution carries on its activity in one or more

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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 Act;

(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.

23. 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 the 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;

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(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 heath care establishment, public or private;

(k) Non-compliance with or mis-performance of the obligations of the Government 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 of 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.

24. 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 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 fulfill 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 (g), (h) and (i) 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 in fructuous;

(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) **Logical 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.

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(7) **Time frame for designation of courts:** The Government shall within 60 days of the commencement of this Act designate a particular court in each district to hear the complaints related 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 Government shall lay down the rules for ensuring these.

(9) **Information on website:** The Government 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.

25. 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, 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 Governments shall, within six months of the notification of this Act, set up funds, to be known as State Health Reparation Fund, to disburse the amounts awarded as compensation to be paid by the Government or Government body.

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CHAPTER-VI
MISCELLANEOUS

26. (1) The Government may, in consultation with the State Right to Health Care Board within two months from the date of coming into force of this Act make necessary rules to be consistent with the provisions of this Act for carrying out the purposes of this Act.

(2) The State Government shall also have the power to enforce the provisions of this Act by issuance of such orders and other remedies as are not inconsistent with the provisions of this Act

Provided that this sub-section does not limit specific enforcement powers of the Government enumerated under this Act.

(3) Every rule made under this section shall be laid, as soon as may be, after it is made, before the Rajasthan Legislative Assembly, while it is in session for a total period of fourteen days which may be comprised in one session or in two or more successive sessions and if before the expiry of the sessions immediately following the session or the successive sessions aforesaid, the Rajasthan Legislative Assembly agrees in making any modification in the rules or the Rajasthan Legislative Assembly agrees that the rules should not be made, the rules shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under the rules.

CHAPTER-VII
IMMUNITIES

27. (1) Notwithstanding anything contrary contained under the provisions of this Act, neither the Government nor the Government personnel, experts or agents responsible for performance of any of the duties and functions under this Act or any civil society representative/member especially authorized or entrusted by the Government to act under this Act, 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 there under. Furthermore, 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.

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(2) (a) 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.

(b) 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 by 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 of omission for which it would be vicariously liable if this section was not in force.

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