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THE ASSAM GAZETTE

অসাধাৰণ

EXTRA ORDINARY

প্ৰাপ্ত কৰ্তৃত্বৰ দ্বাৰা প্ৰকাশিত

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GOVERNMENT OF ASSAM

ORDERS BY THE GOVERNOR

LEGISLATIVE DEPARTMENT :: LEGISLATIVE BRANCH

NOTIFICATION

The 7th May, 2010.

No.LGL.105/2009/12-- The following Act of the Assam Legislative Assembly which received the assent of the Governor is hereby published for general information.

ASSAM ACT NO. XII OF 2010

(Received the assent of the Governor on 29-04-2010)

THE ASSAM PUBLIC HEALTH ACT, 2010

AN

ACT

Preamble

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

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

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

And whereas the persisting inequities and denials in the matter of health in the State are a concern to all ;

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

It is hereby enacted in the Sixty-first Year of the Republic of India as follows:-

CHAPTER-I
PRELIMINARY

**Short title,
extent and
commencement**

1. (1) This Act may be called the Assam Public Health Act, 2010.
(2) It extends to the whole of Assam.
(3) It shall come into force on such date as the Government may, by notification in the official Gazette, appoint.

Definitions

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

(a) **affordable** means that which can be secured by every person

without reducing that person's capacity to acquire other essential goods and services, including food, water, sanitation, housing, health services and education;

- (b) **"capacity to consent"** means ability of an individual, including a minor or a person with mental disability, assessed by the relevant health service provider on an objective basis, to understand and appreciate the nature and consequences of a proposed health care or of a proposed disclosure of health related information, and to make an informed decision in relation to such health care or disclosure ;
- (c) **"communicable diseases"** means illness caused by micro-organisms and transmissible from an infected person or animal to another person or animal;
- (d) **"endemic"** means diseases prevalent in or peculiar to a particular locality, region, or people ;
- (e) **"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" ;
- (f) **"Government"** means the Government of Assam ;
- (g) **"health care"** means testing, 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 ;
- (h) **"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 ;
- (i) **"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 ;
- (j) **"health research"** means any research which contributes to knowledge of :-
- (i) biological, clinical, 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, 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;
- (k) **"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" shall mean the same ;

- (l) **"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 ;
- (m) **"life-style related 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 ;
- (n) **"municipality"** means Municipality and Municipal Corporations existing in different districts of the State ;
- (o) **"Order"** means subsidiary legislation dealing with specific persons or cases and shall refer to orders issued under and by the mandate of this Act ;
- (p) **"Panchayati Raj Institution"** means institutions of local self-government established under the States' Panchayati Raj laws, such as Gram Panchayat, Anchalik Panchayat and Zilla Parishad, and/or any reference to "PRIs" shall mean the same ;
- (q) **"prescribed"** means as prescribed by rules made under this Act ;
- (r) **"public health emergency"** means an unusual or unexpected occurrence or imminent threat of illness which affects or likely to affect a large population which needs immediate Public Health intervention to prevent death or disability to a large number of people ;
- (s) **"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 ;
- (t) **"universal precautions"** 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 ;
- (u) **"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 ;
- (v) **"vulnerable and marginalized individuals or groups"** means individuals who require special attention due to their being disadvantaged on account of physical, social, economic

conditions and who are deemed as requiring special attention by virtue of any act in force in the state.

CHAPTER-II
OBLIGATIONS OF GOVERNMENT IN THE HEALTH AND FAMILY WELFARE DEPARTMENT IN RELATION TO HEALTH

Obligations of the State Government in the Health and Family Welfare Department :

3. (1) Government in the Health and Family Welfare Department have the following general obligations at all times, within the limits of their available resources, towards the progressive realization of health and well being of every person in the state :-

- (a) Undertake appropriate and adequate budgetary measures, to the extent possible as per the globally accepted norms, to satisfy, the obligations and rights set out herein, for ensuring planning and rational allocation and distribution of resources for various health and health related issues and concerns ;
- (b) Provide access to health care services and ensure that there shall not be any denial of health care directly or indirectly, to anyone, by any health care service provider, public or private, including for profit and not for profit service providers, by laying down minimum standards and appropriate regulatory mechanism;

Provided that notwithstanding the above, the Government in the Health and Family Welfare Department shall have a duty to prioritize the most vulnerable and marginalized persons and groups, who are unable themselves to access the means for adequate and appropriate health care services, and ensuring them at least the minimum conditions of health care.

(2) Government in the Health and Family Welfare Department, in order to meet its obligation, shall coordinate with other relevant departments for providing,-

- (a) access to the minimum essential food which is nutritionally adequate;
- (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 and access to basic facilities.

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

- (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, health care providers, within the Government, private and other non-government sectors:

Provided that the Government in the Health and Family Welfare Department shall endeavour to adopt for itself the Indian Public Health Standards (IPHS) for the Health Institutions under its control and the Semi-Government as well as Private Nursing Homes / Health establishments etc. and may review and expand such standards in scope and contents to suit the needs of the State of Assam;

- (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 national, State and local level IEC programmes ;
- (e) expand mother and child health including reproductive health care for universal coverage at the earliest;
- (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 ;

Other obligations of the State Government in the Health and Family Welfare Department :

4. Government in the Health and Family Welfare Department 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 :-

- (a) fixing responsibility and accountability of concerned departments/agencies in case of repeated outbreaks or recurrence of communicable, 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 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, rational use of drugs and monitoring of drug resistance ;
- (f) population stabilization and family planning ;
- (g) regulation of Health establishments and all the facilities providing health services ;
- (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) health Impact Assessment (HIA) of all new development projects ;
- (l) lifestyle related diseases; mental illness, widely prevalent diseases; public health related factors like use of tobacco, alcoholism and other substance abuse, and consumption of unhealthy foods; and promotion of healthy lifestyles like breast feeding, health seeking behaviour, balanced diet, regular exercise, food and water safety, including with regard to their packaging, labeling, advertising and sales and consumer protection, including regulating advertising and taxation and excise policies that have impact on these ;
- (m) identify various types of health institutions including Tea garden hospitals available in the State and prescribe services to be provided by them;
- (n) specify the class or group of patients who will be given free treatment in private health establishments ;
- (o) provision of Geriatric/Palliative care/Mother and Child care and Trauma/Emergency care:
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 protocol of treatment for first 24 hours to an emergency patient of any kind.
- (p) early universalisation of coverage of immunization for mother and child ;
- (q) formation of Patient Welfare Societies (Rogi Kalyan Samiti) for various categories of Health Institutions ;
- (r) promotion of Indian Systems of medicine (ISM) ;
- (s) to devise, adopt, implement, and periodically review, health policies, strategies and plans of action, on the basis of epidemiological, sociological and environmental evidence, addressing the health

- concerns of the whole population;
- (t) prescribe remedial measures in case a patient fails to receive attention in a Government hospital/health establishment because of absence of the Doctors or any other medical staff;
 - (u) suggest and prescribe suitable schedule of inspection of Government/private health institutions by various health functionaries;

CHAPTER-III

COLLECTIVE AND INDIVIDUAL RIGHTS IN RELATION TO HEALTH

- Right to Health**
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 and professional personnel, and essential drugs ;
 - (b) reproductive health services and sexual health care with special emphasis for women and girls;
 - (c) (i) registration of births and deaths and other vital statistics for health,
 - (ii) food safety in the hospitals and health establishments managed by government or by Private owners,
 - (iii) safety, availability and accessibility of drugs, rational use of drugs and monitoring of drug resistance,
 - (iv) population stabilization and family planning,
 - (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,
 - (ix) sanitation and environmental hygiene, including waste management for every kind of waste,
 - (x) right to effective measures for prevention ,treatment and control of epidemic and endemic diseases,
 - (xi) right to effective mechanism in public health emergencies,
 - (xii) right to specified recognized standards and norms for safety and quality assurance of all aspects of health care,
 - (xiii) right to education and access to information concerning main public health issues in the community,
 - (xiv) right to appropriate and efficacious medicines.
- User's right to information**
6. (a) Every user has the right to information about, access to and use of health care facilities, services, programmes, conditions and technologies.

- (b) Every user has the right to 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 associated with each option of health care, alternatives to the proposed health care, including the implications, risks and effects of refusal of health care; and the diagnosis, prognosis and progress of health care; and any other information that may be pertinent to the user in taking a decision, providing consent or to understand his current and possible future health status. Information is to be provided in ethical manner and with human approach ;
- (c) Every user has the right to have the information communicated to him in a way appropriate to the latter's capacity for understanding, with minimum use of unfamiliar or complicated technical terminology.
- (d) Every user has the right to choose the person to be informed on his behalf;
- (e) Every user has a right to 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 services and of any rules and routines of the establishment which would bear on his stay and care.

User's right to
medical records
and data

- 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 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 rights to confidentiality, privacy and disclosure as elaborated herein under section 9 ;
- (b) Every user has the right of access to his medical files and technical records and to any other files and records pertaining to his diagnosis, treatment and care (including X-ray, laboratory reports and other investigation reports) and to receive a copy of his own files and records or parts thereof; and
- (c) Every user has a right to request for and to be given a written summary of his 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.

User's right to
autonomy and
prior voluntary
informed
consent

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

provider proposing it;

- (b) Every user has a right that the service provider empowers and facilitates the exercise of his right to consent in the above manner;
- (c) Every user has the right to refuse or to halt a medical intervention and on his exercising such right, the implications of refusing or halting such an intervention must be carefully explained by the service provider to the user, provided that the refusal or halting comes to the knowledge of the provider;
- (d) When a user is unable to express his consent due to medical reasons or his 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) Every user who lacks the full capacity to give consent, due to his 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 behalf, through a *de jure* or *de facto* guardian, next friend or personal representative, whose credentials are clear to the service provider;
- (f) Every user also has right to 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 provided any health care for experimental or bio-medical or clinical research purposes, except according to guidelines laid down by the Indian Council for Medical Research (ICMR) and unless -
 - (i) it is in association with a health establishment that has been licensed under Assam Health Establishment Act, 1993 as required therein;
 - (ii) the Institutional Ethics Committee as laid down by the prescribed guidelines, has given prior written authorization for the commencement and continuation of such health care; and
 - (iii) the user has been given prior information in the prescribed manner that the health care is for experimental or research purposes or part of an experimental or research project, and he has given informed consent as per the requirements of relevant earlier provisions herein.

Assam Act
XVIII of
1993

User's right to
confidentiality,
Information
disclosure,
privacy

9. (a) Every user has the right that all information about his health status, medical condition, diagnosis, prognosis and health care and all other information of a personal kind (identified or identifiable to him), must be kept confidential, even after his

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.

Duties of users 10. Every user has the following duties :-

- (i) To provide health care providers with the relevant and accurate information for health care, subject to the user's right to confidentiality and privacy ;
- (ii) To comply with the prescribed health care, subject to the same having been administered after duly observing the user's rights as enumerated above ; and
- (iii) To sign a discharge certificate or release of liability if he or she refuses to accept recommended treatment ;
- (iv) To ensure that the premises occupied by the user are kept clean and indulge in no activity that pollutes the atmosphere physically or otherwise.

Rights to health care providers vis-à-vis users :

11. (i) Every health care provider has the right of protection from complaints relating to any adverse consequences for providing his services of any kind as long as the provider has acted bonafide to the best of his professional capability and judgment, and in the best interests of the user, and exercised all reasonable care ;
- (ii) Every health care provider has a right to be treated with respect and dignity by the user and to expect the user to comply with all the duties as enumerated above.

CHAPTER-IV

IMPLEMENTATION AND MONITORING MECHANISM

Establishment of a State Public Health Board

12. A State Public Health Board shall be established by the State Government which shall consist of the following, namely :-
 - (a) The Chief Secretary, Government of Assam, who shall be the Chairperson ;
 - (b) The Principal Secretary, Health and Family Welfare Department, Government of Assam, who shall be the Co-Chairperson ;
 - (c) The Commissioner and Secretary of Health and Family Welfare Department, Government of Assam, who shall be the Vice-Chairperson;
 - (d) The Director of Health Services, Assam who shall be the Member-Secretary;

- (e) Secretaries or their nominees, in charge of departments of Public Health Engineering, Panchayat and Rural Development, Social Welfare, Urban Development, Guwahati Development Department, Finance, Welfare of Plains Tribes and backward Classes, Information and Public Relations, Revenue, Relief and Rehabilitation and Secretary, Education (Secondary) Department- Members;
- (f) Three members of the Assam Legislative Assembly as nominated by the Government - Members ;
- (g) Four non-official members such as public health experts, representatives of medical associations, or Non Government Organizations (NGO) as nominated by the Government – Members;
- (h) Representative of Chairman, Pollution Control Board – Member.

Term of office and honorarium of Members, Fund of the Board and meetings etc. of the Board.

13. (a) The appointment of each member of the State Public Health Board, except the ex-officio appointees, shall be for a period of three years.
- (b) The State Public Health Board may create sub-committees in order to address specific areas or needs concerning the public health system.
- (c) The State Public Health Board shall meet at least once in six months.

Functions of the Board

14. The State Public Health Board shall carry out the following functions, namely :-
- (a) Formulate and implement State level strategies and plans of action for the determinants of health, especially food, water, sanitation and housing ;
 - (b) Identify the State's health goals to be included in the mandate of Panchayati Raj Institutions (PRIs)/ Autonomous Council;
 - (c) To get clinical and medical audits carried out on select conditions of public health importance, receive relevant reports and initiate necessary action.
 - (d) Institute systems of confidential inquiry into deaths to identify and analyse the failures of health systems, towards systemic improvements;
 - (e) Establish and implement performance standards, measures, capacities and process for health care infrastructure, service providers, quality or performance improvement that are required for achieving the objectives of this Act ;
 - (f) Make available, at all levels of health care, essential and rational drugs that are listed in the National List of Essential Medicines and/or the latest Model List of Essential Drugs of WHO, and promoting rational drug use;
 - (g) Develop public health IEC infrastructure and programmes for mass public health campaigns and activities, with

institutionalized involvement of educational institutions, non-governmental organizations, community based organizations, associations of medical providers, traditional health care practitioners, mass media including privately owned mass media, and all stakeholders in promotion of public health;

- (h) 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 ;
- (i) Develop and implement capacity building plans for all the bodies and committees being set up at various levels under this Act ;
- (j) Develop mechanisms for initiating public-private partnership in implementation of public health programmes that ensure equity and quality of health care services;
- (k) Develop mechanisms for creating and empowering decentralized monitoring committees at all levels, both rural and urban and seeking their feedback in structured manner;
- (l) 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;
- (m) Ensure coordination with other Government departments, agencies and with the Central Government for handling public health emergencies ;
- (n) Coordinate with the relevant Government departments and agencies to ensure availability and access to adequate and safe food, water, sanitation and housing throughout the State;
- (o) Review the existing laws and policies of State Government that are related to health/ public health, to determine compliance with this act and make recommendations for reform / amend or repeal where necessary ; and
- (p) 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 State Government, on such terms as it may deem fit, involving dissolving, removing or streamlining any of the existing ones.

District Public
Health board

15. A District Public Health Board shall be established by the Government which shall consist of the following, namely :-

- (a) The Deputy Commissioner of the District / Principal Secretary of the Autonomous Council in the Sixth Schedule districts or his nominee shall be the Chairperson;
- (b) Chief Executive Officer, Zila Parishad in non Sixth Schedule Districts and Chief Executive Member in Sixth Schedule Districts, or his representative shall be the Co-Chairperson.
- (c) The Joint Director of Health Services of the concerned district shall be the Member - Secretary.

- (d) Senior most Engineer at District level from Public Health Engineering Department, President/Chairman, Zila Parishad, District Social Welfare Officer, Project Director DRDA, Deputy Director Town and Planning Commission, Chairperson or his nominee of Municipal Corporation, Programme Officer of ICDS, Project Director IPDP, Director DIPR - Members.
- (e) Four non official members from NGOs, Health experts etc. to be nominated by the Deputy Commissioner/ Principal Secretary of Autonomous Councils of the Sixth Schedule districts as the case may be.

Functions of the District Public Health Board

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

- (a) Organize hearing of the beneficiaries coming to the hospital once in a year with a view to improve the health care services ;
- (b) Formulate and implement strategies and plans of action for the determinants of health, especially food, water, sanitation and housing for the district ;
- (c) Ensure coordination between all the public health institutions of the district;
- (d) Coordinate with other Government departments and agencies for handling public health emergencies ;
- (e) 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
- (f) To carry out such other activities as may be entrusted by the State Health Board in order to achieve the objectives of the Act.

Monitoring mechanism by the Government

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 at all times :

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** : Government shall have a monitoring system to monitor, -
- (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 by 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 (IPHS) in various respects; the charter of users' rights; charter of citizens grants received by

the institutions; medicines and vaccines in stock; services provided to the users, user charges to be paid (if any), as envisaged in the Right to Information Act; and the monitoring of performance of the institutions and establishments on such parameters;

- (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 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.

(iii) Community based monitoring : - The monitoring methods under clauses (i) and (ii) 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.

Objectives of the
monitoring
system

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

CHAPTER-V
MISCELLANEOUS

Power to make
Rules

19. (1) The Government may in consultation with the respective Public Health Boards, within twelve months from the date of coming into force of this Act make necessary rules not inconsistent 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 Assam 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 Assam Legislative Assembly agrees in making any modification in the rules or the Assam 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-VI
IMMUNITIES

Immunity

20. (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 NGO or 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 thereunder. 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.
- (2) (a) No action for damages lies or may be brought against any official of the State 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 be subject to civil remedies under this Act on the theory of vicarious liability, unless such superior or supervisory official had prior actual or constructive knowledge of the violation or actions leading to the violation; and/or was otherwise directly responsible for ensuring against the occurrence of the violation :

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

MOHD. A. HAQUE
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