

National Consultation for Drafting a Public Health Bill

Model Act for the States

9/26/2014

National Health Mission



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September 26, 2014

Introduction

A National Consultative Meet for drafting a Comprehensive Public Health Bill was jointly organised by National Health System Resource Centre (NHSRC), MoHFW, New Delhi and National Law School of India University (NLSIU), Bangalore on September 26, 2014. This repertoire aims to summarize the key points of the consultative meet.

The day began with welcome remarks from Prof. Nandimath, Registrar & Professor, NLSUI. This was followed by a presentation on the statement of purpose by Shri Prasanth K S, Senior Consultant, NHSRC. He spoke on existing legislations on Public Health in India, Pending Bills, and Model Acts (By NICD, CBHI, and Task Force 2009), prepared by various agencies at Central level. He also briefed on the expected outcome of the present Consultation. Explaining to the participants on the evolution of the project, he informed that in 2012, a Task force had been constituted with the mandate of developing an Approach Paper on Public Health Act, which submitted its report in 2013. He shared with audience the recommendations made by the task force:

- Instead of amending the existing draft, a new draft would be created keeping in view the existing conditions in India. This Act shall be a Model Public Health Act to be adopted / adapted by the states.
- The States would be engaged / consulted in drafting the new Public Health.
- A mixed approach involving both coercive and rights based approach would be followed.
- Social determinants of Health would also be dealt with in the new Public Health Act.
- The antiquated laws which have an effect on Health would be modernised and amended.
- The new Public Health Act would provide for an 'infrastructure role' for the Public Health Cadre.

The National Health Systems Resource Centre then entered into a MoU with NLSIU, Bangalore to undertake drafting of the National Public Health Bill, 2014.

Dr. Venkata Rao, Vice Chancellor, NLSIU gave the keynote address. He emphasized that a *good public health system must exist to realise the potential of the Indian demographic dividend*. He quoted Dr. Amartya Sen to further his point, also referred to 'marginalized sections who are yet to benefit from the 'freedoms and rights' conferred to all citizen by the Constitution. In his opinion, the experts must acknowledge the '*changing focus of*

Medicine, and the wide expanse of Medicine before giving their respective feedbacks. He also hoped that the *legislative package under development is holistic and becomes a model for other countries as well.*

Technical Session 1 –The Ideal Strategy of Enforcement of Public Health Scenario

Dr. A K Shiva Kumar, chair of the first technical session, emphasized the need to formulate a comprehensive and impeccable National Public Health Bill to tackle the crisis in human health. The Bill should fulfill the Constitutional obligations and meet the health needs of different age groups from the young to the old and those with special needs including women and people with disabilities. The Bill should set an example for other countries to follow.

Prof. Nandimath in his presentation on 'Enforcement of Public Health Scenario' outlined the primary blueprint for the enactment of this Bill. The first step, i.e., review of literature & model bills to prepare a concept note set forth for expert feedback was already on track. The purpose of the meet was to corroborate this to a particular *deliverable model*. The Draft Bill would then undergo wider consultation to incorporate further facets and subsequently be finalised.

He highlighted the prominence of Health in the Indian Constitution and its status as an Individual's Right. Quoting Article 47 of the Constitution, he spoke about improvement of Public health - curative, preventive & promotive, as the primary duty of the state. Contemplating its promotion to a Fundamental right, he stated its need for translation into action in terms of answerability of the state and the justifiable nature of the right, however, acknowledging the inability of such a translation in the near future.

The address emphatically reiterated the need to attaining '*The highest achievable level of Health*'. He aptly underscored the deficits in the current scenario towards achieving such a status due to insufficient funds & investment by the government in the Health sector i.e., a mere 1.2% of GDP; and lack of emphasis on the health policy, (despite previous health missions) reflecting this maxim.

Dr Dharma Rao, Director MoHFW who spoke next, expressed his concerns on the ability of the draft to cover all social determinants within the embedded limits. He emphasized the need for the framework to be ready within its temporal requirements, whether with or without the social parameters. Prudently enough, he highlighted the need for *all* stakeholders, other than the government, to be involved in the process.

The chairperson, Dr Shiva Kumar, asked for collective action to deliver the unfulfilled right to Health. He stated that the notions of equity, resource and financial distribution cannot be as easily objectified when applied to Health. Subsequently he threw the discussion open to the house.

Shri Amit Yadav called attention to the following points:

- 'Universal Health Access' to be kept in mind while framing the bill; An attempt at 'Health Impact Assessment' to evaluate the effect of previous and new policies; A need to tighten current policies so as to improve the results of this umbrella Act; and 'Inter sectoral convergence' to be ensured by the Act.
- He drew a parallel with the Cigarettes and other Tobacco Products Act that has rendered public places smoke free to a great extent. He pointed out that the significant impact of COTPA is due to the strict enforceability of the Act and similar mechanisms can be explored for the PH Act also.

Shri Arvind Kumar suggested that the bill must provide for a framework for impact analysis of programmes.

Dr. Uday Kumar urged the need to include social determinants and further advocated for a comprehensive bill.

Dr. Raman Kumar expressed need to appropriately spend and regulate private health care in the country.

Dr. Sandeep Desai made the following points;

- Right to public health to be viewed as part of Right to Health; Right to Primary Health with *minimal health determinants* to be followed; and to acknowledge the principle of profit making for investment by Public private partnerships.

Shri Prashant Desai spoke of a Judicial Impact Analysis on decisions relating to public Health. Further, he stated the aim of this exercise must be to draft a comprehensive law to address the current piecemeal approach to public health.

Dr Muraleedharan urged the house to consider the following facts for inclusion in the bill:

- To make use of the potential of information systems in the implementation mechanism of the bill; and to expand the scope of the act to include the important social determinants that play a significant role in determining patient morbidity & mortality, i.e., water, nutrition and sanitation.

Dr. Sanjiv Kumar lauded this opportunity to be a great one for the purpose of drafting a good legislation for public health. He mentioned the need to keep the bill comprehensive, to define all the terms clearly and to widen the scope of health to beyond that of the Ministry of Health. Aply, a priority according to him is also the need to instill measures that can inculcate healthy behaviour and also deal with social stigma attached to certain ailments.

Dr. Suresh BM argued for a more pragmatic approach and mentioned the importance of implementability and practicality of the bill and that the experts could share their thoughts on this.

Dr. Naveen Kumar expressed his concerns regarding ground level issues. He wanted the experts to deliberate on field situations so as to bring a legislation that takes care of the ground realities.

Smt. Anju Prasad expressed concerns regarding grass root level implementation and wanted to know as who will be the appropriate authority under the Act, since whatever is the ambit of the Act, implementation depends on who is incharge of the implementation.

Dr. Priyadarshini spoke in favour of inclusion of all social determinants due to their relation to eventual prognosis. She also mentioned the need to ensure promotion of public health research.

Dr. Pankaj Bhardwaj emphasised the need to do a SWOT analysis of the existing draft bills and cull out the major issues for deliberation while drafting the new Bill.

Dr. SBN Prakash suggested that since the present government has single majority, could MoHFW consider bringing Public Health from the state list to the concurrent list so that centre could also enact on the same subject.

Dr. A Nagarathna, as those before her, underscored the need for a comprehensive law. She added, to ensure implementation, there was a need to frame objective guidelines& rules within the Act. She drew a parallel with the Right to Education, to include provisions to prevent economic constraints from limiting access to a human right.

Prof. Gita Sen also raised a number of pertinent issues:

- She wondered if there was a need for a Constitutional Amendment in order to make a significant change in the field of health.
- She opined that the concept note clearly depicts how disparate everything is with respect to public health. A Public Health Act, in her opinion, will be very useful in putting all of them together and thus providing clarity.
- She cautioned the need to look into gender related dimensions in the society that affect lives of girls, adolescents and older women. She highlighted certain aspects of social relationships i.e.,gender, caste, disability etc. which impinge on health. She also spoke of particular groups in society that face specific problems and the need to carefully address these in the Public Health legislation.
- She stated the need to involve all those ministries which have a significant impact on health.
- She sought a clarification on (i) whether the proposed bill is a framework law (ii) whether the proposed bill is a central act or a model act for the states.

Shri Prasanth K S clarified that the Approach Paper mentioned the New Draft to be a model Act for State Governments and not a central act. Furthermore, this law would be an operational law and not merely a framework one.

Professor Nandimath added a few points regarding implementation of Bills:

- He clarified the difference between *Strictly legal issues* (those that can be addressed legally only e.g. taxation), *Extra Legal Issues* (those outside the scope of law since they are related to ethics or behaviour etc.) and *Mixed Legal Issues* (those where law tries to encourage people to make a change). According to him, health is a mixed legal issue.
- He cautioned that the health ecosystem is scattered around in different areas. Therefore, coordination is sometimes problematic. He stated that if declared a fundamental right, health shall be a part of each ministry.

The chairperson, Dr Shiva Kumar, then summarised the issues raised:

On the question of the Bill being comprehensive or selective, he stated that it should be comprehensive and in alignment with India's commitment to universal health coverage. However, it might be necessary to keep in mind the legal considerations while defining the ambit and scope of the Bill. He pointed out, for instance, that issues like inter-sectoral convergence cannot be legislated and should be a part of broader policy frameworks.

He referred to the judgment made in VP Shanta's case which states that '*if a service hasn't been paid for, then it's not considered a service*' and underscored the need to bring both public as well as private providers under the ambit of the Bill. He called for incorporating a strong equity perspective into the Bill, keeping in mind however that the legal interpretation (and definition) of equity might not always be in sync with the concept of equity used in social sciences. He also underscored the importance of (i) including appropriate redressal mechanisms in the Bill; and (ii) pinning responsibilities by identifying those who would be accountable in case the right to health, (if guaranteed), is not implemented.

Shri Prasanth KS wondered whether the country is in a position to guarantee health as a fundamental right. He gave the illustration of Brazil, the only country that provides for a Right to Health in its Constitution now facing problems of 'Judicialization of healthcare'.

- He explained how the bill is trying to address Social Determinants of Health. The bill is trying to provide for a mechanism encouraging various sectors (coming under the purview of various ministries) to develop a set of criteria/tools to measure the impact of various activities on Health.

- He wanted to get feedback from experts as to whether the rules that govern centre state financing for health programmes should be brought under this regulation or not.

Technical session II: Presentation by Public Health Act drafting team, NLSIU, Bangalore.

The presentation focused on; Improvement of environmental conditions to improve health; Prevention of certain critical non-communicable diseases; Prevention of spread of Communicable diseases; Immunisation & Health Promotion Schemes and Regulation of Healthcare Institutions.

Dr V.R. Muraleedharan, the chairperson of the session suggested focusing the session on Communicable diseases, Health Promotion and Regulation of Healthcare Institutions. He wanted clarification on the issues carved out from various Acts and Bills including Model Acts so that the house could respond.

Shri Prasanth K S spoke of the comparative analysis that had been done among various legislations across the country. Ms Jyotika, from NHSRC gave examples to illustrate this point. The state Acts were also discussed to supplement emerging dimensions. He also added that the proposed Act will supplement the void (left out areas) created by other legislations relating to public health. The mechanism by which this will be achieved will be differing by area covered and these mechanisms will be available for debate by next consultation proposed in the next 3 months time.

Prof. Nandimath, emphasized on the importance of *Health Impact Assessment*. He drew an analogy with the Environment Impact Assessment, but sought for better methodologies in the protocol for an accurate and precise Health Impact assessment.

Prof. Gita Sen made the following important points:

- Clarified that social determinants were not a part of the HLEG mandate, and it aimed to bring the regulatory aspect of health care services provision under a single umbrella, to improve both the public and private sectors.
- She was apprehensive of the Health act not bringing about radical change in the legislative goals and ambits of the government. She suggested that the committee focus on Improvement of environmental conditions to improve health & Regulation of Healthcare Institutions as these areas is novel and largely untouched aspect of public health.

Dr. Sanjiv Kumar, Chairperson agreed about the need to work on certain areas more than others. He spoke of areas such as Health Promotion which needs to incorporate the following elements - Development of personnel skills, Strengthening Community, Creating Supportive Environment, Reorienting Health Services, a Healthy Policy cutting across all sectors.

Dr. UdayKumar asked if hospitals or issues such as availability of quality drugs will fall under this Act? Shri Prasanth K S responded that it is covered under the Clinical Establishments Act.

Dr. Suresh suggested inclusion of research to support the health and education process.

Prof. Nandimath, stated the need for professional auditing, and suggested including it to monitor public money spending.

Dr. Aiyanna asked whether the scope can be widened to include nutrition of infants and children under the Act.

Dr. Raman Kumar drew analogies with the US and Canadian Preventive task forces and asked for similar guidelines to be laid down in the Indian scenario as well, for preventive medicine and promotion of health care.

Dr. Sanjiv Kumar shared that many good public health interventions takes time to get implemented in India and gave the example of Pentvalent vaccine. He wanted Public Health Bill to provide for a favourable environment for authorities to proactively act upon while facing similar instances.

Shri Prasanth KS clarified that only the core functions of public health have been included in the draft. The areas already covered by other Acts have not been re-enacted here.

Prof. Gita Sen stated the need for the regulatory body to be an independent authority. She stressed on the importance of the need to set standards, to continuously assess and monitor the body. She suggested the linkage of the community to the regulatory mechanism to enable participation of citizens and communities.

Dr. Sanjiv Kumar affirmed Dr. Sen's point by mentioning an example from Bangladesh wherein there's presence of community involvement systems at each level with NGOs. There, community issues are addressed by service providers.

Dr. Dharmarao while responding to a suggestion made by Dr. Gita Sen observed that the Ministry has not thought of the role of community monitoring in the implementation of Public Health Bill.

There was also a suggestion to make Medical colleges responsible (oversight function) for Public Health Issues in each district to improve Public Health governance.

The consultation concluded with a presentation on consolidation of day's discussions by Shri Prasanth KS and final remarks from Dr. Sanjiv Kumar and Dr. Muraleedharan who thanked everyone for their valuable inputs. The second consultative Meet is scheduled to be held in the month of December 2014 at Delhi.

Annexure

Table 1 Task Force on Public Health Act (2012)

Members	Organisation
Subhas Salunke	Public Health Foundation of India
P Padmanaban	National Health Systems Resource Centre
Prasanth K S	National Health Systems Resource Centre
Pradeep Saxena	Central Bureau of Health Intelligence

Table 2 Participants list (National Consultation, Bangalore, September 2014)

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