South Asia level Learning Exchange Workshop on Patient's Rights, 2018
Thematic Hub #: Patient's Rights and Regulation of private Medical Sector

Working Paper for Discussion

Secretariat of the Thematic Hub- SATHI, a Health rights organisation based in Pune, India would be anchoring this thematic hub.

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Introduction: In many low and middle income countries especially in South Asia and Africa, the private healthcare sector is playing pivotal role in providing healthcare. For example, in India more than 80% patients seek out-patient care while more than 60% patients seek in-patient care from private hospitals. With advance of medical technology and innovations in organisation of healthcare institutions, the healthcare landscape is rapidly changing in low and middle income countries. This has created many opportunities for better healthcare as well as posed significant challenges for patient's access to quality and affordable care. There is growing discourse of need to protect patient's interest in healthcare set ups, especially protection of patient's rights to assure them good quality healthcare. There are several initiatives to spread awareness about patient's rights in many developing countries. Building upon the experiences and learning from these various initiatives, this Learning Exchange Workshop on Patient's Rights was successful in enhancing the knowledge base of participating researchers, academicians, health rights activists, consumer rights experts, doctors and policy makers regarding broad range of issues related to conceptualization, awareness generation and implementation of patient's rights in LMICs with special focus on key South Asian Countries (India, Sri Lanka, Nepal and Bangladesh) and linkage with East African experiences. Workshop provided valuable information about nature of private medical sector in key South Asian Countries like India, Nepal, Bangladesh, Sri Lanka and African countries like Kenya. It also helped participants in understanding current status of private medical sector regulation and protection of patient's rights. Experiences shared by wide variety of campaigners on patient's rights issues enriched the discussion and gave important insights into dynamics of the change process. This has been canvassed in the detailed report of the workshop.

This workshop raised some questions whose answers needs to be find out within the thematic hub in order to take forward the discussion around regulation of private medical sector in South Asian countries. This working paper strives to summarize these points in more analytical and campaign strategy manner.

Background

Health care in a key South Asian countries, like other Low-Middle Income Countries(LMICs), is delivered by a Mixed Health System – defined as a health system in which out-of-pocket payments and market provision of services predominate as a means of financing and providing services in an environment where publicly-financed government health delivery coexists with privately-financed market delivery. Mixed

health syndrome compromises the quality of public services and defeats the equity objective in several ways. Poor performance of such systems is due to interplay between three factors in the mixed health system[1]:

(i) insufficient state funding for health;
(ii) a regulatory environment that enables the private sector to deliver social services without an appropriate regulatory framework; and
(iii) Lack of transparency in governance.

Today despite massive growth of the private medical sector, and widespread evidence of negative consequences of market failure, regulation of private medical sector remains very weak in most LMICs including South Asia. Despite large scale dissatisfaction related to malpractices, unethical practices, overcharging, and violation of patient's rights, movements around these issues have remained weak until now. Hence there is an urgent need to promote the discourse on patient's rights and accountability of the private medical sector especially in South Asian countries, through involvement of civil society organizations, rational healthcare practitioners and policymakers.

There is an urgent necessity of patient centered approach for regulation of private hospitals in key South Asian countries with important provisions including charter of patient's rights and responsibilities, grievance redressal mechanism for patients, standard treatment guidelines, transparency in rates, rate regulation while emphasizing on participation of civil society organizations, citizens representatives in the ongoing regulatory process to reflect citizens concerns primarily. There is an urgent need to save emerging regulatory structures to save from twin danger of elite capture and expert capture by promoting social regulation; as against existing private interests dominated models of regulation and previous models of command and control kind of regulations which were plagued by bureaucratization and corruption etc. through effective intervention of people's movements.

Analytical perspective about regulation of private healthcare sector in South Asian countries –

1. Reality of dominant private healthcare sector in South Asia cannot be wished away and there is an urgent need to engage with ongoing process of regulation of this sector to make it more patients centric.
2. Strengthening and massively expanding public health system with provision of increased resources will have huge collateral regulatory effect on private medical sector.

[1] *The mixed health systems syndrome*, Sania Nishtar, Bulletin of the World Health Organization 2010;88:74-75. doi: 10.2471/BLT.09.067868

3. Regulating dominant private healthcare sector is a mammoth task which requires dedicated human resources, budgetary support, well designed legal framework, strong political will and 'pressure from below'!
4. Except Bangladesh, all other South Asian countries have witnessed new kinds of regulatory legislative frameworks for both public and private hospitals in last one and half decade. Regulatory mechanism in Bangladesh is typical example of command and control kind of regulatory framework which essentially remained on paper. Sri Lanka, Pakistan, India, Nepal have introduced some kind of new frameworks for regulation with some scope for participation for non-state actors but currently with overwhelming representation from private healthcare providers! It is to be highlighted that in these frameworks the representation to civil society organizations working on patient's rights issues, health activists, women's organizations, and prominent citizens remains very nominal (some exception of Punjab Healthcare Commission in Pakistan). This is alarming. There is an urgent need of strong intervention by people's health movement to force appropriate authorities to change the composition and processes of these regulatory bodies in order to safeguard these emerging regulatory frameworks in Bangladesh, India, Nepal, Pakistan, and Sri Lanka from twin dangers of expert capture and elite capture!
5. There is a need to look regulation of private healthcare sector as a socio-political process involving triangular contest between the state, private healthcare sector and citizens. Now, participation of citizens and civil society organizations in most of the regulatory structures in key South Asian countries is missing to large extent. There is a need for broader campaign for to bring citizens/patients at the centre of the regulation by creating more effective avenues for their voices within these regulatory structures and procedures.
6. There is a need to explore 'bottom-up governance', and related concepts of social accountability of regulators, and social regulation, related to the Health care system including the private medical sector. Social accountability refers to formal or informal mechanisms through which citizens and/or civil society organizations bring officials or service providers to account. 'Social regulation' refers to action-oriented approaches designed to reinvent and democratize regulation, with greater participation and accountability of the regulatory process to users and the public. Patient's Rights can be used as a fulcrum for social mobilization related to regulation and demanding substantial representation of civil society, citizens in regulatory framework.

Key issues and questions related to campaign needs to be further discussion

- There is an urgent need for documentation of instances of patient's rights violation, medical malpractices, overcharging in private hospitals in key South Asian countries considering scarcity of such documents in the public domain. At the end of the workshop, it was decided to compile such instances and share them through e-mail group and publish it on a website. However, this needs coordinated efforts in sustained manner. Thematic Hub needs to come up with detailed plan for accomplishment of this task.
- Healthcare in most of the South Asian countries is highly commercialised and increasingly getting corporatized. Medical tourism is one the most driving factors for corporatisation of healthcare. The question was raised about how to regulate medical tourism to safeguard interests of the patients especially from South Asian countries and African countries who travel to countries like India, Sri Lanka etc for medical tourism?
- How to strengthen and expand the network of health right activists, grass root organisations, researchers, academicians working on patient's rights issues at South Asia level in sustained manner?
- Can Clinical Establishment Acts (CEA) or any similar regulatory legislation become the panacea for overcoming the irrational practices in private sector? There was a forceful debate around this theme which needs to be carried forward. The point of contention was that regulatory legislative frameworks are necessary but not sufficient. It caters to 'hardware' and not necessarily "software". Rationale provided was that the judicial proceedings are slow and costly; also the legal measures make regulation more government centric and do not provide scope for active community participation in regulation process. There are serious implementation gaps as most of the regulatory legislations focus only on infrastructure while remaining silent about processes and outcomes (Quality of Care for eg. Standard Treatment Guidelines). Can the tool of regulatory legislative framework be used to regulate and enhance quality of care both in terms of processes and outcomes? Will that be sufficient? Or does it need to be supplemented by other measures which cater to "software" also? What are these measures?
- The larger discourse on 'Right to health care' is absent and some participants expressed the need to demand it simultaneously with need for regulation of private medical sector. This has great promise to bring in community participation in the regulatory mechanisms. Besides that, the promise of the 'Universal Health system' where the state demands better adherence by private hospitals to regulations through the 'carrot' of in-sourcing of providers and thereby provide increased volumes of patients. E.g. Canada
- What should be the approach of grass root organisations working on patient's rights issues towards medical community especially in the context of regulation of private medical sector? Is medical community a monolithic entity or are there any

contradictions within it? If contradictions are present, then is there are possibility to win over or have an alliance with a section of medical community? Will it be helpful to further the cause of patient's rights and regulation of private providers if grass root organisations develop alliance with section of doctors?

- The National Pharmaceutical Pricing Authority of India has recently come up with an analysis of bills from four big hospitals around Delhi and issued a notification which states that private hospitals earn huge profit, up to 1700%, on consumables. Hospital gets the consumable products at very low price than MRP and sells it to patients at MRP price which is very high and artificially fixed. NPPA called upon the state governments to come up with laws to regulate such profiteering on the lines of CEA. If NPPA cannot do it on its own then question is how to solve this regulatory puzzle through acts like CEA or equivalent acts in various states in India? Thematic Hub needs to come up with creative, practical and concrete legal provisions to be included in regulatory legislations.

Recommended Readings

- NPPA notification dated 20/2/2018 attached as an Annexure