

# Jan Swasthya Abhiyan

(Peoples Health Movement – India)

Health for All - Now!

Health is a Basic Human Right!

*Convenors:*

Abhay Shukla  
Ajay Khare  
Ameer Khan  
Amit Sengupta  
Amitava Guha  
Amulya Nidhi  
B.Ekbal  
Gouranga Mahapatra  
Joe Varghese  
Kajal Jain  
Rakhal Gaitonde  
N.B.Sarojini  
Narendra Gupta  
Obalesha  
Renu Khanna  
Sanjeev Sinha  
Sulakshana Nandi  
T. Sundararaman  
Thelma Narayan  
Vandana Prasad

*National Co-ordination Committee:*

All India People's Science Network (AIPSN)  
All India Drug Action Network (AIDAN)  
Asian Community Health Action Network  
(ACHAN)  
All India Democratic Women's Association  
(AIDWA)  
Bharat Gyan Vigyan Samiti (BGVS)  
Breast Feeding Promotion Network in India  
(BPNI)  
Catholic Health Association of India (CHAI)  
Centre for Community Health and  
Social Medicine, JNU  
Christian Medical Association of India  
(CMAI)  
SOCHARA  
Forum for Creche and Child Care Services  
(FORCES)  
Fed. of Medical Representative  
Assns. of India (FMRAI)  
Joint Women's Programme (JWP)  
Medico Friends Circle (MFC)  
National Alliance of People's  
Movements (NAPM)  
National Federation of Indian  
Women (NFIW)  
National Association of  
Women's Organisations (NAWO)  
Prayas, Rajasthan  
SAMA – Resource Group on  
Women's Health  
SATHI – CEHAT  
Voluntary Health Association  
of India (VHAI)

*Participating Organisations:*

Over 1000 organisations concerned with  
health care and health policy from both  
within and outside the above networks.

Dear Madam/Sir,

Please find attached a Press Release from the Jan Swasthya Abhiyan on the current discussions in the Government to regulate drug prices.

Do feel to contact us at: 09423531478 (Ananat Phadke)/ 011--26524323 (Amit Sengupta) if you need any further clarifications/information

Best Wishes,



Dr.Amit Sengupta, Dr.Anant Phadke, Dr.B.Ekbal,  
Dr.Narendra Gupta, Amitava Guha  
(for Jan Swasthya Abhiyan)

*Addresses for Correspondence:*

**National Secretariat:** c/o SAMA, B-45, 2nd Floor, Main Road Shivalik, N.Delhi-17. Ph: (011) 65637632/26692730  
c/o **Delhi Science Forum**, D-158, Lower Ground Floor, Saket, New Delhi-17. Ph: (011) 26524323, 26862716 (Telfax).  
Email: jsasect.delhi@gmail.com

**Decision of Market Based Pricing of Medicines:  
Reflects Disrespect for the Supreme Court's Attempt to Protect Right to  
Life, Enshrined in the Constitution**

The Jan Swasthya Abhiyaan (JSA) is *deeply disappointed* that after a delay of 7 long years to decide a comprehensive drug pricing policy, the Group of Ministers (GoM) has decided in favour of Market ***Based pricing (MBP) policy*** for price fixation of 348 essential drugs. This decision would more or less legitimize the current exorbitantly high prices of essential medicines; there will be only ***tokenish reduction in their prices***. It is appalling that GoM has chosen to ignore the views of the Honourable Supreme Court and of both the Ministries of Health and Finance. The Supreme Court has suggested that the ***Cost Based Pricing (CBP)*** formula, as specified in the Drug Price Control Order (DPCO) 1995, should continue to be followed. The GOM, formed in 2005, had reserved its decision for 7 long years in spite of directives by the Court to expedite its decision. The delay allowed the pharmaceutical industry to continue to charge exorbitant prices, thus exploiting millions of hapless patients. *Thanks to this masterly inaction by the GoM, the constitutional right to life with dignity of ordinary citizens continued to be violated. With this new decision this violation of right to life would now become 'official'.*

The Jan Swasthya Abhiyan believes that exorbitant prices by pharmaceutical companies leads to denial of access to Essential medicines, and this constitutes denial of the right to life, enshrined in our constitution. JSA contends that ***though policy-making is the prerogative of the executive, the Supreme Court has acted well within its constitutional mandate*** in directing the Government to take a policy which would stop the denial of the human rights of millions of Indian people. However, as reported in the press, the ***Additional Solicitor General*** has reportedly advised the Government that it need not follow the Supreme Court's suggestion to follow Cost Based Pricing under the pretext that policy making is the executive's prerogative. JSA contends that ***Supreme Court's suggestion is to protect human rights of citizens and ignoring it shows the disrespect for the Supreme Court's attempt to protect right to life enshrined in the constitution; it's tantamount to contempt of the SC.***

It may be recalled that responding to a petition by the All India Drug Action Network (AIDAN), ***the Supreme Court in 2003, had directed the Government to devise a policy that would ensure that Essential Medicines are available at costs that ordinary people can afford.*** Further, the Supreme Court – while hearing arguments on this writ petition – had recently opined that the Government should continue to use the cost based formula for price fixation of 348 essential drugs. The cost-based formula, has been part of the DPCO of 1979, 1987 and 1995. Under this formula the ceiling price of a drug is calculated by adding a mark-up (maximum allowable post-manufacturing expenditure or MAPE) on the cost of manufacture of a drug.

The GoM has finally recommended after its meeting yesterday, that this method of price fixation be abandoned, and be replaced by a 'Market Based' formula. This new

formula will fix the ceiling prices of medicines by calculating **simple average of prices of brands of medicine having more than one percent market share**. This is a clear ploy to minimize the reduction in drug prices, to allow pharmaceutical companies to continue to charge inordinately high prices for their products. The complete divergence between the manufacturing costs of medicines and their present market prices (in case of those not presently under price control) has been widely documented. For example, **the retail prices of various brands of medicines are 10, 20, 50 and even 70 times the prices at which the Tamil Nadu Medical Services (TNMSC) buys quality generic medicines. Several examples exist where the top-selling brand of a drug costs 5 to 10 times or more of that of another company**. For example, Atorva (a brand of Atorvastatin -- used for reducing blood cholesterol) is priced at Rs. 104 (10 tablets), in contrast to brands of other reputed companies that sell for Rs. 20. Such exorbitantly high retail brand prices are sustained by the ability of drug manufacturers to influence doctors into prescribing high cost brands, even when much cheaper alternatives are available. In such a situation, patients have no real choice and hence **competition in the market does not bring down drug prices. The pharmaceutical market in India is a clear case of 'market failure' and requires intervention by the Government to ensure that there is a reasonable link between the cost of production and price.**

**Simple Average is a Simple Whitewash**

By the Planning Commission's reckoning, **the 'poverty line' daily consumption expenditure** in India stands at Rs.22 and Rs.29, in rural and urban areas respectively. Contrast this with the cost of commonly used drugs for a month's treatment that would result if the market based formula is followed (Table below). The table below also shows that **using simple average instead of weighted average is hardly beneficial to patients.**

**Cost of medicines for a month's treatment**

Drug	Disease	Market Based Pricing <i>(Weighted Average)</i>	Market Based Pricing <i>(Simple Average)</i>	Cost Based Pricing
Metformin	Diabetes	Rs.33	Rs. 35	Rs.14
Atorvastatin	High blood cholesterol	Rs.142	Rs. 127	Rs.17
Atenolol	High Blood pressure	Rs.51	Rs. 38.5	Rs.08

**While fixing prices of price controlled medicines, the prime consideration cannot be the extent to which it will affect the industry's profitability.** Leading pharmaceutical companies have indulged in rapacious profiteering for too long. One estimate (by SPIC - Small and Medium Enterprises Pharmaceutical Industries Confederation) suggests that **big companies made excess profit, in the past 10 years, to the tune of Rs.1,01,750 Crores** by virtue of most drugs being kept out of price control (only 74 drugs are price controlled today, of which only 30-35 are regularly used).

The Jan Swasthya Abhiyan believes that exorbitant prices by pharmaceutical companies leads to denial of access to Essential medicines, and this constitutes denial of the right to life, enshrined in our constitution. JSA contends that ***though policy-making is the prerogative of the executive, the Supreme Court has acted well within its constitutional mandate*** in directing the Government to take a policy which would stop the denial of the human rights of millions of Indian people. However, as reported in the press, the ***Additional Solicitor General*** has advised the Government that it need not follow the Supreme Court's suggestion to follow Cost Based Pricing under the pretext that policy making is the executive's prerogative. JSA contends that Supreme Court's Supreme Court's suggestion is to protect human rights of citizens and ignoring it means ***disrespect for the Supreme Court's attempt to protect right to life enshrined in the constitution; it's tantamount to contempt of the Supreme Court.***

***Implementation of the Supreme Court's directive (to continue to use a cost based mechanism for price fixation) would lead to substantial decrease in drug prices.*** It would curb profiteering in the industry but not be against the ensuring of fair returns to the industry. The ***dual objective of affordability and access for patients, on one hand, and sustainability and growth of the pharmaceutical industry, on the other, can be ensured only through a cost-based pricing policy.***

***The Jan Swasthya Abhiyan demands*** that

- 1) The Government should heed the Supreme Court's opinion and impose price control on all 348 essential drugs **and** their derivatives, using the existing cost-based formula for price fixation.
- 2) All Escape Routes used to wriggle out of the price regulation must be plugged. Thus **all** dosage forms of all 348 Essential Medicines and all Fixed Dose Combinations of these medicines must be brought under price-control; (all irrational Fixed Dose Combinations should be banned.) Otherwise in practice, the price regulation would be largely nullified.
- 3) The Government should immediately set up a committee of experts to list crucial medicines that –
  - a) have been left out of the current list of Essential Medicines and
  - b) have been included in the Essential Drug Lists of States but which are not currently included in the NLEM.

And ensure these are included in an expanded list of Essential, Life Saving Drugs.

**Constitutional Guarantee of Right to Life and not profiteering should decide medicine prices.**