# Chapter V
# Right to Health: Indian legislations and International documents

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## 5.1 Introduction

Our parliament, the highest political institution in the country, has always been energetic to meet the needs of the changing society. Due to urbanization and industrialization the social patterns of the people are rapidly changing. The most important part is that, with the changing society, the law needs to be changed protecting the interests of the disadvantageous groups and the weaker sections. The Indian Parliament has done much to improve the social patterns of citizens by enacting social welfare legislations. These legislations are framed in order to achieve the goals set in our Constitution. The different legislations have been made in order to protect different groups of people like women, children, workers etc. Apart from the goals laid down in our Constitution, it also provides for a variety of fundamental rights. Health being one of the most important fundamental right needs extra protection by specific legislations. Our Constitution also requires the State to ensure health and nutritional well-being of all people. Before independence the health care sector was in dismal condition as the number of mortality rate owing to diseases was high. But since independence the main emphasis has been the health care sector. This has been made possible by enacting various legislations. The Researcher has discussed in this chapter as to how the different legislations in India protect health as a human right of the citizens.

## 5.2 Constitutional provisions relating to health

The main source of law in our country is the Constitution, which itself provides for health care of the people. The Preamble to our Constitution, serves the following two purposes: -

A) It indicates the source from which the Constitution derives its authority;

B) It also states the objects, which the Constitution seeks to establish and promote.

Hence it does not grant any power but it gives a direction and purpose to the Constitution. It outlines the objectives of the whole

Constitution. These socio-economic goals to be achieved are: to secure to all its citizens social, economic and political justice, liberty of thought, expression, belief, faith and worship; equality of status and opportunity, and to promote among them fraternity so as to secure the dignity of the individual and the unity and integrity of the Nation.

To give a concrete shape to these aspirations, the Constitution has a chapter on Fundamental rights which guarantee certain rights to the people, such as, freedom of the person, freedom of speech, freedom of religion, etc. The Supreme Court has held in the case of Samantha v. State of Andhra Pradesh,[1] that : "the Constitution envisions to establish an egalitarian social order rendering to every citizen, social, economic and political justice in a social and economic democracy of the Bharat Republic." The goals and objectives of the Indian polity as stated in the Preamble are sought to be further clarified, strengthened and concretized through the Directive Principles of the State Policy. Hence Part III and Part IV of the Constitution containing Fundamental rights and Directives principles is a stair to reach the goals set in the preamble. We will see how right to health as a fundamental right is engrafted under the Indian Constitution to fulfill the goals set out in the preamble.

### 5.2.1 Fundamental Rights

The Constitution of India guarantees under articles 14 to 18 guarantees right to equality. It has been held in the case of Indira Sawhney v. UOI[2], "Equality is one of the magnificent corner-stones of Indian democracy." At the same time the Supreme Court has declared right to equality as the basic feature of the Constitution. The concept of equality is embedded in the Preamble of the Constitution. Hence any law or even a Constitution amendment would be declared as invalid if it is offending the right to equality. The Supreme Court in the

[1] AIR 1997 SC at 3326
[2] AIR 1993 SC 477

case of M.G.Badappanavar v. State of Karnataka[3], has reiterated the same principle in the following words:

"Equality is the basic feature of the Constitution of India and any treatment of equals unequally or unequal as equals will be violation of basic structure of the Constitution of India."

Right to equality involves two concepts viz. 'equality before law' and equal protection of the laws'. The first is a negative concept which ensures that there are no special privileges in favour of any one, all are equal before the ordinary law of the land and no person whatever his rank is or condition is above law. The second concept is a positive one. It postulates that equal treatment should be given to all people without discrimination to all persons in a similar situation or equal circumstances. The Supreme Court has explained in Sri Srinivasa Theatre v. Govt of Tamil Nadu[4], that "the two expressions 'equality before law' and 'equal protection of law' do not mean the same thing even if there may be much in common between them."

The case of LIC of India v. Consumer Education and Research Centre[5], deals how equality applies in protection of health of the people. In this case LIC, which is a statutory body, introduced a scheme of life insurance, which was open only to persons in government or semi-government service or of reputed commercial firms. This scheme was declared unconstitutional as being violative of Article 14. LIC argued that this salaried group of lives formed a class with a view to identify health conditions. But the Supreme Court rejected this argument observing, "The classification based on employment in government, semi-government and reputed commercial firms has the insidious and inevitable effect of excluding lives in vast rural and urban areas engaged in unorganized or self-employed sectors to have life insurance offending Article 14 of the Constitution

[3] AIR 2001 SC 260
[4] AIR 1992 SC at 1004
[5] AIR 1995 SC 1811

and socio-economic justice." Hence equality principle should be applied whenever the health facilities are provided by the Government.

Article 21 of the Constitution lays down that "no person shall be deprived of his life or personal liberty except according to procedure established by law". This Article has been interpreted in the widest possible manner so as to include a variety of fundamental rights including right to health. The words 'procedure established by law' was a question of interpretation soon after the Constitution came into force in the case of A.K.Gopalan v. State of Madras[6], wherein the validity of the Preventive Detention Act was challenged. It was contended on behalf of Gopalan that words "procedure established by law" should be interpreted in the same way as the US. Constitution does i.e. in USA, the word 'due' is interpreted to mean just, proper or reasonable and includes even procedural due process including the rules of natural justice. But the majority held that the procedure established by law means the procedure, which is given in the statute book and not the rules of natural justice, which are vague and indefinite, and rejected the same. The decision given in this case held the field for almost three decades till the decision given in the case of Maneka Gandhi v. UOI[7] was decided. It was very well settled in Gopalan that Articles 19, 21 and 22 are mutually exclusive and independent of each other and the law affecting life or personal liberty could not be declared unconstitutional merely because it lacked natural justice or due procedure. Hence the majority of the judges took a very rigid approach in the above case. But as time passed on, this strict view became a little elastic by a number of decisions by the Apex court, which dissented Gopalan. It started with R.C. Cooper v. UOI[8], which is popularly known as the Bank Nationalization case. The Court in this case established a link between Article 19(f) and Article 31(2) and held the major premise of Gopalan as incorrect. State of

[6] AIR 1950 SC 27
[7] AIR 1978 SC 597
[8] AIR 1970 SC 564

West Bengal v. Ashok Dey[9], was another case were in the Court established a link between Articles 19, 21 and 22 while deciding the validity of West Bengal law of Preventive Detention. In the case of Haradhan Saha v. State of West Bengal[10] while reviewing the reasonableness of Maintenance of Internal Security Act, 1971 the Court held that Article 22 impliedly lays down procedural safeguards regarding preventive detention. Justice Bhagwati in the case of Khudiram Das v. State of West Bengal[11] held that Article 22 must meet the requirements of Article 14 or 19. In yet another case of P.L. Lakhanpal v. UOI[12], held that the detenue should be given a right of representation at the initial detention, failure in doing so vitiates the detention.

Maneka Gandhi v. Union of India[13] is a landmark case of post-emergency period. The Supreme Court while interpreting Article 21 took a liberal approach. The Court overruled Gopalan and gave a broader interpretation in order to include more and more fundamental rights into Article 21. The expression 'personal liberty' in Article 21 was given an expansive interpretation covering a variety of rights "which go and constitute Personal liberty of man". The Court held that the expression "personal liberty" should not be read in a narrow and restricted manner so as to exclude those attributes of personal liberty which are specifically dealt with in Article 19. More significantly the Court re-interpreted the expression "procedure established by law" as synonymous to that of 'procedural due process' of USA. It held that the procedure must be fair and reasonable and "cannot be arbitrary, unfair or unreasonable". Hence it completely overruled the view taken in Gopalan. The dormant Article was brought to life by the decision of Maneka Gandhi and since then it is been interpreted to include a

[9] AIR 1972 SC 1660
[10] (1975) 1 SCR 778
[11] AIR 1975 SC 550
[12] AIR 1967 SC 1507
[13] AIR 1978 SC 597

number of rights, which makes life meaningful. It is interpreted in the same sense as the American due process.

Justice Bhagwati has observed in Francis Coralie v. Delhi[14], "We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessaries of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings."

In Shantisar builders v. Narayanan Khimalal Totame[15] the Supreme Court has observed: "the right to life under Article 21 would include the right of food, clothing, decent environment and reasonable accommodation to live in.....suitable accommodation which allows him to grow in all aspects-physical, mental and intellectual." Hence the concept of life has been interpreted in a very expansive manner so as to include a number of rights.

As a result of expansion of the scope of Article 21, the Public Interest Litigations in respect of children in jail being entitled to special protection, health hazards due to pollution and harmful drugs, housing for beggars, immediate medical aid to injured persons, starvation deaths, the right to know, the right to open trial, inhuman conditions in aftercare home have found place under it. The various judgments the Apex Court also included many of the non-justifiable Directive Principles embodied under Part IV of the Constitution as justifiable like right to pollution free water and air; right of every child to a full development; maintenance and improvement of public health; maintaining hygienic condition in slaughter houses.

[14] AIR 1981 SC 746
[15] (1990) 1 SCC 520

Hence Maneka Gandhi's case is proved to be a multi-dimensional. It has given an extended meaning to the word life and liberty of Article 21. Though Article 21 is couched with negative phraseology by the Indian judiciary is by its creative mind has made it possible to impose positive obligations upon the state.

Article 23 of our Constitution prohibits traffic in human beings, begar and forced labour. The Article protects the individual not only against the State but also against private citizens. The term begar means compulsory work without any payment. Traffic in human beings connotes buying and selling of human beings as if they are chattels, such practice is now totally abolished by our Constitution, as it has a direct effect on the health of human beings. Human beings involved in trafficking have a very high risk of communicating sexually transmitted diseases. The Immoral Traffic (Prevention) Act, 1956 has been passed to the effect in order to punish brothel keepers and middlemen.

Forced labour as contemplated under this Article is in the nature of either traffic in human beings or begar. Forced labour is prohibited under the Constitution and several laws have been implemented to the effect like the Minimum Wages Act, 1948; where the employer is bound to pay the minimum wages; the Contract Labour (Regulation and Abolition) Act, 1970, to abolish certain malpractices in contract labour system; The Bonded Labour System (Abolition) Act, 1976 which strikes out the system of bonded labour.

Supreme Court has also in several cases interpreted forced labour in an expansive form. The first of the case relating to bonded labour is the Asiad case i.e. People's Union for rights v. Union of India[16], where the Court held that bonded labour is violative of human dignity and is contrary to the basic human values. The Court insisted to abolish all

[16] AIR 1982 SC 1473

forms of forced labour within the inhibition of Article 23 and made no difference whether the person who is forced to give his labour or service to another is remunerated or not. Justice Bhagwati emphasized in his words:

" where a person is suffering from hunger or starvation , when he has no resources at all to fight disease or to feed his wife and children or even to hide their nakedness, where utter grinding poverty has broken his back and reduced him to a state of helplessness and despair and where no other employment is available to alleviate, the rigor of his poverty, he would have no choice but to accept any work that comes his way, even if the remuneration offered to him is less than the minimum wage. He would be in no position to bargain with the employer. And in doing so he would be acting not as a free agent with a choice between alternatives but under the compulsion of economic circumstances and the labour or service provided by him would be clearly 'forced labour'."

Bandhua Mukti Morcha v. Union of India[17] is another landmark case prohibiting bonded labour by way of public interest litigation. In this case a large number of labourers were working in stone quarries in the State of Haryana under in-human and pathetic conditions. The Court took cognizance of the complaints of the workmen like non-provision of pure drinking water, non-provision of conservancy facilities, absence of medical facilities etc and gave directions to the State authorities to remove these complaints and provide the necessary facilities to them.

Article 24 puts a partial restriction on employment of child Labour. It lays down that children below the age of fourteen years shall not be employed to work in any factory or in or engage in any other hazardous employment.

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[17] AIR 1984 SC 802

It has been held Asiad case[18] that construction work is a hazardous employment and so no child below 14 should be allowed to work in construction work. The same principle was reiterated in the case of Labourers Working on Salal Hydro Project v. State of Jammu and Kashmir,[19] where the Court directed the Central Government to enforce this prohibition. The Court observed that ...the problem of child labour is a difficult problem... and so an attempt has to be made to reduce, if not eliminate, the incidence of child labour.

The question of child labour has been dealt by the Apex court in several public interest litigations. In the case of M.C.Mehta v. State of Tamil Nadu[20], the Court considered the Constitutional perspective of the abolition of the child labour in the notorious Sivakasi Match industries. The Court has issued detailed directions to eradicate the practice of employing children below the age of 14 years in this hazardous industry.

Again in the case of Bandhua Mukti Morcha v. Union of India,[21] the Court dealt with the question employment of children in carpet industry in the State of Uttar Pradesh. After referring to Article 24 and the Directive Principles the Court observed that: the State should provide facilities and opportunities as enjoined under Articles 39(e) and (f) of the Constitution, and to prevent exploitation of their childhood due to indigence and vagary.

Several labour legislations like The Factories act, 1948; The Mines Act, 1952; The Plantation Labour Act, 1951; etc have been passed to give effect to this Article. All these legislations prohibit labour of persons below 14 years of age. The Employment of Children Act, 1938 was the first among the child labour legislation to regulate the

[18] People's Union for Democratic Rights V. UOI, AIR 1982 SC 1473
[19] AIR 1984 SC 177
[20] (1996) 6 SCC 756
[21] AIR 1997 SC 2218

employment of children. The Act was repealed by The Child Labour (Prohibition and Regulation) Act, 1986 which specifies in its schedule certain occupations and processes where employment of children in prohibited. A very recent initiative made by a notification issued by the Government of India is the prohibition of child labour even in small hotels, restaurants, shops, dhabas below the age as prescribed.

Where there is no right there is no remedy. The Constitution has guaranteed a number of Fundamental Rights in Part III and has also provided a remedy to enforce these rights. Article 32 is an effective mechanism for the enforcement of fundamental rights. Article 13 also lays that any law, which is inconsistent with any fundamental rights, is void and can be challenged as violative of fundamental rights. Hence Article 13 makes these rights justifiable. The Courts have power to declare a law to be void if it is inconsistent with the fundamental rights.

Under Article 32, a person can move to the Supreme Court by appropriate proceedings for the enforcement of fundamental rights and the Supreme Court has power to issue appropriate order or directions, or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari which ever may be appropriate for enforcement of petitioner's fundamental rights. Hence right to access to the Supreme Court through Article 32 is itself a fundamental right. It is a guaranteed, quick and summary remedy for the enforcement of fundamental right.

Article 226 is a kind of similar power given to the High Courts. The main difference between article 32 and 226 is whereas 32 can be invoked only for the enforcement of fundamental rights, Article 226 can be invoked for the enforcement of fundamental rights and also for 'any other purpose', like an administrative action where there is no

violation of fundamental rights can be challenged in the High Court. Hence article 32 is narrower than Article 226.

During the last couple of decades public interest litigation has held a very prominent place. By shedding the shackles of locus standi public interest litigation is proved to be an excellent tool for the enforcement of fundamental rights. Various writ petitions relating to health aspects have been entertained in the courts. Some of them are Parmanand Katara, Bandhua Mukti Morcha, M.C. Mehta etc for the enforcement of right to health.[22]

### 5.2.2 Directive Principles of State Policy

Article 36 to 51 contains the Directive Principles of State Policy. India is a welfare state, which seeks to promote the prosperity and well being of the people. The Directive Principles lay down some socio-economic goals, which the various governments in India have to strive to achieve. These principles obligate the State to take positive action in certain direction in order to promote the welfare of the people and achieve economic democracy. They give directions to the Legislatures and the Executive in India as regards the manner in which they should exercise their power. Article 37 specifically states: "the provisions contained in this part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws."

The reason behind non-enforceability and non-justifiability of these principles is they impose positive obligations on the State; the Government is under several restraints while applying the Directive Principles the most crucial is that of financial resources. Hence a Court cannot issue an order for the enforcement of Directive Principles.

[22] Discussed in detail in Chapter VI

Article 38(1) directs the State to strive "to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political shall inform all the institutions of the national life."
This principle reaffirms what has been declared in the Preamble i.e. the function of the Republic to secure inter alia, social, economic and political justice.

Article 38(2) directs the State to strive "to minimize the inequalities in income," and endeavour "to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also groups of people residing in different areas or engaged in different vocations."
Poverty as we have seen earlier is one of the determinants of health. Hence if equal opportunities and facilities are given it will promote health and prevent diseases and illness.

Reading articles 21, 38, 42, 43, 46 and 48A together, the Supreme Court has concluded in Consumer Education and Research Centre v. Union of India[23], that right to health, medical aid to protect the health and vigour of a worker while in service or post retirement is a fundamental right...to make the life of the workman meaningful and purposeful with dignity of person. The Supreme Court in this case dilated the theme of social justice envisioned in the Preamble and Article 38. It said social justice is the arch of the Constitution, which ensures life to be meaningful and livable with human dignity. It is a dynamic device to mitigate the sufferings of the poor, weak, dalits, tribals and the deprived sections of the society and to elevate them to the level of equality to live a life with dignity of person. It further held that health of the worker enables them to enjoy the fruit of his labour, keeping him physically fit and mentally alert for leading a successful life, economically, socially and culturally. Medical facilities to protect

[23] AIR 1995 SC 923

the health of the workers are, therefore, the fundamental and human rights of the workmen.

Article 39 lays down certain principles of policy to be followed by the state. Article 39(e) and (f) are specifically relating to health. Article 39(e) directs its policy towards securing the health and strength of workers, even men and women and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. Article 39(f) lays down that the children are given opportunity and facilities to develop in a healthy manner and in condition of freedom and dignity and that youth are protected against exploitation and against moral and material abandonment. Both the articles aim to protect and safeguard the interest and welfare of the children and young persons.

The Government of India has evolved a national policy for the welfare of the children. The policy sets out measures, which the government of India seeks to adopt for the welfare of children and to protect them from cruelty and exploitation.

The Supreme Court has shown a great concern for the children and in its various decisions has protected the welfare of the children. In Lakshmi Kant Pandey v. Union of India[24] the Court emphasized that the welfare of the entire community depends on the health and welfare of its children.

In Vishal Jeet. V. Union of India,[25] public interest litigation was brought for the child prostitution. The court referred to Articles 23, 39(e) and (f) and gave several directions urging upon the various governments to take further remedial action in the matter.

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[24] AIR1984 SC 469
[25] AIR 1990 SC 1412

The Parliament has also enacted the Immoral Traffic (Prevention) Act, 1956 which aims at suppressing the evil of prostitution. The Juvenile Justice Act (Care and Protection) Act, 2000 which lays down several provisions for the children in conflict with laws and for the child in need of care and protection.

Article 41 requires the State within the limits of its economic capacity and development, to make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want. It has been held in the case of Samir Das Gupta v. State of Bihar[26], that education includes medical education. If medical education is provided to the people than the health of the country will be obviously good.

The main hurdle in this Article is the words "within the limits of its economic capacity" by which the State Governments often get a course not to fulfill this obligation.

Article 42 requires the State to make provision for securing just and humane conditions of work and for maternity relief. India has a large number of populations working as laborers and several legislations have been passed in order to give effect to Article 42. The Maternity Benefit Act, 1961 is one of them, which give the women workers a relief during and after pregnancy.

Article 43 requires the State to endeavor to secure by suitable legislation, or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full employment of leisure and social and cultural opportunities. A living wage is a wage which enables the earner to provide for himself and his

[26] AIR 1982 Pat 66

family not merely the bare essentials of food, clothing and shelter, but a measure of frugal comfort including education for children, protection against ill-health, requirements of essential social needs, and a measure of insurance against the more important misfortunes including old age. The Minimum Wages Act,1948 is a legislation put to force to give life to the words of article 43.

Article 47 obligates the State to regard, as among its primary duties, the raising of the level of nutrition and the standard of living of its people and the improvement of public health. A number of policies and programmes have been implemented to raise the level of nutrition. In particular the State is to endeavor to bring about prohibition of the consumption, except for medicinal purposes, of intoxicating drinks and drugs which are injurious to health.

The Supreme Court reading Articles 21 and 47 together has observed in the case of Vincent Panikurlangara v. Union of India[27],

".....maintenance and improvement of public health have to rank high as these are indispensable to the very physical existence of the community and on the betterment of these depends the building of the society of which the Constitution makers envisaged. Attending to public health, in our opinion, therefore, is of high priority-perhaps the one of the top."

The Supreme Court has observed in Paschim Banga Khet Mazdoor Samity[28]: ".....it is the Constitutional obligation of the State to provide adequate medical services to the people. Whatever is necessary for this purpose has to be done."

The Court further observed "providing adequate medical facilities for the people is an essential part of the obligations undertaken by the

[27] AIR 1987 SC 990
[28] AIR 1996 SC 2426

government in a welfare state. The government discharges this obligation by running hospitals and health centers which provide medical care to the person seeking to avail of those facilities."

Article 48 A obligates the State to endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country. Various environment laws have been passed to the effect like the Environment Protection Act, 1986, Air Act,1981; Water Act, 1974 and so on.

A well known socialist Mr. M.C.Mehta filed a number of public interest litigations for the protection of environment and health. The Court has in the case of M.C.Mehta v. Union of India[29], has said: "Articles 39(e), 47 and 48 A by themselves and collectively cast a duty on the state to secure the health of the people improves public health and protect and improve the environment."

### 5.2.3 Other Constitutional obligations

Article 242 of the Constitution provides that the legislature of a State may by law, endow the municipalities with such powers and authority as may be necessary to enable them to function as institutions of self government and provide with respect to the performance of functions and implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule to the Constitution which include at item 6, 'Public health, sanitation conservancy and solid waste management'. Similar provision is made for the panchayats under Article 243-G read with the Eleventh Schedule (item 23), of the Constitution. Various municipal laws prescribe duties of such local authorities in the sphere of public health and sanitation which include establishment and maintenance of dispensaries, expansion of health services, regulating

[29] JT 2002(3) SC 527

or abating offensive or dangerous trades or practices, providing a supply of water proper and sufficient for preventing danger to the health of the inhabitants from the insufficiency or unwholesomeness of the existing supply, public vaccination, cleansing public places and removing noxious substances, disposal of night soil and rubbish, providing special medical aid and accommodation for the sick in the time of dangerous diseases, taking measures to prevent the outbreak of diseases etc. Therefore whenever there is failure of these statutory obligations of the local authorities the citizens can approach the High Court under Article 226 of the Constitution for seeking a mandamus to get the duties enforced.

There is, however, a significant difference between local government authorities and the State health authorities, the latter having enormous powers to make available financial resources and make key appointments. Healthy alliances between the two types of authorities are crucial, if health is to be effectively promoted

Similarly Article 243 W of the Constitutions concerns power, authority and responsibilities of municipalities. A municipality may be of three types in terms of Article 243-Q. These are Nagar Panchayat, Municipal Council and Municipal Corporation. The function which enables them to function as institutions of self-government are the matters listed in the twelfth schedule.

The relevant health related matters are reproduced as follows:

5. Water supply for domestic, industrial and commercial purposes;

6. Public health, sanitation conservancy and solid waste management.

9. Safeguarding the interest of weaker sections of society, including the handicapped and mentally retarded.

16. Vital statistics including registration of births and deaths.

17. Regulations of slaughter-houses and tanneries.

It has been rightly said by Dr. Shankar Dayal Sharma[30] that

"Our Constitution is not merely a political document which provides the framework and institutions for democratic governance - our Parliament, the Executive and the Judiciary. It provides a framework for the economic and social emancipation of society and particularly, the poor, the underprivileged and the downtrodden. As Granville Austine has said, "the core of the commitment to the social revolution lies in Parts III and IV, in the Fundamental Rights and in the Directive Principles of State Policy. These are the conscience of the Constitution." It is of profound import that the Fundamental Rights are enforceable by Courts of Law. Article 32 of the Constitution guarantees the implementation of these Rights. This is a very crucial safeguard against excesses by executive authority and casts a very heavy responsibility on our Judiciary, a vital pillar of our democratic polity, to ensure that fundamental human freedoms are guaranteed.

### 5.3 Criminal law and health

The Indian Penal Code and the Code of Criminal Procedure by its various provisions protects the health of the people. The Indian Penal Code being a substantive law punishes various acts which influence the health of the people. The Code of Criminal Procedure also throws some light on the health aspect. The researcher has dealt with these provisions herewith

### 5.3.1 Indian Penal Code, 1860

Indian Penal Code applies to any offence committed by any person anywhere in India and on any Indian registered ship or aircraft. The draft of the Indian Penal Code was prepared by the First Law Commission. It was chaired by Lord Macaulay. It came into force in

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[30] Address On The Occasion Of The 50th Anniversary Of The First Sitting Of The Constituent Assembly.

1862 (during the British Raj) and is regularly amended with the changing social pattern.

The Code lays down certain principles to determine the criminal liability of the accused for e.g. General Exceptions. Some of the provisions of the code are directly protecting the health of the people and thus lays down punishments for those who are responsible to affect the health of the people. I have dealt with the relevant provisions of the Code which are as follows:

Section 52 of the Code reads: "Nothing is said to be done or believed in 'Good Faith', which is done or believed without due care and attention." The meaning of the expression "good faith" is what is done with "due care and attention". Due care denotes the degree of reasonableness in the care sought to be exercised. Section 3(22) of the General Clauses Act,1897 defines "good faith" a "A thing is deemed to be done in "good faith" where it is in fact done honestly whether it is done negligently or not. The definition given in the Indian Penal Code excludes the element of negligence.

Hence in the case of Sukaroo Kabiraj v. The Empress[31], wherein Kabiraj who, having no knowledge of surgery beyond that he had acquired in his practice, operated a man for internal piles by cutting them out with an ordinary knife, in consequence of which he died from hemorrhage. It was held as the operation was one so imminently dangerous that even educated surgeons scarcely ever attempted it, the accused was guilty of an offence punishable under section 304-A of the Indian Penal Code.

Section 84 of the code exempts a man who is mentally unhealthy at the time of commission of crime. It lays down as "Nothing is an offence which is done by a person who, at the time of doing it, by reason of

[31] I.L.R. 14 Cal. 566

unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law".

Every man is presumed to be sane. This presumption does not apply to a man whose case is governed by this section. It is based on the principle that in order to constitute a crime the act should have been committed with a guilty intention; a person who is not mentally healthy is unable to know the nature of the act or the wrongfulness of the act or the illegality of the act. This section deals with the deficiency of will due to weak intellect. It should be established under this section that the accused was of unsound mind and his cognitive faculties are so impaired that he did not know the nature of the act done by him or that what he is doing is either wrong or contrary to law.[32]

Section 88 of the Code exempts medical practitioners who while treating a patient cause death. It reads as "Nothing which is not intended to cause death, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, to be known by the order to be likely to cause, to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied, to suffer that harm, or take the risk of that harm."

Illustration appended to the section shows that a surgeon knowing that a particular operation is likely to cause the death of the patient, who suffers under the painful complaint, but not intending to cause his death, and intending, in good faith patient's benefit, performs that operation on the patient, with his consent. He is said to have committed no offence.

Hence unintentional causing of grievous hurt or death is justifiable under this section. The only thing in this section is that of his

[32] Digendra Nath Roy V. State 1970 Cr.L.J 529 at pp 531-533

intention. Though he may know that death will be caused. The only condition in this section is the act must be for the benefit of life, health or body of the person.

Section 89 of the Code exempts a person who causes any harm when the act is done in good faith for the benefit of child less than 12 years of age, or of unsound mind, by or by consent of the guardian or other person having lawful charge of that person. Illustration to this section shows that A, in good-faith, for his child's benefit, without his child's consent, has his child cut for the stone by a surgeon, knowing it to be likely that the operation will cause the child's death, but not intending to cause the child's death. A is within the exception, in as much as his object was the cure of the child.

Section 92 of the Code exempts a person from any harm caused to a person for the act done in good faith for benefit of a person without consent. We have seen in sections 88 and 89 that the element of consent was present. But under this section there is no consent because of the circumstances that makes it impossible for that person to signify consent, or if the person is incapable of giving consent has no guardian or other person in lawful charge from whom it is possible to obtain consent. Like a surgeon who finds a person to be operated immediately, in good faith he does so, he is said to have committed no offence.

Chapter XIV of the Code specifically deals with offences affecting the public health, safety, convenience, decency and morals. Section 269 punishes any person who unlawfully or negligently does any act which is, and which he knows or has a reason to believe to be, likely to spread the infection of any disease dangerous to life. The punishment provided is up to six months imprisonment with or without fine.

The offence extends to willful acts done heedlessly but in the presence of the danger thereby threatened to society of which the accused had knowledge or belief. Any act by which a person or an animal is exposed suffering from communicable disease is a public menace or a hospital for infectious disease erected near a town or city so as to cause serious risk of infection to persons staying or passing thereby is an offence.[33] The main ingredient of this section is the disease must be infectious. The section comes into play whether the communication of the disease is direct or indirect and whether they may be infectious or contagious. The diseases, which the medical authorities agree to be infectious, are all covered under this section and not those, which are suspected. Hence any person who is affected by diseases like plague, cholera etc exposes himself or travels through a public transport are likely to spread the disease and are attracted to this section.

In Chabumian's case,[34] the accused resided in plague-stricken house in the Ambala Cantonment, and had been in contact with a plague patient. He was taken to the plague shed with the patient who died there. The next day, the accused left the shed against orders, and traveled by rail to the neighbouring town. He was held to have committed an offence under this section as he had sufficient reasons to believe that his act was likely to spread the infection of plague which is dangerous to life.

A prostitute suffering from any sexually transmitted disease had sexual intercourse with her client, can she in this circumstance convicted under this section? In the view of West. J.,[35] she could not be convicted under this section, though she might be convicted of cheating if the intercourse was induced by misrepresentation on the part of diseased person. The accused's act of sexual intercourse would

[33] Metropolitan Asylum District Managers v. Hill (1881) 6 A.C. 193
[34] 12 M.L.T. 664
[35] Rakma I.L.R. 11 Bom. 59

not spread infection without the intervention of the complaining party, himself a responsible person, and an accomplice.

Section 270 deals with malignant act likely to spread infection of disease dangerous to life. It punishes any person who malignantly does any act which is or for which he has a reason to believe to likely to spread the infection of any disease dangerous to life. The punishment for such an act is imprisonment of either description for a maximum term of two years with or without fine.

The only difference between this and the last section is in the last section the act was a careless or a negligent act and in this section it is a malignant or malicious act not done with a benevolent intention. If a person is traced under this section then he will be guilty of homicide and not merely nuisance.

Section 271 punishes a person who knowingly disobeys a rule of quarantine in existence made and promulgated by the government. Quarantine relates to a vessel, which is segregated for prevention of contagious disease.

Section 272 punishes a person who adulterates any article of food or drink making it noxious for consumption and intending to sell such article as food or drink. The expression noxious means unwholesome as food or injurious to health. Selling of inferior food is not an offence but selling something, which is noxious, is an offence and the seller is punishable. It is very important under this section that an article of food or drink has been adulterated and the intention was to sell such article as food or drink.[36] The adulteration is punishable only if the article concerned is rendered "noxious as food or drink". Mixing water with milk is not punishable under the Code as after such mixture the

[36] Sulaman Shamji V. Emperor A.I.R. 1943 Bom 445

milk will not turn unwholesome, though a case may be an offence under the Prevention of Food Adulteration Act, 1954.

Section 273 punishes a person who knowingly sells or offers or exposes to sell any article of food or drink which is rendered or has become noxious or is in a state unfit for food or drink. The last section dealt with adulteration of articles rendering them noxious where as this section punishes not only with the articles so adulterated, but also with those which have been otherwise rendered noxious or unfit for human consumption. The section is attracted only if the article is sold as food or drink and it has to be unfit for human consumption. In a case[37] the accused did not sell any article as food or drink but for the purpose of trade, an article which was unfit for human consumption. It was held that no offence was committed. The article of food or drink must be noxious whether by man or lower animals and this section is not limited only to man.[38] The word 'unfit' does not mean unsuitable for food or drink on account of inferior quality brought about by harmless admixture or adulteration. For example, the admixture of large quantity of dirt, wood, matches and black seeds in wheat offered for sale does not make the wheat unfit for consumption within the meaning of this section.[39]

Section 274 deals with adulteration of drugs and punishes any person who adulterates a drug or a medical preparation knowingly that it will be sold or used for any medicinal purpose, as if it had not gone any adulteration and such adulteration has lessened the efficacy or changed the operation of the drug or medicine or made it noxious. The section punishes the intentional adulteration of drugs and medical preparations. It only punishes the adulteration that is a fraud on those who may have to use it. The section, therefore, adds that the intention or knowledge should be that it would be or is likely to be

[37] Emperor V. Saligram 3 Cr. L.J. 208
[38] Narumal 6 Bom.L.R. 520
[39] Baishtab Charan Das V. Upendra Nath Mitra, 3 C.W.N. 66

used for any medical purpose, as if it had not undergone such adulteration. Section 274 is attracted when a person knows that an adulterated drug or medical preparation is sold or offered to be sold or exposed for sale or issued it from any dispensary for medicinal purpose or caused it to be used for medicinal purposes by any person not knowing of the adulteration as unadulterated.

Section 276 punishes any person who sells or offers to sell or exposes to sell or issues from a dispensary for medicinal purposes any drug or medical preparation as a different drug or medical preparation and knows of such difference at the time of sell.

Section 277 punishes any person for fouling water of public spring or reservoir. Any person who corrupts or fouls the water of any public spring or reservoir voluntarily and by doing so has rendered such water less fit for the purpose for which it was ordinarily used shall be punished. The water of a public spring or reservoir is used by public at large. A well, tank or a cistern is included under this section. It is considered to be public property and used by a large number of people. In many cases such water is used for drinking and cooking purposes. If such water is fouled it may harm the health of the people. Some of the examples of fouling water are spitting, washing clothes, cattle etc.

Section 278 punishes any person who voluntarily vitiates the atmosphere in any place so as to make it noxious to health of persons in general dwelling or carrying business in the neighbourhood or passing along a public way. The section applies to trades producing noxious and offensive smells or manufacturing units by which the atmosphere is polluted.

Section 284 of the code punishes any person who with any poisonous substance which is capable of endangering human life or causing hurt

or injury to any person does any act which is so rash and negligent so as to endanger human life or to be likely to cause hurt or injure any person. Under this section any act or omission by the person who is in possession of poisonous substances which is dangerous to human life is included. The object of these sections is to protect people from danger, hurt or injury from substances which are naturally dangerous.

The code also punishes any person who does any negligent act with respect to fire or combustible matter,[40] explosive substance,[41] machinery,[42] pulling down or repairing building,[43] animal.[44]

Section 290 covers all miscellaneous nuisances, which are not otherwise punishable under the code.

Section 304 A is more relevant from the health point of view as it deals with causing death by negligence. It lays down for the death of a person by rash and negligent act not amounting to culpable homicide. Here the question comes whether medical negligence cases can be filed under this section or not. As it includes all the elements of medical negligence a victim can also attract this section and proceed against the doctor for medical negligence,

Though the Code was made way back in 1860 and before independence but it still focuses on various provisions affecting health and more importantly it punishes for affecting public health.

[40] Section 285
[41] Section 286
[42] Section 287
[43] Section 288
[44] Section 289

### 5.3.2 The Code of Criminal Procedure, 1973

The Code under Chapter X Section 133 empowers a District Magistrate or a Sub-divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State Government to make a conditional order on receipt of a report from a police officer that a trade or occupation or keeping of any goods or merchandise is injurious to the health or physical comfort to the community, he may order the person causing the same to desist from carrying on, or to remove or regulate in such manner as may be directed, or to remove such goods or merchandise or to regulate the same in such manner as he deems fit .

## 5.4 Consumer Law applicable to health services

### The Consumer Protection Act, 1986

The Preamble of the Act states "an act to provide for better protection of interests of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumers' disputes and matters connected therewith." Already there are a number of legislations for the protection of consumers like the Drugs (control) Act, 1950, Prevention of Food Adulteration act, 1954, Essential Commodities Act, 1955 and so on. But the Act mainly focuses for the better protection of consumers and consumer justice.

The Act applies to all goods and services in private, public or co-operative sector. The term services are made to include services provided by doctor. This is now very well settled by the Supreme Court in the case of Indian Medical Association V. V.P. Santha[45]. Hence doctors rendering services are all covered under the Act. Only those services which are provided free of charge are exempted from the act. The objects of the Act are based on the rights of the consumers:

[45] (1995) SCC 651

1. Right to be protected against marketing of goods and services which are hazardous to life and property;
2. Right to be informed about the quality, quantity, potency, purity, standard and price of goods or services or to protect the consumer against unfair trade practices;
3. Right to be assured whenever possible, access to a variety of goods and services at competitive prices;
4. The right to be heard and to be assured that the consumers' interest will receive due consideration at appropriate forums;
5. The right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers; and
6. Right to consumer education.

The Act lays down for the formation of Consumer Councils at the Central level[46] and State level[47] whose object is to promote and protect the rights of consumers[48]. For grievance of consumers the Act provides for the establishment of National Commission[49], State Commissions[50] and District Forums[51]. The District Forum is the first court in hierarchy.

Consumer[52] is defined under the Act "as any person who buys goods against consideration includes any user of such goods and any person who hires services against consideration including a beneficiary of such services."

Deficiency[53] means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which

[46] section 4
[47] section 7
[48] section 6 and 8
[49] section 20
[50] section 16
[51] section 10
[52] section 2(d)
[53] section 2(g)

is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract of otherwise in relation to any service.

The term service[54] is defined as service of any description which is made available to potential users and includes services like banking, insurance, transport, processing etc. and by the aforesaid decision of Supreme Court now medical services are also included in the term service. But any service which is provided free of charge or which is under a contract of personal service is not included under the Act.

Any patient who is provided with deficient medical services can take action before the District Forum, State Commission and the National Commission taking into consideration the jurisdiction as provided under the Act[55].

Relief[56] which may be directed to the patients against a doctor as envisaged under the Act are as follows:

1. To pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party;
2. To remove the defects or deficiencies in the services in question;
3. To discontinue the unfair trade practice or the restrictive trade practice or not to repeat it;
4. To provide for adequate costs to the parties.

The Courts considering patients to be under the purview of the Consumer Protection Act, has decided a number of cases against doctors on medical negligence.

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[54] section 2(o)
[55] section 11, 17 and 21 respectively
[56] section 14

## 5.5 Environment and Health

Environment and health intricately linked. Environmental factors contribute significantly to health burden. In India, 60 per cent of malaria, almost all gastro-intestinal and respiratory diseases, and significant proportion of organ specific, skin diseases, are caused because of poor environmental conditions.

Environmental regulation is largely enacted and enforced with human well being and public health as its focus. Environmental laws were first enacted in the 1970s, and were not generally differentiated from the general body of law. For instance, when parliament enacted the Water Act of 1974, it adhered to the pattern of numerous other Indian statutes and created yet another agency-administered licensing system - this time to control effluent discharges into water. A breach of the act invited judge to imposed penalties. Most of the pre-1980 'environmental cases' were either actions or standard agency prosecutions under an environmental statute.

All this was transformed, in part, by the spate of fresh legislation passed after the Bhopal gas leak disaster of December 1984, when a toxic gas, methyl isocyanate leaked from the tanks from the Union Carbide factory and killed – and has since then affected many more. The new laws and rules are impressive in their range. They cover hitherto unregulated fields, such as noise, vehicular emissions, hazardous waste, hazardous microorganisms, the transportation of toxic chemicals, coastal development and environment impact assessment. Though we have a number of environment laws to protect the health and well being of the people, but we find that these laws are not implemented in letter and spirit.

The Supreme Court too ironically laments that "If the mere enactment of laws relating to the protection of environment was to ensure a clean and pollution- free environment, then India would, perhaps, be the

least polluted country in the world. But, this is not so. There are said to be over 200 Central and State statutes, which have at least some concern with environmental protection, either directly or indirectly. The plethora of such enactments has, however not resulted in preventing environmental degradation on the contrary; this has increased over the years.

The Environmental laws may be classified into three topics as follows:

5.5.1 Environment Protection Laws

5.5.2 Resource Management

5.5.3 Administration of Environment laws

### 5.5.1 Environment Protection Laws

In 1986 The Environment (Protection) Act was passed which authorizes the Central Government to protect and improve environmental quality, control and reduce pollution from all sources, and prohibit or restrict the setting and /or operation of any industrial facility on environmental grounds. The Environment Protection Act (1986) is the umbrella Act of all environmental legislation. It was brought to prominence after the Bhopal gas tragedy as legal redress to people affected by environmental problems. The Environment Protection Act focuses on the populations' general treatment of the environment in India, whereas the National Conservation Strategy and Policy Statement on Environment and Development (NCSPSED), a policy proposed in 1992 following the Rio Summit, tries to describe how the environment should be considered in the context of growth-oriented policies and programmers. This policy is not obliged to address the health aspects of ecological changes or the environmental conditions that contribute to health problems, though the provisions of the Environment Protection Act are legally binding on the established regulatory agencies and other stakeholders

In pursuance of Section 6, 8 and 25 of the Environment (Protection) Act, 1986 the Central Government has made the following rules for the protection and health and environment:

- Hazardous wastes (management and handling) rules, 1989 for the management and handling of the hazardous wastes which would affect the health of the people
- The Hazardous Micro-organisms Rules, 1989 for the manufacture, use, import, export and storage of hazardous Micro-organisms/Genetically engineered organisms and cells.
- The Biomedical waste (Management and Handling) Rules, 1998 which is a legal binding on the health care institutions are framed to streamline the process of proper handling of hospital waste such as segregation, disposal, collection, and treatment.
- Recycled Plastics Manufacture and Usage Rules, 1999 for the manufacture and use of recycled plastics carry bags and containers.
- Municipal solid wastes (management and handling) rules, 2000 have been framed to regulate the management and handling of municipal solid wastes.
- Noise pollution (regulation and control) rules 2000 have been framed because the increasing ambient nose levels in public places from various sources like industrial activity, construction activity, generator sets, and loudspeakers. Public address system, music system, vehicular hors etc have deleterious effects of human health and the psychological well being of the people. So in order to regulate and control noise producing and generating source with the objective of maintain the ambient air quality standards in respect of noise the rules are being framed.
- The Ozone Depleting Substances (Regulation and Control) Rules, 2000 have been framed to regulate ozone depleting substances.
- The batteries (management and handling) rules 2001 have also been made.

### 5.5.2 Resource management

The Water (Prevention and Control of Pollution) Act, 1974 establishes an institutional structure for preventing and abating water pollution and maintaining and restoring the wholesomeness of water. It establishes standards for water quality and effluent. Polluting industries must seek permission to discharge waste into effluent bodies. The (Central Pollution Control Board) has been constituted under this act to fulfill the aforesaid purposes of the Act.

The Air (Prevention and Control of Pollution) Act, 1981 provides for the control and abatement of air pollution. This Act has been passed in order to fulfill the international obligation under the United Nations Conference on human environment at Stockholm in June 1992 in which India has participated. It entrusts the power of enforcing this act to the CPCB.

The Atomic Energy Act, 1982 deals with the radioactive waste.

### 5.5.3 Administration of Environment Laws

The Public Liability Insurance Act and Rules and Amendment, 1992 was drawn up to provide for public liability insurance for the purpose of providing immediate relief to the persons affected by accident while handling any hazardous substance.

In 1995 - The National Environmental Tribunal Act has been created to award compensation for damages to persons, property, and the environment arising from any activity involving hazardous substances.

In 1997 - The National Environment Appellate Authority Act has been created to hear appeals with respect to restrictions of areas in which classes of industries etc. are carried out or prescribed subject to certain safeguards under the EPA.

## 5.6 Medical Laws

In India we have a large number of legislations in the field of medicine and health. The legislations are made keeping in view of the needs of the society and protecting the health of the people. The drug industry did basically not exist in India in the beginning of the 20th century. Most of the drugs were imported from foreign countries. The change was brought from the end of the First World War when the demand of the indigenous products increased; this led to the establishment of the pharmaceutical manufacturing concerns. In order to earn more profits some of the products produced were of inferior quality and harmful for public health. As a consequence the Government was, called upon to take notice of the situation and consider the matter of introducing legislation to control the manufacture, distribution and sale of drugs and medicines.

Two of the laws, The Poisons Act and the Dangerous Drugs Act were passed in 1919 and 1930 respectively. The Opium Act was quite old having being adopted as early as 1878. But to have a comprehensive legislation, with the rapid expansion of the pharmaceutical production and drug market required by the end of the second decade for its control, the Indian Government appointed, in 1931, a Drugs Enquiry Committee under the Chairmanship Lt. Col. R. N. Chopra which was asked to make sifting enquiries into the whole matter of drug production, distribution and sale by inviting opinions and meeting concerned people. The Committee was asked to make recommendations about the ways and means of controlling the production and sale of drugs and pharmaceuticals in the interest of public health. The Chopra Committee toured all over the country and after carefully examining the data placed before it, submitted a voluminous report to government suggesting creation of drug control machinery at the centre with branches in all provinces. For an efficient and speedy working of the controlling department the committee also recommended the establishment of a well-equipped

Central Drugs Laboratory with competent staff and experts in various branches for data standardization work. Under the guidance of the Central Laboratory, it was suggested, small laboratories would work, in the provinces. For the training of young men and women, the Committee recommended the permission of Central Pharmacy Council, and the Provincial Pharmacy Councils, with Registrars who would maintain the lists containing names and addresses of the licensed pharmacists.

The outbreak of the Second World War in 1939 delayed the introduction of legislation on the lines suggested by the Chopra Committee, which the Indian government contemplated and considered as urgent. However, the Drugs Act was passed in 1940 partly implementing the Chopra recommendations. With the achievement of independence in 1947 the rest of the required laws were put on the Statute Book. In 1985, the Narcotic Drugs and Psychotropic Substances Act were enacted repealing the Dangerous Drugs Act 1930 and the Opium Act of 1878.

At present the following Acts are in force in order to govern the manufacture, sale, import, export and clinical research of drugs and cosmetics in India.

- The Drugs and Cosmetics Act, 1940
- The Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954
- The Narcotic Drugs and Psychotropic Substances Act, 1985
- The Epidemic Diseases Act, 1897
- The Transplantation of Human Organs Act, 1994
- The Mental Health Act, 1987

The Researcher has discussed the above mentioned legislations as under:

### 5.6.1 The Drugs and Cosmetics Act, 1940

The aim of the Act is to regulate the import, manufacture, distribution and sale of drugs and cosmetics. Provisions of this are in addition and not in derogation of the Dangerous Drugs Act, 1930[57].

The Act provides for the constitution of Drugs Technical Advisory Board[58] to advise the Central and the State Governments on technical matters, the Central Drugs Laboratory[59] to carry out analysis and testing of drugs and cosmetics, and the Drugs consultative committee[60] to advise the Central and State Government and the Drugs Technical Advisory Board on any matter tending to secure uniformity throughout the country in the administration of this Act.
It lays the circumstances under which a drug is deemed it is misbranded[61], adulterated[62] and spurious[63] as well as circumstances under which a cosmetic is misbranded[64] and spurious[65]. It bans import of goods[66], which are prohibited by the law, and any such import cannot be treated as lawfully imported goods. It also prohibits the manufacture, sale, distribution of drugs and cosmetics which are not of a standard quality or misbranded or adulterated or spurious and which are injurious to health[67].

It also makes provision for the appointment of inspectors[68] to inspect any premises where drugs and cosmetics are manufactured, take samples, examine any record, document, and register and seize the same if he has reason to believe that it may furnish evidence of the commission of an offence punishable under this Act.

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[57] section 2
[58] section 5
[59] section 6
[60] section 7
[61] section 9
[62] section 9A
[63] section 9B
[64] section 9C
[65] section 9D
[66] section 10
[67] section 10
[68] section 21, 22 and 23

It covers penalties[69] for the violation of the Act and if any drug deemed to be adulterated or spurious when used by any person who is likely to cause death or likely to cause such harm on his body would amount to grievous hurt within the meaning of Section 320 of the Indian Penal Code[70]. Similar punishments of lesser order are applicable for manufacture and sale of cosmetics[71].

Though the Act does not apply to Ayurvedic, Siddha or Unani drugs but a separate Advisory Board which is to be called the Ayurvedic, Siddha and Unani drugs Technical Advisory Board has been constituted to advise the Central and State Governments on technical matters arising out of this chapter and to carry out other functions assigned to it by this chapter[72].

### 5.6.2 The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954

This Act is meant to control the Advertisements regarding drugs; it prohibits the advertising of remedies alleged to possess magic qualities and to provide for matters connected therewith. The Drugs and Magic Remedies Act prohibits[73] a person from taking part in publication of any advertisement referring to any drug which suggests use of the drug for:

a) the procurement of miscarriage in women or prevention of conception in women; and
b) the maintenance or improvement of the capacity of the human being for sexual pleasure;
c) the correction of menstrual disorders in women;
d) the diagnosis, cure, mitigation, treatment or prevention of any venereal disease.

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[69] section 27 to 30
[70] section27
[71] section 27A
[72] section 33I to 33 K
[73] section 2(b)

It is prohibited to directly or indirectly give a false impression regarding the true character of a drug or make false claim for it or to convey any false or misleading information in any material particular about it[74]. No person shall import into or export from India any document containing advertisement of this nature. Whoever contravenes the provisions of this Act shall, on conviction, be punishable with imprisonment, which may extend to six months, with or without fine. In case of subsequent convictions the imprisonment can be extended to one year[75]. The document, article or thing which contains the offending advertisement can be seized and confiscated. If the person contravening any of the provisions of the Act is a company, every person who at the time the offence was committed was in charge of the business of the company shall be deemed guilty. The prohibition under this Act does not apply to: a) any signboard or notice displayed by a registered medical practitioner including the treatment for any of the disease, b) any treaties or book dealing with any of the matters from a bonafide scientific standpoint, c) any advertisement related to any drug sent confidentially to any registered medical practitioners or to chemists for distribution among registered medical practitioners or to a hospital or laboratory, and d) Government advertisements.

### 5.6.3 Narcotic Drugs and Psychotropic Substances Act, 1985

The Act is passed to consolidate and amend the law relating to narcotic drugs, to make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substance and to provide for the forfeiture of property derived from, or used in, illicit traffic in narcotic drugs and psychotropic substances, to implement the provisions of the International Conventions on Narcotic Drugs and Psychotropic Substance and for matters connected therewith.

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[74] section 4
[75] section 9

The Central Government has been given the power to add to or omit from the list of psychotropic substances specified in the Schedule[76]. The Central Government is also empowered to take measures under the Act for preventing and combating abuse of narcotic drugs and psychotropic substances and the illicit traffic therein[77]. The measures in general provided under the Act are to coordinate the actions of various officers, State Governments and authorities under this or under any act for the time being in force; obligations under the international conventions; assistance to the concerned authorities in foreign countries and concerned international organizations with a view to facilitating coordination and universal action for prevention and suppression of illicit traffic in narcotic drugs and psychotropic substances; identification, treatment, education, after care, rehabilitation and social re-integration of addicts and such other measures as it deems necessary for the implementation of the Act. It may also constitute an authority or hierarchy of authorities for the purpose of implementation of above measures.

The Central Government also has the power to appoint a Narcotics Commissioner[78] to exercise all powers and functions relating to the superintendence of the cultivation of the opium and for such other functions as may be entrusted to him.

A Narcotic Drugs and Psychotropic Substances Consultative Committee[79] may also be constituted to advise the Central Government on such matters relating to the administration of the act.

A fund called the National Fund is to be constituted where in the amounts of sale proceeds of any property used for illicit trafficking, grants made by any person or institution, income from investments

[76] Section 3
[77] Section 4
[78] Section 5
[79] Section 6

etc will be credited and the same will be applied to meet the expenditure incurred for the above mentioned measures taken.

It prohibits any person to cultivate any coca plant, opium poppy or any cannabis plant, produce, manufacture, possess, sell, purchase, transport, ware-house, use, consume, import inter-State export inter-State import into India, export from India or transship any narcotic drug or psychotropic substance except for medical or scientific purposes[80].

The Central Government is also empowered to permit, control and regulate the cultivation of coco plant and opium poppy, the production and manufacture of opium and production of poppy straw; the sale of opium and opium derivatives from the Central Government factories for export from India or sale to State Government or to manufacturing chemists; the manufacture, possession, transport, import inter-State, export inter-State, sale, purchase, consumption or use of psychotropic substances; the import into India and export from India and transshipment of narcotic drugs and psychotropic substances[81]

The Act provides for certain punishments[82] for contravention of any provisions relating to poppy straw, coco plant and coco leaves, prepared opium, opium poppy and opium cannabis plant and cannabis, embezzlement of opium by a licensed cultivator, manufactured drugs and preparations, psychotropic substances, illegal import into India, export from India or transshipment of narcotic drugs and psychotropic substances, for external dealings in narcotic drugs and psychotropic substances, for allowing premises, etc., to be used for commission of an offence, for illegal possession in small quantity for personal consumption of any narcotic drug or psychotropic substance or consumption of such drug or substance,

[80] Section 8
[81] Section 10
[82] chapter IV of the Act

for financing illicit traffic and harbouring offenders, for abetment and criminal conspiracy.

The Act provides for the Constitution of Special Courts for speedy trial of the offences under the Act and the procedure thereof.

### 5.6.4 The Epidemic Diseases Act, 1897

The Act was passed to provide for the better prevention of the spread of Dangerous Epidemic Diseases.

It is a very small legislation consisting of four sections. Section 2 concerns special measures for control of epidemic diseases. It enables the State Government to take measures if it is satisfied that an epidemic disease has occurred in any part of the state or the state is threatened by such an epidemic and considers that the provisions of the existing laws are insufficient to meet the requirements, it may take or empower any of its officers to take/prescribe such suitable measures after duly notifying the public.

The State Government may also take measures and prescribe regulations for inspection of persons travelling by road, rail, air or sea or other means and consider segregation persons suspected of being infected with any disease either in a hospital, temporary accommodation or other suitable means. The Central Government may also take similar action when an epidemic occurs in India or a part of it.

Section 3 of the Act makes an offence under section 188 of the Indian Penal Code for any person disobeying any order or regulation made under the Act.

It also affords protection to persons acting under the Act by stating in Section 4 that no suit or other legal proceeding shall lay against any

person for anything done or in good faith intended to be done under this Act.

### 5.6.5 The Transplantation of Human Organs Act, 1994

The Act aims to provide for the regulation of removal, storage and transplantation of human organs for therapeutic purposes and for the prevention of commercial dealings in human organs

It was passed by the Parliament under clause (1) of Article 252 of the Constitution based on its requirement being raised by the state legislatures of Maharashtra, Himachal Pradesh and Goa. It has thereafter been adopted by a number of State Legislative Assemblies and also by all Union Territories.

The Act defines "therapeutic purpose"[83] as a systematic treatment of any disease or the measures to improve health according to any particular method or modality; and "Transplantation"[84] means the grafting of any human organ from any living person or deceased person to some other living person for therapeutic purposes.

The Act lays down for the authority to be given by the donor[85], who is not less than 18 years of age before his death. Such authority has to be given in the presence of two or more witnesses, at least one of whom must be a near relative. Any person in lawful authority of the dead body can also give authorization for the removal of any organ for therapeutic purposes provided that the donor had no objection before his death and the no near relative has such objection. The removal of the organ shall be made by a registered medical practitioner under the Indian Medical Council Act. The medical practitioner must get the certification of death or the certification of brain stem death by the

[83] section 2(o)
[84] section 2 (p)
[85] section 3

Board constituted as per the provisions of the Act[86]. If the deceased is less than 18 years of age then the parents may give authorization of their dead child.

The Act prohibits removal of human organs in case an inquest is required to be held in relation to such body and if a person is in possession of a dead body solely for the purpose of internment, cremation or other disposal[87].

If a dead body is lying in a hospital or prison and not claimed by any one within 48 hours from the time of the death then the authority for the removal of human organ can be given by the person in charge of the management or control of the hospital or prison or by an employee of such hospital or prison authorized in this behalf by the person in charge of the management or control. No such authority shall be given if the person empowered to give such authority has a reason to believe that any near relative of the deceased is likely to claim the dead body even if such relative has not come forward within 48 hours from the time of death[88].

An organ may removed from the body which is to be sent for postmortem if such organ is not needed for legal purposes and that the deceased had not expressed wish against such removal. The Act lays down certain restriction on removal and transplantation of human organs[89].

It restricts live donation and transplantation into a recipient unless the donor is a near relative of the recipient[90]. If the recipient is not a near relative then such donation and transplantation is permitted

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[86] section 3(6)
[87] section 4
[88] section 5
[89] section 6
[90] section 9(1)

only on approval of the Authorization Committee constituted by the State Government or the Central Government in case of Union Territories[91]. Such Authorization Committee shall hold and inquiry and grant or reject the approval as per the requirements of the Act.

The Act provides for the regulation of hospitals conducting the storage, removal or transplantation of human organs. Such hospital has to be a registered hospital as provided under the act[92].

The Act also prohibits removal or transplantation of human organs for any purpose other than therapeutic purposes[93]. The donor and the recipient have to be explained all possible effects, complication and hazards connected thereto[94].

The Act provides for offences and penalties in case such removal is with authority, for commercial dealings and for contravention of any other provisions of the Act[95].

### 5.6.6 Legislations for the conduct of Medical Profession

Apart from these all legislations we also have the following legislations governing the conduct of medical profession:

1. Indian Medical Council Act, 1956
2. Indian Medicine Central Council Act, 1970
3. Indian Nursing Council Act, 1947
4. Dentist Act, 1948
5. The Pharmacy Act, 1948
6. The Homeopathy Central Council Act, 1973

These all legislations broadly deals with the setting of Medical Councils at national and state levels and empower them with the

[91] section 9(3)
[92] Chapter III of the Act.
[93] section 11
[94] section 12
[95] Chapter IV of the Act.

powers, inter alia, to lay down minimum standards for medical education, enrolment of doctors and also regulate their profession by formulating the Code of Medical Ethics.

### 5.7 Occupational health laws

Labour and Industrial Law legislations in India dates back to nearly 150 years. Well, it can be classified into pre-independence and post-independence eras. The Fatal Accidents Act, 1855, Indian Boilers Act, 1923; Workman's Compensation Act, 1923; Trade Unions Act, 1923, The Children (Pledging of Labour) Act, 1933; The Employees Liability Act, 1938, The Industrial Employment (Standing orders) Act, 1946; The Industrial Disputes Act, 1947 etc., are the beneficial as well as protective legislations. After independence, more than 100 enactments were made by Central and various State Governments to regulate working conditions, obligations, rights of employers and workmen. The Researcher has dealt with the following legislations and their provisions relating to health.

- Employees' State Insurance Act, 1948
- The Factories Act, 1948
- The Maternity Benefit Act, 1961
- The Mines Act, 1952
- The Plantation Labour Act, 1951
- Workmen's Compensation Act, 1923

#### 5.7.1 Employees' State Insurance Act, 1948

The Employees' State Insurance Act is a legislation which aims at bringing about social and economic justice to the poor labour class of the land. It aims at the labour welfare. The Employees' State Insurance Act, 1948, is designed to provide security to the industrial worker. The object of the Act is to introduce social insurance by providing certain benefits to employees in case of sickness, maternity, disablement or death due to employment injury.

Employment injury includes any occupational disease which is contracted to an insured during the employment[96]. The Act aims to provide medical care to insured persons and progressively to their families. The Act provides for health care and cash benefits to the employees working in factories using power and employing 10 or more persons and establishments/shops not using power and employing 20 or more persons

All employees in the factories or establishments shall be insured as provided under the Act. The worker who is covered under the scheme is entitled to get medical benefits from the day he enters into insurable employment. It consists of free medical treatment in case of sickness, injury and maternity. His family members are also entitled to get free medical care as explained under the Act. Dependents of an insured person who dies during employment are also provided with compensation. Insured women are given benefit in case of confinement, miscarriage or sickness arising out of confinement and premature birth of child. In recent years, the Employees' State Insurance Corporation has been providing additional benefits and protection to the workers suffering from tuberculosis, cancer, leprosy, mental diseases and also provided artificial limbs.

The Act under Section 3 provides for the establishment of Employee's State Insurance Corporation to look after the administration of the scheme of employee's state insurance in accordance with the provisions of the Act. Moreover under section 19 the Act empowers the corporation to take steps for the benefit of insured persons. These measures permitted to be taken by the corporation are in addition to any benefit scheme specified in this Act. These are as follows:

1. The corporation may promote measures for the improvement of the health and welfare of the insured persons.

[96] section 52 A

2. It shall promote measures for the rehabilitation and re-employment of insured persons who have been disabled or injured.
3. The corporation may incur expenses in respect of such measures from its funds the limit for which shall be prescribed by the Central Government.

Section 10 provides for the Constitution of a Medical Benefit Council by the Central Government. The main duties of the Council shall be to advise the corporation and the standing committee on matters relating to administration of medical benefit, the certification for purposes of the grant of benefits and other connected matters. The Council shall also investigate into the complaints against medical practitioners in connection with medical treatment and attendance.

Section 46 of the Act fulfills the purpose of the Act by providing for benefits to the insured persons or their dependents. In India health and medical care facilities are provided to the workers through a network of 140 hospitals, 43 annexes and 1443 dispensaries located throughout the country.

### 5.7.2 The Factories Act, 1948

The Factories Act for the first time was enacted in the year 1881 then it was amended in the year 1934 which replaced the previous Act. The Act of 1934 was drafted in the light of the recommendations of Royal commission on Labour. As the Act was implemented a number of defects and weaknesses were revealed and so it was to be revised and the Act of 1948 was put to force to consolidate and amend the law relating to labour in factories.

The Factories Act, 1948 is a social legislation which has been enacted for occupational safety, health and welfare of workers at work places and to provide congenial atmosphere, healthy and clean surroundings

to the workers during the working hours and for the improvement of industrial efficiency. Various amendments have been made to keep the Act in tune with the developments in the field of health and safety.

Factory is defined under the Act as

- any premises using power and employing 10 or more persons and
- establishments/shops not using power and employing 20 or more persons

It does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952)], or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place as they are covered under separate Acts.

The Act does not permit the employment of women and young in a dangerous process or operation. Children are defined, "who have not attained an age of 15 years[97]", are not permitted to be hired[98] and need to have medical fitness certificates if he/she is made to work and age is not confirmed[99]

The enforcement of this legislation is being carried out on district basis by the District Inspectors of Factories. After inspection, Improvement Notices are issued to the defaulting managements and ultimately legal action is taken against the defaulting managements. Under the Act, the factory owner is required to send a written notice containing full details regarding the factory to the Chief Inspector of Factories.

Section 10 of the Act provides for the appointment of qualified medical practitioners to be certifying surgeons who shall examine young persons and persons engaged in dangerous processes. Chapter III of

[97] section 2
[98] section 67
[99] section 69

the Act specifically deals with health of the workers. Section 11 deals with the cleanliness of the factory and lays down provisions as to keeping the factory clean and free from effluvia arising from any drain, privy or other nuisance. It lays down some precautions to be taken like:

- ✓ Daily sweeping of floor, benches of workrooms, staircases and passages;
- ✓ Use of disinfectant on the floor at least once in a week;
- ✓ Effective drainages if the floor is liable to become wet in the course of any manufacturing process;
- ✓ Painting and varnishing of walls, partitions, all ceilings and tops of rooms, doors and window frames periodically.

Section 12 deals with the effective arrangements for the treatment of wastes and effluents due to manufacturing process. Ventilation and temperature in the factory has to be effective and adequate for the circulation of fresh air[100]. Section 14 deals with the effective measures which should be adopted to keep the work-rooms free from dust and fume so that it is not injurious or offensive to the workers. It also prohibits the use of internal combustion engine unless the exhaust is conducted into the open air and effective measures have been taken to prevent such accumulation of fumes. Section 15 empowers the State Government to make rules relating to artificial humidification. The Act lays that no room in any factory be overcrowded to an extent injurious to the health of the workers employed therein and so provides for the number of workers to be posted on each work-room of factory. It provides for the maintenance of sufficient and suitable lighting, natural, artificial or both. Special provisions as to wholesome drinking water at suitable points situated for all workers employed, all points marked as "drinking water" in the language understood by a majority of the workers, such points must not be situated within six metres of

[100] section 13

any washing place, urinal, latrine, spittoon, open drain where sullage and effluents are carried, provision for cool drinking water during hot weather is made where more than 250 workers are employed.

Section 19 provides for the latrines and urinals to be conveniently situated, separate enclosed accommodations for male and female workers which are adequately lighted and ventilated and be kept at all times in a clean and sanitary conditions. It also provides for sufficient number of spittoons at convenient places in a clean and hygienic condition.

Chapter IV of the Act deals with the safety measures to be taken in the factories. It lays for compulsory fencing of machinery which shall be securely fenced by safeguards of substantial construction which shall be constantly maintained. It allows examination or operation of machinery only by a specially trained adult male worker when the work on or near machinery is in motion. It prohibits employment of young person on dangerous machines unless full instruction as to the dangers and precautions to be observed, sufficient training have been given at the same time it has to be under adequate supervision by a person who has a thorough knowledge and experience of the machine. It lays down for the protection of eyes by the use of goggles and precautions to be taken against dangerous fumes, gases and in case of fire etc.

Chapter IV-A deals with provisions relating to hazardous processes. It lays down for the constitution of sit appraisal committee to examine the factory carrying on hazardous processes.

Facilities for washing, storing and drying clothing, sitting, first-aid appliances, canteens, shelter rooms, rest rooms, lunch rooms and crèches are provided under Chapter V which deals with the welfare of the workers.

Chapter VI deals with the working hours of adults which provides for weekly hours, weekly holidays, compensatory holidays, daily hours, interval for rest, night shifts, extra wages for overtime, restriction on double employment and restrictions on employment of women.

Chapter VII deals with the employment of young persons and prohibits employment of child who has not completed 14th year of age. It also provides for obtaining certificate of fitness if any young person is to be employed. It lays down the working hours of children, register of child workers and medical examination of such child at regular intervals. The Act provides for penalties for contravening the provisions of the act.

### 5.7.3 The Maternity Benefit Act, 1961

With the increase in the number of women employees there was a need of doing social justice to women workers employed in mines, factories and plantation. The Act was basically meant for maternity leave and benefits to women employees. The Act is applicable to every establishment including such establishment belonging to government and to every establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances. It also applies to every shop or establishment in which 10 or more persons are employed or were employed on any day of the preceding 12 months.

Section 4 lays down that no employer shall knowingly employ a woman in any establishment six weeks immediately following the day of her delivery nor shall a woman work in any establishment during this period including miscarriage or medical termination of pregnancy. At the same time no woman will be subjected to work of an arduous nature or which involves long hours of standing during the period of one month immediately preceding the period of six weeks before her expected date of delivery or during any period during the six weeks for

which the pregnant woman does not avail leave of absence under section 6.

Section 5 of the Act defines the right to payment of maternity benefits for which a woman is entitled. The woman entitled to maternity benefit under this Act is required to give a notice regarding the same to her employer for payment to her or her nominee and will undertake not to work in any establishment during this period. She will have to notify the date from which she will be absent from work; which should not exceed a duration of six weeks from her expected date of delivery. A woman employee who is not provided pre or post-natal care free of charge is entitled to receive medical bonus.

The Act also provides for the leave for miscarriage up to six weeks with pay immediately following the day of her miscarriage or medical termination of pregnancy. A woman suffering from illness arising out of pregnancy, delivery, premature birth of child, miscarriage, medical termination of pregnancy, tubectomy operation and the like is entitled to one month's additional leave with wages at the rate of maternity benefit. On rejoining after her delivery, a woman is entitled to two breaks in her day's schedule for nursing the child until the child attains the age of 15 months independent of normal breaks.

A woman cannot be dismissed during the period of her pregnancy nor can any retrograde steps be initiated with regard to the term and conditions of service. The only exception being on account of gross misconduct where the employer may by order in writing communicated to the woman; deprive her of maternity benefit and or medical bonus. The woman however has a right to appeal the prescribed authority within a period of 60 days.

### 5.7.4 The Mines Act, 1952

The Act is aimed for the regulation of labour and safety in mines. It seeks to regulate the working conditions in mines by providing for measures required to be taken for the safety and security of workers employed therein and certain amenities for them. Following are some of the objectives of the Act focused on the health of the workers employed in the mines:

1. To make provisions as to health and safety of workers employed in mines such as drinking water, conservancy, medical appliances, and responsibility of the owner, agent or manager to give notice of accidents to proper authority.
2. To make provision relating to hours and limitation of employment such as weekly day of rest, compensatory day of rest, hours of work above ground and below ground night shift, extra wages for overtime work, limitation of daily hours of work, prohibition of the presence of persons below 18 years of age and employment of women.
3. It seeks to achieve fair and healthy environment in the mines, through inspecting staff. For the efficient implementation of the Act the Central Government is authorized to appoint Chief Inspector and Inspectors who are assigned various powers and functions under the act. The Central Government ha also power to appoint certifying surgeons.

Chapter V of the Act lays down the provisions as to health and safety. The Act is in the lines of the Factories Act, 1948 and has similar kinds of provisions as to drinking water, Urinals, latrines etc.

Chapter VI deals with the hours and limitations of employment and provides for weekly one day of rest, compensatory day of rest, hours of work above ground to be not more than 48 hours in any week or for more than nine hours in any day, hours of work below ground to be

not more than 48 hours in any week or eight hours in any day. The Act also provides for night shift and extra wages for overtime.
It prohibits employment of persons below eighteen years of age and employment of women below ground and above ground except between the hours of 6 am and 7 pm.

### 5.7.5 The Plantation Labour Act, 1951

The object of the Act is to provide for the welfare of labour and to regulate the conditions of work in plantation.
Plantation means any land which is used or intended to be used for growing tea, coffee, rubber and other plants and includes offices hospitals, dispensaries, schools and any other premises used for any purpose connected with such plantation. It does not include any factory to which the provisions of Factories Act, 1948 applies.
Every employer of a plantation has to be a registered with the registering officers. The Act makes specific provisions in relation to drinking water, conservancy, medical facilities, canteens, crèches, recreational facilities, educational facilities and housing facilities.
It also lays down provision as to weekly hours, weekly holiday and intervals for rest. It prohibits employing of woman and child workers during night hours. Penalties are imposed for contravening any provisions of the Act.

### 5.7.6 Workmen's Compensation Act, 1923

The Workmen's Compensation Act is one of the earliest measures taken up for the benefit of laborers and it is a social insurance legislation. Before the Act was passed, any workmen who received injuries during the course of employment had to file suit in the court in order to determine the amount of compensation, which at times was a lengthy and costly for the worker group.

It was in the year 1884 that the question of granting compensation for fatal and serious accidents was realized in India. There arose a need of

legislation for the protection of workers working in factory and mining operations. This was due to the growing complexity of industry in this country with the increasing use of machinery and consequent danger to workmen along with poverty of the workmen themselves render it advisable that they should be protected from hardships arising from accidents.

Workmen's Compensation Act, 1923 is Central legislation which provides for payment of compensation for injuries suffered by a workman in the course of and arising out of his employment according to the nature of injuries suffered and disability incurred, where death results from the injury, the amount of compensation is payable to the dependants of the workmen.

The object of the workmen's compensation is to make provision for the payment of compensation to a workman only i.e., to the concerned employee himself in case by his surviving the injury in question and to his dependants in the case of his death.

The Act clearly says, that the workmen need protection as for as possible from hardship arising from accidents owing to increasing use of machinery with its consequent danger to workmen.

The salient features of the Act are as follows:

1. The Act is based on the British pattern. Payment of compensation is made obligatory on all employers whose employees are entitled to claim benefit under the Act.
2. The workman or his dependants may claim compensation if the injury has been caused by accident arising out of and in the course of employment and in case of injury not resulting in death if such accident cannot be attributed to the workman having been at the time of accident under the influence of drink or drugs or if it is not caused due to willful disobedience of rule or orders or disregard of safety devices.

3. The various classes of workers have been specified in the definition of "workman" in section 2(1) and in schedule II. Persons employed in the administration or clerical capacity and earning more than Rs. 1600/- per month (except railway servant) were excluded from the benefit of the Act. But now the conditions of average monthly wage limit of Rs. 1600/- has been abolished.
4. The amount of compensation payable depends in case of death on the average monthly wages of the deceased workman and in the case of an injured workman both on the average monthly wages and the nature of disablement.
5. In case of fatal accident the following provisions are made-
    i. All cases of fatal accident are to be brought to the notice of the Commissioner;
    ii. If the employer admits his liability the amount of compensation payable is to be deposited with the commissioner;
    iii. If the employer admits his liability and at the same time there are grounds for believing compensation to be payable, the dependants get the information necessary to enable them to judge if they should make a claim or not.
6. The Act is administered by the Commissioner for workman's compensation appointed by the State Government.
7. The worker cannot claim benefits under the Act and Employees State Insurance Act together.
8. Compensation in case of death ranges from Rs. 50,000 to Rs. 4.56 lakh and in the case of permanent total disablement from Rs. 60,000 to Rs. 5.48 lakh.

## 5.8 Women and health laws

Women have always obtained an inferior status in our society. They are often ignored and are considered to be as child producing machines. In such situation there is no one to take care of women who besides homely duties do a much more to help the economic condition of the family. The legislators have done a great task by enforcing laws protecting health of women.

The researcher has discussed the following laws relating to the health of women:

- Pre-conception and Pre-Natal Diagnostic Techniques (Regulation and Prevention of misuse)Act, 1994
- The Medical Termination of Pregnancy Act, 1971

### 5.8.1 Pre-conception and Pre-Natal Diagnostic Techniques (Regulation and Prevention of misuse) Act, 1994

The Act is aimed for the regulation of the use of pre-natal diagnostic techniques for the purpose of detecting genetic or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex linked disorders and the prevention of the misuse of such techniques for the purpose of pre-natal sex determination leading to female foeticide.

It provides for the regulation of genetic counseling centres, genetic Laboratories and Genetic Clinics and makes it compulsory to get it registered. It prohibits employment of persons who does not possess the prescribed qualifications.

Chapter IV of the Act deals with registration, certificate of registration, cancellation or suspension of registration, appeal against the order of suspension or cancellation of registration of Genetic Counseling Centers, Genetic laboratories or Genetic Clinics.

The Act permits pre-natal diagnostic techniques to be used only for the purposes mentioned below:

i. Chromosomal abnormalities;
ii. Genetic metabolic diseases;
iii. Hemo-globinopathies;
iv. Sex-linked genetic diseases;
v. Congenital anomalies;
vi. Any other abnormalities or diseases as may be specified by the Central Supervisory Board.

Pre-natal diagnostic techniques shall be used only if the following conditions are fulfilled:

*i.* Age of the pregnant woman is above thirty-five years;
*ii.* The pregnant woman has undergone two or more spontaneous abortions or foetal loss;
*iii.* The pregnant woman has been exposed to potentially teratogenic agents such as drugs, radiation, infection or chemicals;
*iv.* The pregnant woman has a family history of mental retardation or physical deformities such as spasticity or any other genetic disease;
*v.* Any other condition as may be specified by the Central Supervisory Board.

Punishment and penalties are imposed on those who violate the provisions of the Act like advertisement relating to pre-natal determination of sex and so on.

### 5.8.2 The Medical Termination of Pregnancy Act, 1971

Previously abortions were governed exclusively by the Indian Penal Code and the Code of Criminal Procedure. Abortions were not allowed except to save the life of a pregnant woman. By the passing of the Act of 1971 it has made abortions to be legal under certain

circumstances. It is a health care measure which helps to reduce maternal morbidity and mortality resulting from illegal abortions.
It permits Medical termination of pregnancy (MTP) only under certain conditions which are as follows:

*i.* MTP can be carried out in case of contraceptive failure, rape, threat to mother's life, and grave injury to her physical and mental health, risk of the child being born with congenital abnormalities.

*ii.* MTP can only be conducted at approved hospitals i.e. Government hospitals and other hospitals and centers specifically approved by the authorities after ensuring availability of essential surgical facilities.

*iii.* MTP can only be performed by doctors trained for the purpose and by post-graduates in Gynecology and Obstetrics.

*iv.* Certification approval is needed by one doctor when pregnancy is below 12 weeks and by two doctors when it is between 12 to 20 weeks. Beyond 20 weeks, no termination is permissible.

*v.* Written approval of the lady or the guardian in case of a minor is to be obtained before carrying out the MTP.

One very important provision is that relating to the written consent of the woman which is a pre-requisite for performing an abortion.

**5.9 Children and health**

Today's children are tomorrow's asset. The future of our country is dependant on our today's children. But we find majority of children are not able to develop themselves due to economic constraints. And because of which their health is not taken care of. The researcher has discussed the following laws relating to children. We also find that the children are not properly taken care of just because of lack of knowledge of their parents. The laws have done much in this field too.

- The Child Labour (Prohibition and Regulation) Act, 1986

- The Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992
- The Juvenile Justice (Care and Protection) Act, 2000.

### 5.9.1 The Child Labour (Prohibition and Regulation) Act, 1986

The Act has been enacted to prohibit the engagement of children in certain employments and to regulate the conditions of work of children in certain other employments. The Act has the following objects:

1. To ban the employment of children;
2. To lay down a procedure to decide modifications to the Schedule of banned occupations or processes;
3. To regulate the conditions of work of children in employments where they are not prohibit from working;
4. To lay down enhanced penalties for employment of children in violation of provisions of this Act, and other Acts which forbid the employment of children;
5. To obtain uniformity in the definition of "child" in the related laws.

Child under the Act is defined as a person who has not completed his fourteenth year of age. The Act prohibits the employment of children in certain occupations set forth in Part A of the schedule or any processes set forth in Part B of the Schedule. A Child Labour Technical Advisory Committee has to be constituted under the Act to advise the Central Government for the purpose of addition of occupations and processes to the Schedule. The Act makes provision of hours and period of work, weekly holidays, health and safety measures which includes cleanliness, disposal of wastes, ventilation and temperature, dust and fumes, drinking water, latrine and urinals etc. The implementation of the Act is done through the inspector who shall have the notice of establishments employing children, nature of occupation, etc. Stringent penalties are imposed under the Act for

employing any person less than the prescribed age or for violating the provisions of the Act.

### 5.9.2 The Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992

In fact breastfeeding has been our culture since ancient time. But in modern times our babies were deprived this gift of God due aggressive promotion of infant formulae and packaged cereal foods, which resulted in increased infant morbidity, malnutrition and mortality. Recognizing this as a major public health problem, the Government of India had enacted the above legislation to prevent such improper practices

India became one of the few countries in Asia to fully implement the International Code of Marketing of Breast milk Substitutes with the enactment of the Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992 (41 of 1992)

The Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992, as amended in 2003, provides for the regulation of the production, supply and distribution of infant milk substitutes, feeding bottles and infant foods, with a view to protecting and promoting breast-feeding and ensuring the proper use of infant foods.

The statement of objects and reasons of the Act is reproduced here: "Inappropriate feeding practices lead to malnutrition, morbidity and mortality in our children. The promotion of infant milk substitutes and related products like feeding bottles and teats does constitute a health hazard. The Promotion of infant milk substitutes and related products has been more pervasive and extensive than the dissemination of information concerning the advantages of mother's

milk and breast-feeding and contributes to a decline in breast-feeding. In the absence of strong interventions designed to protect, promote and support breast-feeding, this decline can assume dangerous proportions, subjecting millions of infants to greater risks of infections, malnutrition and death...."

Under the Act, "infant food"[101] means any food that is marketed or otherwise represented as a complement to mother's milk to meet the needs of the infant after the age of six months and up to the age of two years. "Infant milk substitute"[102] refers to any food being marketed or otherwise represented as a partial or total replacement for mother's milk for the infant up to the age of two years.

The Act prohibits persons from advertising, or taking part in the publication of any advertisement, for the distribution, sale or supply of infant milk substitutes, feeding bottles or infant foods, or giving an impression or creating a belief in any manner that the feeding of infant milk substitutes and infant foods is equivalent to, or better than, feeding mother's milk, or taking part in the promotion of infant milk substitutes, feeding bottles or infant foods[103]. Similarly, it expressly prohibits persons from supplying or distributing samples of infant milk substitutes or feeding bottles of infant foods or gifts of utensils or other articles, or contacting any pregnant woman or the mother of an infant, or offering inducement of any other kind for the purpose of promoting the use or sale of infant milk substitutes or feeding bottles or infant foods[104].

The Act lays down standards and quality control requirements, where it prohibits all persons from producing, selling or distributing any infant milk substitutes, feeding bottles or infant foods unless they confirm to the standards specified under the Prevention of Food

[101] section 2(f)
[102] section 2(g)
[103] section 3
[104] section 4

Adulteration Act, 1954[105]. All such containers should bear the standard mark specified by the Bureau of Indian Standards Act, 1986.

The IMS Act bans direct or indirect benefits to health workers or their associations, bans commissions offered by companies to achieve sales targets, also bans promotions and displays in hospitals, clinics and chemists' shops and prohibits the dissemination of incorrect information peddled by companies in the form of booklets, flash cards, films, slides, magazines or newspapers[106].

It prescribes guidelines for labeling where the label "Important Notice: Mother's Milk is best for the baby" has to be in capital letters of 5mm size and placed visibly on the centre panel of the container or label. Violations of the provisions of the Act are cognizable offences but are bailable under the Criminal Procedure Code[107].

In 2003, when the Act was amended, it was given a wider ambit to control advertisements in the electronic media as audio or visual transmission. It defined infant foods more clearly as foods that can be introduced after six months of age up to two years. This was clearly intended to promote exclusive breast-feeding for the first six months and continued breast-feeding for two years or beyond. Almost all the clauses pertaining to infant foods in particular were strengthened and prohibitory clauses introduced in matters relating to promotion, distribution, donation and inducements. The amendment of 2003 in the Act has strengthened the existing legislation. It recognizes breastfeeding as the best.

The amendment of 2003 is passed with an object to ban the following:

- Promotion of all kinds of foods for babies under the age of two years,

[105] section 6
[106] section 8
[107] section 6

- Promotion of infant milk substitutes, infant foods or feeding bottles in any manner including advertising, distribution of samples, donations, using educational materials, and offering any kind of benefits to any person,
- All forms of advertising including electronic transmission by audio or visual transmission for all products under its scope, i.e. infant milk substitutes, infant foods or feeding bottles, Promotion of products under its scope, i.e. infant milk substitutes, infant foods or feeding bottles, by a Pharmacy, Drug store or a Chemist shop.
- Use of pictures of infants or mothers on the labels of infant milk substitutes or infant foods.
- Labeling of infant foods for use before six months.
- Funding of health workers or an association health workers for seminars, meetings, conferences, educational course, contest fellowship, research work or sponsorship.

The amendment is in support of World Health Assembly's Resolution 54.2 that defines the period of exclusive breastfeeding to be first six months. It removes any ambiguity whatsoever about the fact that complementary foods should only be introduced after age of six months along with continued breastfeeding for two years or beyond. This is a major change for better health and development of infants and young children: mother's milk is all that a baby needs for first six months and introduction of complementary feeding is now recommended after the age of six months, rather than the earlier recommended at 4 months. This recommendation was adopted by the World Health Assembly resolution 54.2 in May 2001. The Government of India took significant steps to implement this.

Thus, the Act had a clear intent; the saving of millions of children's lives and improving their nutritional status by preventing the baby food industry from enticing mothers and the health system to give infants breast milk substitutes.

### 5.9.3 The Juvenile Justice (Care and Protection) Act, 2000

The object of the Act is to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection, by providing for proper care, protection and treatment by catering their developmental needs, and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under the act.

The Act is in pursuance of Constitutional provisions like Article 15(3), 39(e)(f), 45, 47 and after adoption and ratification of the Convention of the Rights of the Child, 1989; United Nations Standard Minimum Rules for the administration of Juvenile Justice, 1985 (the Beijing Rules) and the United Nations Rules for the Protection of Juveniles Deprived for their Liberty (1990) and all other relevant instruments.

## 5.10 Food laws and health measures

Food plays a very important role in protecting the health of a human being. The following legislations have been discussed relating health and food laws:

- The Food Safety and Standards Act, 2006
- The Prevention of Food Adulteration Act, 1954

### 5.10.1 The Food Safety and Standards Act, 2006

The Act passed on 23rd August 2006 is aimed to consolidate the laws relating to food and to establish the Food Safety and Standards Authority of India for laying down science based standards for articles of food and to regulate their manufacture, storage, distribution, sale and import, to ensure availability of safe and wholesome food for human consumption and for matters connected therewith and incidental.

The Act is aimed at the protection of health. The Act makes certain principles to be followed by the Central and State Govt. and the Food Authority like to achieve an appropriate level of protection of human life and health and the protection of consumer's interests, risk assessment and their harmful effects of health, measures to ensure appropriate level of health etc.

The Act also provides standards relating to the articles of food and prohibits use of food additive or processing aid unless it is accordance with the Act[108], it also prohibits contaminants, naturally occurring toxic substances, heavy metals[109], pesticides, veterinary drugs residues, antibiotic residues and micro-biological counts[110]. It provides for proper packaging and labeling of foods as per the regulations specified[111]. It puts restrictions of advertisements of any food which is misleading or deceiving or contravenes the provisions of this Act[112]. It prohibits engagement of persons from unfair trade practices. It also prohibits importation of food articles into India if they are unsafe, misbranded or sub-standard[113].

It also casts certain responsibilities and liabilities on food business operator in case where the food is unsafe, misbranded, sub-standard, which is time being prohibited either by the Govt. in the interest of general public, supply of food after its date of expiry etc[114]. Hence the food operator has to satisfy the requirements of the Act and the rules and regulations made hereunder at all stages of production, processing, import, distribution and sale within the businesses.

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[108] section 19
[109] section 20
[110] section 21
[111] section 23
[112] section 24
[113] section 25
[114] section 26

More importantly the Act has made provisions for the licensing and registration of food business and makes it compulsory for every food manufacturer including a petty retailer, hawker, itinerant vendor or a temporary stall holder etc. to register himself under the Act and get the license which is issued by the competent authorities established under the Act[115]. It also empowers the designated officers to give improvement notices on the food business operators who have failed to comply with the provisions of the Act[116]. The food safety officers appointed under the Act shall take samples of any food, seize them and to put them in safe custody for the analysis. The samples of food taken are to be sent to such laboratories, research institutions and referral food laboratory which are recognized and accredited under the Act. [117]

Certain penalties and punishments are provided under the Act for selling sub-standard, misbranded food, for misleading advertisements, for containing extraneous material in food, unhygienic and unsanitary processing and manufacturing of food etc[118].

It is health protecting legislation but the main hurdle is how far the provisions of the Act will be implemented specifically when the Act also applies to hawkers and petty retailers. Will all these people who are unaware of the food legislations obtain licenses as provided under the Act? Another apprehension is relating to the corrupt practices of the officers appointed under the Act. They may make money by coercing the poor food business operators.

[115] section31
[116] section 32
[117] section 38
[118] Chapter IX

### 5.10.2 The Prevention of Food Adulteration Act, 1954

The first step towards the menace of adulteration of food, drink and drug was taken under the Indian Penal Code, 1860. Section 272 to 276 included the provisions of offences relating to public health and safety. However the provisions under the Indian Penal Code were not comprehensive and hence there was a need for specific law relating to food adulteration.

Several states like Assam, Bengal, Calcutta, Bihar, Orissa, Bombay, Madras, Punjab, Karnataka, Uttar Pradesh, and Madhya Pradesh had their own state laws relating to food adulteration. There was no uniformity in laws and punishments provided under all these state legislations. As the subject of food stuffs and other goods was included in the concurrent list of the 7th schedule to our Constitution, a Central Act called as the Prevention of Food Adulteration Act, 1954 was put to force to ensure uniformity in procedures and punishments.

The title itself implies that the Act lays emphasis on the preventive aspect of adulteration of food rather than punitive aspect based on the principle that 'prevention is better than cure.' It is a consumer protection legislation which has been designed to prevent, curb and check adulteration of foodstuffs and to punish the wrong doers. Hence the legislation designed to protect the health of the people. It also aims to prevent manufacture, storing and sale of adulterated food-stuff for human consumption.

It prohibits manufacture, sale, storage, distribution and import into India any adulterated, misbranded, any article for the import of which a license is needed and any article of food which is in contravention to any other provision of this Act[119]. The implementation of the Act is through various authorities established under the Act. The Act provides for the constitution of Central Committee for food

[119] section 5

standards[120] to advise the standard of food article which shall be uniform throughout the country. The committee shall also advise the Central Government and State Government on questions relating to the administration of Act.

A Central Food Laboratory[121] is constituted to bring uniformity in food standards through out the country. Hence whatever is misbranded or adulterated in one part of the country shall be the same in every corner of the country. The main function of the laboratory is to analyze the food samples and investigate for fixation of standards of any food article. The Act makes a provision for the appointment of a public analyst[122] to analyze the samples collected from the food inspector. The food inspected as appointed under the provisions of the Act shall mainly inspect the establishments licensed for the manufacture, storage or sale of an article of food, procure and send samples for analysis, investigate into complaints, maintain a record of all inspections, make enquiries and inspection to detect food adulteration etc.

An export inspection council is constituted under the act to check the quality of food materials meant to export. The Act provides for stringent penalties and punishments of imprisonment for violating the provisions of the act[123]

## 5.11 Disability and law

### 5.11.1 The Mental Health Act, 1987

The attitude of the society towards persons afflicted with mental illness has changed considerably and it is now realized that no stigma should be attached to such illness as it is curable, particularly, when

[120] section 3
[121] section 4
[122] section 8
[123] section 16

diagnosed at an early stage. Thus the mentally ill persons are to be treated like any other sick persons and the environment around them should be made as normal as possible.

The experience of the working of Indian Lunacy Act, 1912 (4 of 1912) has revealed that it has become out-modeled. With the rapid advance of medical science and the understanding of the nature of malady, it has become necessary to have fresh legislation with provisions for treatment of mentally ill persons in accordance with the new approach.

The Mental Health Act, 1987, repealed the Indian Lunacy Act, 1912 with a clear aim and object to consolidating the law relating to mentally ill persons, better management of the property of a mentally ill person and for dealing with matters connected with the affairs of the property of mentally ill, with the overall object that a mentally ill person be given all protection. It is a social welfare legislation. The Mental Health Act is one of the good legislations. It came into force in 1993 however it is enacted in 1987, which shows that the Act was given low priority. The Act is not retrospective in nature.

1. The Object of the Act is

I. To regulate admission to psychiatric hospitals or psychiatric nursing homes of mentally ill-persons who do not have sufficient understanding to seek treatment on a voluntary basis, and to protect the rights of such persons while being detained;

II. To protect society from the presence of mentally ill persons who have become or might become a danger or nuisance to others;

III. To protect citizens from being detained in psychiatric hospitals or psychiatric nursing homes without sufficient cause;

IV. To regulate responsibility for maintenance charges of mentally ill persons who are admitted to psychiatric hospitals or psychiatric nursing homes;

V. To provide facilities for establishing guardianship or custody of mentally ill persons who are incapable of managing their own affairs;

VI. To provide for the establishment of Central Authority and State Authorities for Mental Health Services;

VII. To regulate the powers of the Government for establishing, licensing and controlling psychiatric hospitals and psychiatric nursing homes for mentally ill persons;

VIII. To provide for legal aid to mentally ill persons at State expense in certain cases.

"Mentally ill person" is defined under the Act as a person who is in need of treatment by reason of any mental disorder other than mental retardation.[124]

Psychiatric hospitals and nursing homes can be established or run only on obtaining a license from state or central authority for mental health services, and would be regulated for proper functioning and care of the mentally ill. Psychiatric services provided from a general hospital or the licensing and regulating rules would not cover nursing home.[125]

Any person aged eighteen and above can voluntarily get admission for inpatient treatment. In case of minor (less than 18 years of age) mentally ill, can be present for admission by the guardian as a voluntary patient. The medical officer in-charge should be satisfied about the need of inpatient treatment.[126]

[124] sub section (1) of section 2
[125] section 3-10
[126] section 15, 16, 17

Patients admitted on voluntary basis, if they request for discharge, are obliged to be discharged by the medical officer in charge within 24 hours of receiving the request, provided the medical officer is convinced that the discharge will not harm the interest of the voluntary patient. In such case, the medical officer would constitute a Board of two medical officers and seek their opinion. If the Board is of the opinion that such voluntary patient needs further treatment in the psychiatric hospital or psychiatric nursing home, the medical officer shall not discharge the voluntary patient but continue his treatment for a period not exceeding 90 days at a time.[127]

Admission to psychiatric hospital under special circumstances can also be made on request of a relative or friend of the patient if the patient is not in a position to express willingness for admission as voluntary patient, provided the medical officer in charge is satisfied that it is in the interest of the patient to do so. This application should be accompanied by two medical certificates (one from a medical officer who is working in governmental service) stating that the person has such mental illness and it requires inpatient observation and treatment.[128]

No person admitted on the request of another person can be kept in the mental hospital for more than 90 days unless admitted under a Reception Order.[129]

Apart from voluntary admission, a mentally ill person can be admitted through Reception Order[130]. An application for reception order may be made by the Medical Officer in charge of a mental hospital, by the spouse or by any other relative of the mentally ill patient for admission to the Magistrate. The application should be accompanied by two medical certificates from two independent medical practitioners

[127] sub section 3 of Section 18
[128] sub section 1 and 2 of section 19
[129] sub section 2 of section 19
[130] section 20

certifying the need for admission for treatment, and that is in the interest, for personal safety of the patient, or that of others. The medical practitioners should have seen the patient within the last ten days prior to the application. The magistrate can pass the Reception Order or Rejection to the application, after personally reviewing the documents and personally examined the alleged mentally ill (unless for reasons which he considers expedient not to personally examine). The consideration of the application should be made in the presence of the applicant, the allegedly mentally ill person, and the person appointed by the allegedly mentally ill to represent him.[131] A Reception order is valid up to 30 days only or till discharged.[132]

A mentally ill patient admitted by relative or friend can also apply to the magistrate for discharge.[133] The Act provides detailed procedures for taking into custody by the police, confinement and security of mentally ill persons or prisoners in a mental hospital.[134] The Act provides detailed procedures for ensuring proper care and custody to a mentally ill person by his legal relatives, through the police station.[135]The Act provides for regular, thorough supervision of mental hospital and nursing homes by monthly joint inspection of three visitors designated by the Central or State authority for health services.[136]

Any person (other than a prisoner) admitted to a psychiatric hospital who feels he has recovered from his mental illness can apply for discharge to the magistrate, supported by a medical certificate from the medical officer in charge of the hospital[137]; he can be allow to take

[131] section 22
[132] section 31
[133] sub section 3 of section 19
[134] section 23 and 35
[135] section 25
[136] section 37
[137] section 43

leave from the hospital on request of his relatives or friends for a specified period.[138]

Detailed procedure of safety in hospital, or during leave or absence or transfer to the another hospital has been laid down in Sections 45, 46, 47. Similarly provisions relating to safe custody and protection of property of the patients has been provided under Sections 50 to 77. Physical or mental cruelty of mentally ill patients is forbidden. Similarly conduct of research on a mental patient is forbidden, unless voluntarily consent is obtained.

The human rights of a mentally ill person are protected[139] under the Act. It lays down that no mentally ill person shall be subjected during treatment to any indignity (whether physical or mental) or cruelty. It further lays down that no mentally ill person shall be used of purposes of research unless under the following circumstances:

1. such research is of direct benefit to him for the purposes of diagnosis or treatment or
2. such person is a voluntary person and has given his consent in writing.

Any person contravening the provisions of the Act are strictly penalized under the Act.[140] Mental Health Authorities are formed as a watchdog bodies to assure the quality of services. Govt. and private psychiatric hospitals need to get license from these authorities.

### 5.11.2 The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995

The purpose of this Act is to fix responsibilities on the Central and State Government to the extent of their resources permit, to provide services, create facilities and give support to people with disabilities in

[138] section 45
[139] section 81
[140] section 82-87

order to enable them to have equal opportunities in participating as productive and contributing citizens of this country to the fullest extent their abilities. It fixes its responsibilities on the Governments (Centre and State) to ensure that disabilities do not prevent individual citizens of this country from living a full life and making full contribution each in accordance with his/her ability. This Act provides a frame within which specific demands can be made by the disabled people in order to ensure that the promise made in this Act are honoured by the Government.

Disability is defined to mean blindness, low vision, leprosy-cured, hearing impairment, Locomotor disability (includes Cerebral Palsy), mental retardation and mental illness. According to the Act a person with disability has to be certified by a medical authority that he or she is suffering from not less than 40% of the disability.

The Act lays down for the constitution of The Central Co-ordination Committee, The Central Executive Committee (CEC) to carry out certain functions as envisaged under the Act. In the same way the State Coordination Committees are to be constituted at the State level.

In order to take steps for Prevention and Early Detection of Disabilities the Act provides that within the limits of their economic capacity and development, the appropriate Governments and the local authorities, with a view to preventing the occurrence of disabilities, shall -

a) undertake or cause to be undertaken surveys, investigations and research

concerning the cause of occurrence of disabilities;

b) promote various methods of preventing disabilities;

c) screen all the children at least once in a year for the purpose of identifying at-risk cases;

d) provide facilities for training to the staff at the primary health centers;

e) Sponsor or cause to be sponsored awareness campaigns and disseminate or cause to be disseminated information for general hygiene health and sanitation;
f) Take measures for pre-natal, peri-natal, and post-natal care of mother and child;
g) Educate the public through the pre-schools, primary health centers, village level workers and anganwadi workers;
h) Create awareness amongst masses through television, radio and other mass media on the causes of disabilities and the preventive measures to be adopted.

The Central and State Governments and local authorities under the Act shall ensure that every child with disability has access to free and adequate education till the age of 18, integrate students with disabilities into normal schools, set up special schools in government and private sectors for those in need of special education and equip these special schools with vocational training facilities for children with disabilities.

The local authorities shall also introduce schemes for non formal education of children with disabilities who have discontinued their education after 5th class. Conduct special part time classes for functional literacy for children with disabilities in the age group of 16 and above, and provide each child with disability, free of cost, special books and equipments needed for his or her education, including in open schools and Universities. The Government shall set up adequate number of teacher training institutions, capable of training teachers specialized in disabilities and adequate in number, in order to run both special schools and integrated schools for children with disabilities. The Government shall provide transport facilities to children with disabilities, remove architectural barriers from schools, colleges and other institution imparting vocational training and education to students with disability, provide books uniform and other

materials to children attending schools, grant scholarships to students with disabilities, restructure curriculum for the benefit of students with disabilities. Government shall promote research for assistive devices to give a child disability equal opportunities in education.

Regarding the Employment of disabled persons the Act lays down that Government shall identify posts which can be reserved for persons with disabilities. These reservations shall not be less than 3% of which 1% will be reserved for each of the below mentioned disabilities.

1. Blindness or low vision
2. Hearing Impairment
3. Locomotor disability or Cerebral palsy

Special employment exchange will be the nodal agency for the purpose of employment. If in any year, any of the above vacancy can not be filled then people with other disabilities can be given employment, and finally, if there is no person with disability who can fill the vacancy, then a person other than a person with disability can be given employment.

Appropriate Governments and local authorities shall formulate schemes for ensuring employment of persons with disability and this shall include training of persons with disabilities. All Govt. educational institutions and those receiving aids from the Government shall reserve not less than 3% seats for persons with disabilities. Not less than 3% of all poverty alleviation schemes shall be reserved for persons with disabilities. Govt. shall within their economic capacities, give incentives to employers in public and private sectors to ensure that 5% of the work force is composed of persons with disabilities.

The Act provides for certain Affirmative Actions to be taken by the Govt. includes to provide aids and appliances to persons with disabilities and shall provide land at concessional rates for allotment to persons with disabilities for housing, business, special recreation

centers, special schools, research centers and factories by entrepreneurs with disabilities.

In order to ensure non discrimination, the Govt. transport shall take special measures to adopt their facilities and amenities so that they permit easy access to persons with disabilities, inclusive of persons on wheel chairs. Government and local authorities shall also within their capacity, provide auditory signals along red lights, crossing constructions shall be designed for wheel chair users and engraving on zebra crossing for blind people. Warning signals shall be provided at appropriate places for the people with disabilities etc. Building and toilets shall be constructed with ramps and other features so that wheel chair users can have access to them. No employer shall terminate an employee who acquires a disability during service. No employer shall also deny promotion to an employee on grounds of disability, but provide for circumventing this, based on the type of work.

Provisions relating to Research and Manpower Development lay down that Government and local authorities shall promote and sponsor research in order to prevent disability, rehabilitate the disabled, develop assistive devices, identify jobs for disabled and develop pre-disabled structural features in factories and offices. The Act provides for establishment and Recognition of Institutions for Persons with Disabilities and Institution for Persons with Severe Disabilities In order to see the implementation of the Act the Central Government is empowered to appoint The Chief Commissioner and Commissioners for Persons with Disabilities.

**5.11.3 The National Trust (For welfare of persons with Autism, Cerebral Palsy, Metal Retardation and Multiple Disabilities) Act, 1999**- The trust aims to provide total care to persons with mental retardation and cerebral palsy and also manage the properties

bequeathed to the Trust. The Trust also supports programmes that promotes independence and address the concerns of those special persons who do not have family support. The Trust will be empowered to receive grants, donations, benefactions, requests and transfers.

**5.11.4 The Rehabilitation Council Act of India (RCI, 1992)** - The Act was created to provide for the constitution of the Rehabilitation Council of India for regulating training of the Rehabilitation Professional and maintaining of a Central Rehabilitation Register and related issues.

### 5.12 International human rights instruments

During the First World War which took place in 1914 Civilian population became victims of expanded warfare which gave rise to a new sense of international morality. At the end of First World War in 1919 Nations seriously considered imposing criminal penalties on heads of State for violations of fundamental Human Rights and so the measures to study and formulate the human rights provisions started at this point of time[141]. Further the end of Second World War made States to think seriously about Human Rights.

The term 'United Nations' was devised by President Franklin D. Roosevelt of the United States. It was first used in the 'Declaration of United Nations' of 1 January 1942 during the Second World War, when representatives of 26 nations pledged to continue to fight together against the Axis powers. .

The proposal for a United Nations Organization was made at a meeting of representatives of China, the Soviet Union, the United Kingdom and the United States at Dumbarton Oaks, UK, in August-September 1944. This was followed by the United Nations Conference on International Organization, held at San Francisco from 25 April-26 June 1945. The United Nations Charter was signed on 26 June 1945.

[141] See chapter 2, 2.5

The United Nations officially came into existence on 24 October 1945 with the Charter ratified by China, France, the Soviet Union, the United Kingdom, and the United States and by a majority of other signatories.

Hence The United Nations was established in 1945, where in one main purpose was "to respect for human rights and for fundamental freedoms for all without distinctions to race, sex, language and religion." The first international codification of human rights took place in the aftermath of World War II, with the adoption by the United Nations' General Assembly of the Universal Declaration of Human rights (UDHR) on 10 December, 1948. This document was intended to set a common standard of achievement for all nations. The rights and freedoms contained in UDHR establish guidelines to which all UN member states should aspire and adhere, and which people everywhere should strive to achieve.

However, by the time that States were prepared to turn the provisions of the declaration into binding law, the Cold War had overshadowed and polarized human rights into two separate categories. The West argued that civil and political rights had priority and that economic and social rights were mere aspirations. The Eastern bloc argued to the contrary that rights to food, health and education were paramount and civil and political rights secondary.

Hence two separate treaties were created in 1966 – the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) to strengthened the UDHR. The treaties contained legal obligations for the states that ratify them.

These covenants and the UDHR are referred to collectively as the International Bill of Rights from which has evolved most of the basic principles contained in the body of international human rights today.

Since the International Bill of Rights came into effect, there have been numerous international human rights instruments that clarify and refine the specifics of human rights norms in particular subject areas. When a State ratifies or accedes to a human rights convention, it becomes known as a State party to the Convention and is thereafter legally bound (subject to any reservations it has entered) to the obligations imposed by the Convention. State party obligations describe what a State must do, and must not do, in order to ensure that the population of the country is able to enjoy the rights set out in the convention. States parties are expected to adopt or to modify domestic legislation and policies so that they conform to the human rights standards set out in the covenants, conventions or protocols.

These human rights treaties guarantee specific rights to individuals, they establish state obligations corresponding with those rights and they create mechanisms to monitor states' compliance with their obligations and allow individuals to seek redress for violation of their rights. Hence these instruments that encapsulate human rights are:

- International human rights treaties are binding on governments that ratify them;
- Declarations are non-binding, although many norms and standards enshrined therein reflect principles which are binding in customary international law;
- United Nations conferences generate nonbinding consensual policy documents, such as declarations and programmes of action.

The internationally accepted standards and norms set out in these instruments are to be used in conjunction with existing national laws on right to health. It should be promoted by helping to turn legal

standards into health-related policies and programmes at the national level and for guiding their own health-related work.

Human Rights relating to health are set out in basic human rights treaties include:

- The human right to the highest attainable standard of physical and mental health, including reproductive and sexual health.
- The human right to equal access to adequate health care and health-related services, regardless of sex, race, or other status.
- The human right to equitable distribution of food.
- The human right to access to safe drinking water and sanitation.
- The human right to an adequate standard of living and adequate housing.
- The human right to a safe and healthy environment.
- The human right to a safe and healthy workplace, and to adequate protection for pregnant women in work proven to be harmful to them.
- The human right to freedom from discrimination and discriminatory social practices, including female genital mutilation, prenatal gender selection, and female infanticide.
- The human right to education and access to information relating to health, including reproductive health and family planning to enable couples and individuals to decide freely and responsibly all matters of reproduction and sexuality.
- The human right of the child to an environment appropriate for physical and mental development.

Selected excerpts from the international human rights treaties relating to right to health are reproduced below:

**5.13 The Universal Declaration of Human Rights**, under Article 25 lays down "Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing, medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, Motherhood, old age or other lack of livelihood in circumstances beyond his control. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock shall enjoy the same social protection."

**5.14 The International Covenant on Civil and Political Rights** (ICCPR), 1966 also sets certain human rights to health. Article 6 of the covenant lays down that "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life." Right to life includes everything which makes life meaningful and worth including that of health facilities to be provided by the state parties. Article 7 says that "No one shall be subjected to torture or to cruel, inhumane or degrading treatment or punishment." Particularly this article focuses that no one shall be subjected without his free consent to medical or scientific experimentation.

**5.15 International Covenant on Economic, Social and Cultural Rights**, 1966 lays down a number of human rights which directly protects the health of the people. The covenant under Article 7 lays recognizes the right of everyone to enjoy just and favorable conditions of work which ensure safe and healthy working conditions. This aspect is very much important because if the work place is the atmosphere where a person spends most hours. They have to be just and favorable in order to protect right to health. Article 11 provides for a right to an adequate standard of living. This is vital because a standard of living includes health facilities availed by an individual. Article 12 is most relevant with the human right to health and it

provides for the "the enjoyment of the highest attainable standard of physical and mental health. It further provides for the steps to be taken to achieve the full realization of this right which shall include the reduction of infant mortality and for the healthy development of the child; the improvement of all aspects of environmental and industrial hygiene; the prevention, treatment and control of epidemic, endemic, occupational and other diseases; the creation of conditions which would assure to all medical service and medical attention in the event of sickness."

As mentioned earlier that after the international bill of rights documents were being made a number of conventions were followed which focused on the human rights of various groups.

**5.16 Convention on the Elimination of All Forms of Discrimination against Women, 1979,** which specifically laid women's human rights. Article 10 of the Convention lays down an obligation to ensure to women access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning. Article 12 focuses on human right to health it compels the States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning. It further ensures to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Article 14 obligates the State parties to take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure

to such women the right; to have access to adequate health care facilities, including information, counselling and services in family planning and to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

**5.17 Convention on the Elimination of All Forms of Racial Discrimination 1965** under Article 5 ordains the "States Parties undertake to eliminate racial discrimination and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, the right to public health, medical care, social security and social services"

**5.18 The Convention on the Rights of the Child, 1989** under Article 24 reads as "States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health...." in order to pursue full implementation of this right the State Parties are obligate to take the following measures:

(a) To diminish infant and child mortality;
(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
(c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
(d)To ensure appropriate prenatal and postnatal health care for mothers;
(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in

the use of basic knowledge of child health and nutrition, the advantages of breast-feeding, hygiene and environmental sanitation and the prevention of accidents;
(f) To develop preventive health care guidance for parents, and family planning education and services.

Further it lays down that effective and appropriate measures should be taken to abolish traditional practices prejudicial to the health of children. Article 11 provides to combat the illicit transfer and non-return of children abroad. Article 19 compels the state parties to take legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

It also makes provision for the disabled child under Article 23 which recognizes that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community. Article 25 makes provision in respect of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement. Article 27 recognizes the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. Article 32 recognizes the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

Article 33 is to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances. Article 34 undertakes to protect the child from all forms of sexual exploitation and sexual abuse.

**5.19 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1987** (Torture Convention or CAT) defines the word torture so as to protect the health of the human beings. It lays down that the term 'torture' includes any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

**5.20 The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others** is also signed and ratified by a number of countries. The convention was entered in to force on 25th July 1951.

**5.21 The Standard Minimum Rules for the Treatment of Prisoners** which was Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955 lays down certain principles relating to the treatment of prisoners which directly affect the health of the prisoners. These principles are regarding :-

- Sleeping accommodation to meet all requirements of health, with due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation
- Large windows for the entrance of fresh air;
- Adequate bathing and shower installations
- Adequate sanitary installations
- Provision of water and with such toilet articles as is necessary for health and cleanliness.
- Clothing suitable for the climate and adequate to keep him in good health
- Food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.
- Specialist treatment for Sick prisoners
- The services of a qualified dental officer
- In women's institutions there shall be special accommodation for all necessary pre-natal and post-natal care and treatment.
- At least one qualified medical officer who should have some knowledge of psychiatry. The medical services should be organized in close relationship to the general health administration of the community or nation. They shall include a psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality.
- The medical officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures; the segregation of prisoners suspected of infectious or contagious conditions; the noting of physical or mental defects which might hamper rehabilitation, and the determination of the physical capacity of every prisoner for work.

- The medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed.
- The medical officer shall report to the director whenever he considers that a prisoner's physical or mental health has been or will be injuriously affected by continued imprisonment or by any condition of imprisonment.
- The medical officer shall regularly inspect and advise the director upon:
    a. The quantity, quality, preparation and service of food;
    b. The hygiene and cleanliness of the institution and the prisoners;
    c. The sanitation, heating, lighting and ventilation of the institution;
    d. The suitability and cleanliness of the prisoners' clothing and bedding;
    e. The observance of the rules concerning physical education and sports, in cases where there is no technical personnel in charge of these activities.

The director shall take into consideration the reports and advice that the medical officer submits and, in case he concurs with the recommendations made, shall take immediate steps to give effect to those recommendations; if they are not within his competence or if he does not concur with them, he shall immediately submit his own report and the advice of the medical officer to higher authority.

## 5.22 United Nations Rules for the Protection of Juveniles Deprived of their Liberty was adopted by General Assembly resolution 45/113 of 14 December 1990

The rules define a juvenile as every person under the age of 18. the relevant rules for the protection of health are provide under the heads *Physical environment and accommodation, medical care and notification of illness, injury or death the guardian.*

***Physical environment and accommodation***

There rules lay down that the Juveniles deprived of their liberty have the right to facilities and services that meet all the requirements of health and human dignity. Further it provides that the design of detention facilities for juveniles and the physical environment should be in keeping with the rehabilitative aim of residential treatment, with due regard to the need of the juvenile for privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure-time activities. The design and structure of juvenile detention facilities should be such as to minimize the risk of fire and to ensure safe evacuation from the premises. There should be an effective alarm system in case of fire, as well as formal and drilled procedures to ensure the safety of the juveniles. Detention facilities should not be located in areas where there are known health or other hazards or risks.

Sleeping accommodation should normally consist of small group dormitories or individual bedrooms, while bearing in mind local standards. During sleeping hours there should be regular, unobtrusive supervision of all sleeping areas, including individual rooms and group dormitories, in order to ensure the protection of each juvenile. Every juvenile should, in accordance with local or national standards, be provided with separate and sufficient bedding,

which should be clean when issued, kept in good order and changed often enough to ensure cleanliness.

Sanitary installations should be so located and of a sufficient standard to enable every juvenile to comply, as required, with their physical needs in privacy and in a clean and decent manner.

To the extent possible juveniles should have the right to use their own clothing. Detention facilities should ensure that each juvenile has personal clothing suitable for the climate and adequate to ensure good health, and which should in no manner be degrading or humiliating. Juveniles removed from or leaving a facility for any purpose should be allowed to wear their own clothing.

Every detention facility shall ensure that every juvenile receives food that is suitably prepared and presented at normal meal times and of a quality and quantity to satisfy the standards of dietetics, hygiene and health and, as far as possible, religious and cultural requirements. Clean drinking water should be available to every juvenile at any time.

The provisions relating to ***Medical care*** lays down that:

Every juvenile shall receive adequate medical care, both preventive and remedial, including dental, ophthalmologic and mental health care, as well as pharmaceutical products and special diets as medically indicated. All such medical care should, where possible, be provided to detained juveniles through the appropriate health facilities and services of the community in which the detention facility is located, in order to prevent stigmatization of the juvenile and promote self-respect and integration into the community.

Every juvenile has a right to be examined by a physician immediately upon admission to a detention facility, for the purpose of recording any evidence of prior ill-treatment and identifying any physical or mental condition requiring medical attention.

The medical services provided to juveniles should seek to detect and should treat any physical or mental illness, substance abuse or other condition that may hinder the integration of the juvenile into society. Every detention facility for juveniles should have immediate access to adequate medical facilities and equipment appropriate to the number and requirements of its residents and staff trained in preventive health care and the handling of medical emergencies. Every juvenile who is ill, who complains of illness or who demonstrates symptoms of physical or mental difficulties, should be examined promptly by a medical officer.

Any medical officer who has reason to believe that the physical or mental health of a juvenile has been or will be injuriously affected by continued detention, a hunger strike or any condition of detention should report this fact immediately to the director of the detention facility in question and to the independent authority responsible for safeguarding the well-being of the juvenile.

A juvenile who is suffering from mental illness should be treated in a specialized institution under independent medical management. Steps should be taken, by arrangement with appropriate agencies, to ensure any necessary continuation of mental health care after release.

Juvenile detention facilities should adopt specialized drug abuse prevention and rehabilitation programmes administered by qualified personnel. These programmes should be adapted to the age, sex and other requirements of the juveniles concerned, and detoxification facilities and services staffed by trained personnel should be available to drug- or alcohol-dependent juveniles.

Medicines should be administered only for necessary treatment on medical grounds and, when possible, after having obtained the informed consent of the juvenile concerned. In particular, they must not be administered with a view to eliciting information or a

confession, as a punishment or as a means of restraint. Juveniles shall never be testers in the experimental use of drugs and treatment. The administration of any drug should always be authorized and carried out by qualified medical personnel.

The relevant provisions of ***Notification of illness and injury*** are as follows:

The family or guardian of a juvenile and any other person designated by the juvenile have the right to be informed of the state of health of the juvenile on request and in the event of any important changes in the health of the juvenile. The director of the detention facility should notify immediately the family or guardian of the juvenile concerned, or other designated person, in case of death, illness requiring transfer of the juvenile to an outside medical facility, or a condition requiring clinical care within the detention facility for more than 48 hours. Notification should also be given to the consular authorities of the State of which a foreign juvenile is a citizen.

A juvenile should be informed at the earliest possible time of the death, serious illness or injury of any immediate family member and should be provided with the opportunity to attend the funeral of the deceased or go to the bedside of a critically ill relative.

**5.23 Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

This was Adopted by General Assembly resolution 37/194of 18 December 1982 and laid down certain principles to be followed. *Principle 1 lays down that* Health personnel, particularly physicians, charged with the medical care of prisoners and detainees have a duty to provide them with protection of their physical and mental health

and treatment of disease of the same quality and standard as is afforded to those who are not imprisoned or detained.

**5.24 Declaration on the Rights of Mentally Retarded Persons was proclaimed by General Assembly resolution 2856 (XXVI) of 20 December 1971**

The Declaration on the Rights of Mentally Retarded Persons calls for national and international action to ensure that it will be used as a common basis and frame of reference for the protection of the following rights of mentally retarded persons:

- same rights as that of other human beings,
- right to proper medical care and physical therapy
- right to economic security and to a decent standard of living
- right to perform productive work or to engage in any other meaningful occupation
- right to live with his own family or with foster parents
- right to a qualified guardian
- right to protection from exploitation, abuse and degrading treatment

**5.25 Principles for the protection of persons with mental illness and the improvement of mental health care was Adopted by General Assembly resolution 46/119 of 17 December 1991**

The principles have to be applied without discrimination of any kind. Certain rights have been laid down for persons with mental illness like:

- right to the best available mental health care
- right to be treated with humanity and respect for the inherent dignity of the human person.

- right to protection from economic, sexual and other forms of exploitation
- right against discrimination
- right to exercise all civil, political, economic, social and cultural rights as recognized under various international documents pertaining to human rights
- rights of protection of minors
- right to live and work, as far as possible, in the community.
- the right to be treated and cared for, as far as possible, in the community
- right to receive such health and social care as is appropriate to his or her health needs,
- right to be protected from harm
- right to be treated in the least restrictive environment
- right to be informed consent before treatment
- right to have the notice of his rights

**5.26 Universal Declaration on the Eradication of Hunger and Malnutrition was Adopted on 16 November 1974 by the World Food Conference convened under General Assembly resolution 3180 (XXVIII) of 17 December 1973; and endorsed by General Assembly resolution 3348 (XXIX) of 17 December 1974**

It was declare that the elimination of hunger and malnutrition, is included as one of the objectives in the United Nations Declaration on Social Progress and Development, and the elimination of the causes that determine this situation are the common objectives of all nations;

A need to solve the food problem was emphasized and the state parties were made to make all efforts to eliminate the widening gaps which today separate developed and developing countries and to bring about a new international economic order.

The right of every man, woman and child to be free from hunger and malnutrition in order to develop fully and maintain their physical and mental faculties has been proclaimed.

### 5.27 Declaration on the Rights of Disabled Persons was Proclaimed by General Assembly resolution 3447 (XXX) of 9 December 1975

The term "disabled person" is defined as any person unable to ensure by himself or herself, wholly or partly, the necessities of a normal individual and/or social life, as a result of deficiency, either congenital or not, in his or her physical or mental capabilities.

The following rights of disabled persons were proclaimed:

- enjoyment of all human rights without any discrimination or distinction'
- right to respect for their human dignity
- same civil and political rights as other human beings
- right to become self-reliant as possible
- disabled persons are entitled to the measures designed to enable them to become as self-reliant as possible.
- right to medical, psychological and functional treatment,
- right to economic and social security and to a decent level of living
- right to live with their families or with foster parents
- right against exploitation and all treatment of a discriminatory, abusive or degrading nature
- right to avail qualified legal aid

**5.28 Convention relating to the Status of Refugees was adopted on 28 July 1951 by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly resolution 429 (V) of 14 December 1950**

Different Rights of refugees were laid down including

- Right against discrimination
- Favourable treatment as regards housing
- Equal protection of labour legislations and social security which includes remuneration, allowances, holidays with pay, minimum age of employment, overtime arrangements restrictions on home work, minimum age of employment, apprenticeship and training, women's work and the work of young persons, the enjoyment of the benefits of collective bargaining.
- Social security benefits in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national laws or regulations, is covered by a social security scheme

**5.29 Regional human rights instruments**

Apart from the above international instruments there are certain regional human rights instruments which directly or indirectly protect right to health.

Under the **American system** the following documents have been there:

• American Declaration of the Rights and Duties of Man (1948)
• American Convention on Human Rights (1969);

- Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights — 'Protocol of San Salvador' (1988),
- Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women — 'Convention of Belém Do Pará.

**The African System has the following instruments:**

- African Charter on Human and Peoples' Rights (1981),
- African Charter on the Rights and Welfare of the Child (1990),

Under the **European System the following documents are present:**

- European Social Charter (1961), and the Revised Charter, (1996),
- European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) and it's Twelve Protocols (1952-2000) [as amended by Protocol No.11];
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment; and
- European Convention on Human Rights and Biomedicine and its Protocols (1997).

***European Union (EU):***

- Charter of Fundamental Rights of the European Union (2000)

It is noteworthy that there is no regional human rights system in place in Asia. Hence we find that several human rights instruments have been signed and ratified by several countries. India being the signatory of almost all the international instruments has made ample provisions in its legislations to protect and promote human rights.

It has been very rightly said that

*'when we speak of human rights, we must never forget that we are laboring to save the individual man, woman or child from violence,*

*abuse and injustice...Freedom from want and freedom from fear go hand in hand.'* [142]

## 5.30 WORLD HEALTH ORGANISATION

### 5.30.1 Health Organization of the League of Nations

After the First World War (1914-1918), when the League of Nations and its Health Organization were formed, there was a proposal to establish a single international health organization. However, negotiations broke down and two international health organizations remained. The League of Nations Health Organization carried out activities covering a wide field of health issues.

### 5.30.2 Second World War and health in the Region

Before Second World War, most of the countries in the South-East Asia Region were under colonial rule. India, Burma (now Myanmar) and Ceylon (now Sri Lanka) were British colonies. Bangladesh was then a part of British India. By a treaty, Bhutan had agreed to accept British guidance in its external affairs. Nepal managed to avoid becoming a colony. So did Thailand. Maldives became a British Protectorate in 1887. The whole of the Indonesian archipelago was part of the Dutch empire. Korea had been annexed by Japan in 1910 and remained a colony till after the Second World War. Mongolia was a state of Manchu China till the early twentieth century. In 1921, after a revolution, it became an independent state known as the Mongolian People's Republic.

The general level of health in the colonies, protectorates, as well as independent countries in the Region was poor. The hot and humid climate of the tropics in which most of the countries are situated, created a favourable environment for most of the infectious organisms of various diseases to survive and thrive. Coupled with this was the widespread poverty, leading to illiteracy, poor housing conditions,

[142] Kofi Annan, UN Secretary General, on human rights being indivisible

overcrowding and under nutrition or malnutrition. Epidemics of smallpox, cholera, plague and malaria sporadically swept through the populations whose resistance to disease was already low. Mortality from these epidemics was naturally high. Medical care was limited to a small section of the population.

The health of the people in a number of countries, which was already not satisfactory, had considerably deteriorated by the end of the war. Food shortages resulting in undernutrition and malnutrition, lack of health and medical services and acute shortage of medicines adversely contributed to this situation. Malaria was widespread in all countries. So were tuberculosis, venereal diseases and yaws. Infant mortality was also very high in most countries.

### 5.30.3 The word 'Health' in the UN Charter

Dr. De Paula Souza and the Brazilian delegation to the United Nations conference must be given the credit for having insisted that the concept of 'health' be included in the Charter of the United Nations[143]. Its inclusion in this basic document represents an acknowledgement that social, economic and even political progress was conditional to improvement in the state of the health of the people. Dr. Szeming Sze, one of the co-authors of the Joint Declaration by the delegations of China and Brazil, relates this story in his personal memoir on the origins of the World Health Organization:

Before the United Nations Conference on International Organization opened on 25 April 1945, the US and UK delegates had consulted each other and had agreed that no questions in the field of health would be included on the conference agenda. Dr Szeming Sze from the Chinese delegation, Dr de Paula Souza from the Brazilian delegation and Dr Karl Evang from the Norwegian delegation, not knowing of the US-UK consultations, agreed that the question of establishing a new

[143] see United Nations Charter, Articles 57 and 62

international health organization should be put on the conference agenda. Since China was one of the four sponsoring powers of the Conference, it was thought that Dr Sze should get the Chinese delegation to initiate the proposal for a proposed amendment to the draft Charter which had been prepared at Dumbarton Oaks. Unfortunately, there was not sufficient time left for submission of an amendment. So another approach was tried in the form of a resolution for Commission II, Committee 3, of which Sir Ramaswami Mudaliar of India was the Chairman, calling for an international health conference of Member States which would have as its aim the establishment of an international health organization. The draft resolution was formally submitted as a joint proposal of the Chinese and Brazilian delegations. The resolution got bogged down in the Committee. By another twist of fate, Dr Sze one day found himself sitting next to Mr. Alger Hiss, Secretary-General of the Conference, at an official dinner. Dr Sze asked Mr. Hiss for his advice, who suggested rewriting the resolution in the form of a declaration, which would not be considered as being under the same interdiction as a resolution. This advice turned out to be very sound, and with overwhelming support the Declaration was adopted. This was the beginning of the future World Health Organization

### 5.30.4 The 'Magna Carta' of Health

The Constitution of the World Health Organization has been called the 'Magna Carta' of health. In its final form, it constitutes one of the most powerful instruments for international collaboration to enable man to improve his condition of life.

### 5.30.5 Constitution of the World Health Organization

The States Parties to this Constitution declare, in conformity with the Charter of the United Nations, that the following principles are basic to the happiness, harmonious relations and security of all peoples:

- Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.
- The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition.
- The health of all peoples is fundamental to the attainment of peace and security and is dependent upon the fullest co-operation of individuals and States.
- The achievement of any State in the promotion and protection of health is of value to all.
- Unequal development in different countries in the promotion of health and control of disease, especially communicable disease, is a common danger.
- Healthy development of the child is of basic importance; the ability to live harmoniously in a changing total environment is essential to such development.
- The extension to all peoples of the benefits of medical, psychological and related knowledge is essential to the fullest attainment of health.
- Informed opinion and active co-operation on the part of the public are of the utmost importance in the improvement of the health of the people.
- Governments have a responsibility for the health of their peoples, which can be fulfilled only by the provision of adequate health and social measures.

Accepting These Principles, and for the purpose of co-operation among themselves and with others to promote and protect the health of all peoples, the Contracting Parties agreed to the present Constitution and established the World Health Organization as a specialized agency within the terms of Article 57 of the Charter of the United Nations on 12 January 1948.

### 5.30.6 Concept of 'Health' in the Bill of Human Rights

The United Nations Commission on Human Rights, which met in Geneva in December 1947, incorporated in the Charter of Human Rights the following article:

"Everyone, without distinction as to economic and social conditions, has the right to the preservation of his health through the highest standards of food, clothing, housing and medical care which the resources of the State and community can provide. The responsibility of the State and community for the health and safety of its people can be fulfilled only by provision of adequate health and social measures."

### 5.30.7 World Health Day

The First World Health Assembly in 1948 decided that World Health Day should be celebrated every year on 22 July in commemoration of the signing of the WHO Constitution on that date in 1946 by 61 governments at the International Health Conference in New York. The Second World Health Assembly, however, considered that schools and other educational institutions worldwide could and should act as important focal points for the observance of this day. Since schools in most countries were having vacations in July, they could not observe the occasion. The Assembly, therefore, chose 7 April, the day the WHO Constitution came into force, as a suitable alternative. The Assembly resolved that, beginning 1950 and each year thereafter, World Health Day should appropriately be celebrated on 7 April by all Member States.

### 5.31 Alma Ata Declaration

The World Health Organisation and United Nations Children Fund organised an International conference on "Health for All and Primary Health Care" at Alma Ata, Kazakistan (CIS) from 6th to 12th September 1978. It proclaimed the need for urgent action by all-the governments, health and development workers, and the world community to protect and promote the health of people of the world. The conference reaffirmed that health, which is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, is a fundamental human right. The attainment of the highest possible level of health is an important, world wide, social goal, whose realisation requires the action of many other social and economic sectors in addition to the health sector.

It defined Primary health care briefly as:

i. Essential,
ii. Available and easily accessible,
iii. Acceptable to community,
iv. Affordable by the community and the country,
v. Takes care of all the major health problems of the community,
vi. Effective,
vii. Comprehensive, to encompass preventive, curative, promotive and rehabilitative services,
viii. Backed and supported by the existing health structure at all levels, and
ix. Provided with active participation of the community.

The Alma Ata declaration gave an insight into the understanding of primary health care. It viewed health as an integral part of socioeconomic development of the country. It provided the most holistic understanding to health and the framework that States needed to pursue to achieve the goals of development. The Declaration recommended that primary health care should include at least: education concerning prevailing health problems and methods of

identifying, preventing and controlling them; promotion of food supply and proper nutrition, and adequate supply of safe water and basic sanitation; maternal and child health care, including family planning; immunization against major infectious diseases; prevention and control of locally endemic diseases; appropriate treatment of common diseases and injuries; promotion of mental health and provision of essential drugs. It emphasized the need of strong first-level care with strong secondary and tertiary level care linked to it. It called for an integration of preventive, promotive, curative and rehabilitative health services that had to be made accessible and available to the people, and this was to be guided by the priniciples of universality, comprehensiveness and equity.

It also recognized the need for a multisectoral approach to health and clearly stated that primary health care had to be linked to other sectors. At the same time, the Declaration emphasized on complete and organized community participation, and ultimate self-reliance with individuals, families and communities assuming more responsibility for their own health, facilitated by support from groups such as the local government, agencies, local leaders, voluntary groups, youth and women's groups, consumer groups, other non-governmental organizations, etc. The Declaration affirmed the need for a balanced distribution of available resources.[144]

Subsequent to the Alma Ata Declaration many member countries of the World Health Organisation declared "Health for all by the year 2000 AD" as their national health policy objective. To fulfil their objective huge funds were allocated for the establishment of health centres and engaging health personnel. But due to of facilities like supply of drugs, inadequate health workers etc people lost faith in the usefulness of these health posts. Being dissatisfied they commuted long distances to seek medical aid at better equipped and staffed

[144] WHO 1978

hospitals and clinics located in the larger towns. When satisfactory transportation was not available, people were forced to seek help from folk remedies or indigenous practitioners.

The goal of Health for All by 2000 has not been achieved. Factors responsible for this failure are:-

- Biased and poor socio-economic development in the regions where it was needed most,
- Discriminatory policies due to age, gender and ethnicity thus preventing access to health care surveillance.

In order to realise the goals of "Health for All in the 21st century", WHO has come forward with an outline of visions, goals and objectives and targets to achieve it in the very near future. The implementation of new global health policy "Health for all in 21st century" will be guided by global targets. Specific indicators will be developed to assess progress at all levels.

**5.32 Conclusion**

We find that the Indian Parliament has addressed a number of issues and has made laws in respect of various aspects of health. The legislature has been prompt enough to address newer and upcoming issues in the health sector. Since independence health has been given a pivotal place by the Indian parliament and the same continues to be so as on date. More importantly the Government's capacity to develop national health policy and legislation that conforms to human rights obligations is strengthened with the implementation of progressive legislations. The only uncovered area till now has been the recognition of health as a human right through specific legislation. Hopefully the same has been attempted to be fulfilled by the Parliament with the introduction of National Health Bill.

Health has to be promoted from the human rights perspective and the same has to be borne in the minds of each and every individual involved in the health care sector. This is only possible when the

legislations are made with a view to promote and protect health from a human right perspective. We find that the legislations in India fail to focus and promote health from human rights approach.

We have seen that at the international level too, health is promoted from a human rights perspective. Various international conventions, documents and treaties are signed and ratified by the governments. Governments decide freely whether or not to become parties to a human rights treaty. Once this decision is made, however, there is a commitment to act in accordance with the provisions of the treaty concerned. Steps towards the full realization of rights must be deliberate, concrete and targeted as clearly as possible towards meeting a government's human rights obligations. All appropriate means, including the adoption of legislative measures and the provision of judicial remedies, as well as administrative, financial, educational and social measures, must be used in this regard.

India being a signatory to various human rights instruments has implemented the same into its legislations and policies positively. The principle of progressive realization of human rights imposes an obligation upon the State Parties to move as expeditiously and effectively as possible towards the goal set. Any deliberately retrogressive measures require the most careful consideration and need to be fully justified by reference to the totality of the rights provided for in the human rights treaty concerned and in the context of the full use of the maximum available resources.

To conclude it can be said that health legislation can be an important vehicle towards ensuring the promotion and protection of the right to health. In the design and review of health legislation, human rights provide a useful tool to determine its effectiveness and appropriateness in line with both human rights and public health goals.