CHAPTER - III
HEALTH EGISLATIONS
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(A) INTRODUCTION

Human resources are central to all public health systems and a considerable share of resources allocated to public health goes towards them. Law has had important contributions to several public health achievements. The reach of public health law in India is as broad as public health itself and both have expanded to meet the needs of society. If we look at public health legislations, though there are several legislative tools in the country it does not have any composite public health act covering the entire country and defining public health. Public health law defines the legal powers and duties of the State, to ensure conditions for people to be healthy with collaboration from multiple stakeholders. The preservation of public health is among the most important goals of governments and law can serve as an effective tool not only at the individual level but also at a larger community level. Law, therefore, emerges as a tool in public health to be used, where appropriate and after due process, in promoting and protecting public health goals.

Eminent scholar Frank Grad observed that public health law does not come in a neat legislative package, but consists of many types of legislations which have little in common except for the benign purpose of advancing public health. In addition to the Constitution, there are five main instruments in the Indian legal system that deal with regulation of health care and safeguarding individuals against medical negligence. These are: Law of Torts, Consumer Protection Act, 1986, Indian Penal Code, 186, Indian Medical Council Act, 1956, Indian Contract Act, 1872.

(B) PUBLIC HEALTH LEGISLATIONS

1. Indian Penal Code, 1860

The notion right to health has found a place under the law of public nuisance under a statute of Indian penal code 1860. 262 A person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right.263 This act also prohibits the action which is supposed to spread infection of disease dangerous to life. Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.264 It also extends to the malignant act likely to spread infection of disease dangerous to life. Whoever malignantly does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.265

Indian penal code also sets rule for the disobedience of the act. Whoever knowingly disobeys any rule made and promulgated by the Government for putting any vessel into a state of quarantine, or for regulating the intercourse of vessels in a state of quarantine with the shore or with other vessels, for regulating the intercourse between places where an infectious disease prevails and other places, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.266 Punishment for the Adulteration of food or drink intended for sale goes on to imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with

262 The Indian Penal Code, 1860.
263 Ibid, section 268.
264 Ibid, section 269.
265 Ibid, Section 270.
266 Ibid, section 271.
both. Sale of noxious food or drink, and adulterated drugs shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both. Healthy atmosphere is the need of the time. Anyone who makes it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way shall be punished with fine which may extend to five hundred rupees.

Any Negligent conduct with respect to poisonous substance in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. Negligent conduct with respect to fire or combustible matter and explosive substances which may endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. Negligent conduct with respect to animal which is in possession of any person and who is sufficient to guard against any probable danger to human life, or any probable danger of grievous hurt from such animal, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

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267 Ibid, section 272.
268 Ibid, Sections 273, 275.
269 Ibid, Section 277.
270 Ibid, Section 278.
271 Ibid, Section 284.
272 Ibid, Sections 285 and 286
273 Ibid, Section 289.
2. The Cigarettes (Regulations of Production, Supply and Distribution) Act, 1975

The cigarettes (regulations of production, supply and distribution), act 1975 provides for certain restrictions in relation to trade and commerce in, and production supply and distribution of, cigarettes and for matters connected therewith or incidental thereto.\textsuperscript{274} No person shall, directly or indirectly, produce supply or distribute cigarettes unless every package of cigarettes produced supplied or distributed by him bears thereon, or on its label, the specified warning. No person shall carry on trade or commerce in cigarettes unless every package of cigarettes distributed, sold or supplied by him bears thereon, on its label, the specified warning. No person shall import cigarettes for distribution or supply for a valuable consideration or for sale unless every package of cigarettes so imported by him bears thereon, or on its label, the specified warning.\textsuperscript{275}

The Specified warning on a package of cigarette shall be legible and prominent to be boldly and clearly presented in distinct contrast to the other type, lettering or graphic material used on the package or its label and shall be printed, painted or inscribed on the package in a colour which contrasts conspicuously with the background of the package or its label. Every package containing cigarettes shall be so packed as to ensure that the specified warning appearing thereon, or on its label, is, before the package is opened, visible to the consumer.\textsuperscript{276} No person shall advertise for the distribution, sale or supply of cigarettes, and no person shall take part in the publication of any such advertisement, unless the specified warning is included in such advertisement. Every specified warning included in an advertisement shall be conspicuous, legible and prominent.\textsuperscript{277} No person shall, whether directly or indirectly, import, for the purpose of carrying on any trade or commerce in cigarettes, any documents article or thing, containing any advertisement which violates the provisions contained in sub-section (1) or sub-section (2).\textsuperscript{278} The disobedient to the act leads to penalty. Any person who carries on any trade or commerce in, or who

\begin{itemize}
\item \textsuperscript{274} Preamble to the Cigarettes (Regulations of Production, Supply And Distribution) Act 1975.
\item \textsuperscript{275} Ibid, Section 3(1) to (3).
\item \textsuperscript{276} Ibid, Section 4(1) to (2).
\item \textsuperscript{277} Ibid, Section 5(1) to (2).
\item \textsuperscript{278} Ibid, Section 5(3).
\end{itemize}
produces, supplies or distributes, cigarettes, shall, if any package of such cigarettes does not contain the specified warning, be liable to pay a penalty not exceeding five times the value of the package of cigarettes or one thousand rupees, whichever is more, whether or not such package of cigarettes has been confiscated or is available for confiscation.\footnote{Ibid, Section 12.}

3. The Delhi Prohibition of Smoking and Non-Smokers Health Protection Act, 1996

About 8 lakh persons die in India every year due to their tobacco habit. These deaths are due to hazardous effects of tobacco consumption in any form like smoking beedi, cigarettes and hukka though pipe etc. leading to cancer of lungs, larynx, oropharynx, urinary bladder, kidneys, pancreas, coronary heart diseases/peripheral vascular diseases etc. The smoke exhaled by smokers is more hazardous to non-smokers. All these deaths and huge expenditure on treatment of these diseases are preventable and can be utilized in overall socio economic development of our country. Keeping in view of the above scenario, Delhi Govt. has enforced the Delhi Prohibition of Smoking and Non Smokers Health Protection Act in whole of Delhi with effect from 26.11.97.\footnote{Available at <www.delhi.gov.in/wps/wcm/connect/.../Medical+WU89.pdf?MOD> last visited on 23\textsuperscript{rd} November 2010.} According to Section 10 of the Act, the owner or manager or in-charge of affairs of every place of public work or use shall display and exhibit a board at a conspicuous place or places in and outside the premises visited or used by general public prominently stating that the place is a "no smoking zone" and that "smoking is an offence."\footnote{Available at <http://www.expressindia.com/latest-news/Display-no-smoking-board-or-pay-a-fine-Delhi-Police/271671/> last visited on 24\textsuperscript{th} November 2010.} Any person, who contravenes the provision, shall be punished with a fine which may extend to Rs 100 and in case of second or subsequent offence, shall be slapped with a minimum fine of Rs 200, but which may extend up to Rs 500.\footnote{Ibid.}
4. The Epidemic Act, 1897

Under the realm of disease control and medical care, various laws were enacted. One of these includes the Epidemic Disease Act of 1897, which provides for prevention of dangerous epidemic diseases. This act came into being on 4th February 1897. This act was enacted to provide for the better prevention of the spread of dangerous epidemic diseases by empowering the government to take special measures and prescribe regulations as to dangerous epidemic diseases. When at any times the government thinks fit that the ordinary provisions of the law for the time being in force are insufficient for the purpose, may take, or require or empower any person to take, such measures and, by public notice prescribe such temporary regulations to be observed by the public or by any person or class of persons as it shall deem necessary to prevent the outbreak of such disease or the spread thereof, and may determine in what manner and by whom any expenses incurred including compensation if any shall be defrayed. In particular and without prejudice to the generality of the foregoing provisions, the state government may take measures and prescribe regulations for the inspections of persons travelling by railways or otherwise and the segregation, in hospital, temporary accommodation or otherwise, of persons suspected by the inspecting officer of being infected with any such disease.


This act was passed to control the health hazards of unsanitary disposal of latrines and unhygienic urban and rural landscape of the country. This act provides for the prohibition of employment of manual scavengers as well as construction or continuance of dry latrines and for the regulation of construction and maintenance of water-seal latrines and for matters connected therewith or incidental thereto. It prohibits the inhuman and derogatory practice of manual scavengers. It says Subject

283 Preamble to the Epidemic Act, 1897.
to sub-section (2) and the other provisions of this Act, with effect from such date and in such area as the State Government may, by notification, specify in this behalf, no person shall- (a) engage in or employ for or permit to be engaged in or employed for any other person for manually carrying human excreta; or (b) construct or maintain a dry latrine. The state government should also take certain measures for the protection and improvement of the environment or public health in that area and provide adequate facilities for the use of water-seal latrines in that area.

6. HIV/AIDS Bill- 2009

The legislation has been drafted with two main objectives: firstly to protect the rights of those living with and affected by HIV/AIDS and secondly to prevent and control the spread of HIV/AIDS. This disease has thrown up such vast inequities, violent abuse and widespread stigma that human rights have been trampled on in a manner rarely witnessed in the public health sphere. However, these rights also need to be protected to address public health imperatives: by using law as an instrument of social change and protecting the rights of those infected and most vulnerable to HIV/AIDS, an environment can be created whereby stigma, violence and inequity will be lessened. This will bring the problem into the open and make it easier to control.

The bill furthers the right to health as recognized in our constitution and puts the responsibility on the state to provide free of cost comprehensive HIV treatment including diagnostic, ARVs and nutritional supplements. The bill also recognizes the right of children and young persons to access healthcare services and information in their own right. This is particularly important for street children and those living on their own. It also recognizes community-based alternatives to institutionalization for vulnerable and affected children. Similarly, in many other spheres, the Bill ensures

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287 Ibid, Section 3(1).
288 Ibid, Section 3(2).
290 Available at <http://www.issuesinmedicalethics.org/152co66.html> last visited on 22nd November 2010.
access to information and healthcare services for marginalized populations and for women and girls. Thus, the Bill envisages a detailed and carefully planned strategy to address the HIV epidemic through an extensive prevention, care, treatment and support programs.  

7. The Lepers Act, 1898

The Lepers Act, 1898 was enacted to provide for the segregation and medical treatment of pauper lepers and the control of lepers following certain callings. In this act "Pauper leper" means a leper who publicly solicits alms or exposes or exhibits any sores, wounds, bodily ailment or deformity with the object of exciting charity or of obtaining alms, and leper means any person suffering from any variety of leprosy. The State Government may, by notification in the Official Gazette, appoint any place to be a leper asylum if it is satisfied that adequate arrangements have been made or will be made for the accommodation and medical treatment of lepers therein, and may, by a like notification, specify the local areas from which lepers may be sent to such asylum. The State Government may also appoint any Medical Officer of the Government or other qualified medical man to be an Inspector of Lepers and any person to be a Superintendent of a Leper Asylum, with such establishment as may, in its opinion, by necessary, and every Inspector or Superintendent so appointed shall be deemed to be a public servant.

The State Government also has the power to notify in the Official Gazette, and order that no leper shall, personally prepare for sale or sell any article of food or drink or any drugs or clothing intended for human use; or bathe, wash clothes or take water from any public well or tank debarred by any municipal or local bye-law from use by lepers; or drive, conductor ride in any public carriage plying for hire other than a railway carriage; or exercise any trade or calling which may by such notification be

293 Preamble, The Lepers Act, 1898.
294 Ibid, Section 2 (1) (2).
295 Ibid, Section 3 (A).
296 Ibid, Section 4.
prohibited to lepers.\textsuperscript{297} Whoever disobeys any order made pursuant to the powers conferred above shall be punishable with fine which may extend to twenty rupees. The Act provides that, when any person is accused of an offence under this section, the Magistrate before whom he is accused shall cause him to be examined by an Inspector of Lepers and shall not proceed with the case unless such Inspector clearly notifies that such person is a leper.\textsuperscript{298}

8. Registration of Births and Deaths Act, 1969

The Registration of Births and Deaths Act, 1969 was enacted to provide for the regulation of registration of births and deaths and for matters connected therewith.\textsuperscript{299} The Registration of Births and Deaths, Act was placed with the aim to collect and compile vital statistics which is necessary for planning and administration. Births and Deaths are the vital events in any population. Knowledge about these events is essential for understanding the old demography, health and civil needs.\textsuperscript{300} The Registrar-General appointed by the central government may issue general directions regarding registration of births and deaths in the territories to which this Act extends, and shall take steps to co-ordinate and unify the activities of Chief Registrars in the matter of registration of births and deaths and submit to the Central Government an annual report on the working of this Act in the said territories.\textsuperscript{301}

(C) FOOD AND DRUGS LEGISLATIONS

1. The Dangerous Drugs Act-1919 and 1930

In the beginning of the current century Drug Industry was practically non-existent in India and pharmaceuticals were being important from abroad. The First World War changed the situation and not only were finished and cheap drugs imported in increasing volume, the demand for indigenous products also were voiced

\textsuperscript{297} Ibid, Section 9 (1).
\textsuperscript{298} Ibid, Section 9(3).
\textsuperscript{299} Preamble, Registration of Births and Deaths Act, 1969.
\textsuperscript{300} Available at <http://nihfw.org/NDC/DocumentationServices/Legislations /THEREGISTRATION OFBIRTHS ANDDEATHS.html> last visited on 22nd November 2010.
\textsuperscript{301} Registration of Births and Deaths Act, 1969, Section 3(3).
from all sides. With the glamour for swadeshi goods manufacturing concerns, both Indian and Foreign, sprang up to produce pharmaceuticals at cheaper rates to compete with imported products. Naturally some of these were of inferior quality and harmful for public health. The Government was, therefore, 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.\textsuperscript{302}

Two of the laws, The Poisons Act and the Dangerous Drugs Act were passed in 1919 and 1930 respectively. The purpose of the Dangerous Drugs Acts is to regulate the import, export, manufacture, sale, and use of drugs of addiction. According to the act the dangerous drugs includes coca leaf, hemp and opium, and all manufactured drugs unless there is anything in the subject or context.\textsuperscript{303} To grab the regulatory mechanism it lays down that no one shall cultivate any coca plant or gather any portion of a coca plant. It also prohibits manufacture or possess prepared opium unless it is prepared from opium lawfully possessed for the consumption of the person so possessing it, or the import and export in transshipment is also banned under the act. However this section shall not apply to the cultivation of any coca plant or to the gathering of any portion thereof on behalf of the government.\textsuperscript{304} The penal clause provides that whoever violates the prohibitory provisions shall be punished with imprisonment which may extend to three years, with or without fine.\textsuperscript{305} Whoever cultivates any coca plant or gathers any portion of coca plant shall be punished accordingly.\textsuperscript{306} The purpose of act is to keep the common citizens away from the deleterious impact of such dangerous pursuits.\textsuperscript{307}

\textbf{2. The Drugs and Cosmetics Act 1940}

The right to health of a person under the drugs and the cosmetics act, 1940 is protected by prohibition of import manufacture and distribution of spurious and


\textsuperscript{303} The Dangerous Drugs Act 1930, Section 2(h).

\textsuperscript{304} Ibid, Section 4.

\textsuperscript{305} Ibid, Section 10.

\textsuperscript{306} Ibid, Section 10.

\textsuperscript{307} Zafar Mahfooz Nomani, note 26, p.64.
adulterated drugs.\textsuperscript{308} For the purposes of this act a drug is deemed to be misbranded if it is so coloured, coated, powdered or polished that damage is concealed or if it is made to appear of better or greater therapeutic value than it really is; or if it is not labeled in the prescribed manner; or if its label or container or anything accompanying the drug bears any statement, design or device which makes any false claim for the drug or which is false or misleading.\textsuperscript{309} This act also explains adulterated drugs which for the purpose of this act shall be deemed to be adulterated, if it consists, in whole or in part, of any filthy, putrid or decomposed substance; or if it has been prepared, packed or stored under insanitary conditions whereby it may have been contaminated with filth or whereby it may have been rendered injurious to health; or if its container is composed in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or if it bears or contains, for purposes of colouring only, a colour other than one which is prescribed; or if it contains any harmful or toxic substance which may render it injurious to health; or if any substance has been mixed therewith so as to reduce its quality or strength.\textsuperscript{310}

3. The Drugs and the Magic Remedies (Objectionable Advertisement) Act 1954

The drugs and the magic remedies (objectionable advertisement) act 1954,\textsuperscript{311} was passed to stop or regulate the advertisement which are having magical effect for curing the patient and which allure the innocent person to go for such treatment.\textsuperscript{312} The act states that no person shall take any part in the publication of any advertisement referring to any drug in terms which suggest or are calculated to lead to the use of that drug for the procurement of miscarriage in women; or prevention of conception in women; or the maintenance or improvement of the capacity of human beings for sexual pleasure; or the correction of menstrual disorder in women; or the diagnosis, cure, mitigation, treatment or prevention of any disease, disorder or condition specified in the Schedule, or any other disease, disorder or condition (by

\textsuperscript{308} Preamble to The Dangerous Drugs Act. 1930.
\textsuperscript{309} Ibid, Section 9.
\textsuperscript{310} Ibid, Section 9(A).
\textsuperscript{311} The Drugs and the Magic Remedies (Objectionable Advertisements) Act, 1954.
\textsuperscript{312} Ibid, Preamble.
whichever name called) which may be specified in the rules made under this Act.\textsuperscript{313}

The exemption clause provides that no such rule shall be made except, in respect of any disease, disorder or condition which requires timely treatment in consultation with a registered medical practitioner or for which there are normally no accepted remedies, and after consultation with the Drugs Technical Advisory Board constituted under the Drugs and Cosmetics Act, 1940 (23 of 1940) and, if the Central Government considers necessary, with such other persons having special knowledge or practical experience in respect of Ayurvedic or Unani systems of medicines as that Government deems fit.\textsuperscript{314}

For the purpose of prohibiting these misleading advertisements the act states that no person shall take any part in the publication of any advertisement relating to a drug if the advertisement contains any matter which directly or indirectly gives a false impression regarding the true character of the drug.\textsuperscript{315} No person carrying on or purporting to carry on the profession of administering magic remedies shall take any part in the publication of any advertisement referring to any magic remedy which directly or indirectly claims to be effective for the treatment of certain diseases.\textsuperscript{316}

\section*{4. The Narcotic Drugs and Psychotropic Substances Act, 1985}

This Act was formed 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 substances.\textsuperscript{317} Subject to the provisions of the Act, the Central Government shall take all such measures as it deems necessary or expedient for the purpose of preventing and combating abuse of narcotic drugs and psychotropic substances.\textsuperscript{318} Whoever, in contravention of any provision of this Act or any rule or order made or condition of license or permit granted or certificate or authorization issued thereunder, imports into India or exports from India or transships any narcotic drug or psychotropic substance shall be punishable, where the

\begin{itemize}
\item \textsuperscript{313} Ibid, Section 3.
\item \textsuperscript{314} Ibid, Section 3(1) and Section 3(2).
\item \textsuperscript{315} Ibid, Section 4.
\item \textsuperscript{316} Ibid, Section 5.
\item \textsuperscript{317} Preamble to The Narcotic Drugs and Psychotropic Substances Act, 1985
\item \textsuperscript{318} Ibid, Section 4(1).
\end{itemize}
contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine, which may extend to ten thousand rupees or with both; where the contravention involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment- for a term which may extend to ten years, and with fine; which may extend to one lakh rupees; where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees: Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees. 319

(D) HEALTH ADMINISTRATION LEGISLATIONS

1. The Indian Medical Degrees Act, 1916

The Indian Medical Degrees act, 1916 was passed by the Indian legislative council to regulate the grant of titles implying qualification in Western medical Science and the assumption and use by unqualified persons of such title. 320 The right of conferring granting or issuing in the (States) degrees diplomas, licenses certificates or other documents stating or implying that the holder grantee or recipient thereof is qualified to practice western medical science, shall exercisable only by the authorities specified in the schedule and such other authority as the (State Government) may, by notification in the (Office Gazette) and subject to such conditions and restrictions as (it) thinks fit to impose authorities in this behalf. 321 For the purpose of unauthorization of conferment of degrees the States shall confer grant or issue or hold himself out as entitled to confer grant or issue any degree, diploma license certificate or other document, stating or implying that the holder grantee or recipients qualified to practice western medical science in India. 322

319 Ibid, Section 23.
320 The Indian Medical Degrees Act, 1916, Preamble.
321 Ibid, Section 3.
322 Ibid., Section 4.
2. Code of Medical Ethics

Medicine and law have always been related to each other. “Code of Ethics” must be in conformity with the “Laws of the land”, retaining the moral guidelines and is not contrary to the accepted morals of the society.\textsuperscript{323} The present code of medical ethics is the Hippocratic Oath, which has been adopted by The Medical Council of India as “code of Ethics” and which has accepted this as the guiding principle for all medical practitioners registered in India. Further, the medical Council of India, with the previous approval of the Central Govt. has made detailed regulations relating to the professional conduct, etiquette and ethics for registered medical practitioners and these have been published in the Gazette of India dated 06 April 2002 (part III – Section 4) and are in force from the said date.\textsuperscript{324} Declaration to be made by each applicant at the time of registration is as follows: -

1. I solemnly pledge myself to consecrate my life to service humanity.

2. Even under threat, I will not use my medical knowledge contrary to the laws of humanity.

3. I will maintain the utmost respect for human life from the time of conception.

4. I will not permit consideration of religion, nationality, race party politics of social standing to intervene my duty and my patient.

5. I will practice my profession with conscience and dignity.

6. The health of my patients will by my first consideration.

7. I will respect the secrets, which are confirmed in me.

8. I will give to my teacher the respects and gratitude which is their due.

9. I will maintain by all means in my power, the honor and noble traditions of medical profession.

10. I will treat my colleagues with all respect and dignity.


\textsuperscript{324} Ibid.
11. I shall abide by the code of medical ethics as enunciated in the Indian Medical Council.\textsuperscript{325}

12. I make these promises solemnly, freely and upon my honor.\textsuperscript{326}

A physician shall uphold the dignity and honour of his profession. The prime object of the medical profession is to render service to humanity; reward or financial gain is a subordinate consideration. Who-so-ever chooses his profession, assumes the obligation to conduct himself in accordance with its ideals. A physician should be an upright man, instructed in the art of healings. He shall keep himself pure in character and be diligent in caring for the sick; he should be modest, sober, patient, prompt in discharging his duty without anxiety; conducting himself with propriety in his profession and in all the actions of his life.\textsuperscript{327} Though a physician is not bound to treat each and every person asking his services, he should not only be ever ready to respond to the calls of the sick and the injured, but should be mindful of the high character of his mission and the responsibility he discharges in the course of his professional duties. In his treatment, he should never forget that the health and the lives of those entrusted to his care depend on his skill and attention. A physician should endeavor to add to the comfort of the sick by making his visits at the hour indicated to the patients. A physician advising a patient to seek service of another physician is acceptable; however, in case of emergency a physician must treat the patient. No physician shall arbitrarily refuse treatment to a patient. However for good reason, when a patient is suffering from an ailment which is not within the range of experience of the treating physician, the physician may refuse treatment and refer the patient to another physician.\textsuperscript{328}

3. The Pharmacy Act 1948

The profession of sell and distribution of medicines is very dangerous and not every person can be allowed to play with the health of the common masses. This work has to be done by persons who are legally trained for the task. The pharmacist plays a

\textsuperscript{325} Professional Conduct, Etiquette and Ethics, Regulations 2002.
\textsuperscript{326} Declaration of the Medical Professionals as cited in appendix 1 of the Code of the Medical Ethics.
\textsuperscript{327} The Code of the Medical Ethics, Section 1(1.2).
\textsuperscript{328} Ibid., section 2(1).
very important role in the health arena. People have the right to have the appropriate medicine for the health disease they are suffering and so the pharmacists have to be trained according to the need of the time. For this the Pharmacy Act was passed in 1948 and was amended in 1959, 1976 and 1984. The aim of this law is to regulate the profession of Pharmacy in India for the protection of health of Indian population. The Central Council may, subject to the approval of the Central Government, make regulations, which are called the Education Regulations, prescribing the minimum standard of education required for qualification as a pharmacist.\textsuperscript{329} The Education Regulations may prescribe the nature and period of study and of practical training to be undertaken before admission to an examination; the equipment and facilities to be provided for students undergoing approved courses of study; the subjects of examination and the standards therein to be attained; any other conditions of admission to examinations.\textsuperscript{330} The Executive Committee shall from time to time report to the Central Council on the efficacy of the Education Regulations and may recommend to the Central Council such amendments thereof as it may think fit.\textsuperscript{331}

The Central Council shall cause to be maintained in the prescribed manner a register of pharmacists to be known as the Central Register, which shall contain the names of all persons for the time being entered in the register for a State.\textsuperscript{332} Each State Council shall supply to the Central Council five copies of the register for the State as soon as may be after the first day of April of each year, and the Registrar of each State Council, shall inform the Central Council, without delay, all additions to, and other amendments in, the register for the State made from time to time.\textsuperscript{333} It shall be the duty of the Registrar of the Central Council to keep the Central Register in accordance with the orders made by the Central Council, and from time to time to revise the Central Register and publish it in the Gazette of India. The Central Register shall be deemed to be public document within the meaning of the Indian Evidence

\textsuperscript{329} The Pharmacy Act 1948, Section 10(1).
\textsuperscript{330} Ibid, Section 10(2)
\textsuperscript{331} Ibid, Section 10(5)
\textsuperscript{332} Ibid, Section 15-A (1)
\textsuperscript{333} Ibid, Section 15-A (2)
Act, 1872 (1of 1872) and may be proved by the production of a copy of the Register as published in the Gazette of India.334

4. The Dentists Act, 1948

The Dentist Act 1948 was designed to regulate the profession of dentistry.335 The government constituted and composed the dentist council to regulate the profession. The dentist council comprises of one registered dentist, one member elected from amongst themselves by the members of the Medical Council of India; and not more than four members elected from among themselves, by Principals, Deans, Directors and Vice-Principals of dental colleges in the States training students for recognized dental qualifications. One member represents state and six members are nominated by the central government. The director general of health services is an ex-officio member.336

One of the most important functions of the dentist council is to recognize the dentist qualification of any person granted by any authority or institution in India.337 Any authority or institution in India which grants a dental qualification not included in Part I of the Schedule may apply to the Central Government to have such qualification recognized and included in that Part, and the Central Government, after consulting the Council, and after such inquiry, if any, as it may think fit for the purpose, may, by notification in the Official Gazette, amend Part I of the Schedule so as to include such qualification therein, and any such notification may also direct that an entry shall be made in Part I of the Schedule against such dental qualification declaring that it shall be a recognized dental qualification only when granted after a specified date.338

The dental qualifications, granted by any authority or institution outside India, which are included in Part II of the Schedule shall be recognized dental qualifications only for the purposes of the registration of citizens of India when the register is first

334 Ibid, Section 15-A (3)
335 Preamble to the Dentists Act, 1948.
336 Ibid, Section 3.
337 Ibid., section 10 (1)
338 Ibid., Section 10 (2)
prepared under this Act.\textsuperscript{339} The dental qualification granted by any authority or institution outside India, which are included in Part III of the Schedule, shall be recognized dental qualification for the purposes of this Act, but no person possessing any such qualification shall be entitled for registration unless he is a citizen of India.\textsuperscript{340} The Council may prescribe the period and nature of an apprenticeship or training which shall be undergone and the other conditions which shall be satisfied by a person before he is entitled to be registered under this Act as a dental mechanic.\textsuperscript{341} The code of ethics is also prescribed for the dentists by the council to regulate the code of professional conduct and etiquettes by the dentists practicing all over India.\textsuperscript{342}

5. \textbf{The Indian nursing council act, 1947}

Indian Nursing Council act, 1947 was constituted in order to establish a uniform standard of training for nurses, midwives and health visitors.\textsuperscript{343} The Indian nursing council created under the act of 1947 has power to require information as to courses of study and training and examinations all over India.\textsuperscript{344} It shall be the duty of the Secretary of the Council to keep the Indian Nurses Register in accordance with the provisions of this Act, and from time to time, to revise the register and publish it in the Gazette of India. Such register shall be deemed to be a public document within the meaning of the Indian Evidence Act, 1872 (1 of 1872), and may be proved by a copy published in the Gazette of India.\textsuperscript{345}

6. \textbf{The All India Institute of Medical Sciences Act, 1956}

This Act was designed to provide for the establishment of an All-India Institute of Medical Sciences. This Act lays down the measures that would help in improving professional competence amongst medical practitioners by addressing the issue of

\begin{flushleft}
\textsuperscript{339} Ibid, Section 10 (3-a) \\
\textsuperscript{340} Ibid, Section 10 (4-a) \\
\textsuperscript{341} Ibid, Section 12 \\
\textsuperscript{342} Ibid, Section 17 (A) \\
\textsuperscript{343} Preamble to The Indian Nursing Council Act, 1947. \\
\textsuperscript{344} Ibid, Section 12. \\
\textsuperscript{345} Ibid, Section 15A-(2)(3).
\end{flushleft}
medical education. The object of the All India Institute is to develop patterns of teaching in undergraduate and postgraduate medical education in all its branches so as to demonstrate a high standard of medical education to all medical colleges and other allied institutions in India. The main functions of the Institute includes providing for undergraduate and postgraduate teaching in the science of modern medicine and other allied sciences, including physical and biological sciences; providing facilities for research in the various branches of such sciences and humanities to conduct experiments in new methods of medical education, both undergraduate and postgraduate. In order to arrive at satisfactory standards of such education it also prescribes courses and curricula for both undergraduate and postgraduate studies. The institute also holds examinations and grant degrees, diplomas and other academic distinctions and titles in undergraduate and postgraduate medical education.

7. The Indian Medical Council Act, 1956

The Indian Medical Council Act, 1956 was passed to provide for the reconstitution of the Medical Council of India, and the maintenance of a Medical register for India and for matters connected therewith. Notwithstanding anything contained in this Act or any other law for the time being in force no person shall establish a medical college or no medical college shall open a new or higher course of study or training (including a new course of study or training) which would enable a student of such course or training to qualify himself for the award of any recognized medical qualification; or increase its admission capacity in any course of study or training except with the previous permission of the central government obtained in accordance with the provisions of the Central Government obtained in accordance with the provisions of this section. Where any medical college is established except with the previous permission of the central government in accordance with the provisions of section 10A, no medical qualification granted to any student of such

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346 Preamble, The all India Institute of Medical Sciences Act, 1956.
347 Ibid, Section 13 (a).
348 Ibid, Section 14.
349 Ibid, Preamble.
350 Ibid, Section 10A.
medical college shall be recognized medical qualification for the purpose of this act.\textsuperscript{351}

8. The Indian Medicine Central Council Act, 1970

The Indian medicine central council act, 1970 was formulated for the integration of traditional and modern medicinal system in India.\textsuperscript{352} According to this act the Indian medicine means the system of Indian medicine commonly known as Ashtang, Ayurveda, siddha or Unani Tibb whether supplemented or not by such modern advances as the Central Council may declare by notification from time to time.\textsuperscript{353} Accordingly the central council constitutes separate committees for Ayurveda, Siddha and Unani. Each such committee shall consist of members elected representing the Ayurveda, Siddha or Unani system of medicine. Subject to such general or special directions as the Central Council may from time to time give, each such committee shall be competent to deal with any matter relating to Ayurveda, Siddha or Unani system of medicine, as the case may be, within the competence of the Central Council.

(E) HUMAN ORGANS LEGISLATIONS

1. The Medical Termination of Pregnancy Act, 1971

This act was enacted by the Indian parliament in 1971. This act extends to the whole of India except the state of Jammu and Kashmir.\textsuperscript{354} This act was passed to curb the population growth and protect the health of pregnant women.\textsuperscript{355} This act was to provide for the termination of certain pregnancies by registered medical practitioners only.\textsuperscript{356} This act bars the application of Indian Penal Code for undertaking termination by registered medical practitioner. It categorically rules that notwithstanding anything contained in the Indian Penal Code, a registered medical practitioner shall not be

\textsuperscript{351} Ibid, Section 10B.
\textsuperscript{352} Preamble, The Indian Medicine Central Council Act, 1970.
\textsuperscript{353} Ibid, Section 2(e).
\textsuperscript{354} The Medical Termination of Pregnancy Act, Article 1 (2).
\textsuperscript{355} Ibid.
\textsuperscript{356} Ibid, Preamble.
guilty of any offence under that code or any other law for the time being in force, if any pregnancy is terminated by him in accordance with the provisions of this act.\textsuperscript{357}

The grounds for exercise of such powers are enumerated under section 3. It lays down that pregnancy may be terminated if the length of the pregnancy does not exceed twenty weeks and not less than two registered medical practitioners are of the opinion, formed in good faith that continuance of pregnancy would involve a risk of life to the pregnant women or grave injury to her physical or mental health or leading to substantial risk that if the child was born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.\textsuperscript{358}

Where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.\textsuperscript{359} In another explanatory clause it was laid down that where any pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.\textsuperscript{360} In determining whether the continuance of pregnancy would involve such risk of injury to the health account may be taken of the pregnant woman's actual or reasonable foreseeable environment.\textsuperscript{361} The pregnancy of women who is minor or lunatic or both shall be terminated with the consent of her guardian and that too in writing.\textsuperscript{362} To stop the frequent termination of the pregnancy by the force of this act it is laid down that no pregnancy shall be terminated at a place other than the hospital maintained by the government, or at a place which has been approved by the government for this purpose.\textsuperscript{363}

\begin{thebibliography}{99}
\bibitem{357} Ibid, Section 3(1).
\bibitem{358} Ibid, Section 3(2).
\bibitem{359} Ibid, explanation 1.
\bibitem{360} Ibid, explanation 2.
\bibitem{361} Ibid, Section 3(3).
\bibitem{362} Ibid, Section 3(4).
\bibitem{363} Ibid, Section 4.
\end{thebibliography}
2. The Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994

The Prenatal Diagnostic Techniques Regulation and Prevention of Misuse Act 1994 was enacted to protect the female child in order to regulate the sex ratio in the country and to limit the tendency of the people to have a male child. This act provides 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 for the prevention of the misuse of such techniques for the purpose of pre-natal sex determination leading to female foeticide, and for matters connected there with or incidental thereto.\(^{364}\) According to this act no Genetic Counseling Centre, Genetic Laboratory or Genetic Clinic unless registered under this Act, shall conduct or associate with, or help in, conducting activities relating to pre-natal diagnostic techniques.\(^{365}\) No medical geneticist, gynecologist, pediatrician, registered medical practitioner or any other person shall conduct or cause to be conducted or aid in conducting by himself or through any other person, any pre-natal diagnostic techniques at a place other than a place registered under this Act.\(^{366}\)

No pre-natal diagnostic techniques shall be conducted except for the purposes of detection of any of the following abnormalities, namely:-- (i) Chromosomal abnormalities; (ii) Genetic metabolic diseases; (iii) Haemoglobinopathies; (iv) Sex-linked genetic diseases; (v) Congenital anomalies; (vi) Any other abnormalities or diseases as may be specified by the Central Supervisory Board.\(^{367}\)

There are some other conditions for the pre-natal diagnostic prescribed under this act. No pre-natal diagnostic techniques shall be used or conducted unless the person qualified to do so is satisfied that any of the following conditions are fulfilled, namely:-- (i) Age of the pregnant woman is above thirty-five years; (ii) the pregnant woman has undergone of two or more spontaneous abortions or foetal loss; (iii) the pregnant woman had been exposed to potentially teratogenic agents such as drugs,

\(^{365}\) Ibid, Section 3(1).
\(^{366}\) Ibid, Section 3(3).
\(^{367}\) Ibid, Section 4(2).
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.\textsuperscript{368}

No person, being a relative or the husband of the pregnant woman shall seek or encourage the conduct of any prenatal diagnostic techniques on her except for the purpose specified above.\textsuperscript{369} No Genetic Counseling Centre or Genetic Laboratory or Genetic Clinic shall conduct or cause to be conducted in its Centre, Laboratory or Clinic, pre-natal diagnostic techniques including ultrasonography, for the purpose of determining the sex of a foetus.\textsuperscript{370} These centers shall not issue or cause to be issued any advertisement in any manner regarding facilities of pre-natal determination of sex available at such Centre, Laboratory, Clinic or any other place. No person or organization shall publish or distribute or cause to be published or distributed any advertisement in any manner regarding facilities of pre-natal determination of sex available at any Genetic Counseling Centre, Genetic Laboratory, Genetic Clinic or any other place.

Any person who contravenes the provisions of subsection (1) or sub-section (2) shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees.\textsuperscript{371} Notwithstanding anything in the Indian Evidence Act, 1872 (1 of 1872), the court shall presume unless the contrary is proved that the pregnant woman has been compelled by her husband or the relative to undergo pre-natal diagnostic technique and such person shall be liable for abetment of offence under sub-section (3) of section 23 and shall be punishable for the offence specified under that section.\textsuperscript{372}

\textsuperscript{368} Ibid, Section 4(3).
\textsuperscript{369} Ibid, Section 4(4).
\textsuperscript{370} Ibid, Section 6(a).
\textsuperscript{371} Ibid, Section 22.
\textsuperscript{372} The Prenatal Diagnostic Techniques Regulation and Prevention of Misuse Act 1994, Section 24.
3. The Transplantation of Human Organs Act, 1994

The Transplantation of Human Organs Act 1994 was passed to stop the tendency to think human organs as commodity and 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 and for matters connected therewith or incidental thereto.\(^{373}\) (For the purpose of voluntary donation any donor may, in such manner and subject to such conditions as may be prescribed, authorize the removal, before his death, of any human organ of his body for therapeutic purposes.\(^{374}\) The donor had to give in writing and in the presence of two or more witnesses (at least one of whom is a near relative of such person), unequivocally authorized at any time before his death, the removal of any human organ of his body, after his death, for therapeutic purposes, the person lawfully in possession of the dead body of the donor shall, unless he has any reason to believe that the donor had subsequently revoked the authority aforesaid, grant to a registered medical practitioner all reasonable facilities for the removal, for therapeutic purposes, of that human organ from the dead body of the donor.\(^{375}\) Where no such authority as is referred to in sub-section was made by any person before his death but no objection was also expressed by such person to any of his human organs being used after his death for therapeutic purposes, the person lawfully in possession of the dead body of such person may, unless he has reason to believe that any near relative of the deceased person has objection to any of the decease person’s human organs being used for therapeutic purposes, authorize the removal of any human organ of the deceased person for its use for therapeutic purposes.\(^{376}\)

The authority given under these circumstances shall be sufficient warrant for the removal, for therapeutic purposes, of the human organ; but no such removal shall be made by any person other than the registered medical practitioner.\(^{377}\) Where any human organ is to be removed from the body of a deceased person, the registered medical practitioner shall satisfy himself, before such removal, by a personal

\(^{373}\) The Transplantation of Human Organs Act, 1994.
\(^{374}\) Ibid, Section 3(1).
\(^{375}\) Ibid, Section 3(2).
\(^{376}\) Ibid, Section 3(3).
\(^{377}\) Ibid, Section 3(4).
examination of the body from which any human organ is to be removed, that life is extinct in such body or, where it appears to be a case of brain-stem death, that such death has been a brain stem death.\textsuperscript{378} Where any human organ is to be removed from the body of a person in the event of his brain-stem death, no such removal shall be undertaken unless such death is certified, in such form and in such manner and on satisfaction of such conditions and requirements as may be prescribed, by a Board of medical experts consisting of the following namely: the registered medical practitioner in charge of the hospital in which brain-stem death has occurred; and a neurologist or a neurosurgeon.\textsuperscript{379}

Sometimes there is situation where the dead body is lying unclaimed. This act lays down provision for such cases also where a dead body is lying in a hospital or prison and not claimed by any of the near relatives of the deceased person within forty-eight hours from the time of the death of the concerned person, the authority for the removal of any human organ from the dead body which so remains unclaimed may be given, in the prescribed form, by the person in charge, for the time being, 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 thereof.\textsuperscript{380}

The Restrictions on removal and transplantation of human organs is also encouraged under this act. No human organ removed from the body of a donor before his death shall be transplanted into a recipient unless the donor is a near relative of the recipient.\textsuperscript{381} If any donor authorizes the removal of any of his human organs before his death for transplantation into the body of such recipient, not being a near relative, as is specified by the donor by reason of affection or attachment towards the recipient or for any other special reasons, such human organ shall not be removed and transplanted without the prior approval of the Authorization Committee.\textsuperscript{382} The Central Government shall constitute, by notification, one or more Authorization Committees consisting of such members as may be nominated by the Central

\textsuperscript{378} Ibid, Section 3(5).
\textsuperscript{379} Ibid, Section 3(6).
\textsuperscript{380} Ibid, Section 5(1).
\textsuperscript{381} Ibid, Section 9(1).
\textsuperscript{382} Ibid, Section 9(3).
Government on such terms and conditions as may be specified in the notification for each of the Union Territories for the purposes of this section. The State Government shall constitute, by notification, one or more authorization Committees consisting of such members as may be nominated by the State Government on such terms and conditions as may be specified in the notification for the purposes of this section.\textsuperscript{383}

On an application jointly made, in such form and in such manner as may be prescribed, by the donor and the recipient, the Authorization Committee shall, after holding an inquiry and after satisfying itself that the applicants have complied with all the requirements of this Act and the rules made thereunder, grant to the applicants approval for the removal and transplantation of the human organs.\textsuperscript{384} If, after the inquiry and after giving an opportunity to the applicants of being heard, the authorization Committee is satisfied that the applicants have not complied with the requirements of this Act and the rules made thereunder, it shall, for reasons to be recorded in writing, reject the application for approval.\textsuperscript{385} For the Regulation of hospitals conducting the removal, storage or transplantation of human organs, it is laid down in this act that no hospital, unless registered under this Act, shall conduct, or associate with, or help in, the removal, storage or transplantation of any human organ; no medical practitioner or any other person shall conduct, or cause to be conducted, or aid in conducting by himself or through any other person, any activity relating to the removal, storage or transplantation of any human organ at a place other than an place registered under this Act.\textsuperscript{386}

No hospital shall be registered under this Act unless the appropriate authority is satisfied that such hospital is in a position to provide such specialized services and facilities, possess such skilled manpower and equipments and maintain such standards as may be prescribed.\textsuperscript{387} Further the act prescribes Punishment for commercial dealings in human organs. Whoever makes or received any payment for the supply of, or for an offer to supply, any human organ; seeks to find person willing to supply for payment any human organ; offers to supply any human organ for payment;
initiates or negotiates any arrangement involving the making of any payment for the supply of, or for an offer to supply, any human organ; takes part in the management or control of a body of persons, whether a society, firm or company, whose activities consist of or include the initiation or negotiation of any arrangement referred to in clause or publishes or distributes or causes to be published or distributed any advertisement inviting persons to supply for payment of any human organ; offering to supply any human organ for payment; or indicating that the advertiser is willing to initiate or negotiate any arrangement shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to seven years and shall be liable to fine which shall not be less than ten thousand rupees but may extend to twenty thousand rupees. 388

4. The Delhi Artificial Insemination (Human) Act, 1995

The Delhi Artificial Insemination (Human) Act, 1995 lays down the provisions for the regulation of donation, sale and supply of human semen and ovum for the purpose of artificial insemination. 389 No person shall carry on a semen bank in Delhi unless he has been duly registered in respect of such semen bank and the registration in respect thereof. 390 The semen bank before accepting the semen for artificial insemination shall test the donor for the presence of HIV and two antibodies by using a highly sensitive ILISA Kit and it when found negative, only then the donor shall be allowed to donate. 391 It is necessary for the semen bank to keep the complete bio-data including mark of identification of the donor. 392 The recipient for HIV 1 and 2 and sexually transmitted diseases before performing artificial insemination; seek the written consent of the donor and the recipient and their spouse; in case of the requests of semen or ovum from specified donor/recipient not segregate the XX or YY chromosomes for artificial insemination. 393 The medical practitioner is also under a

388 Ibid, Section 19.
390 Ibid, Section 3.
391 Ibid, 1995, Section 10(1).
392 Ibid, 1995, Section 10(3).
393 Ibid, Section 14.
duty to maintain secrecy about the identity of the donor and the recipient of the semen/ovum and seek the written consent of the recipient for using the semen.\textsuperscript{394}

(F) SECTORAL HEALTH LEGISLATIONS

1. The Vaccination Act, 1880

The Vaccination Act, 1880 was enacted as an umbrella legislation to give power to prohibit inoculation and to make the vaccination of children compulsory in certain Municipalities and Cantonments.\textsuperscript{395} In any local area to which the provisions of this Act apply, inoculation shall be prohibited; and inoculated persons not to enter, without certificate, local area subject to Act. No person who has undergone inoculation shall enter such area before the lapse of forty days from the date of the operation, without a certificate from a medical practitioner.\textsuperscript{396} Every local area to which this Act applies shall be a vaccination-circle, or shall in manner hereinafter provided be divided into a number of such circles by the appointment of superintendents of vaccinators.\textsuperscript{397}

The Superintendent of vaccination, in addition to the other duties imposed on him by or under the provisions of this Act, shall ascertain whether all unprotected children, under the age of fourteen years if boys, and under the age of eight years if girls, within the local area under his superintendence have been vaccinated; and, if he has reason to believe that the parent or guardian of any such child is bound by the provisions hereinbefore contained to procure the vaccination of such child or to present it for inspection, and has omitted so to do, he shall personally go to the house of such parent or guardian, and there make enquiry, and shall, if the fact is proved, forthwith deliver to such parent or guardian, or cause to be affixed to his house, a notice requiring that the child be vaccinated, or (the case may be) that it be presented for inspection, at a time and place to be specified in such notice.\textsuperscript{398} Apart from the vaccination act of 1880 there are various important state enactments on this subject.

\textsuperscript{394} Ibid, Section 14 (f) and (g).
\textsuperscript{395} The Vaccination Act, 1880.
\textsuperscript{396} Ibid, Section 6.
\textsuperscript{397} Ibid, Section 7.
\textsuperscript{398} Ibid, Section 17.

2. The Prisons Act, 1984

We all know that the prisoners are the violators of the laws but being a human it is the duty of the state to protect their human rights. Protection of health rights is not a separate zone under the Prisons Act, 1984. The medical officer in the prisons is under the duty to look after the sanitary administration of the prison, and shall perform such duties as may be prescribed by rules made by the State Government.\textsuperscript{399} Every civil and unconvicted criminal prisoner unable to provide himself with sufficient clothing and bedding shall be supplied by the Superintendent with such clothing and bedding as may be necessary.\textsuperscript{400} The names of prisoners desiring to see the Medical Subordinate or appearing out of health in mind or body shall, without delay, be reported by the officer in immediate charge of such persons to the Jailer. The Jailer shall, without delay, call the attention of the Medical Subordinate to any prisoner desiring to see him, or who is ill, or whose state of mind and body appears to require attention, and shall carry into effect all written directions given by the Medical Officer or Medical Subordinate respecting alterations of the discipline or treatment of any such prisoner.\textsuperscript{401}

All directions given by the Medical Officer or the Medical Subordinate in relation to any prisoner, with exception of orders for supply of medicines or directions relating to such matters as are carried into effect by the Medical Officer himself or under his superintendence, shall be entered day by day in the prisoner’s history-ticket or in such other record as the State Government may by rule direct, and the Jailer shall make an entry in its proper place stating in respect of each direction the facts of its having been or not having been complied with, accompanied by observations, if any, as the Jailer thinks fit to make, and the date of the entry.\textsuperscript{402} In every prison a hospital or proper place for the reception of sick prisoners shall be provided for the

\textsuperscript{399} Ibid, Section 13(1).
\textsuperscript{400} The Prisons Act, 1984, Section 33.
\textsuperscript{401} Ibid, Section 37.
\textsuperscript{402} Ibid, Section 38.
purpose of maintenance of prisoner’s health. The superintendent of prisons is empowered to send a prisoner to hospital for special treatment. The Superintendent may, if in his opinion, a prisoner requires special treatment in a hospital outside the prisoner in an asylum as defined in Indian Lunacy Act, 1912, send him to such hospital or asylum subject to the prisoner executing such bond and abiding by such other conditions, if any, as the State Government may by rule or order prescribe.

3. The Mental Health Act, 1987

This Act was enacted to consolidate and amend the law relating to the treatment and care of mentally ill persons, to make better provision with respect to their property and affairs and for matters connected therewith or incidental thereto. According to this act mentally ill person means person who is in need of treatment by reason of any mental disorder other than mental retardation. The Central Government shall establish an Authority for mental health with such designation as it may deem fit. The Authority established under sub-section (1) shall be subject to the superintendence, direction and control of the Central Government. The state governments are also under obligation to establish an authority for mental health with such designation. This authority shall regulate, develop and co-ordinate the mental health services under the state government to supervise the psychiatric hospitals and psychiatric nursing homes and other Mental Health Service Agencies (including places in which mentally ill persons may be kept or detained) under the control of the State Governments.

The Central Government may, in any part of India, or the State Government may, within the limits of its jurisdiction, establish or maintain psychiatric hospitals or psychiatric nursing homes for the admission, treatment and care of mentally ill persons at such places as it things fit; and separate psychiatric hospitals and psychiatric nursing homes may be established or maintained for children under the

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403 Ibid, Section 39.
404 The Mental Health Act, 1987.
405 Ibid, Section 2(1).
406 Ibid, Section 3.
407 Ibid, Section 4.
The health rights of the mentally ill people are protected under this act on the voluntary basis. Any person (not being a minor), who considers himself to be a mentally ill person and desires to be admitted to any psychiatric hospital or psychiatric nursing home for treatment, may request the medical officer in charge for being admitted as a voluntary patient. Any mentally ill person who does not, or is unable to, express his willingness for admission as a voluntary patient, may be admitted and kept as an inpatient in a psychiatric hospital or psychiatric nursing home on an application made in that behalf by a relative or a friend of the mentally ill person if the medical officer-in-charge is satisfied that in the interests of the mentally ill person it is necessary so to do. Chapter V111 of the Act lays down special provisions for the protection of human rights of mentally ill persons. No mentally ill person shall be subjected during treatment to any indignity (whether physical or mental) or cruelty. No mentally ill person under treatment shall be used for purposes of research, unless such research is of direct benefit to him for purposes of diagnosis or treatment; or such person, being a voluntary patient, has given his consent in writing or where such person (whether or not a voluntary patient) is incompetent by reason of minority or otherwise, to give valid consent, the guardian or other person competent to give consent on his behalf, has given his consent in writing for such research.

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408 Ibid, Section 5.
409 Ibid, Section 6.
410 Ibid, Section 15
411 Ibid, Section 19.
412 Ibid, Section 81.

Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act 1992 provides for the regulation of production, supply and distribution of infant milk substitutes, feeding bottles and infant foods with a view to the protection and promotion of breastfeeding and ensuring the proper use of infant foods and for matters connected therewith or incidental thereto.413 "Infant food" under this act means any food (by whatever name called) being marketed or otherwise represented as a complement to mother's milk to meet the growing nutritional needs of the infant after the age of four months.414 Also "infant milk substitute" in this act is defined as any food being marketed or otherwise represented as a partial or total replacement for mother's milk, whether or not it is suitable for such replacement.415 Certain prohibitions in relation to infant milk substitutes, feeding bottles and infant foods have been laid down in this act. No person shall advertise, or take part in the publication of any advertisement, for the distribution, sale or supply of infant milk substitutes or feeding bottles or give an impression or create a belief in any manner that feeding of infant milk substitutes is equivalent to, or better than, mother's milk; or take part in the promotion of use or sale of infant milk substitutes or feeding bottles or infant foods otherwise than in accordance with the provisions of this Act.416 The act also provides prohibition of incentives for the use or sale of infant milk substitutes or feeding bottles. No person shall supply or distribute samples of infant milk substitutes or feeding bottles or gifts of utensils or other articles; or contact any pregnant woman or the mother of an infant; or offer inducement of any other kind, for the purpose of promoting the use or sale of infant milk substitutes or feeding bottles.417 No person shall use any health care system for the display of placards or posters relating to, or for the distribution of,

414 Ibid, Section, 2 (f).
415 Ibid, Section 2(g).
416 Ibid, Section 3.
417 Ibid, Section 4.
materials for the purpose of promoting the use or sale of infant milk substitutes or feeding bottles or infant foods.\textsuperscript{418}

5. The food adulteration act, 1954

Adulteration of food is defined as the addition or subtraction of any substance to or from food, so that the natural composition and quality of the original food substance is affected. Adulteration of food causes several health problems in humans. Some of the health hazards include stomach ache, body ache, anemia, abortion, paralysis, and increase in the incidence of tumors, pathological lesions in vital organs, abnormalities of skin and eyes.\textsuperscript{419} Keeping this in view, a legislation called "Prevention of Food Adulteration Act, 1954" was enacted. The objective envisaged in this legislation was to ensure pure and wholesome food to the consumers and also to prevent fraud or deception.\textsuperscript{420} This act lays down Prohibitions on manufacture and sale of certain articles of food. No person shall himself or by any person on his behalf manufacture for sale, or store, sell or distribute— any adulterated food; any misbranded food; any article of food for the sale of which a license is prescribed, except in accordance with the conditions of the license; any article of food the sale of which is for the time being prohibited by the Food (Health) Authority in the interest of public health; any article of food in contravention of any other provision of this Act or of any rule made thereunder; or any adulterant.\textsuperscript{421} A food inspector is appointed by the central or the state government under section 9 of this act exercises the power to take samples of any article of food from any person selling such article; any person who is in the course of conveying, delivering or preparing to deliver such article to a purchaser or consignee; a consignee after delivery of any such article to him; and to send such sample for analysis to the public analyst for the local area within which such sample has been taken.\textsuperscript{422} If any person imports into India or manufactures for

\textsuperscript{418} Ibid, Section 8(1).
\textsuperscript{420} Available at \texttt{http://india.gov.in/sectors/health_family/food_prevention.php} last visited on 28th November 2010
\textsuperscript{421} The Food Adulteration Act, 1954, Section 7.
\textsuperscript{422} Ibid, Section 10(1).
sales or stores, sells or distributes any article of food which is adulterated whether by himself or by any other person on his behalf he shall, in addition to the penalty to which he may be liable under the provisions of this act, be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years, and with fine which shall not be less than one thousand rupees.\(^{423}\)

(G) LABOUR LAW LEGISLATIONS

1. The Workmen’s Compensation Act, 1923

The objective of this Act is that in the case of an employment injury compensation be provided to the injured workman and in case of his death to his dependents.\(^{424}\) This act is a 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 dependents of the workmen.\(^{425}\) Any worker employed in any of a wide variety of hazardous occupations who has suffered an injury is eligible for compensation. If he dies, his dependents can claim the benefits provided by the Act. The injury must disable him for more than 3 days, totally or partially. The disablement means the loss in the earning capacity of a workman in every employment which he was capable of doing at the time of the accidents. Its effect may be temporary or permanent. To get compensation for an occupational disease, a workman must have been employed in the specified occupation for a continuous period of at least 6 months.\(^{426}\)

\(^{423}\) Ibid, Section 16.
\(^{424}\) The workmen’s Compensation Act, 1923.
\(^{425}\) Available at <http://wiki.answers.com/Q/What_is_Workmen's_Compensation_Act_1923> last visited on 24th November 2010.
\(^{426}\) Available at <http://nihfw.org/NDC/DocumentationServices/Legislations/THEWORKMENS_COMPENSATION.html> last visited on 24th November 2010.
2. **The Employees’ State Insurance Act 1948**

The Employee State Insurance Act, 1948, is a piece of social welfare legislation enacted primarily with the object of providing certain benefits to employees in case of sickness, maternity and employment injury and also to make provision for certain other matters incidental thereto. A medical benefit council is constituted by the central government under section 10 of this act to promote measures for the improvement of the health and welfare of insured persons and for the rehabilitation and re-employment of insured persons who have been disabled or injured and may incur in respect of such measures expenditure from the funds of the Corporation within such limits as may be prescribed by the Central Government.

The act lays down the following benefits to the people: (a) periodical payments to any insured person in case of his sickness certified by a duly appointed medical practitioner or by any other person possessing such qualifications and experience as the Corporation may, by regulations, specify in this behalf; (b) periodical payments to an insured woman in case of confinement or miscarriage or sickness arising out of pregnancy, confinement, premature birth of child or miscarriage, such woman being certified to be eligible for such payments by an authority specified in this behalf by the regulations; (c) periodical payments to an insured person suffering from disablement as a result of an employment injury sustained as an employee under this Act and certified to be eligible for such payments by an authority specified in this behalf by the regulations; (d) periodical payments to such dependents of an insured person who dies as a result of an employment injury sustained as an employee under this Act, as are entitled to compensation under this Act; (e) medical treatment for and attendance on insured persons.

Provided that the amount of such payment shall not exceed such amount as may be prescribed by the Central Government and the claim for such payment shall be made within three months of the death of the insured person or within such extended period as the Corporation or any officer or authority authorized by it in this behalf.
may allow.\textsuperscript{429} The qualification of a person to claim sickness benefit, the conditions subject to which such benefit may be given, the rates and period thereof shall be such as may be prescribed by the Central Government. The qualification of an insured woman to claim maternity benefit, the conditions subject to which such benefit may be given, the rates and period thereof shall be such as may be prescribed by the Central Government.\textsuperscript{430}

3. The Factories Act, 1948

This is an umbrella legislation to protect health and welfare of the workers. Health of the workers has been given special reference under chapter 3 of the factories act 1948. Cleanliness of the factory premises has been given the prior preference. Every factory shall be kept clean and free from effluvia arising from any drain, privy or other nuisance, accumulation of dirt and refuse shall be removed daily, and disposed of in a suitable manner.\textsuperscript{431} The floor of every workroom shall be cleaned at least once in every week effectively.\textsuperscript{432} The walls, doors and windows, passages and staircases of the premises shall be painted at least every 5 years.\textsuperscript{433} Effective arrangements shall be made in every factory for the treatment of wastes and effluents due to the manufacturing process carried on therein, so as to render them innocuous and for their disposal.\textsuperscript{434} Effective and suitable provision shall be made in every factory for securing and maintaining adequate ventilation in every room and reasonable conditions of comfort and prevent injury to health.\textsuperscript{435} Effective measures should be taken to prevent accumulation of dust and fumes which is likely to be injurious to workers employed in the factory.\textsuperscript{436} No room in any factory shall be overcrowded to an extent injurious to the health of the workers employed therein.\textsuperscript{437}

\textsuperscript{429} Ibid, Section 46.
\textsuperscript{430} Ibid, Section 50.
\textsuperscript{431} The factories act 1978, Section 11(a).
\textsuperscript{432} Ibid, Section 11(b).
\textsuperscript{433} Ibid, Section 11.
\textsuperscript{434} Ibid, Section 12(1).
\textsuperscript{435} Ibid, Section 13(1).
\textsuperscript{436} Ibid, Section 14.
\textsuperscript{437} Ibid, Section 16(1).
The State Government may prescribe standards of sufficient and suitable lighting for factories. All workers employed in a factory shall be provided with sufficient supply of safe drinking water. Sufficient latrine and urinal accommodation separate for male and female which should be adequately lighted and ventilated should be provided for the workers by the factory owner under the factories act. Safety and welfare measures have a direct bearing on the occupational health of the workers. No young person shall be allowed to work at any machine which can be dangerous to the health and safety of the worker. Provisions like fencing of the machinery, striking gear and device for cutting power, self-acting machines, hoist and lifts, revolving machinery and pressure plant are to facilitate better industrial working environment. Special provisions for young persons, prohibition of employment of women and children near cotton opener for the protection of eyes are of great importance. By an amendment in 1987 inserted in relation to hazardous processes like constitution of site appraisal committees to advise the government in the matter of granting permission for setting up or expansion of factories involving hazardous process, compulsory of information by the occupier of the hazards to the workers to the chief inspectors and the local authority within whose jurisdiction the factory is located and also to the general public in the vicinity.

4. Maternity Benefit Act, 1961

The Maternity benefit act 1961 is enacted to regulate the employment of women in certain establishments for certain periods before and after childbirth and to provide for maternity benefits and certain other benefits. The object of maternity leave and benefit is to protect the dignity of motherhood by providing for the full and healthy maintenance of women and her child when she is not working. For the purpose of

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438 Ibid, section 17(4)
439 Ibid, section 18(1).
440 Ibid, Section 19.
441 Zafar Mahfooz Nomani, note 26, p.100.
443 Preamble to Maternity Benefit Act, 1961
protecting the health of the women no employer shall knowingly employ a woman in any establishment during the six weeks immediately following the day of her delivery or her miscarriage.\textsuperscript{445} Also no pregnant woman shall, on a request being made by her in this behalf, be required by her employer to do during the period specified, any work which is of an arduous nature or which involves long hours of standing or which in any way is likely to interfere with her pregnancy or the normal development of the foetus, or is likely to cause her miscarriage or otherwise to adversely affect her health.\textsuperscript{446}

Every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence immediately preceding and including the day of her delivery and for the six weeks immediately following that day.\textsuperscript{447} If any employer contravenes the provisions of this Act or the rules made thereunder he shall be punishable with imprisonment which may extend to three months, or with fine which may extend to five hundred rupees, or with both; and where the contravention is of any provision regarding maternity benefit or regarding payment of any other amount and such maternity benefit or amount has not already been recovered, the court shall in addition recover such maternity benefit or amount as if it were a fine, and pay the same to the person entitled.\textsuperscript{448}

\section{5. The Dock workers (Safety, Health And Welfare) Act, 1986}

This act provides for the safety, health and welfare of the dock workers in respect of all ports and ships.\textsuperscript{449} Under this act the inspectors appointed by the state government under section 3 have been conferred broad powers. He can enter any ship, dock, warehouse or other premises, where any dock work is being carried on, or where he has reason to believe that any dock work is being carried on; make examination of the ship, dock, lifting machinery, cargo, gear, staging, transport

\footnotesize\textsuperscript{445} Maternity Benefit Act, 1961, Section 4(1).  
\textsuperscript{446} Ibid, Section 4(3)  
\textsuperscript{447} Ibid.  
\textsuperscript{448} Ibid, Section 21.  
\textsuperscript{449} The Dock Dorkers (Safety, Health and Welfare) Act, 1986.
equipment, warehouses or other premises, used or to be used, for any dock work; require the production of any register, muster roll or other document relating to the employment of dock workers and examine such document; take on the spot or otherwise such evidence of any person which he may deem necessary.\textsuperscript{450}

Workers are also under obligation to exercise great degree of precaution in the course of their work. No dock worker shall willfully interfere with, or misuse, any appliance, convenience or other thing provided in connection with any dock work for the purpose of securing the health, safety and welfare of dock workers; or willfully and without reasonable cause do anything likely to endanger himself or others; and neglect to make use of any appliance, convenience or other thing provided in connection with any dock work for the purpose of securing the health, safety and welfare of dock workers.\textsuperscript{451} If any dock worker contravenes any provisions of this Act or the regulations imposing any duty or liability on dock workers, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.\textsuperscript{452}

\textbf{(H) COMMON LEGISLATIONS APPLICABLE TO HEALTH CARE}

\textbf{1. Law of Torts}

As a technical term of English law, tort has acquired a special meaning as a species of civil injury or wrong.\textsuperscript{453} The law of tort at various places provides for the protection of right to health. Tort of Nuisance is not a way apart. Nuisance has been categorized into public and private nuisance. In case of Public Nuisance, there must be some unlawful act or omission interfering with the lives, comfort, property or common rights of the public, for instance, keeping dangerous premises near a Highway or obstruction of a Highway. An action against public nuisance can be brought in tort, by a private individual if he suffers any particular damage over and above that suffered by the public at large. The tort of Private Nuisance signifies

\begin{footnotes}
\textsuperscript{450} Ibid, Section 4.
\textsuperscript{451} Ibid, Section 11(1).
\textsuperscript{452} Ibid, Section 14(3).
\end{footnotes}
violation or interference with one’s use of property, health, comfort or convenience. For instance, obstruction of right of way of the claimant, interference with the claimant’s water supply, access of air, light or support, etc. Direct injury to the health of the person is not necessary for determining the act of nuisance. Also a person cannot take advantage of his peculiar sensitivity to noise and smell.  

Another aspect is tort of negligence which also provides protection where health of the person is hampered by a negligent act of another person. For example destruction of crops, causing health risks from pollution, throwing objects on the land, using the neighboring house for drug deals. The general principle behind the tort of negligence is that ‘you must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour.’ Since long the medical profession is respected and when a simple act of negligence on their part can cause great health risks. Any man practicing a profession requires particular level of learning, which impliedly assures a person dealing with him, that he possesses such requisite knowledge, expertise and will profess his skill with reasonable degree of care and caution to avoid any health risks.  

In any modern society, interactions between the State and the citizens are large in their number, frequent in their periodicity and important from the point of view of their effect on the lives and fortunes of citizens. Such interactions often raise legal problems, whose solution requires an application of various provisions and doctrines. A large number of the problems so arising fall within the area of the law of torts. This is because, where relief through a civil court is desired, the tort law figures much more frequently, than any other branch of law. It is the vast reservoir from which jurisprudence can still draw its nourishing streams. Given this importance of tort law, and given the vast role that the State performs in modern times, one would reasonably expect that the legal principles relating to an important area of tort law, namely,

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455 Available at [www.thearchives.net/power_points/le/ch7.ppt](http://www.thearchives.net/power_points/le/ch7.ppt) last visited on 25th November 2010.
liability of the State in tort, would be easily ascertained. However, at present, this ideal is not at all achieved, in reality, in India.\textsuperscript{458}

2. Consumer Protection Act, 1986

The main objective of this act is to promote and protect the rights of consumers such as the right to be protected against marketing of goods which are hazardous to health and can cause risk to life and property; the right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect the consumer against unfair trade practices. The right to be 'assured, wherever possible, access to a variety of goods [and services] at competitive prices; the right to be heard and to be assured that consumer's interests will receive due consideration at appropriate fora; the right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers.\textsuperscript{459}

Three tier consumer disputes redressal machinery has been set up under the act at national, state and district levels which provides inexpensive and speedy redress for consumer disputes/complaints against defective goods, deficiencies in services, unfair and restrictive trade practices, or a matter of charging excessive prices.\textsuperscript{460} There shall be established for the purposes of this Act, the following agencies, namely- a Consumer Disputes Redressal Forum to be known as the "District Forum" established by the State Government in each district of the State by notification; a Consumer Disputes Redressal Commission to be known as the "State Commission" established by the State Government in the State by notification; and a National Consumer Disputes Redressal Commission established by the Central Government by notification.\textsuperscript{461} The act also provides the manner in which the complaint has to be made by the consumer to whom such goods are sold or delivered or agreed to be sold or delivered or such service provided or agreed to be provided.\textsuperscript{462} If the forum finds


\textsuperscript{459} The Consumer Protection Act 1986, Section 6.

\textsuperscript{460} S.K Verma et. al. note 186, p.94.

\textsuperscript{461} The Consumer Protection Act 1986, Section 9.

\textsuperscript{462} Ibid, Section 12(1).
that the goods about which the complaint has been made if defective then in that case it shall issue an order to the opposite party directing him to do one or more of the following things- to remove the defect pointed but by the appropriate laboratory from the goods in question; to replace the goods with new goods of similar description which shall be free from any defect; to return to the complainant the price, or, as the case may be, the charges paid by the complainant; 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; to withdraw the hazardous goods from being offered for sale; to cease manufacture of hazardous goods and to desist from offering services which are hazardous in nature; to pay such sum as may be determined by it, if it is of the opinion that loss or injury has been suffered by a large number of consumers who are not identifiable conveniently. Where a trader or a person against whom a complaint is made or the complainant fails or omits to comply with any order made by the District Forum, the State Commission or the National Commission, as the case may be, such trader or person or Complainant shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years, or with fine which shall not be less than two thousands rupees but which may extend to ten thousand rupees, or with both.

3. The Environment Protection Act, 1986

The Environment Protection Act 1986 is an umbrella legislation which not only protects the environment but also protects the health of the people by providing people with clean and safe environment necessary for their healthy life. This Act provide for the protection and improvement of environment and for matters connected therewith. “Environment” here includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, microorganism and property. The Central Government may, in the exercise of its powers and performance of its functions under

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463 Ibid, Section 14.
464 Ibid, Section 27.
466 Ibid, Section 2(1).
this Act, issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions. The power to issue directions under this section includes the power to direct the closure, prohibition or regulation of any industry, operation or process; or stoppage or regulation of the supply of electricity or water or any other service.\textsuperscript{467} The Central Government also, by notification in the Official Gazette, make rules in respect of the standards of quality of air, water or soil for various areas and purposes; the maximum allowable limits of concentration of various environmental pollutants (including noise) for different areas; the procedures and safeguards for the handling of hazardous substances; the prohibition and restrictions on the handling of hazardous substances in different areas; the prohibition and restriction on the location of industries and the carrying on process and operations in different areas; the procedures and safeguards for the prevention of accidents which may cause environmental pollution and for providing for remedial measures for such accidents.\textsuperscript{468}

For the prevention and control of environment pollution persons carrying an industry operation, etc, are not allowed to emit or permit to discharge of any environmental pollutants in excess of the standards as are prescribed.\textsuperscript{469} Where the discharge of any environmental pollutant in excess of the prescribed standards occurs or is apprehended to occur due to any accident or other unforeseen act or event, the person responsible for such discharge and the person in charge of the place at which such discharge occurs or is apprehended to occur shall be bound to prevent or mitigate the environmental pollution caused as a result of such discharge.\textsuperscript{470} Any person empowered by the Central Government in this behalf shall have a right to enter, at all reasonable times with such assistance as he considers necessary, any place-for the purpose of examining and testing any equipment, industrial plant, record, register, document or any other material object or for conducting a search of any building in which he has reason to believe that an offence under this Act or the rules made thereunder has been or is being or is about to be committed and for seizing any such equipment, industrial plant, record, register, document or other material object if he

\textsuperscript{467} Ibid, Section 5.
\textsuperscript{468} Ibid, Section 6.
\textsuperscript{469} Ibid, Section 7.
\textsuperscript{470} Ibid, Section 9(1).
has reason to believe that it may furnish evidence of the commission of an offence punishable under this Act or the rules made thereunder or that such seizure is necessary to prevent or mitigate environmental pollution.\textsuperscript{471}

Whoever fails to comply with or contravenes any of the provisions of this Act, or the rules made or orders or directions issued thereunder, shall, in respect of each such failure or contravention, be punishable with imprisonment for a term which may extend to five years with fine which may extend to one lakh rupees, or with both, and in case the failure or contravention continues, with additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues after the conviction for the first such failure or contravention. If there is a failure or contravention to this which continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which may extend to seven years.\textsuperscript{472}

\section*{4. The Water (Prevention and Control of Pollution) Act, 1974}

This act has been enacted to provide for the prevention and control of water pollution and the maintaining or restoring of wholesomeness of water. With a view to carrying out the purposes aforesaid, the Act provides for the establishment of Boards for the prevention and control of water pollution. It also provides for conferring on and assigning to such Boards powers and functions relating thereto and for matters connected therewith.\textsuperscript{473} Pollution under the Act means contamination of water or such alteration of the Physical, Chemical or Biological properties of water or such discharge of any sewage or trade effluent or of any other liquid, gas and solid substance into water (whether directly or indirectly) as may be the case or is likely to create nuisance or render such water harmful or injurious to public health or safety or to domestic, commercial, industrial, agricultural or other legitimate uses, or to the life and health of animals or plant or of aquatic organizations. Trade effluent includes any liquid or solid substance which is discharged from any premises used for carrying on

\begin{flushright}
\textsuperscript{471} Ibid, Section 10(1) (a).
\textsuperscript{472} Ibid, Section 15.
\textsuperscript{473} Prevention and Control of Pollution Act, 1974.
\end{flushright}
any industry operation or process or treatment and disposal system, other domestic sewage.\textsuperscript{474}

5. Air Protection Act, 1998

This Act has been enacted to regulate the activities which involve the emission of pollutants into the ambient air, damage to the ozone layer, and appearance of factors which cause climate change.\textsuperscript{475} The health effects caused by air pollutants may range from subtle biochemical and physiological changes to difficulty breathing, wheezing, coughing and aggravation of existing respiratory and cardiac conditions. These effects can result in increased medication use, increased doctor or emergency room visits, more hospital admissions and even premature death.\textsuperscript{476} The punishments for violating the provisions of the Air Act are specified in sections 37 to section 39 of the act. Under section 37, penalty for violation of sections 21, 22 and 31A is imprisonment for a term varying between 18 to 72 months and with fine which can be extended to an additional fine of up to Rs.5000, and imprisonment for a term varying between 24 months to 84 months in case of continued noncompliance. For offences specified in section 38, the penalty is imprisonment for a period, which may extend to 3 months and/or with fine, which may extend to Rs. 10,000. As far as violation of any other provisions of the act is concerned, section 39 prescribes imprisonment for a period, which may extend to 3 months and/or with fine which, may extend to Rs. 10,000 and with additional fine of up to Rs. 5000 for every day during which such failure continues.\textsuperscript{477}


Manufacture, Storage, and Import of Hazardous Chemical Rules, 1989 has been notified in exercise of the powers conferred by Section 6, 8 and 25 of the

\textsuperscript{474} Ibid.
\textsuperscript{475} See The Air Protection Act, 1998.
Environment (Protection) Act, 1986 with the objective of proper management of the manufacture, storage and import of Hazardous Chemicals.\textsuperscript{478} The Principal objectives of the regulation are the prevention of major accidents arising from industrial activities; the limitation of the effects of such accidents both on man and on the environment and the harmonization of the various control measures and the agencies to prevent and limit major accidents.\textsuperscript{479} Any person responsible for importing hazardous chemicals in India shall provide at the time of import or within thirty days from the date of import to the concerned authorities the information pertaining to the name and address of the person receiving the consignment in India; the port of entry in India; mode of transport from the exporting country to India; the quantity of chemical(s) being imported; and complete product safety information.\textsuperscript{480}

If the concerned authority at the State is satisfied that the chemical being imported is likely to cause major accident, it may direct the importer to take such steps including stoppage of such imports as the concerned authority at the State may deem it appropriate.\textsuperscript{481} The concerned authority at the State shall simultaneously inform the concerned Port Authority to take appropriate steps regarding safe handling and storage of hazardous chemicals while off-loading the consignment with the port premises.\textsuperscript{482} Any person importing hazardous chemicals shall maintain the records of the hazardous chemicals imported as specified in Schedule 10 and the records so maintained shall be open for inspection by the concerned authority at the State or the Ministry of Environment and Forests or any officer appointed by them in this behalf.\textsuperscript{483}

\textsuperscript{478} Available at <http://www.dpcc.delhigovt.nic.in/act_hzchem.htm> last visited on 28th November, 2010.
\textsuperscript{479} Manufacture, Storage, and Import of Hazardous Chemical Rules, 1989 as amended in 1994; Annexure 7.
\textsuperscript{480} Ibid, Section 18 (2).
\textsuperscript{481} Ibid, Section 18 (3).
\textsuperscript{482} Ibid, Section 18 (4).
\textsuperscript{483} Manufacture, Storage, and Import of Hazardous Chemical Rules, 1989, Section 18 (5)

The Code of Criminal Procedure, 1973 extends to the whole of India except the state of Jammu and Kashmir.\textsuperscript{484} The nuisance created under section 268 of the Indian Penal Code 1860, is also punished under section 144 of the criminal procedure act 1973. This act has power to issue order in urgent cases of nuisance of apprehended danger. In cases where, in the opinion of a District Magistrate, a Sub-divisional Magistrate or any other Executive Magistrate specially empowered by the State Government in this behalf, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable, such Magistrate may, by a written order stating the material facts of the case, direct any person to abstain from a certain act or to take certain order with respect to certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquility, or a riot, of an affray.\textsuperscript{485}

(I) CONCLUSION

Understanding law and legal framework of the constitution is imperative for any form of business or activity, including healthcare. Unfortunately, most of this information is scattered across various Acts and Statues. To add to this, legal language is very technical and difficult to be interpreted by a non-legal person. Inevitably, except for a select few, the healthcare segment is largely oblivious and unaware of the various legalities governing it. This chapter is an effort to bridge the existing gap and providing with all the relevant and latest information related to or affecting the healthcare segment.\textsuperscript{486} There are some common laws, which are applicable to the healthcare segment. The Indian Penal Code has several provisions, applicable to medical and paramedical professionals. These provisions have been

\textsuperscript{484} The Code of Criminal Procedure, 1973, Section 1(1).
\textsuperscript{485} Ibid, Section 144(1).
specified in this chapter. The Consumer Protection Act, 1984, protects the consumers from losses/ damages due to negligence by the concerned professional/institution, has also been specified. Public Health Legislations are equally crucial for any healthcare institution or organization, as the overall mission of any healthcare institution is to promote good health. Inevitably it is essential to have an overarching understanding about some of the public health legislations being enforced in the country. Health information is essential to rationalize the action of the policy makers and evaluate the progress of health interventions in the country.