CHAPTER: 5

RIGHT TO HEALTH AND LEGAL APPROACH

5.1. Constitutional Law

Rights mean interest or claim. They may be individual or group rights, Natural or legal rights negative or positive rights. There are certain Human rights as discussed in previous chapter. They may be civil and political; economic, social and cultural rights. Claimants of the rights may be Animals, Authors, Children, Consumers, Creditor, Fathers, Foetuses, Gun owners, Humans, Natives, Kings, LGBT, Men, Minorities, Mothers, etc.

So far as the Fundamental Rights are concerned, they are a charter of rights contained in the Constitution of India\(^1\). It guarantees civil liberties such that all Indians can lead their lives in peace and harmony as citizens of India. These include individual rights common to most liberal democracies, such as equality before law, freedom of speech and expression, and peaceful assembly, freedom to practice religion, and the right to constitutional remedies for the protection of civil rights by means of writs such as habeas corpus. Violation of these rights result in punishments as prescribed in the Indian Penal Code or other special laws, subject to discretion of the judiciary. The Fundamental Rights are defined as basic human freedoms that every Indian citizen has the right to enjoy for a proper and harmonious development of personality. These rights universally apply to all citizens, irrespective of race, place of birth, religion, caste or gender. Aliens (persons who are not citizens) are also considered in matters like equality before law. They are enforceable by the courts, subject to certain restrictions. The Rights have their origins in many sources, including England's Bill of Rights, the United States Bill of Rights and France's Declaration of the Rights of Man.

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\(^1\) See Part III of The Constitution of India
The development of constitutionally guaranteed fundamental human rights in India was inspired by historical examples such as England's Bill of Rights (1689), the United States Bill of Rights (approved on 17 September 1787, final ratification on 15 December 1791) and France's Declaration of the Rights of Man (created during the revolution of 1789, and ratified on 26 August 1789). Under the educational system of British Raj, students were exposed to ideas of democracy, human rights and European political history. The Indian student community in England was further inspired by the workings of parliamentary democracy and Britishers political parties.

In 1919, the Rowlatt Act gave extensive powers to the British government and police, and allowed indefinite arrest and detention of individuals, warrant-less searches and seizures, restrictions on public gatherings, and intensive censorship of media and publications. The public opposition to this act eventually led to mass campaigns of non-violent civil disobedience throughout the country demanding guaranteed civil freedoms, and limitations on government power. Indians, who were seeking independence and their own government, were particularly influenced by the independence of Ireland and the development of the Irish constitution. Also, the directive principles of state policy in Irish constitution were looked upon by the people of India as an inspiration for the independent India's government to comprehensively tackle complex social and economic challenges across a vast, diverse nation and population.

In 1928, the Nehru Commission composing of representatives of Indian political parties proposed constitutional reforms for India that apart from calling for dominion status for India and elections under universal suffrage, would guarantee rights deemed fundamental, representation for religious and ethnic minorities, and limit the powers of the government. In 1931, the Indian National Congress (the largest Indian political party of the time) adopted resolutions committing itself to the defense of fundamental civil rights, as well as socio-economic rights such as the minimum wage and the abolition of untouchability and serfdom. Committing themselves to socialism in

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1936, the Congress leaders took examples from the Constitution of the Soviet Union, which inspired the fundamental duties of citizens as a means of collective patriotic responsibility for national interests and challenges.

Task of developing a constitution for the nation was undertaken by the Constituent Assembly of India, composing of elected representatives. The Constituent Assembly first met on December 9, 1946 under the presidency of Dr. Sachidanand later Dr. Rajendra Prasad was made its President. While members of Congress composed of a large majority, Congress leaders appointed persons from diverse political backgrounds to responsibilities of developing the constitution and national laws. Notably, B. R. Ambedkar became the chairperson of the drafting committee, while Jawaharlal Nehru and Sardar Vallabhbhai Patel became chairpersons of committees and sub-committees responsible for different subjects. A notable development during that period having significant effect on the Indian constitution took place on 10 December 1948 when the United Nations General Assembly adopted the Universal Declaration of Human Rights and called upon all member states to adopt these rights in their respective constitutions.

The fundamental rights were included in the First Draft Constitution (February 1948), the Second Draft Constitution (17 October 1948) and final Third Draft Constitution (26 November 1949), prepared by the Drafting Committee.

The fundamental rights were included in the constitution because they were considered essential for the development of the personality of every individual and to preserve human dignity. The writers of the constitution regarded democracy of no avail if civil liberties, like freedom of speech and religion were not recognised and protected by the State. The term "State" includes all authorities within the territory of India. It includes the Government of India, the Parliament of India, the Government and legislature of the states of India. It also includes all local or other authorities such as Municipal Corporations, Municipal Boards, District Boards, Panchayats etc. To avoid confusion with the term states and territories of India, State (encompassing all the authorities in India) has been capitalised and the term state (referring to the state

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5 See Art. 12 of The Constitution of India.
governments) is in lowercase. According to them, "democracy" is, in essence, a government by opinion and therefore, the means of formulating public opinion should be secured to the people of a democratic nation. For this purpose, the constitution guaranteed to all the citizens of India the freedom of speech and expression and various other freedoms in the form of the fundamental rights.⁶

All people, irrespective of race, religion, caste or sex, have been given the right to move the Supreme Court and the High Courts for the enforcement of their fundamental rights. It is not necessary that the aggrieved party has to be the one to do so. Poverty stricken people may not have the means to do so and therefore, in the public interest, anyone can commence litigation in the court on their behalf. This is known as "Public interest litigation".⁷ In some cases, High Court judges have acted on their own on the basis of newspaper reports.

These fundamental rights help not only in protection but also the prevention of gross violations of human rights. They emphasise on the fundamental unity of India by guaranteeing to all citizens the access and use of the same facilities, irrespective of background. Some fundamental rights apply for persons of any nationality whereas others are available only to the citizens of India. The right to life and personal liberty is available to all people and so is the right to freedom of religion. On the other hand, freedoms of speech and expression and freedom to reside and settle in any part of the country are reserved to citizens alone, including non-resident Indian citizens.⁸ The right to equality in matters of public employment cannot be conferred to overseas citizens of India.⁹

Fundamental rights primarily protect individuals from any arbitrary state actions, but some rights are enforceable against individuals.¹⁰ For instance, the Constitution

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⁷ Bodhisattva Gautam v. Subhra Chakraborty. This was the case where Public interest litigation was introduced (date of ruling 15 December 1995).
¹⁰ "Bodhisattva Gautam v. Subhra Chakraborty; 1999ICHRL 69". World Legal Information Institute. Retrieved 2006-05-25. This was the case where fundamental rights were enforced against private individuals (date of ruling 15 December 1995).
abolishes untouchability and also prohibits *begar*. These provisions act as a check both on state action as well as the action of private individuals. However, these rights are not absolute or uncontrolled and are subject to reasonable restrictions as necessary for the protection of general welfare. They can also be selectively curtailed. The Supreme Court has ruled\(^\text{11}\) that all provisions of the Constitution, including fundamental rights can be amended. However, the Parliament cannot alter the basic structure of the constitution. Features like secularism and democracy fall under this category. Since the fundamental rights can be altered only by a constitutional amendment, their inclusion is a check not only on the executive branch but also on the Parliament and state legislatures.\(^\text{12}\) A state of national emergency has an adverse effect on these rights. Under such a state, the rights conferred by Article 19 (freedoms of speech, assembly and movement, etc.) remain suspended. Hence, in such a situation, the legislature may make laws that go against the rights given in Article 19. Also, the President may by order suspend the right to move court for the enforcement of other rights as well.

The Constitution of India under Article 21 provides for right to life and personal liberty to the people of India. Under the various provisions of the constitution it imposes the responsibilities to the central as well as state Government to establish a welfare state, secure and protect the rights of the individual and promote their well being. The State has to implement the Directive Principles, as it is the obligatory duty of the Government, to provide adequate medical facilities and health care to the people of India, by running hospitals and health care centers.

The courts are custodian and protector of the fundamental rights of the citizens, but now they are empowered to proceed further and give compensatory relief to the victims, whenever, there is violation of his or her fundamental right to health, by

\(^{11}\) *Kesavananda Bharati vs. The State of Kerala*; AIR 1973 S.C. 1461, (1973) 4 SCC 225 – In what became famously known as the "Fundamental Rights case", the Supreme Court decided that the basic structure of the Constitution of India was unamendable

public or by the State. For violation of the fundamental rights of the Citizens, Supreme Court under Article 32 and the High court under Article 226 can grant monetary relief to the sufferer through Writ petitions. It can penalize the wrong doer, including the Government and fix the liability for the public wrong, under the Constitution of India. There is no express provision, for fixing such liability but, the Supreme Court, through its various judgments, have made the adequate provisions for fixing the liabilities for the same.

In the Constitution of India, the spirit of fundamental rights and directive principles of state policy recognizes many basic rights of the individuals, safeguarding the human dignity. Fundamental rights are justiciable i.e. they can be enforced by legal action. Directive principles are directions for the legislatures and are not enforceable or justiciable but are powerful instruments for the good governance of the country and it shall be the duty of the state to apply these principles in making the law (Article 37).

5.1.1. Fundamental Rights and Human Health

(a) Right to Life and Personal Liberty\textsuperscript{13}

No person shall be deprived of his life or personal liberty except according to the procedure established by Law. Thus, the Right to life or personal liberty under article 21 from the point of health includes –

Right to health
Right to Doctor's Assistance
Right to Pollution free environment

(b) Remedies for enforcement of Fundamental Rights from the Supreme Court\textsuperscript{14}:

\textsuperscript{13} See Article 21 of The Constitution of India
\textsuperscript{14} Ibid, Article 32
The Constitution gives right to move Supreme Court for the enforcement of the fundamental rights. Whenever a right of the citizen is violated, he can move the Supreme Court for the enforcement of that right.

(c) Remedies for enforcement of Fundamental Rights from High Courts\textsuperscript{15}:

The Constitution gives right to move the High court for the enforcement of the fundamental rights. Whenever the fundamental right of the citizen is violated, he can move to the High court for the enforcement of that right.

(d) Public Interest Litigation:

Normally the person, who’s individual right, is violated or infringed, has a locus standie to file a writ petition for the enforcement of a fundamental right. However, when there is a breach of some public duty or breach of a constitutional provision which causes injury to the general public. Any person is allowed to file writ petition for such violation & Supreme court has taken cognizance of even petitions filed based on the Press reports, for such violation of fundamental rights.

5.2. Directive Principles and Human Health

Certain Policies to be followed by the State\textsuperscript{16}

(a) No exploitation at work place

(a) That the citizens, men and women equally, have the right to an adequate means of livelihood.

(e) That the health and strength of workers, men and women and the tender age of children are not abused, and the citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.

(f) That the children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity, and that children and youth are protected against exploitation and against moral and material abandonment.

\textsuperscript{15}Ibid Article 226

\textsuperscript{16}See Article 39 of The Constitution of India
(b) **Right to work and public assistance**\(^{17}\):

The State shall, within the limits of its economic capacity and development, make effective provisions for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of underserved want. Thus it deals with social services and confers right to Public assistance in cases of sickness and disablement.

(c) **Just and human conditions at work place**\(^{18}\):

It requires, that the State, within the limits of its economic capacity and development, to make effective provisions, for securing just and human conditions at work and also make provisions for maternity relief.

(d) **Duties of the State to raise the level of nutrition and standard of living and to improve public health**\(^{19}\):

It lays down, the duty of the State, to regard, as among its primary duties -the raising of the level of nutrition and the standard of living of its people and the improvement of Public Health.

The State has to endeavor to bring about prohibition of the consumption (except for the medicinal purposes) of intoxicating drinks and drugs which are injurious to health.

(e) **Protection and improvement of the environment in view of the Public Health**

Article 48 A introduced by the Forty second amendment in 1976. It obligates the state to endeavor to protect and improve the environment in view of the Public Health. The State must take necessary steps for protection and improvement of healthy environment- essential, for preserving and maintaining good public health.

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\(^{17}\) Ibid Article 41  
\(^{18}\) Ibid Article 42  
\(^{19}\) See Article 47 of The Constitution of India
5.1.3. Fundamental Duties:

Prior to Forty Second Amendment of the Constitution in 1976, there were no fundamental duties of the citizens. The list of fundamental duties was incorporated in the constitution on the recommendation of the Swarna Singh Committee. It is the fundamental duty of every citizen to protect and improve the natural environment including forests, lakes, rivers, wild life to have compassion for living creatures.\(^{20}\)

5.2. International Covenant

It requires the State parties to strive for the highest attainable standard of physical and mental health. The effect of these international human rights documents are to impose obligations on the State, relating to health, under different laws, such as Law of Torts, Law of Contract, Consumer Protection and Law of Crimes.\(^{21}\)

5.3. Judicial Approach:

There are so many decisions of the higher judiciary in India regarding the rights of the people in relation to the health

**Municipal Council, Ratlam v/s. Vardhichand**\(^{22}\)

This case refers to the (Art. 21) for right to health with reference to the pollution free environment and State duty to maintain pollution free environment under article 47.

In this case, resident of Ratlam, Vardhichand filed a complaint that Municipality had failed to prevent the discharge of malodorous fluids from the nearby Alcohol plant in to the public street (nala) and provide sanitary facilities on the roads. The Supreme Court directed the Municipality to follow the statutory duties as provided in Article 47.

\(^{20}\) Ibid, Article 51 A (g)

\(^{21}\) See Article 12 of the International Covenant on Economic, Social and Cultural Rights

\(^{22}\) (1980)4 SCC 162
of the constitution and stop the effluents from the alcohol plant from flowing in to the nala or street and remove unhygienic conditions amounting to public nuisance. It further stressed, that Article 47, makes it, paramount primary duty on the State or Municipality to take steps to prevent pollution free environment and improve the public health.

The Court also observed that - Where Directive Principles have found statutory expression in do's and don'ts, the court will not sit idle and allow municipal or Government to become statutory mockery. The Law will relentlessly be enforced and the plea of poor finances will be alibi when people in the misery cry for Justice. The officer in charge and even elected representative will have to face the penalty of law, if what the constitution and follow up legislation, direct them to do are defied or denied wrongfully.

M. C. Mehta v/s. Union of India\textsuperscript{23} [Ganga pollution case]

This case refers to the (Art.21) for right to health with reference to the pollution free environment. Justice Singh declared the closure of Industries which were polluting river Ganga (though it may bring unemployment and loss of revenue to the State) as life, health and ecology have greater importance for the people than the unemployment and loss of revenue.

M. C. Mehta v/s. Union of India\textsuperscript{24}

This case refers to the (Art.21) for right to health with reference to the pollution free environment. In this case there was a leakage of oleum gas on 04 Dec. 1985 from the Shri Ram Food and Fertilizer Corporation, New Delhi, in which one person died on the spot and several persons were fallen ill because of the leakage of the toxic gas. Mr. M. C. Mehta filed public interest litigation under Art. 32 as there was violation of Art. 21 and sought to close and relocate the Plant which was located in the thickly

\textsuperscript{23} (1987)4 SCC 463
\textsuperscript{24} AIR1987SC965
populated area of Delhi. The District Magistrate, Delhi ordered to close down the factory.

Chief justice Bhagwati showed his deep concern, for the safety of the people of Delhi from the leakage of the hazardous substance like oleum gas. The Apex Court made significant announcement in this case, that enterprises engaged in hazardous or inherently dangerous activity owe an absolute duty to the community and must be absolutely liable to compensate for the harm caused by such activities. It was observed that there is an element of hazard or risk inherent in the very use of science and technology and it is not possible to totally eliminate such hazards or risks to the community. We cannot possibly adopt a policy of not having any chemical or other hazardous industries, merely because, they pose hazards or risk to the community. We can only hope to reduce the elements of hazards or risks to the community, by taking all necessary steps. It allowed it to restart the factory with modifications of the workers safety, while maintaining the effluent discharge and emission standards.

**Pt. Parmanad Katara v/s. Union of India**

This case refers to the (Art.21) for right to health, Art.32, Art.41 and 42 rights to get the treatment in sickness and disablement.

In this case, Pt. Parmanad Katara was a small human right activist fighting for the good cause of general public interest. He filed a writ petition on the basis of a report in Hindustan Times, in which it was alleged that a man traveling by Scooter was knocked down by a speeding car. He had a head injury and was bleeding profusely. He was picked by a person on the road and he took him to the nearest hospital. The doctor refused to attend to him and give treatment. He could not get the treatment due to lack of operative facilities for a head injury and non availability of a Neuro-

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25 AIR 1989SC 2039
Surgeon. He was advised to take him to a different hospital located about 20 km away, authorized to treat Medico-Legal cases. At last he died on the way.

The Supreme Court has held that there cannot be two opinions that preservation of human life is of paramount importance. Every medical practitioner, whether practicing or attached to government or private hospital has a profound obligation, to extend his services with due expertise for protecting life. No law or statute can intervene, to avoid or delay the discharge of this paramount obligation, cast upon the members of the medical profession. Many a times the number of the medical professionals avoids his duty to help a dying person, because it might turn out to be a medico-legal case. No doubt a physician is free to choose his patient, whom he wants to serve. However, he should respond to any request for his assistance in an emergency.

The Supreme Court has further held that whenever a member of the medical profession is approached, and if he finds, that whatever assistance he could give, is not sufficient to save the life of the patient, & some better assistance is necessary, it is the duty of the medical man, to provide primary medical aid to the patient and then refer the patient to the other hospital, where the expertise facilities required for the treatment are available. The practice of the doctors and certain Government institutions, to refuse even the primary medical aid to the patient and referring them to other hospitals, simply because they are medico legal cases are deprecated. No medical man shall commit an act of negligence depriving the patient from necessary care.

Union Carbide Corporation v/s. Union of India\textsuperscript{26} - Bhopal Gas Tragedy

This case refers to the (Art.21) for right to health with reference to the pollution free environment.

\textsuperscript{26}AIR 1992 SC 248
In this case there was leakage of MIC (Methyl Isocyanides) gas from the Union Carbide Corporation at Bhopal on 2-3 December 1984. It was reported that more than 3000 people died the same night and two lakh persons were fallen ill of various ailments. In this case the Supreme Court held that the Union Carbide Corporation will compensate the victims and their relatives and also for the injuries to unborn children whose congenital defects were traceable to MIC toxicity inherited or derived congenitally due to the accident.

**State of Punjab v/s. Mohinder Singh**\(^{27}\)

The Right to Health is recognized as a part of fundamental right to life, guaranteed by Article 21 of the Constitution. In this case an employee Mr. Mohinder Singh of the Punjab State had a heart ailment. The specialist of this disease was not available in Punjab so he was permitted by the Director of Health Services and the Medical Board of Punjab, to have treatment outside Punjab i.e. at All India Institute of Medical Sciences, New Delhi. The employee had to pay room rent at the Institute as per their rates. The employee claimed re-imbursement for the same. The State Government rejected the claim saying that the room rent was not permitted as per Government Rules. The Employee went to the court and it was held that having regard to Article 21 of the Constitution, the employee was entitled for the re-imbursement amount actually paid by him as room rent.

**Dilip Basu v/s. State of Bengal**\(^{28}\)

This writ petition in the Supreme Court was decided by Honorable Justice Dr. A. S. Anand and K. T. Thomas. The petition was related to Article 21, 22, 32 and 226 & others. The Honorable Apex court has held that according to Article 21, no person shall be deprived of his life or personal liberty except according to the procedure established by law. Personal liberty thus is a sacred and cherished right under

\(^{27}\)AIR 1997 SC 1225

\(^{28}\)AIR 1997 SC 3017
Constitution of India. The expression life and Personal liberty has been held to include the right to live with human dignity and thus it would also include within itself a guarantee, against torture and assault by the State or its functionaries.

**Pachim Bengal Khod Majdoor Samiti and others v/s. Government of West Bengal**

This case refers to the (Art. 21) for right to health and Art.41 and 42 making it the duty of the State to provide the treatment in sickness and disablement.

One member of the Pachim Bengal Khod Majdoor Samiti fell from the train and got head injury for which he needed a Neuro Surgeon to operate on him. He moved from 7-8 hospitals and was turned down for lack of operative facilities for a head injury and non availability of a Neuro Surgeon. At last he was admitted and operated at some hospital after wastage of few hours. He was alright but he sued the Government for not providing adequate facilities for Neuro-Surgery in the State Hospital.

The Supreme Court has held that it is the responsibility of the State to provide for the facilities of treatment in the State run hospitals and held this inability to provide Neuro-Surgery in the State Hospital as violation of Article 41 and 42 to be read with Art.21 and penalized the Bengal Government with a fine of Rs. 25000. It was held that Life without health is no life at all.

It also issued necessary directions to the Central and State Government to ensure availability of proper medical facilities to deal with the emergency cases.

It also emphasized that the State cannot abdicate the constitutional obligation imposed upon it, by citing financial constraints- as a reason for not providing adequate health care facilities.

**In M. C. Mehta v/s. Kamal Nath**

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29 (1996)4 SCC 37
Justice Saghir Ahmad of Supreme Court gave a wider interpretation of the fundamental right or Constitutional right of Article 21. It was held that the expression life in Article 21 does not mean mere animal existence. It has a wider meaning which includes right to livelihood, better standards of life, hygienic conditions in the work place and leisure. This means right to live with human dignity and have a living environment congenial to human existence. Any activity which pollutes the environment and makes it unhealthy, hazardous to human health is violative of the right guaranteed by Article 21. He further held that environmental pollution and spoliation should also be regarded as amounting to violation of article 21 of the constitution.

**Hinch lal Tiwari v/s. Kamla devi**

This case refers to Art. 21 for right to health with reference to pollution free environment. In this case, The Supreme Court has held that material resources of the community like forests, tanks, ponds, hillock, mountain etc are nature's bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enables people to enjoy a quality of life which is the essence of the guaranteed right under Article 21 of the Constitution. The Court decided that the Pond's land cannot be allotted for the residential purpose.

**5.4. Health Related Laws in India**

- The Medical Termination of Pregnancy Act, 1971 and Rules
- Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act and Rules
- Acts in Disability Insecticides Act, 1994 and Rules
- Maternity Benefit Act, 1961 and Rules
- Narcotic Drugs and Psychotropic Substances Act and Rules
- The Prevention of Food Adulteration Act, 1954

30 AIR 2000 SC 1997
31 (2001)6 SCC 496
Drugs and Cosmetics Act, 1940
The Pharmacy Act, 1948
The Transplantation of Human Organs Act and Rules Environmental Acts and Rules Consumer Protection Act and
Medical Profession Mental Health Act, 1987
Food Safety and Standards Regulations
The Protection of Women from Domestic Violence Act, 2005
The Marriage Laws (Amendment) Bill, 2010
The Prohibition of Sexual Harassment of Women at Workplace Bill, 2010
Food Safety and Standards (Prohibition and Restrictions on Sales) Regulations, 2011 Food Safety and Standards (Contaminants, Toxins and Residues) Regulations, 2011

5.5. Medical and Pharmacy Laws

- Pharmacy Act, 1948.
- Indian Medical Council Act and Code of Medical Ethics, 1956.
- Lepers Act.
- Drug and Cosmetics Act, 1940.
- Dentist Regulations, 1976
- Narcotic and Psychotropic Substances Act,

5.6. Labour Laws

- Industrial Disputes Act, 1947.
- Indian Trade Union Act, 1926.
- Industrial Employment (Standing Orders) Act, 1946.
Bombay Shops and Establishment Act, 1948
Factories Act, 1948
Child Labour (Prohibition and Regulation) Act, 1986.
Payment of Wages Act, 1936.
Payment of Bonus Act, 1965.
Fatal Accidents Act, 1855.
Workmen’s Compensation Act, 1923.
Employees’ Provident Funds and Miscellaneous Provisions Act, 1952.
Payment of Gratuity Act, 1972.
National Holidays under Shops Act.

5.7. Environmental Laws
- Insecticides Act, 1968.
- Air (Prevention and Control of Pollution) Act, 1981.

5.8. Medical Termination of Pregnancy Act, 1971

Pregnancy and its termination is a right of a woman, but it is subject to certain restrictions. Medical Termination of Pregnancy Act, 1971 is enacted to provide for the termination of certain pregnancies by registered medical practitioners and for matters connected therewith or incidental thereto.

When pregnancies may be terminated by registered medical practitioners? [Section 3]
Subject to Section 3(4), a pregnancy may be terminated by a registered medical practitioner, -

(a) Where the length of the pregnancy does not exceed twelve weeks, and if such medical practitioner is of opinion, formed in good faith, or

(b) Where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioners are of opinion, formed in good faith, that-

(i) The continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health; or

(ii) There is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.

(iii) Grave injury to her physical or mental health

Explanation I-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.

A girl aged 18 years raped and made pregnant by several accused. In view of mental torture and agony of the girl, the court directed for termination of pregnancy.\textsuperscript{32}

Explanation II - 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.

In determining whether the continuance of a pregnancy would involve such risk of injury to the health as is mentioned in Sec.3 (2),

5.8.1. Account may be taken of the pregnant woman's actual or reasonable foreseeable environment.

No pregnancy of a woman shall be terminated except with the consent in writing:

1. of her guardian, who has not attained the age of eighteen years, or, who, having attained the age of eighteen years, is a mentally ill person; And in other cases

\textsuperscript{32} D. Rajeshwaryv. State of T.N., Cr.LJ3795 (Mad)
2. of the pregnant woman. [S. 3(4)]
Where the consent of the girl or her guardian is not obtained for termination of pregnancy the benefit of Sec.3 is not available to doctor.\(^{33}\)

5.8.2. Place where pregnancy may be terminated.

No termination of pregnancy shall be made in accordance with this Act at any place other than-
(a) A hospital established or maintained by Government, or
(b) A place for the time being approved by Government or a District Level Committee constituted by that Government
Conditions as to the length of pregnancy and place for MTP mentioned under Ss 3 and 4 respectively shall not apply. –
Where a registered medical practitioner is of opinion, formed in good faith, that the termination of such pregnancy is immediately necessary to save the life of the pregnant woman.

5.8.3. No place shall be approved
(i) Unless the Government is satisfied that termination of pregnancies may be done therein under safe and hygienic conditions; and
(ii) Unless the following facilities are provided therein, namely:
(iii) In case of first trimester, that is, up to 12 weeks of pregnancy –
A gynecological examination/labour table, resuscitation and sterilization equipment, drugs and parental fluid, back up facilities for treatment of shock and facilities for transportation; and
In case of second trimester, that is up to 20 weeks of pregnancy -
(a) An operation table and instruments for performing abdominal or gynecological surgery;
(b) Anaesthetic equipment, resuscitation equipment and sterilisation equipment;

\(^{33}\)Misha Malaviya v. State of M. P. 2000 Cr. L. J. 671[MP]
(c) Drugs and parental fluids for emergency use, notified by Government of India from time to time.

5.8.4. Offences and Penalties

Termination of a pregnancy by a person who is not a registered medical practitioner shall, be an offence punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years.
In a place other than the registered/recognized, shall be punishable with rigorous imprisonment for a term which shall not be less than 2 years but which may extend to 7 years.
Any person being owner of a place which is not approved under the Act shall be punishable with rigorous imprisonment for a term which shall not be less than 2 years but which may extend to 7 years. [Sec. 5]

5.9. Provisions under Indian Penal Code, 1860

5.9.1. Causing miscarriage:

Whoever voluntarily causes a woman with child to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either for a term which may extend to three years, or with fine, or with both, and, if the woman be quick with child, shall be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine.
Explanation:- A woman who causes herself to miscarry, is within the meaning of this section.[Sec. 312]

5.9.2. Causing miscarriage without woman’s consent:-

Whoever commits the offence without the consent of the woman, whether the woman is quick with child or not, shall be punished with imprisonment for life or with imprisonment of either for a term which may extend to ten years, and shall also be liable to fine. [Sec. 313]
5.9.3. Death caused by act done with intent to cause miscarriage: -

whoever, with intent to cause the miscarriage of woman with child, does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term may extend to ten years, and shall also be liable to fine.

If act done without woman’s consent:- shall be punished either with imprisonment for life or with the punishment above mentioned.

Explanation: - It is not essential to this offence that the offender should know that the act is likely to cause death. [Sec. 314]

Act done with intent to prevent child being born alive or to cause it to die after birth: -

Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth, and not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both. [Sec. 315]

5.9.4. Causing death of quick unborn child by act amounting to culpable homicide:- whoever does any act under such circumstances, that if he thereby caused death he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. [Sec. 316]

Illustration:

A knowing that he is likely to cause the death of a pregnant woman, does an act which, if it caused the death of the woman, would amount to culpable homicide. The woman is injured, but does not die, but the death of an unborn quick child with which she is pregnant is thereby caused. A is guilty of the offence defined in this section.

Exposure and abandonment of child under twelve years, by parent or person having care of it:-

Whoever being the father or mother of a child under the age of twelve years, having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either
description for a term which may extend to seven years; or with fine, or with both. [Sec. 317]

Explanation.- this section is not intended to prevent the trial of the offender for murder or culpable homicide, as the case may be, if the child die in consequence of exposure.

5.9.5. Concealment of birth by secret disposal of dead body –

Whoever, by secretly burying or otherwise disposing of the dead body of a child whether such child die before or during its birth, intentionally conceals or endeavors to conceal the birth of such child, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. [Sec. 318]

5.10 Female Infanticide in India

The Female Infanticide Prevention Act, 1870, also Act VIII of 1870 was a legislative act passed in British India, to prevent murder of female infants. The Section 7 of this Act declared that it was initially applicable only to the territories of Oudh, North-Western Provinces and Punjab, but the Act authorized the Governor General to extend the law to any other district or province of the British Raj at his discretion.

British colonial authorities passed the Female Infanticide Prevention Act 1870, under pressure of Christian missionaries and social reformers seeking an end to the incidences of female infanticides in South Asia. The law's preamble stated that the murder of female infants is believed to be commonly committed in certain parts of British India, and these were Oudh, North-Western Provinces and Punjab. The Act initially applied to these regions.

The law authorized the creation of a police force to maintain birth, marriage and death registers, to conduct census of the district at its discretion, enforce a special tax on the
district to pay for the expenses and entertainment of said police officers. The Act also stipulated a prison sentence of six months or a fine of thirty thousand rupees, or both, on anyone who disobeyed or obstructed the police officers enforcing the Act. Section 6 of the Act allowed the police officer to seize a child from any person he suspects may neglect or endanger any female child, as well as force collect a monthly fee from that person.

The Act was in force till 1981 in Pakistan, when it was superseded by an ordinance

Female foeticide in India

Sex selection is a deep rooted problem in India. Families who discriminate against girl children prefer to abort the child in womb. Boy child is preferred since he will carry on the family responsibilities and family name.

The ultrasound techniques make possible to know the sex of the child in womb. If it is found a girl child in womb, the people started termination of pregnancy. This process began in the early 1990s when ultrasound techniques gained widespread use in India. There was a tendency for families to continuously produce children until a male child was born. Foetal sex determination and sex selective abortion by medical professionals has today grown into a Rs. 1,000 crore industry (US$ 244 million). Social discrimination against women and a preference for sons have promoted female foeticide in various forms skewing the sex ratio of the country towards men.

According to the decennial Indian census, the sex ratio in the 0-6 age group in India went from 104.0 males per 100 females in 1981, to 105.8 in 1991, to 107.8 in 2001, to 109.4 in 2011. The ratio is significantly higher in certain states such as Punjab and Haryana (126.1 and 122.0, as of 2001).

5.11. Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994

The main purpose of enacting the act is to ban the use of sex selection techniques before or after conception and prevent the misuse of prenatal diagnostic technique for sex selective abortion.

5.11.1. Sex selection is any act of identifying the sex of the foetus and elimination of the foetus if it is of the unwanted sex.
Offences under this act include conducting or helping in the conduct of prenatal diagnostic technique in the unregistered units, sex selection on a man or woman, conducting PND test for any purpose other than the one mentioned in the act, sale, distribution, supply, renting etc. of any ultra sound machine or any other equipment capable of detecting sex of the foetus. Main provisions in the act are:

The Act provides for the prohibition of sex selection, before or after conception.

It regulates the use of pre-natal diagnostic techniques, like ultrasound and amniocentesis by allowing them their use only to detect:

- a) genetic abnormalities
- b) metabolic disorders
- c) chromosomal abnormalities
- d) certain congenital malformations
- e) haemoglobinopathies
- f) sex linked disorders.

No laboratory or centre or clinic will conduct any test including ultra sonography for the purpose of determining the sex of the foetus.

No person, including the one who is conducting the procedure as per the law, will communicate the sex of the foetus to the pregnant woman or her relatives by words, signs or any other method.

Any person who puts an advertisement for pre-natal and pre-conception sex determination facilities in the form of a notice, circular, label, wrapper or any document, or advertises through interior or other media in electronic or print form or engages in any visible representation made by means of hoarding, wall painting, signal, light, sound, smoke or gas, can be imprisoned for up to three years and fined Rs. 10,000.

5.11.2. Compulsory registration

The Act mandates compulsory registration of all diagnostic laboratories, all genetic counselling centres, genetic laboratories, genetic clinics and ultrasound clinics.

Amendment in 2003

Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 (PNDT), was amended in 2003 to The Pre-Conception and Pre-Natal Diagnostic
Techniques (Prohibition Of Sex Selection) Act (PCPNDT Act) to improve the regulation of the technology used in sex selection.

**Implications of the amendment are**

a) Amendment of the act mainly covered bringing the technique of preconception sex selection within the ambit of the act

b) Bringing ultrasound within its ambit

c) Empowering the central supervisory board, constitution of state level supervisory board

d) Provision for more stringent punishments

e) Empowering appropriate authorities with the power of civil court for search, seizure and sealing the machines and equipments of the violators

f) Regulating the sale of the ultrasound machines only to registered bodies

As discussed above the object of the Act is to provide for the prohibition of sex selection, before or after conception, and for regulation of pre-natal diagnostic techniques for the purposes of detecting genetic abnormalities or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex-linked disorders and for the prevention of their misuse for sex determination leading to female foeticide and for matters connected therewith or incidental thereto.

In order to fully understand the provisions of this act it is important to know the specific and technical words used in this Act which are defined as under:

"**Pre-natal diagnostic test**" means ultrasonography or any test or analysis of amniotic fluid, chorionic villi, blood or any tissue of a pregnant woman conducted to detect genetic or metabolic disorders or chromosomal abnormalities or congenital anomalies or naemoglobinopathies or sex-linked diseases

"**conceptus**" means any product of conception at any stage of development from fertilisation until birth including extra embryonic membranes as well as the embryo or foetus;

"**embryo**" means a developing human organism after fertilisation till the end of eight weeks (fifty-six days);
"foetus" means a human organism during the period of its development beginning on the fifty-seventh day following fertilisation or creation (excluding any time in which its development has been suspended) and ending at the birth;

"Genetic Clinic" means a clinic, institute, hospital, nursing home or any place, by whatever name called, which is used for conducting pre-natal diagnostic procedures;

'Explanation.-For the purposes of this clause, "Genetic Clinic" includes a vehicle, where ultrasound machine or imaging machine or scanner or other equipment capable of determining sex of the foetus or a portable equipment which has the potential for detection of sex during pregnancy or selection of sex before conception, is used;

"Genetic Laboratory" means a laboratory and includes a place where facilities are provided for conducting analysis or tests of samples received from Genetic Clinic for pre-natal diagnostic test; and includes a place where ultrasound machine or imaging machine or scanner or other equipment capable of determining sex of the foetus or a portable equipment which has the potential for detection of sex during pregnancy or selection of sex before conception, is used;

"Medical geneticist" means a person who possesses a degree or diploma or certificate in medical genetics in the field of pre-natal diagnostic techniques or has experience of not less than two years in such field after obtaining—

(i) any one of the medical qualifications recognised under the Indian Medical Council Act, 1956 (102 of 1956); or

(ii) a post-graduate degree in biological sciences;

it includes a person who possesses a degree or diploma in genetic science in the fields of sex selection and pre-natal diagnostic techniques or has experience of not less than two years in any of these fields after obtaining- (i) any one of the medical qualifications recognised under the Indian Medical Council Act, 1956 (102 of 1956); or (ii) a post-graduate degree in biological sciences;

(i) "Pre-natal diagnostic procedures" means all gynaecological or obstetrical or medical procedures such as ultrasonography, foetoscopy, taking or removing samples of amniotic fluid, chorionic villi, embryo, blood or any other tissue or fluid of a man, or of a woman before or after conception, for being sent to a Genetic Laboratory or Genetic Clinic for conducting any type of analysis or pre-natal diagnostic tests for selection of sex before or after conception;
"Pre-natal diagnostic techniques" includes all pre-natal diagnostic procedures and pre-natal diagnostic tests;

"pre-natal diagnostic test" means ultrasonography or any test or analysis of amniotic fluid, chorionic villi, blood or any tissue or fluid of a pregnant woman or conceptus conducted to detect genetic or metabolic disorders or chromosomal abnormalities or congenital anomalies or haemoglobinopathies or sex-linked diseases;

"Sex selection" includes any procedure, technique, test or administration or prescription or provision of anything for the purpose of ensuring or increasing the probability that an embryo will be of a particular sex;

"sonologist or imaging specialist" means a person who possesses any one of the medical qualifications recognised under the Indian Medical Council Act, 1956 (102 of 1956) or who possesses a post-graduate qualification in ultrasonography or imaging techniques or radiology;

5.11.3. Regulation of Genetic Counseling Centres, Genetic Laboratories and Genetic Clinics

(1) 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;

(2) No Centre or Laboratory or Clinic shall employ or cause to be employed or take services of any person, whether on honorary basis or on payment who does not possess the qualifications as may be prescribed.

(3) 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.

5.11.4. Prohibition of sex selection.-

No person, including a specialist or a team of specialists in the field of infertility, shall conduct or cause to be conducted or aid in conducting by himself or by any other person, sex selection on a woman or a man or on both or on any tissue, embryo, conceptus, fluid or gametes derived from either or both of them.
5.11.5. Prohibition of ultrasound machine, etc., to persons, laboratories, clinics, etc., not registered under the Act.-No person shall sell any ultrasound machine or imaging machine or scanner or any other equipment capable of detecting sex of the foetus to any Genetic Counseling Centre, Genetic Laboratory, Genetic Clinic or any other person not registered under the Act.

(1) No place including a registered Genetic Counselling Centre or Genetic Laboratory or Genetic Clinic shall be used or caused to be used by any person for conducting pre-natal diagnostic techniques except for the purposes specified in clause (2) and after satisfying any of the conditions specified in clause (3);

(2) 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;

(3) no pre-natal diagnostic techniques shall be used or conducted unless the person qualified to do so is satisfied for reasons to be recorded in writing 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 two or more spontaneous abortions or foetal loss;
(iii) The pregnant woman had been exposed to potentially teratogenic agents such as drugs, radiation, infection or chemicals;
(iv) The pregnant woman or her spouse has a family history of mental retardation or physical deformity such as, spasticity or any other genetic disease;
(v) Any other condition as may be specified by the Board: Provided that the person conducting ultra sonography on a pregnant woman shall keep complete record thereof in the clinic in such manner, as may be prescribed, and any deficiency or inaccuracy found therein shall amount to contravention of the provisions of section 5 or section 6 unless contrary is proved by the person conducting such ultra sonography;
(4) No person including a relative or husband of the pregnant woman shall seek or encourage the conduct of any pre-natal diagnostic techniques on her except for the purposes specified in clause (2);
(5) No person including a relative or husband of a woman shall seek or encourage the conduct of any sex selection technique on her or him or both.”.

5.11.6. Written consent of pregnant woman and prohibition of communicating the sex of foetus [Sec.5.]

(1) No person referred to in clause (2) of section 3 shall conduct the pre-natal diagnostic procedures unless—
(a) He has explained all known side and after effects of such procedures to the pregnant woman concerned;
(b) He has obtained in the prescribed form her written consent to undergo such procedures in the language which she understands; and (c) a copy of her written consent obtained under clause (b) is given to the pregnant woman.
(2) No person including the person conducting pre-natal diagnostic procedures shall communicate to the pregnant woman concerned or her relatives or any other person the sex of the foetus by words, signs, or in any other manner Determination of sex prohibited.

5.11.7. Determination of sex prohibited (Sec.6)

(a) No Genetic Counselling 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;
(b) No person shall conduct or cause to be conducted any pre-natal diagnostic techniques including ultrasonography for the purpose of determining the sex of a foetus.
(c) No person shall, by whatever means, cause or allow to be caused selection of sex before or after conception.
5.11.8. Registration of Genetic Counselling Centres, Genetic Laboratories or Genetic Clinics (Sec.18).

(1) No person shall open any Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic after the commencement of this Act unless such Centre, Laboratory or Clinic is duly registered separately or jointly under this Act.

(2) Every application for registration shall be made to appropriate authority, accompanied by such fees as may be prescribed.

(3) Every existing Centre, Laboratory or Clinic engaged, either partly or exclusively, in counselling or conducting pre-natal diagnostic techniques, shall apply for registration within sixty days from the date of such commencement of the Act.

(4) Subject to the provisions of section 6, every Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic engaged in counselling or conducting pre-natal diagnostic techniques shall cease to conduct any such counselling or technique on the expiry of six months from the date of commencement of this Act unless such Centre, Laboratory or Clinic has applied for registration and is so registered separately or jointly or till such application is disposed of, whichever is earlier.

(5) No Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic shall be registered under this Act unless the Appropriate Authority is satisfied that such Centre, Laboratory or Clinic is in a position to provide such facilities, maintain such equipment and standards as may be prescribed.

5.11.9. Granting of registration certificate (Sec.19)

The Appropriate Authority shall, after holding an inquiry and after satisfying itself and having regard to the advice of the Advisory Committee in this behalf, grant a certificate of registration in the prescribed form jointly or separately to the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, as the case may be.

(2) If, the Appropriate Authority is satisfied that the applicant has not complied with the requirements of this Act or the rules, it shall, for reasons to be recorded in writing, reject the application for registration.

(3) Every certificate of registration shall be renewed in such manner and after such period and on payment of such fees as may be prescribed.
(4) The certificate of registration shall be displayed by the registered Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic in a conspicuous place at its place of business.

5.11.10. Cancellation or suspension of registration (Sec. 20) and Appeal (Sec. 21)

Cancellation or suspension of registration-
(1) The Appropriate Authority may suo moto, or on complaint, issue a notice to Centre, Laboratory or Clinic to show cause why its registration should not be suspended or cancelled for the reasons mentioned in the notice.

(2) If, after giving a reasonable opportunity of being heard to the Centre, Laboratory or Clinic and having regard to the advice of the Advisory Committee, the Appropriate Authority is satisfied that there has been a breach of the provisions of this Act or the rules, it may, without prejudice to any criminal action that it may take against such Centre, Laboratory or Clinic, suspend its registration for such period as it may think fit or cancel its registration, as the case may be.

(3) Notwithstanding anything contained in sub-sections (1) and (2), if the Appropriate Authority is, of the opinion that it is necessary or expedient so to do in the public interest, it may, for reasons to be recorded in writing, suspend the registration of any Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic without issuing any such notice referred to in sub-section (1).

5.11.12. Appeal -

The Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic may, within thirty days from the date of receipt of the order of suspension or cancellation of registration passed by the Appropriate Authority under section 20, prefer an appeal against such order to— (i) the Central Government, where the appeal is against the order of the Central Appropriate Authority; and (ii) the State Government, where the appeal is against the order of the State Appropriate Authority, in the prescribed manner.
5.11.13. Prohibition of advertisement relating to pre-conception and pre-natal determination of sex and punishment for contravention (Sec.22)

No person, organisation, Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic including clinic, laboratory or centre having

(1) Ultrasound machine or imaging machine or scanner or any other technology

(2) By any means whatsoever, scientific or otherwise capable of undertaking determination of sex of the foetus or sex selection shall issue, publish, distribute, communicate or cause to be issued, published, distributed or communicated any advertisement, in any form, including internet, regarding facilities of pre-natal determination of sex or sex selection before conception available at such Centre, Laboratory, Clinic or at any other place.

(3) Any person who contravenes the provisions of sub-section (1) or sub-section (2) shall be punishable with imprisonment for a term which extend to three years and with fine which may extend to ten thousand rupees.

Explanation.-For the purposes of this section, "advertisement" includes any notice, circular, label, wrapper or any other document including advertisement through internet or any other media in electronic or print form and also includes any visible representation made by means of any hoarding, wall-painting, signal, light, sound, smoke or gas.

5.11.14. Offences and Penalties (Sec. 23)

(1) Any registered medical practitioner or any person who owns such a Centre, a Laboratory or a Clinic or is employed in and renders his professional or technical services therein, whether on an honorary basis or otherwise, and who contravenes any of the provisions of this Act or rules made thereunder shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees and on any subsequent conviction, with imprisonment which may extend to five years and with fine which may extend to fifty thousand rupees.
(2) The name of the registered medical practitioner who has been convicted by the court under sub-section (1), shall be reported by the Appropriate Authority to the respective State Medical Council for taking necessary action including the removal of his name from the register of the Council for a period of two years for the first offence and permanently for the subsequent offence.

(3) Any person who seeks the aid of such Centre, Laboratory or Clinic or of a medical geneticist, gynecologist or registered medical practitioner for conducting pre-natal diagnostic techniques on any pregnant woman (including such woman unless she was compelled to undergo such diagnostic techniques) for purposes other than those specified in clause (2) of section 4, shall, be punishable with imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees and on any subsequent conviction with imprisonment which may extend to five years and with fine which may extend to fifty thousand rupees.

5.11.15. Presumption in the case of conduct of pre-natal diagnostic techniques

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.(Sec.24)

5.11.16. Penalty for contravention of the provisions of the Act or rules for which no specific punishment is provided elsewhere in this Act, shall be punishable with imprisonment for a term which may extend to three months or with fine, which may extend to one thousand rupees or with both and in the case of continuing contravention with an additional fine which may extend to five hundred rupees for every day during which such contravention continues after conviction for the first such contravention. (Sec.25)
5.12. Maternity Benefit Act, 1961

[Total Sections – 30 and Schedules - Nil]

- **Object** – is to regulate the conditions of service and to provide certain benefits to the women employees in the form of leave with wages, maternity bonus, rest intervals, crèches, etc.

- **Application** – every factory, mine, plantation and to every shop or establishment in which 10 or more employees are employed or were employed on any day of preceding twelve months. However, it does not apply to the establishments which are covered under the ESI Act, 1948.

- **Coverage** – women including unmarried are eligible when she is expecting a child and has worked for 80 days in the 12 months immediately preceding the date of her expected delivery.
  - Female workers engaged on casual, daily wages, etc. basis without any category or any wage ceiling, they are covered.

- A woman employee is entitled to these benefits irrespective of the number of children she has, although it is contrary to the family planning norms of the Government.

5.12.1. Benefits

- [i] Cash – leave with average pay for six weeks before and after the delivery; in case of miscarriage- six weeks after the date of incident; additional one month leave for illness due to the pregnancy and two weeks after the Tubectomy Operation on proof.
  - If she could not avail of six weeks’ leave preceding the date of her delivery, she can avail this one following her delivery.

- (1) A Medical Bonus of Rs. 1000/-, if no pre-natal confinement and post-natal care is provided for by the employer free of charge.

- (2) The Central Government may before every three years, by notification in the Official Gazette, increase the amount of medical bonus subject to the maximum of twenty thousand rupees."

- No deduction from wages of the employee.
• [ii] Non-cash – light work for ten weeks before the date of her expected delivery, if she asks for it.
  - Two nursing breaks of 15 minutes each in the course of her daily work until the child attains the age of 15 months.
  - No discharge or dismissal while she is on maternity leave.
  - No change in her service conditions to her disadvantage during the period, she is on maternity leave.

5.12.2. Conditions for claiming Benefits

• Written Notice to her employer in prescribed form stating as follows, along with necessary proof:
  - That her maternity benefit may be paid to her or nominee;
  - That she will not work in any establishment during the period during which she receives benefits;
  - That she will be absent from work from so and so date;
  - Failure to give notice, however, does not disentitle her to the benefits available under the Act.

• Payment - employer is liable to pay the benefits, before delivery - in advance, and after delivery within 48 hours to her or nominee or legal representative thereof, as the case may be.

• Forfeiture – if any woman works in any other establishment during maternity leave or dismissed for gross misconduct disqualify her right to get the benefits under the Act.

5.12.3. Offences and Penalties

• Failure to display the Extract of the Act; or to produce any register or document before the Inspector or obstructing him; or contravention of any provision of this Act – Imprisonment up to one year or fine up to Rs. 5000/- or both.

• Failure to pay maternity benefit as provided under the Act; or dismissal or discharge of a woman employee during the benefit period in contravention of the provisions of the Act – Imprisonment up to one year or fine up to Rs. 5000/- (minimum 3 months and Rs. 2000/- respectively)
5.13. The Transplantation of Human Organs Act, 1994
[Total Sections – 25 and Schedules –Nil]

There was no law which specifically prevents the illegal removal and donation of the human organs. The National Human Rights Commission was deeply concerned about the illegal trade in human organs and in particular, trade in kidneys, which often involves exploitations of poor people and violation of their human rights. Estimated amount involved in that trade is Rs. 40 crores, a year. Doctors, Nurses, and Ward boys of hospitals are deputed to detect the prospective customers in need of the organs as well as prospective youths who are ready to donate their organs for want of money. They act as agents. They get in touch with the relatives of the patients and offer the kidney at a negotiable price. Many illegal means are practiced to get the organs. Most of the time, it is the poor and not the rich that resort to the sale or donation of their organs for consideration. The patients in need of kidneys also prefer to have a live donor as they can judge the expected efficiency of the kidneys by the various blood tests.

5.13.1. Why these are happening?

Supply short of demand

- According to Data collected for the year 2010 by various hospitals in the country:
  - India needs 175,000 kidney transplants, but due to lack of facilities and donors, only 5,000 transplants are done.
  - 50,000 liver transplants are needed but only 700 surgeries are conducted
  - Only 30 hearts were transplanted as against the need of 50,000
  - For transplanting cornea, 100,000 surgeries were needed but only 25,000 were conducted
  - There are only 200 government approved kidney transplant centres, 30 liver transplant centres and 10 cardiac transplant centres across India
  - India has only 200 kidney transplant surgeons, 25 liver transplant surgeons and 15 cardiac transplant surgeons
5.13.2. Beneficiaries of tissue transplant

- Skin transplant is needed for victims of severe burns
- People suffering from blindness because of eye disease or injury can benefit from cornea transplant
- Bone transplantation is used to cure patients suffering from bone deformity due to ageing or other birth defects. It can also help victims who have to undergo amputations and accident victims whose bones may have got damaged beyond repair.

Every day 12 persons die due to non-availability of important organs and their transplantation.

- 57% organs of the human body are necessary to stop this human loss.
- In India 90 thousand/year brain-death take place.
- Only 0.16 persons donate their organ out of 10 lakh people in India.
- Whereas the figure in foreign is higher than in India.
  - In Spain it is 35/10 lakh;
  - In Britain it is 27/10 lakh;
  - In U.S.A. it is 26/10 lakh;

5.13.3. Object of the Act is

- to provide for the regulation, 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.

5.13.4. Interpretation of certain words

- “Therapeutic purposes” means systematic treatment of any disease or the measures to improve health according to any particular method/modality;
- “Transplantation” means the grafting of any human organ from any living person or deceased person to some other living person for therapeutic purposes.
● “Payment” means payment in money or money's worth but does not include any payment for defraying or reimbursing-
  - (i) The cost of removing, transporting or preserving the human organ to be supplied; or
  - (ii) Any expenses or loss of earnings incurred by a person so far as reasonably and directly attributable to his supplying any human organ from his body;
● “Human organ” means any part of a human body consisting of a structured arrangement of tissues, which, if wholly removed, cannot be replicated, by the body;
● “Near relative” means spouse, son, daughter, father, mother, brother or sister;

5.13.5. Prohibition of removal or transplantation of human organs

1. for any purpose - other than therapeutic purposes
  ● No donor or a person is empowered to give authority for the removal of any human organ for any purpose other than therapeutic purposes. [Sec. 11]
2. without Explaining effects, etc., to donor and recipient -

  - No registered medical practitioner shall undertake the removal or transplantation of any human organ unless he has explained, in such manner as may be prescribed, all possible effects, complications and hazards connected with the removal and transplantation to the donor and the recipient respectively. (Sec. 12)

5.13.6. Restrictions on Removal and Transplantation of human organs [Sec.9]
Before Death and After Death
  ● Before Death
  ● No human organ removed from the body of a donor before his death shall be transplanted into a recipient unless
  1. the donor is a near relative of the recipient ; or
  2. as specified by the donor by reason of affection or attachment towards the recipient or for any other special reasons,
but in such case
a) the prior approval of the Authorization Committee is required.
b) for that joint application is necessary in a prescribed form and manner
c) The Authorization Committee shall, after holding an inquiry and after satisfying itself grant to the applicants approval for the removal and transplantation of the human organ, or reject the application for approval, if the applicants have not complied with all the requirements of this Act and the rules made thereunder,

- The Central Government and (b) The State Government as case may be shall constitute, by notification, one or more Authorization Committees

- **After Death**

3. After his/her death to any person who may be in need of such human organ
   - provided it is so authorised by the diseased before his/her death or other competent person

**5.13.7. Removal of human organs not to be authorised [Sec.4]**

- Removal of human organs not to be authorized under section 3 of this Act, in certain cases.

(1) Where the authority, has reason to believe that an inquest may be required to be held in relation to such body in pursuance of the provisions of any law for the time being in force.

(2) The person to whom such body has been entrusted solely for the purpose interment [funeral], cremation or other disposal.[Sec.4]

**1- Who may authorize? (Sec. 3 )**

- Removal for therapeutic purpose only. (Sec. 11)

1. Donor him/her self:
   - at any time before his death,
   - in writing and in the presence of two or more witnesses (at least one of whom is a near relative i.e. spouse, son, daughter, father, mother or sister of such person);

2. The person lawfully in possession of the dead body and Authorized by the diseased:
   - shall grant to a registered medical practitioner all reasonable facilities for the removal,
   - provided the donor had not subsequently revoked the authority
3. The person lawfully in possession of the dead body (not-authorized but not objected either by the diseased or by near relative)
   - unless he has reason to believe that any near relative of the deceased person has objection
4. The Parents in case of minor person
   - where brain-stem death of any person of less than eighteen years of age, occurs
   - and is so certified,
   - Any of the parents is so authorised

2- When may be authorized? (Sec. 3)

1. In a case of brain-stem death* and life is extinct in such body
   - When the registered medical practitioner is satisfied by a personal examination of the body; and
   - On satisfaction of such conditions and requirements as may be prescribed, by a Board of medical expert
   The Board shall be consisting of
   (i) The registered medical practitioner, in charge of the hospital in which brain-stem death has occurred;
   (ii) An independent registered medical practitioner, being a specialist;
   (iii) A neurologist or a neurosurgeon to be nominated by the registered medical practitioner specified, from the panel of names approved by the Appropriate Authority; and
   (iv) The registered medical practitioner treating the person whose brain-stem death has occurred.

*[brain-stem death is a stage at which all functions of the brain-stem have permanently and irreversibly ceased]*

3- Authorization - in case of unclaimed bodies in hospital or prison (Sec. 5)

   - (1) by the person in-charge 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, provided
   - the dead body remains unclaimed by the relatives for forty-eight hours from the time of the death of the concerned person….
   - (2) No authority shall be given under sub-section (1)
- if the person empowered to give such authority has reason to believe that any near relative of the deceased person is likely to claim the dead body even though such near relative has not come forward to claim the body of the deceased person within the time specified in sub-section (1), i.e. 48 hours.

4 - Authorization - when sent for postmortem examination for medico-legal or pathological purpose (Sec. 6)

- (a) by reason of the death of such person having been caused by accident or any other unnatural cause; or
- (b) For pathological purposes,
- At that time if
- such human organ will not be required for the purpose for which such body has been sent for postmortem examination,
- and the deceased person had not expressed, before his death, any objection to any of his human organs being used, for therapeutic purposes after his death and/or,
- authority had not been revoked by the diseased before his death.

5.13.8. Preservation of human organs and savings (Sec. 7 & 8)

- After the removal of any human organ from the body of any person, the registered medical practitioner shall take such steps for the preservation of the human organ so removed as may be prescribed. (Sec. 7)
- Savings. – (Sec. 8)

(1) Nothing in the foregoing provisions of this Act shall be construed as rendering unlawful any dealing with the body or with any part of the body of a deceased person if such dealing would have been lawful if this Act had not been passed.

(2) Neither the grant of any facility or authority nor removal of any human organ from the body of a deceased person in accordance with the, provisions of this Act shall be deemed to be an offence punishable under the Indian Penal Code (45 of 1860).

5.13.9. Regulation of hospitals conducting the removal, storage or transplantation of human organs.(Sec. 10) –
(1) On and from the commencement of this Act, -

(i) Registration compulsory:

No hospital, unless registered under this Act, shall conduct, or associate with, or help in, the removal, storage or transplantation of any human organ;

(ii) At the Registered Place only:

An activity relating to the removal, storage or transplantation of any human organ shall be conducted at a registered place only, under this Act; and

(iii) For Therapeutic purposes only

Only for therapeutic purposes, the place including a hospital registered under the Act to be used or cause to be used by any person for the removal, storage or transplantation of any human organ.

Exceptions for eyes and ears:

(2) Notwithstanding anything contained in the Act,

The eyes or the ears may be removed at any place from the dead body of any donor, for therapeutic purpose, by a registered medical practitioner.

Explanation. - For the purposes of this sub-section, “ears” include ear drums and ear bones.

5.13.10. Appropriate authority and its function (Sec. 13)

The Central and the State Government shall appoint, by notification, one or more officers as Appropriate Authorities for each of the Union and State territories respectively for the purposes of this Act.

The Appropriate Authority shall perform the following functions, namely:

(i) to grant registration u/s 15 (1) or renew registration u/s 15 (3);

(ii) to suspend or cancel registration under Section 16(2);

(iii) to enforce such standards, as may be prescribed, for hospitals engaged in the removal, storage or transplantation of any human organ;

(iv) to investigate any complaint of breach of any of the provision of this Act or any of the rules made there under and take appropriate action;

(v) to inspect hospitals periodically for examination of the quality of transplantation and the follow-up medical care to persons who have undergone transplantation and persons from whom organs are removed; and

(vi) to undertake such other measures as may be prescribed.
● Registration of hospitals engaged in removal, storage or transportation of human organs (Sec. 14)
● Certificate of registration (Sec. 15)
● Suspension or cancellation of registration. (Sec. 16)
● Appeals - within thirty days from the date of the receipt of the order to the Central, Government or the State Government as the case may be. (Sec. 17)
● Punishment for removal of human organ without authority with imprisonment for a term which may extend to five years and with fine which may extend to ten thousand rupees (Se. 18)

Where any person convicted is a registered medical practitioner, his name shall be removed from the register of the Council for a period of two years for the first offence and permanently for the subsequent offence.

5.13.11. Punishment for commercial dealings in human organs (Sec. 19)

● -Whoever
  (a) Makes or receives any payment for the supply of, or for an offer to supply, any human organ;
  (b) seeks to find a person willing to supply for payment any human organ;
  (c) offers to supply any human organ for payment,
  (d) Initiate or negotiates any arrangement involving the making of any payment for the supply of, or for an offer to supply, any human organ;
  (e) 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 (d); or
  (f) Publishes or distributes or causes to be published or distributed any advertisement, -
    (i) Inviting persons to supply for payment of any human organ;
    (ii) Offering to supply any human organ for payment; or
    (iii) Indicating that the advertiser is willing to initiate or negotiate any arrangement referred to in clause (d),

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;

- Provided that the court may, for any adequate and special reason to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than two years and a fine less than ten thousand rupees.

5.13.12. Punishment for contravention of any other provision of this Act (Sec. 20)

- Whoever contravenes any provision of this Act or any rule made, or any condition of the registration granted, thereunder for which no punishment is separately provided in this Act,
- Shall be punishable with imprisonment for a term, which may extend to three years or with fine, which may extend to five thousand rupees.

5.13.13. Offences by companies. (Sec. 21)

- (1) Where any offence punishable under this Act has been committed by a company,
- every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

- But, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence, shall not be held responsible.

- (2) and if it is proved that the offence has been committed with the consent or connivance of, or in attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punish accordingly.
5.13.14. Cognizance of offence. (Sec. 22)

(1) No court shall take cognizance of an offence under this Act except on a complaint made by-

(a) The Appropriate Authority concerned, or any officer authorized in this behalf by Appropriate Authority of the Central Government or the State Government, as the case may be; or

(b) A person intending to make a complaint to the court, has given a notice of not less than sixty days, in such manner as may be prescribed, to the Appropriate Authority concerned, of the alleged offence.

(2) No court other than that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

(3) Where a complaint has been made under clause (b) of sub-section (1), the court may, on demand by such person, direct the Appropriate Authority to make available copies of the relevant records in its possession to such person.


There is a great increase in the Number of Advertisements published in newspaper or magazines or leaflets television and other electronic media alleging cure for many diseases like venereal diseases, Sexual stimulants for proper erection, or other diseases of the woman. These diseases are such that the patients due to fear of embarrassment or humiliation or a social stigma feel shy of telling to the doctors about their diseases. These advertisements claim a magic cure of the diseases by the use of advertised drugs. The ignorant and illiterate people get carried away by the Advertisements and resort to self medication or self treatment. They are ignorant about the effects, side effects or harmful effects of the drugs. After reading the advertisement, they also tend to go to the quacks who indulge in such advertisements. It was necessary to stop such advertisements. It was considered that the necessary legislation should be enacted by the centre in order to deal with this menace, and so this act was passed on 30th April 1954.
5.14.1. Object of the Act:

The object of the act is to object to the advertisements which claim a magic cure of the diseases by the use of advertised drugs, to avoid self medication or self treatment by people or their being misled by various advertisements. The necessary condition, therefore, is that the Advertisement must induce others in using the advertised drug. It does not object to advertisement which gives the mere identification, description, information about the drug, its uses and appraises of quality and quantity.

5.14.2. Advertisements like

a) "New life, New Vigor, New spirit, New Wave, If you want a cure see today the well known world famous experience registered physician"

b) "Special diseases such as oldness in youth can be cured to get youth in old age" are very common which attracts the ignorant and illiterate people for the treatment

c) Advertisement: means any information about the drug or magic remedy in any form-in news paper, magazines, in media like T.V. radio etc. distributing hand bills, announcing on mike or loud speaker or by neon signs or any means by which the advertiser can reach the general public:

d) Advertisement must induce others for using of the drug so advertised. The mere advertisement which does not induce its use is not objectionable.

e) To amount to be an offence, The Publication of the Advertisement, Should have reference to a drug and it should have suggested as a cure for certain

5.14.3. Legality of the Act:

In the case of Ram singh Vs. State of Delhi34

It was claimed that An advertisement is a speech and under article 19(l)(a) there is freedom of Speech and expression, so Prohibition of Advertisement in section 3 of

34AIR 1951 SC 270 (272).
the act is. Violating the fundamental right of Speech and expression, is. Their Lordship defined the word advertisement and held that Advertisement is merely identification and description, appraising of quality and quantity. It has no other object than to draw attention to the article to be sold. In legal advertisement there should not be any inducement for purchase, or claim of the cure of the diseases. When such claim is made out in the advertisement, it becomes prohibited and liable for action under section 3 of the act.

**Section 3 of the Act prohibits the advertisement** of certain drugs for treatment of certain diseases and disorders. There was a question whether it violates Article 19(l)(a) of the constitution which gives a right to speech and expression as the advertisement is a form of speech in favor of the drug which is advertised.

In *L. J. Valentine V. F. J. Chrestensen*[^35] the Lordship held that the freedom of speech and expression in art. 19 (a) of the constitution, relates to the propagating new ideas, freedom of press and circulation and imparting information about the new invention or the property of the drugs. The advertisement of the drugs is not objectionable, but when they claim a cure, or induces somebody to buy or use it for cure, it gains an interest of commerce or trade value and does not propagate new ideas or dimensions, hence they do not come under the right of speech under Article 19(l) (a). So the section 3 of the Act does not violate the constitutional right to speech of expression.

In *Hamdard Dawakhana V. Union of India*[^36] it was argued whether prohibition of advertisement interfere with the private business and impose unreasonable restriction on the freedom to practice any profession guaranteed under article 19(l) (g). It was argued that under the guise of protecting public interest the Act arbitrarily interferes with the private business or impose unreasonable restrictions. His Lordship held that the main object of the act is to stop objectionable and unethical advertisements for the purpose of discouraging self medication and self treatment so there is no question of unreasonable restrictions. Hence it is legal to bring such restrictions.

[^36]: AIR 1960 SC 554.
5.14.4. Important Definitions under the Act

Section 2 (a) Advertisement: It includes any notice, circular, label, Wrapper or other document and any announcement made orally or by any means of producing or transmitting light, sound or smoke.

Section 2 (b) Drug:

   a) It includes a medicine for the internal or external use of human beings or animals
   b) Any substance intended to be used for or in the diagnosis, cure, mitigation, treatment or prevention of disease in human beings or animals
   c) Any article, other than food, intended to affect or influence in any way the structure or any organic function of the body of human beings or animals
   d) Any article intended for use as a component of any medicine, substance or article, referred to in sub-clause (i),(ii),and (iii)

Section 2 (c) Magic Remedy:
It includes Talisman, mantra, kavacha and any other charm of any kind which is alleged to possess miraculous powers for the diagnosis, cure, mitigation, treatment or preservation of any diseases in human beings or animals or for affecting or influencing in any way the structure or any organic function of the body of human beings or animals.

5.14.5. Prohibition of Advertisement of certain drugs for treatment of certain diseases and disorders
Section 3 of The Drugs and Magic Remedies (Objectionable Advertisements) Act 1954 lays down that: No person shall take part in the publication of any advertisement referring to any drug in terms which suggest or calculated to lead to the use of that drug for:

   a) The procurement of Miscarriage in woman / prevention of conception in women or

   b) The maintenance or improvement of the capacity of human beings for sexual Pleasure: or
c) The correction of menstrual disorder in women: or provided 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 medicine as that Government deems fit.

5.15. The Clinical Establishments (Registration & Regulation) Act 2010,
It was enacted by the Central Government with a view of prescribing the minimum standards of facilities and services provided by them. The act is applicable to all kinds of clinical establishments from the public and private sectors of all the recognised systems of medicine including single doctor clinics (Only exception will be establishment run by armed forces). It applies to the States of Himachal Pradesh, Arunachal Pradesh, Sikkim, Mizoram, Union Territories and any other state which adopt the act under clause (1) of the article 252 of the constitution. The National Council for Clinical Establishments appointed as per the composition given in the act will compile the list of all clinical establishments, classify them and develop the minimum standards and review periodically. Every state and Union Territory also shall constitute similarly a State / UT Council .The act lays down the procedure of registration, rules and the penalties for violation of rules by the clinical establishments.

5.16. Code of Ethics
The first use of code of ethics in the practice of medicine can be traced as back as 4th & 5th century B. C. Hippocrates - the father of medicine recommended certain principles to be followed by health workers. These principles with some modifications are accepted by the new practitioners in the form of oath. The following is the format
of the oath of Hippocrates. It was to be taken by every medical practitioner before registering him with the Medical Council.

5.17. The oath of Hippocrates-

1) I swear by Apollo Physician, by Asklepios, by health, by panacea, and by all the Gods and goddesses, making them witnesses, that I will carry out, according to my ability and judgment, this oath and this indenture.

2) To regard my teacher in this art as equal to my own parents, to make him partner in my livelihood, when he is in need of money to share mine with him, to consider his offspring as my own brother, to teach them this art if they require to learn it, without fee or indenture.

3) To impart precept, oral instruction, and all other learning to my sons, to the sons of my teacher and to the pupils who have signed the indenture and sworn obedience to the physician' law, but to none other.

4) I will use treatment to help the sick according to my ability and judgment, but I will never use it to injure or wrong them.

5) I will not give poison to anyone though asked to do, nor will I suggest such plan.

6) Similarly, I will not give a pessary to a woman to cause abortion. But in purity and holiness I will guard my life and my art.

7) I will not use the knife either on sufferers from stone, but I will give place to such as be craftsman therein.

8) Into whatever houses I enter, I will do so to help the sick, keeping myself free from all intentional wrong-doing and harm especially from fornication with woman or man, bond or free.

9) Whatsoever in the course of practice I see or hear (or even outside my practice in social intercourse) that ought never to be published abroad. I will not divulge, but consider such things to be holy secrets.

10) Now, if I keep this oath and break it not, may I enjoy honour in my life and art, among all men for all time, but if I transgress and forswear myself, May the opposite befall me.
5.18. The Declaration of Geneva Convention (1948)

The world Medical Association at its third General Assembly at Geneva in September 1948 adopted a certain code of ethics in the form of an oath to be taken by all members of the Medical Profession at the time of entering in to the Medical Profession:

At the time of registration, each applicant shall be given a copy of the Declaration by the Registrar of the concerned Medical Council and the applicant shall read, sign and agree to abide by the same.

The Declaration is as follows:

1) I solemnly pledge myself to consecrate my life to the service of Humanity.
2) I will give to my teachers, the respect and gratitude which is their due.
3) I will practice my profession with conscience and dignity.
4) The health of my patient will be my first consideration.
5) I will respect the secrets which are confided in me.
6) I will maintain by all the means in my power, the honor and noble traditions of the Medical Profession.
7) My colleagues will be my brothers.
8) I will not permit considerations of religion, nationality, race, party politics or social standing to intervene between my duty and my patient.
9) I will maintain the utmost respect for human life from time of conception even under threat; I will not use my medical knowledge contrary to the laws of Humanity.
10) I makes these promises solemnly, freely, and upon my honor.

5.19. Professional misconduct:

Infamous conduct or professional misconduct is defined in chapter seven of Indian Medical Council (Professional conduct, Etiquette and Ethics) Regulations, 2002 as - "That act of a medical man done in pursuit of his profession, with regard to which it would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competence or by legally formed medical associations."
Indian Medical Council (Professional conduct, Etiquette and Ethics) Regulations, 2002.

The Medical Council of India has prepared a list of acts and/or omissions of the medical practitioners which amounts to professional misconduct. The list cannot be considered as exhaustive but considered as inclusive. The form of misconduct might vary with the time and new inclusions can be added by the Medical Councils. The Medical Councils have power to punish such misconducts by giving warning in mild cases and by temporarily or permanently removing the name of the medical practitioner from the register of the council. There by preventing him from practicing the profession.

5.19.1. List of Professional Misconduct as enumerated by the Medical Council of India -

1) Adultery or improper conduct or association with the patient.
2) Conviction by court of Law of offences involving moral turpitude.
3) Issuance of false, untrue, misleading or improper Certificates, reports or other documents under their signatures. It is advised to keep a copy of the certificates issued by the doctor. He should mention at least two identification marks on the certificate and also take patient's signature for the receipt of the certificates.
4) Contravention of the drugs Act and regulations.
5) Selling a schedule poison to the public under his signature without justification.
6) Performing or helping an unqualified person to perform an abortion or any illegal operation- i.e. performing an operation though it is not indicated.
7) Issuance of certificate of efficiency in modern medicine to unqualified or non medical person.
8) Contribution to or publishing of articles to the lay press and giving interviews regarding the diseases and treatment which amounts to advertising of himself or soliciting practice. However he can write to lay press under his own name on matters of public interest, hygienic living or can deliver public lectures, give talks on radio, T.V. etc for information to the public about the availability
of new procedures, surgical techniques or effects of the drugs on the human beings.

9) The advertisement of the clinic, nursing homes, and dispensaries can be done but it should contain only the name of the institution, type of patients admitted, facilities offered and the charge of fees.

10) Use of unusually large sign Board or signs on the prescription papers. It should contain only their name, qualifications, titles and name of the specialty.

11) Disclosing the secrets of his patients, learnt during the course of discussion required for diagnosis and treatment as this is a privilege communication. However they can be disclosed in public interest or in the court of law under order of the presiding judge.

12) Refusal of the treatment on the ground of religion, caste, and sex and financial constrain.

13) Operating without informed consent from patient, his or her spouse, guardian or parents wherever required.

14) Bringing out or publishing photographs or case reports of the patients in any medical journal or press- disclosing his identity- without his permission.

15) Exhibits or publishes the scale of his fees but he can display it in his clinic.

16) Uses touts or agents to procure patients.

17) Claims him to be specialist though he is not.

Here is an extract of the Indian Medical Council Act, 1956 (Annexure 2) to understand the ethical rules of doctors and also Indian Medical Council's Regulations, 2002 (Annexure 3) regarding the professional conduct, etiquette and ethics.

5.20. The Indian Medical Council Act, 1956
(The Act of 102 of 1956 enacted on 30th December, 1956 and amended till date)
(Relevant Sections)
Object an Act is 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. Be it enacted by Parliament in the seventh year of the Republic of India as follows:-

This Act may be called the Indian Medical Council Act. 1956.
It extends to the whole of India.
It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.(Sec.1.)

5.20.1. Interpretation of words used in this Act

In this Act, unless the context otherwise requires:-
"approved institution" means a hospital, health centre or other such institution recognised.
by a university as an institution in which a person may undergo the training, if any, required by his course of study before the award of any medical qualification to him.
"council" means the Medical Council of India constituted under this Act.
["deleted" by Indian Medical Council (Amendment) Act, 1964.]
"Indian Medical Register" means the medical register maintained by the Council.
"Medical Institution" means any institution, within or without India, which grants degrees, diplomas or licences in medicine.
"medicine" means modern scientific medicine in all its branches and includes surgery and obstetrics, but does not include veterinary medicine and surgery.
"Prescribed" means prescribed by regulations.
   i.   "recognised medical qualification" means any of the medical qualifications included in the Schedules.
   j.   "regulation" means a regulation made under section 33.
   k.   "State Medical Council" means a medical council constituted under any law for the time being in force in any State regulating the registration of practitioners of medicine.
   1.   "State Medical Register" means a register maintained under any law for the time being in force in any State regulating the registration of practitioners of medicine.
   m.   "University" means any University in India established by law and having a medical faculty. (Sec. 2.)

5.20.2. Constitution & Composition of the Council

1. The Central Government shall cause to be constituted a council consisting of the following members, namely:-
a) One member from each State other than a Union Territory to be nominated by the Central Government in consultation with the State Government concerned.

b) One member from each University to be elected from amongst the members of the medical faculty of the University by members of the Senate of the University or in case the University has no Senate, by members of the Court.

c) One member from each State in which a State Medical Register is maintained, to be elected from amongst themselves by persons enrolled on such register who possess the medical qualifications included in the First or the Second Schedule or in Part II of the Third Schedule.

d) Seven members to be elected from amongst themselves by persons enrolled on any of the State Medical Registers who possess the medical qualifications included in Part I of the Third Schedule.

e) Eight members to be nominated by the Central Govt.

2. The President and Vice-President of the Council shall be elected by the members of the Council from amongst themselves.

3. No act done by the Council shall be questioned on the ground merely of the existence of any vacancy in, or any defect in the constitution of the Council. (Sec.3)

5.20.3. Recognition of Medical Qualification Granted by Universities or Medical Institutions in India

1) The medical qualifications granted by any university or medical Institution in India which are included in the first Schedule shall be recognised medical qualifications for the purposes of this Act.

2) Any university or medical Institution in India which grants a medical qualification not included in the First Schedule may apply to the Central Govt., to have such qualification recognised, and the Central Government, after consulting the Council, may, by notification in the official Gazette, amend the First Schedule so as to include such qualification therein, and any such notification may also direct that an entry shall be made in the last column of the First Schedule against such medical qualification declaring that it shall be a recognised medical qualification only when granted after a specified date.
5.20.4. Recognition of Medical Qualifications Granted by Medical Institutions in Countries with which there is a Scheme of Reciprocity

1) The medical qualifications granted by medical institutions outside India which are included in the Second Schedule shall be recognised medical qualifications for the purposes of this Act.

2) The Council may enter into negotiations with the Authority in any country outside India which by the law of such country is entrusted with the maintenance of a register of medical practitioners, for the settling of a scheme of reciprocity for the recognition of medical qualifications and in pursuance of any such scheme, the Central Government may, by notification in the official Gazette, amend the Second Schedule so as to include therein the medical qualification which the Council has decided should be recognised and any such notification may also direct that an entry shall be made in the last column of the Second Schedule against such medical qualification declaring that it shall be a recognised medical qualification only when granted after a specified date.

3) The Central Government, after consultation with the Council, may, by notification in the Official Gazette, amend the Second Schedule by directing that an entry be made therein in respect of any medical qualification declaring that it shall be recognised medical qualification only when granted before a specified date.

4) Where the Council has refused to recommend any medical qualification which has been proposed for recognition by any Authority referred to in sub-section (2) and that Authority applies to the Central Government in this behalf, the Central Government, after considering such application and after obtaining from the council a report, if any, as to the reasons for any such refusal, may by notification in the Official Gazette, amend the Second Schedule so as to include such qualification therein and the provisions of sub-section (2) shall apply to such notification. (Sec.12)

5.20.5. Recognition of medical qualification granted by certain medical institutions whose qualifications are not included in the first or second schedule
1. The medical qualifications granted by medical institutions in India which are not included in the First Schedule and which are included in Part I of the Third Schedule shall also be recognised medical qualifications for the purposes of this Act.

2. The medical qualifications granted to a citizen of India: -

a) before the 15th day of August, 1947, by medical institutions in the territories now forming part of Pakistan, and,

b) before the 1st day of April, 1937, by medical institutions in the territories now forming part of Burma, which are included in part 1 of the Third Schedule shall also be recognised medical qualifications for the purposes of this Act.

3. The medical qualifications granted by medical institutions outside India, before such date as the Central Government may, by notification in the Official Gazette, specify which are included in Part II of the Third Schedule shall also be recognised medical qualifications for the purposes of this Act, but no person possessing any such qualification shall be entitled to enrolment on any State Medical Register unless he is a citizen of India and has undergone such practical training after obtaining that qualification as may be required by the rules or regulations in force in the country granting the qualification, or if he has not undergone any practical training in that country he has undergone such practical training as may be prescribed.

4. The Central Government, after consulting the Council, may, by notification in the Official Gazette, amend Part II of the Third Schedule so as to include therein any qualification granted by a medical institution outside India, which is not included in the Second Schedule.

Provided that after the commencement of the Indian Medical Council (Amendment) Act, 2001, no such amendment shall be made in Part II of the Third Schedule to include any primary medical qualification granted by any medical institution outside India:
Provided further that nothing contained in the first proviso shall apply to inclusion in Part II of the Third Schedule any primary medical qualification granted by any medical institution outside India to any person whose name is entered in the Indian Medical Register.

Explanation- For the purposes of this sub-section, "primary medical qualification" means any minimum qualification sufficient for enrolment on any State Medical Register or for entering the name in the Indian Medical Register.

(4A) A person who is a citizen of India and obtains medical qualification granted by any medical institution in any country outside India recognised for enrolment as medical practitioner in that country after such date as may be specified by the Central Government under sub-section (3), shall not be entitled to be enrolled on any Medical Register maintained by a State Medical Council or to have his name entered in the Indian Medical Register unless he qualified the screening test in India prescribed for such purpose and such foreign medical qualification after such person qualifies that said screening test shall be deemed to be the recognised medical qualification for the purposes of this Act for that person.

(4B) A person who is a citizen of India shall not, after such date as may be specified by the Central Government under sub-section (3), be eligible to get admission to obtain medical qualification granted by any medical institution in any foreign country without obtaining an eligibility certificate issued to him by the Council and in case any such person obtains such qualification without obtaining such eligibility certificate, he shall not be eligible to appear in the screening test referred to in sub-section (4A).

Provided that an Indian citizen who has acquired the medical qualification from foreign medical institution or has obtained admission in foreign medical institution before the commencement of the Indian Medical Council (Amendment) Act. 2001 shall not be required to obtain eligibility certificate under this subsection but, if he is qualified for admission to any medical course for recognised medical qualification in any medical institution in India, he shall be required to qualify only the screening test prescribed for enrolment on any State Medical Register or for entering his name in the Indian Medical Register.

(4C) Nothing contained in sub-sections (4A) and (4B) shall apply to the medical qualifications referred to in section 14 for the purposes of that section.
5. Any medical institution in India which is desirous of getting a medical qualification granted by it included in Part I of the Third Schedule may apply to the Central Government to have such qualification recognised and the Central Government, after consulting the Council, may by notification in the Official Gazette, amend Part I of the Third Schedule so as to include such qualification therein, and any such notification may also direct that an entry shall be made in the last column of Part-I of the Third Schedule against such medical qualification declaring that it shall be a recognised medical qualification only when granted after a specified date.

5.20.6. Special provision in certain cases for recognition of Medical Qualification granted by Medical Institution in countries with which there is no scheme of Reciprocity

1. The Central Government after consultation with the Council, may, by notification in the Official Gazette, direct that medical qualifications granted by medical institutions in any country out-side India in respect of which a scheme of reciprocity for the recognition of medical qualifications is not in force, shall be recognised medical qualification for the purposes of this Act or shall be so only when granted after a specified date: Provided that medical practice by persons possessing such qualifications:
   a. Shall be permitted only if such persons are enrolled as medical practitioners in accordance with the law regulating the registration of medical practitioners for the time being in force in that country;
   b. Shall be limited to the institution to which they are attached for the time being for the purposes of teaching, research or charitable work; and
   c. Shall be entitled to the period specified in this behalf by the Central Government by general or special order.

2. After consultation with council in this behalf, it can be recognised by notification in Official Gazette. (Sec. 14)

5.20.7. Right of persons possessing qualifications in the schedules to be enrolled
1. Subject to the other provisions contained in this Act, the medical qualifications included in the Schedules shall be sufficient qualification for enrolment on any State Medical Register.

2. Save as provided in section 25, no person other than a medical practitioner enrolled on a State Medical Register:-

   a) shall hold office as physician or surgeon or any other office (by whatever designation called) in Government or in any institution maintained by a local or other authority;
   b) shall practice medicine in any State;
   c) shall be entitled to sign or authenticate a medical or fitness certificate or any other certificate required by any law to be signed or authenticated by a duly qualified medical practitioner;
   d) Shall be entitled to give evidence at any inquest or in any court of law as an expert under section 45 of the Indian Evidence Act, 1872 on any matter relating to medicine.

3. Any person who acts in contravention of any provision of sub-section (2) shall be punished with imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees, or with both. (Sec. 15)

5.20.8. Withdrawal of recognition

1. When upon report by the Committee or the visitor it appears to the Council:-
   a) that the courses of study and examination to be undergone in, or the proficiency required from candidates at any examination held by any University or medical institution,
   b) that the staff, equipment accommodation, training and other facilities for instruction and training provided in such University or medical institution or in any college or other institution affiliated to that University, do not conform to the standards prescribed by the Council, the Council shall make a representation to that effect to the Central Government.
2. After considering such representation, the Central Govt, may send it to the State Government of the State in which the University or medical Institution is situated and the State Government shall forward it along with such remarks as it may choose to make to the University or Medical Institution, with an intimation of the period within which the University or medical institution may submit its explanation to the State Government.

3. On the receipt of the explanation or, where no explanation is submitted within the period fixed, then on the expiry of that period, the State Government shall make its recommendations to the Central Government.

4. The Central Government, after making such further inquiry, if any, as it may think fit, may by notification in the official Gazette, direct that an entry shall be made in the appropriate Schedule against the said medical qualification declaring that it shall be a recognised medical qualification, only when granted before a specified date or that the said medical qualification if granted to students of a specified college or institution affiliated to any university shall be a recognised medical qualification only when granted before a specified date or, as the case may be, that the said medical qualification shall be a recognised medical qualification in relation to a specified college or institution affiliated to any University only when granted after a specified date. (Sec. 19)

5.20.9. Minimum standards of medical education

(1) The Council may prescribe the minimum standards of medical education required for granting recognised medical qualifications (other than post-graduate medical qualifications) by universities or medical institutions in India.

(2) Copies of the draft regulations and of all subsequent amendments thereof shall be furnished by the Council to all State Governments and the Council shall before submitting the regulations or any amendment thereof, as the case may be, to the Central Government for sanction, take into consideration the comments of any State Government received within three months from the furnishing of the copies as aforesaid.
(3) The Committee shall from time to time report to the Council on the efficacy of
the regulations and may recommend to the Council such amendments thereof
as it may think fit. (Sec. 19 A)

5.20.10. Professional conduct

(1) The Council may prescribe standards of professional conduct and etiquette and
a code of ethics for medical practitioners.  
(2) Regulations made by the Council under sub-section (1) may specify which
violations thereof shall constitute infamous conduct in any professional
respect, that is to say, professional misconduct, and such provisions shall have
effect notwithstanding anything contained in any law for the time being in
force. (Sec. 20A)

5.20.11. Indian medical register

(1) The Council shall cause to be maintained in the prescribed manner a register
of medical practitioners to be known as the Indian Medical Register, which
shall contain the names of all persons who are for the time being enrolled on
any State Medical Register and who possess any of the recognised medical
qualifications.

(2) It shall be the duty of the Registrar of the Council to keep the Indian Medical
Register in accordance with the provisions of this Act and of any orders made
by the Council, and from time to time to revise the register and publish it in
the Gazette of India and in such other manner as may be prescribed.

(3) Such register shall be deemed to be public document within the meaning of
the Indian Evidence Act, 1872 and may be proved by a copy published in the
Gazette of India. (Sec. 21)

5.20.12. Supply of copies of the state medical registers

Each State Medical Council shall supply to the Council six printed copies of the State
Medical Register as soon as may be after the commencement of this Act and
subsequently after the first day of April of each year, and each Registrar of a State Medical Council shall inform the Council without delay of all additions to and other amendments in the State Medical Register made from time to time. (Sec. 22)

5.20.13. Registration in the Indian medical register

The Registrar of the Council, may, on receipt of the report of registration of a person in a State Medical Register or on application made in the prescribed manner by any such person, enter his name in the Indian Medical Register, Provided that the Registrar is satisfied that the person concerned possesses a recognised medical qualification. (Sec. 23)

5.20.14. Removal of names from the Indian medical register

(1) If the name of any person enrolled on a State Medical Register is removed there from in pursuance of any power conferred by or under any law relating to medical practitioners for the time being in force in any State, the Council shall direct the removal of the name of such person from the Indian Medical Register.

(2) Where the name of any person has been removed from a State Medical Register on the ground of professional misconduct or any other ground except that he is not possessed of the requisite medical qualifications or where any application made by the said person for restoration of his name to the State Medical Register has been rejected, he may appeal in the prescribed manner and subject to such conditions including conditions as to the payment of a fee as may be laid down in rules made by the Central Government in this behalf, to the Central Government, whose decision, which shall be given after consulting the Council, shall be binding on the State Government and on the authorities concerned with the preparation of the State Medical Register. (Sec. 24)

5.20.15. Provisional registration

(1) A citizen of India possessing a medical qualification granted by a medical institution outside India included in part II of the Third Schedule, who is required to
undergo practical training as prescribed under sub section (3) of Section 13, shall, on production of proper evidence that he has been selected for such practical training in an approved institution be entitled to be registered provisionally in a State Medical Register and shall be entitled to practice medicine in the approved institution for the purposes of such training and for no other purpose.

(2) A person who has passed the qualifying examination of any university or Medical Institution in India for the grant of a recognized medical qualification shall be entitled to be registered provisionally in a State Medical Register for the purpose of enabling him to be engaged in employment in a resident medical capacity in any approved institution, or in the Medical Service of the Armed Forces of the Union, and for no other purpose, on production of proper evidence that he has been selected for such employment.

(3) The names of all persons provisionally registered under sub-section (1) or sub-section (2) in the State Medical Register shall be entered therein separately from the names of other persons registered therein. A person registered provisionally as aforesaid who has completed practical training referred to in sub section (1) or who has been engaged for the prescribed period in employment in- a resident medical capacity in any approved institution or in the Medical service of the Armed Forces of the Union, as the case may be, shall be entitled to registration in the State Medical Register under Section 15.(Sec.25)

5.20.16. Privileges of persons who are enrolled on the Indian medical register

Subject to the conditions and restrictions laid down in this Act, regarding medical practice by persons possessing certain recognised medical qualifications, every person whose name is for the time being borne on the Indian Medical Register shall be entitled according to his qualifications to practice as a medical practitioner in any part of India and to recover in due course of law in respect of such practice any expenses, charges in respect of medicaments or other appliances, or fees to which he may be entitled.(Sec. 26)
5.20.17. Commission of inquiry

Whenever it is made to appear to the Central Government that the Council is not complying with any of the provisions of this Act, the Central Government may refer the particulars of the complaint to a Commission of Inquiry consisting of three persons two of whom shall be appointed by the Central Government, one being a Judge of a High Court and one by the Council, and such Commission shall proceed to inquire in a summary manner and to report to the Central Government as to the truth of the matters charged in the complaint, and in case of any charge of default or of improper action being found by the commission to have been established, the Commission shall recommend the remedies, if any, which are in its opinion necessary.

The Central Government may require the Council to adopt the remedies so recommended within such time as, having regard to the report of the Commission, it may think fit, and if the Council fails to comply with any such requirement, the Central Government may amend the regulations of the Council, or make such provision or order or take such other steps as may seem necessary to give effect to the recommendations of the Commission.

A Commission of inquiry shall have power to administer oaths, to enforce the attendance of witnesses and the production of documents, and shall have all such other necessary powers for the purpose of any inquiry conducted by it as are exercised by a Civil Court under the Code of Civil Procedure, 1908.(Sec. 27)

5.20.18. Protection of action taken in good faith

No suit, prosecution or other legal proceeding shall lie against the Government, the Council or a State Medical Council or any Committee thereof, or any Officer or servant of the Government or Councils aforesaid for anything which is in good faith done or intended to be done under this Act. (Sec.28)

5.21. Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002
MEDICAL COUNCIL OF INDIA NOTIFICATION

No. MCI - 211(2) 2001 - Regn. New Delhi dated the 11th March, 2002

In exercise of the powers conferred under section 20A read with section 33(m) of the Medical Council Act, 1956(102 of 1956), the Medical Council of India, with the previous approval of the Central Government, hereby makes the following regulations relating to the Professional Conduct, Etiquette and Ethics for registered medical practitioners, namely:

These Regulations may be called the Indian Medical Council (Professional conduct, Etiquette and Ethics) Regulations, 2002.

They shall come into force on the date of publication in the Official Gazette.

5.21.1. CODE OF MEDICAL ETHICS

DECLARATION:

Each applicant, at the time of making an application for registration under the provision of Act, shall be provided a copy of the declaration and shall submit a duly signed Declaration as provided in Appendix 1. The applicant shall also certify that he/she had read and agreed to abide by the same.

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