CHAPTER - III

CONSUMER PROTECTION AND INDIAN - CONSTITUTION
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INTRODUCTION

Indian Constitution is parental law of the nation to any that "Every law is an effort to maintain the spirit of constitution, will not be incorrect." The enactment of Consumer Protection Act has also been done to cope with the desire of Constitution specially to guard and promote human health. Up-till now, there was not available any such exhaustive legislation to protect the human health without complicated procedure and un-expensive. These two aspects are present in Consumer Protection Act i.e. its procedure is not complicated and it does not involve high expenditure.

Desire of Constitution

Hence it is a great responsibility of Consumer Protection Act to fulfill the aims or desire of Indian Constitution which have been incorporated in Article 21, 38, 39, 47, 48-A, 51 (G) Union List Entry No. 31, and State List Entry No. 6. The attitude of Supreme Court of India has been very clear, soft and liberal towards the problems relations to environment, medical services and food items and closely related to human health. Thus, the help of Constitution
and Supreme Court, which is the guard of Constitution also, can be made available to the sufferers through the dicentralised Consumer Protection Forums. The Indian Constitution in Article 47, 48-A, 51(G), Union List Entry No. 31 and State List Entry No. 6 clearly depicts that environmental protection and to take health care of citizens i.e. consumers of the state is most needful because citizens (consumers) health is fundamental to the National progress.

Health is a part of life. Life cannot exist without health. Consumers' health is mainly affected by food, water and environment. Article 21 of the constitution declares Right to Food, Water and decent environment for decent life. What is Environment? "Environment in the modern context of sustainable development includes the physical and social factors of the surrounding of human beings and includes land, water, atmosphere, climate, sound, odour and some biological factors such as animals, plants etc. In Chameli Singh Vs. State of U.P., the Supreme Court laid down that: "While dealing with Article 21 of the Constitution has held that the need for a decent and civilized life includes the right food, water and a decent environment. The Supreme Court further observed that - In any organised society, right to live as a human being is not ensured by meeting only the animal needs of
men. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this subject, right to live guarantee in any civilised society implies the right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to any civilised society. All civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights and Conventions or under the Constitution of India cannot be exercised without these basic human rights." In S.K. Garg Vs. State of U.P., the learned court about right to get water is a part of right to life held - "The right to get water is part of the right to life guaranteed by Article 21 of the Constitution of India, but a large section of citizens of Allahabad are being deprived of this right. Without water the citizens of Allahabad are going through terrible agency and distressed particularly in this hot season when the temperature goes up to 46, 47 degree celsius. Without the people are bound to die in large numbers due to dehydration and heat stroke and in fact, many have died already."
Pollutions Damaging Human Health

In connection with the supply of pure water to passengers, District Forum stated in case of General Manager, Southern Railway Vs. Chairman Madras Provincial Consumers Association.

Drinking Water in containers: The Railway was bound to see that there was availability of drinking water in suitable container in every compartment of the train, instead of supplying water in satchels along with curd, rice in economy food packet as directed by the District Forum. The Govt. of M.P. has sunk several hand-pumps in mountain region to provide drinking water to villagers where water resources were far away. Among villagers it was detected that due to excessive fluoride quantity in water persons suffered with many deformities of knees, teeth and other parts of body. To provide relief to sufferers in case of Hamid Khan Vs. State. It was held that - "There are various persons suffering from this deformity. Therefore, it is directed that person given in list Annexure 'A' shall be given free medical treatment, whether it be by way of surgery or by way of calipers and shoes. In case surgery in required, then, the same shall be undertaken at the expense of the state and each persons, whose surgery is done shall be paid Rs. 3,000/- (Rupees Three thousand) over and above frees medical
treatment at the expense of the state. It, these persons even after surgery require necessary artificial appliances like limbs or calipers, the same should be provided." Similarly, the persons living on the bank of rivers using its water as drinking water, in many places become victim of water pollution due to discharge of unhygienic fluid from industries in the river located near by. It is ultra essential to protect the life and health of every consumer living in such vicinities.

In Bhawani River Sakthi Sugar limited in re AIR 1998, it was held - "The true significance of the matter regarding the need to arrest the unabated pollution, which has become a health hazard and environmental enemy because of discharge of objectionable effluents from the distillery into Bhavani River and adjoining areas." Some times particular trade and industry causes air and water pollution simultaneously and create a great threat to health of consumers. In Abdul Hamid Vs. The Gwalior Rayon Silk Mfg. (WVG) Co. Ltd. the M.P. High Court considered that - "Section 21 of the Water Pollution Act, provides for taking samples of effluents. Sub-section (2) thereof makes the result of analysis inadmissible in any legal proceedings in the absence of compliance with the various provisions in sub-sections (3), (4) and (5). Section 26 of the Air Pollution Act contains
similar provisions. These provisions are for the due protection of the industries. They are there to ensure a proper balance between the conflicting claims of nation's industrial progress and the hazards to the health of the citizens. The safeguards provided under the Acts have rational basis and without them the industrialists could be vexed day in and day out by being dragged to the Criminal Courts for variety of reasons even unconnected with the vindication of the law. The water and air Acts are special Acts brought on the statute-book and constitute a complete code for prevention and control of water and air pollution by any trade industry. It has expressly been mandated therein, that notwithstanding anything inconsistent there with contained in any enactment other than the acts their provisions prevail. Inconsistent provisions in any other Act cannot, therefore, be permitted to come in the way of the provisions of the special Acts and defeat them. In view of the express provisions in section 52 of Air Act and section 60 of the Water Act it has to be held that to the extent of inconsistency the provisions of the penal code General Clauses Act and the code stand repealed. In matter relating to pollution of air or water by trade industry recourse has to be taken to the provisions of the special Acts."
Air Pollution

Regarding air pollution by industries in some states small, cottage and tiny industries were exempted from liability for polluting air, but in the case of Muni Swamy Gowda Vs. State of Karnataka, the learned Judges held - "A plain reading of section 18(1)(b) of the Air (Prevention and Control of Pollution) Act, 1981, unquestionably manifests that the State Board shall be bound by only such directions issued by the State Government which pertains to the discharge of functions assigned to the State Board under Section 17 of the said Act. It is also amply clear that neither the State Govt. can issue any directions which has no nexus with the functions assigned to the Board nor the Board is bound to follow any such direction." "In the said background it has to be ascertained as to whether under the provisions of the Air Act, the State Board has been assigned with the functioned to exempt any industrial plant from the provisions of the said Act conditionally or unconditionally. At least, on my reading of the provision of the Act with minute details, I do not find any provisions under which the parliament has vested any discretion with the State Board to grant exemption to any particular industrial plant or class of plants. A reading of Section 17 of Air Act, which sets out of the functions of the State Board, clearly
envisages that the functions assigned to the State Board are meant for taking such steps as may further the object of the Act in effectively controlling the air pollution caused by the industries. No clause of the said section, or for the sake any provisions of the Air Act has empowered the State Board to keep any industrial plant out of the purview of the Act if it causes air pollution. Any authority to grant exemption assumed by the State Board can be held only to be derogatory to the object and express provisions of the Act. None the less, it has done so by exempting 115 industrial plants under its resolution, dated 7.5.1990 under the purported direction of the State Government which had been notified to the public on 10.3.1992. I may emphatically state here that whether any particular industrial plant falls within the purview of the Air Act or not, has to be adjudged with reference to the provisions of the Act itself which provides that the Act will apply to only such industries which emit air pollutions. Therefore, if any industry is not emitting any air pollutant, then ipso facto the provisions of the Act will have no application to it. But, if it is emitting air pollutants, irrespective of its extent then neither the State Government nor the State Board has any competence to keep such industries may be cottage, small scale or tiny to keep them out of the purview of the Act. Accordingly,
notification dated 10.3.1992 issued by the State Board granting exemption in respect of certain industrial plants is declared as ultra vires its powers and functions and is accordingly quashed."

Due to climatic conditions of such places of industries, strong winds disperse the polluted blanket in the area over mountains and forests and plain areas causing great damages to consumer's health in distant places also. In V.S. Damodaran Nair Vs. State. It was held that. "Air pollution adversely affects human beings and their environment. The extent of air pollution depends heavily on how weather disposes of the pollutants. The ability of the atmosphere to dilute and disperse them is limited to two factors, wind speed and the depth in the atmosphere to which air near the surface can be mixed. Although, considerable variation occurs from day-to-day in the extent to which these factors disperse air pollution, the same patterns tend to repeat themselves over months or years, on some few days in a year, strong winds and highly atmospheric conditions may disperse even the heaviest blanket of pollution. On many other days, weak winds and highly stable conditions let small quantities of pollutants accumulate and to serious proportion. It is stated that many cities like in natural basins at the confluence of rivers, around bays, or in flat areas backed against mountains, such
basins are natural gathering places for low-lying masses of warm air, which trap pollutants in the familiar phenomenon known as "inversion". The Cochin city and surrounding area are situated in such a way that the possibility of inversions taking place is quite often and natural. Consequently, the pollution in Cochin and other adjoining areas should be considered in the light of its position. The various sources of air pollution caused in Cochin are from industrial plants, motor vehicles, sewers and domestic drains emanating foul gases. Some of the major pollutants are ammonia, sulphur dioxide, carbon monoxide, nitrogen dioxide, etc. The main sources for these pollutants are ammonia manufacturing plants, fertilizer plants, sulphuric acid manufacturing plants, fuel burning processes, metallurgical industry, petrochemical industry, nitric acid manufacturing, nitration processes, combustion processes respectively. Air pollutants are in the form of smoke, fume, dust, odour, gas etc. of these the main classification that is alleged in this case are smoke, fume, dust, odour and gases, it is an admitted case that air pollutants are causing serious health hazards like eye irritation, vegetation damage, further causing respiratory diseases and other harmful effects to human being and vegetation.
Every person's or consumer's right to fresh air, clean water and pollution free environment which promote the consumer's health are protected by constitutional and statutory provisions. In Velore Citizens Welfare Forum Vs. Union of India, it was held. "In view of the mentioned constitutional and statutory provisions we have no hesitation in holding that the 'precautionary' principle and the 'polluter pays' principle are part of the environmental law of the country." The Supreme Court further observed that (Para 15) -- "The Constitutional and statutory provision protect a person's right to fresh air, clean water and pollution free environment, but the source of the right is the inalienable common law rights of clean environment."

In paragraph 16, Supreme Court observed as follows - "Our legal system having been founded on the British Common Law, the right of a person to pollution free environment is a part of the basic jurisprudence of the land."9 The recognition of rights to live in pollution free water and air has been done by Supreme Court in Subhash Kumar Vs. State of Bihar"10 as under. It has been judicially recognised by the Supreme Court that "that right to live is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for
full enjoyment of life." The air pollution is commonly seen in the cities and urban town where vehicles driven by petrol, diesel, coal gas and kerosene oil ply in great numbers. The atmosphere is polluted by harmful smoke and causes harm to health of consumers in general and particular both. "The mandate of Articles 47 and 48-A the Supreme Court issued direction to solve the problems of the chaotic traffic conditions and the Supreme Court was not satisfied with the performance of authorities in solving the acute problem of vehicular pollution. The directions of the Supreme Court were for making the state to effectively discharge their problem. Article 144 of the Constitution provides all authority civil and judicial in the territory of India to act in the aid of Supreme Court. As a legal issue, it was essential to examine the impact of the right under compelling performance of such obligation. It was appropriate to take a decision on after hearing amicus and learned Additional Solicitor general." "As per mandate of Articles 47 and 48-A directions were issued from time to time to solve the problem of vehicular pollution, but the court felt distressed to find that the directions given by it were not complied with".

"The law cast an obligation on the state to improve the public health and protect and improve the environment. Whenever the
directions are issued, they are meant to be complied with which was obligation of the State, Article 144 of the Constitution provides that all authorities civil as well as judicial, shall act in the aid of Supreme Court. The mining operations near the inhabited areas and towns also cause air and noise pollution damaging the health of people in general and also in particular. The up winds and the down winds are the basic causes of this pollution. A detailed survey was conducted by NEERI. In M.C. Mehta Vs. Union of India and other the Supreme Court held. "The mining operations within the radius of 5 kms. from Badkal lake and Surajkund were stopped by the Haryana Government on the basis of the recommendation made by the Broad. The main operators through their learned counsel raised serious objection to the recommendation of the Board seeking closure of the mining operation within the radius of 5 kms. According to learned counsel the pollution generated, if any, by the mining activities cannot go beyond a distance of one km. and as such the closure of the miner within the area of 5 kms was wholly unjustified. It was suggested by the learned counsel that another opinion in this respect may be obtained from an expert body like the National Environmental Engineering Research Institute (NEERI). Part of NEERI report may be referred to as under: Air quality
monitoring was carried out by the inspection team at one working mine beyond 5 km from Badkal lake and Surajkund area to assess the extent on air pollution from the mining activities overburden loading and haulage and to determine fugitive emissions of Suspended Particulate Matter (SPM). One monitoring station was established in upwind direction at a distance of 300 m. whereas another monitoring station was located in downwind direction at 50 m. distance from the face of the mine. The mining activity was being carried out in an area of 0.75 x 1.0 km.² The air quality monitoring was conducted for four hours during mining operations. The blasting operation also took place during the air quality monitoring. At the upwind and downwind stations SPM concentrations were observed to be 124 and 416 hg/m³ respectively." Fugitive air pollutant emission rate of SPM for mining activities was also estimated using upwind downwind technique. The fugitive emission rate was 30.26 gm/sec for production of 4000 tons of stones during four hours.

**Noise Pollution**

Noise levels were measured by inspection team at the working mine beyond 5 mks. from Badkal lake. The noise levels were observed to be in the range of 52-8 dBA. The noise levels were also
measured at a distance of 500 m away from the working mine and it was observed to be equal to the background noise level of 40-42 dBA. Noise levels were also measured during blasting, when 820 gms. of explosive was used in four holes of 1.2 m. depth. The maximum noise level if 59.5 dBA was recorded at a distance of 500 m. from the blast site. Several recommendations were made by NEERI. On the basis of such report and recommendation there is no doubt that mining activity vicinity were bound to cause several impact on the local ecology and therefore in order to preserve the environment and control pollution within such vicinity it was necessary to stop mining in the areas and recommendation of NEERI to be adopted.

Right to live in peace, to sleep in peace, enjoy health free from pollution has been commented as fundamental right of every person or consumer. In Bandhua Mukti Morcha Vs. Union of India,\textsuperscript{12} it was held that - "It is a fundamental right of everybody to live with dignity. Such right would include all those rights which ensure making a person's life meaningful, complete and worth living. Right to life would also include right to live in peace, to sleep in peace, enjoy health free from pollution. Similar view has been taken by the court in Burra Bazar fire works dealers Association Vs. Commissioner of Police, Calcutta.\textsuperscript{13} The view is as under - "Under
the Indian Constitution, people have a right sleep and leisure. Disruption or disturbance in sleeps creates mental stress, deficient in working efficiency and other things."

**Views of Kautiya Regarding Pollution**

R.P. Kangle commenting on "Kautilya Arthashastra" throws light on the ancient medical & environmental ethics in the following words - "**Section 26 to 30 of the Kautilya Arthashastra** provided for penalties against the citizen for making the city dirty and are given below.

<table>
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<th>Provision of Law</th>
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| Sections-26      | - Prescription of law  
|                  | - For throwing dirt on the road, the fine shall be one-eighth of a pana and for blocking the same with muddy water, the fine shall be one-quarter of a pana. |
| Section-27       | - For the same cause, on the royal high way, such fine shall be double |
| Section-28       | - For voiding feaces in a holy place for water, in a temple and in a royal property, the fine shall be one pana, and rises successively by one pana for subsequent offences, for passing urine, the punishment is half of above. |
| Section-29       | - It is exceptional provision & examples punishment on the people if such pollution was due to impact of medicine or due to illness of the person. |
Section-30 - For throwing dead body of animals like cat, dog or serpent inside the city, the fine imposed is three panas, and for other animals like donkey, camel, mule, horse or a cattle, the fine imposed was six panas and for human dead body the fine imposed was fifty panas.

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As individual's health is interdependent on his personal environmental and environment in surroundings, preservation environment was given much emphasis. It is crystal clear by the following. "After independence, there is also constitutional sympathy for environment preservation. As per Constitution (Amendment) Act, 1976; it has become obligatory duty on the part of State and every citizen to protect and improve the environment. Article 47 of the Directive principles of the State policy lies down that the improvement of public health is one of the primary duties of the state. Similarly, Article 48-A envisages that, the state shall endeavour to protect and improve the environment, Article 51-A(G) made it a fundamental duty on every citizen of India who shall have to protect and improve the natural environment. Even the Indian Constitution made it clear that environment laws have certain immunities from judicial scrutiny. As per, Article 31-C, any law
which gives fee effect to the policy of the state towards securing objectives of environmental issues which includes Bio-Medical Wastes Management, shall not be treated as void or inconsistent, if it abridges or takes away any of the fundamental rights conferred by Article 14 or 19 nor any such law shall be called in question in any court on the ground that is does not give effect to that policy. List-II of the state list, Entry-6 deals with public health and sanitation, Entry-18 deals with land and right in and over the land and under list-III (on current list Entry-20 the state has the power to enact on economic and social planning which includes Bio-Medical Wastes Management regulations.

Pollution by Wastes of Hospitals

The hospitals and other health care institutions dump their wastes, containing human tissues, blood soaked items, excreta, drugs, swabs, disposal syringes and medals, bandages etc. in the municipal garbage dumps. These dumping sites are regularly visited by 'rag pickers' who scan and sort out these wastes manually to pick out plastics, disposable syringes etc. so that they be resold at various places for recycling. The problems of waste disposal in the hospital and other recycling. The problems of waste disposal in the hospital and other health care institutions have become issue of
increasing concern. The punishment for the person who pollutes environment has also been prescribed in I.P.C. as under - "Under the Indian Penal Code, 1860 a polluter of the environment can also punished it he does any act which causes any common injury, danger or annoyance to the public or to the people in general then the act may be treated as public nuisances as defined under section 268 and the offender may be punished under section 290 or 291 of the code. Similarly if a person unlawfully or negligent does any act which is, or which he knows, or has reason to believe to be, likely to spread the infection of any diseases dangerous to life, may be punished under section 269 of the India Penal Code. Law serves as one of the key instruments of such social regulation. Therefore it is essential for developing a legal frame-work on the management of Bio-Medical wastes and implementation of the same through an effective medium for sustainable development. Therefore a judicious balance between environment protection and bio-medical wastes management is the need of the hour.

The health of an individual is so much intermingled with his life that the two cannot be separated. Both are interdependent. It is vital issue before National Jurisprudence to care for health of an individual to confirm his right to life as guaranteed by constitution.
In this regard the notable article "Yesterday, today and tomorrow" is most authentic about the duties of law towards health of individual and general both. He has analysed the shortcomings of present day laws for health justice as under - "It is a disaster of our individualistic adversarial jurisprudence that we do not have a mass disaster-handing pro-censual system. With multinational corporations establishing their empires like octopuses, the health of the people their very life is in peril. The midnight of 2nd December, 1984, when Bhopal city was asleep death disability and distress unprecedented in the world's industrial history, descended deceptively on Bhopal's desperate citizens harrowingly handled together in the cold, dark slums and yawing suburbs around the Union Carbide's Yama Campus; the felonious fumes frighteningly leaked from the delingguent Union Carbide Plant, 'gas-assinated' the helpless innocent in thousands and reduced them to vegetable existence, countless miserable were left alive sans eyes, sans limbs, sans lungs, sand everything. This is not foul fate but grave crime and so demands - (a) Militant measures against corporate stratagems and cunning culprits and (b) dynamic strategies of habilitative and compensative justice, beyond competitive Indo-American legal battles, is the Indian judicial process, with its deck-
by-deck slow motion as good as dead for the masses who seek justice in their lifetime. A few constitutional seeds, Art. 48-A mandates the state to safeguard the environment and Art. 51-A obligates every citizen, be he minister, officer legislator or citizen simpliciter, to protect the natural environment. Article 41 calls upon the state to make effective provision for securing public assistance in cases of sickness and disablement and underserved want.

Health it is obvious, he is human right and fundamental covered by the breadth of right to life. Health is a right not a governmental grace or service to be purchased. We must therefore, revise our ideas about health justice as implicit in the foremost human right viz the right to life. Nahid F. Toubia, in a paper presented as the first International Conference on Health and Human Rights at Harvard University the following statement - "Adoption of the human rights paradigm has the potential to revolutionize the health field. The human right principle that all human beings are boards free and equal in dignity and rights is a powerful concept in spite of its simplicity. By applying the principle of equality to health, we have no choice but to examine the relationship between the individual and all those who have power to affect his or her health. "In curative health care, most doctors and
other health professionals are trained to believe that they know what is best for their patients. Patients right to full information and decision-making power decrease in direct correlation with lowered social, economic or gender status. This is more dramatic in countries in which illiteracy is high, public health information is practically non-existent, and the legal system is too weak to be utilized favourably. Removal of diseased or non-diseased organs without patient permission and use of experimental procedures without informed consent are not uncommon. The Medical Science and services of Doctors plays a vital role in maintaining health in an individual. In the very beginning, the medical profession has been very noble and pious. Patients treated and respected Doctor's as next to God. Who has given them Birth and life. Gradually the medical professional has taken the shape of trade or commerce, i.e. a means to earn money and exploitation of patients started. Rich patients are being given priority and poor ones neglected. Though this situation is quite contrary to medical Jurisprudence. Still further, now a days, the medical treatment is being provided by patients through Medical Hospitals and Research Centres with certain specialties on industrial lines. The consumers are compelled to bear very high expenditures beyond their monetary capacities. This
unwanted situation can only be curbed by News, Laws and consequent punishments. Dr. Raghunath Patnaik in his article "Bio Medical Waste Management and the process of Environmental Governance" has rightly analysed as under: The health status of an individuals a community or a national is determined by the interplay and integration of two ecological factors i.e. the internal environment of man himself and external environment of man which surrounds him. Disease spreads due to disturbance in the delicate balance between man and his environment. The science of safeguarding health is known to people as sanitation and it covers the whole field of controlling the environment with a view to prevent disease and promote health.¹⁴

In order to check the practice of charging very high rates for diagnostic and pathological services, the master piece suggestions have been given in -- P.R. Subhash Chandran Vs. Govt. of A.P.¹⁵ as under - One of the suggestions given in the writ petition is that the Director of Medical and Health Department of the state should prevail on such Hospitals to notify the fees charges for various types of tests, treatments and operations. The state must assume a regulatory control by enacting suitable legislation and by amending existing Drug Control Laws. The improvement of public health
being one of the Directive Principles and evolution of proper Medicare system under which the people can have the medical treatment free form exploitation will be in furtherance of the fundamental right to life enshrined in Article 21 of the Constitution, there is paramount need for the state to focus its attention on these aspects and find remedial measures. The existing laws are either inadequate or deficient. It is time that the state should take stock of the situation, if not already done, and initiate necessary measures such as setting up a grievance redressal machinery and devising a regulatory mechanism to cover vulnerable areas where unfair and unprofessional practices are rampant. If necessary, the state should not hesitate to enact comprehensive legislation after wide-ranging consultations with the experts in the field, Managements of the Hospitals and the cross-section of public. The court cannot direct the state to legislate can the court give any directions as to modalities of legislation or the regulatory measures. At the same time this writ petition has to be viewed as an effort to create awareness and sensitize the Governmental machinery for urgent remedial steps.

The patient consumer of Medical services has been categorically given relief through various articles in Indian Constitution. For instance -
Compensation to consumer for loss for injury - "Section 14(1) of the Consumer Protection Act indicates that the compensation to be awarded is for loss for injury suffered by the consumer due to the negligence of the opposite party. A determination about deficiency in service for the purpose of section 2(1)(G) has, therefore, to be made by applying the same test as is applied in an action for damages for negligence. The standard of care which is required from medical practitioners as laid down by Mc Nair, J. in his direction to the jury in Bolam Vs. Friern Hospital Management Committee\textsuperscript{16} has been accepted by the House of Lords in a number of cases.\textsuperscript{17} In Bolam Vs. Friern Hospital Management Committee\textsuperscript{18} Mc. Nair J. has said - "But, where you get a situation which involves the use of some special skill or competence, then the test as to whether there has been negligence or not is not the test of the man on the man on the top of a clapham omnibus because he has got this special skill. The test is the standard of the ordinary skilled man exercising and professing to have that special skill. A man need not posses the highest expert skill, it is well-established law that it is sufficient if he exercises the ordinary skill of an ordinary competent man exercising that particular article." In an action for negligence in tort against surgeon this Court, in Laxman Balakrishna Joshi Vs.
Trimbak Gadbole,¹⁹ has held: "The duties which a doctor owes to his patient are clear. A person, who holds himself out ready to give medical advice and treatment impliedly undertakes that he is possessed of skill and knowledge for the purpose. Such a person when consulted by a patient owes him certain duties, viz, a duty of care in deciding whether to undertake the case, a duty of care in deciding what treatment to give or a duty of care in the administration of that treatment. A breach of any of those duties gives right of action for negligence to the patient. The practitioner must bring to his task a reasonable degree of care. Neither the very highest nor a very low degree of care and competence judged in the light of the particular circumstances of each case is what the law required. (at 213 of SCR) (at 131-132 of AIR)." It is, therefore, not possible to hold that in view of definition of "deficiency" as contained section 2(1)(G) medical practitioners must be treated to be excluded from the ambit of the Act and the service rendered by them is nor covered under section 2(1)(0).²⁰

**Damage by wrong Medicine:** "Where a Homeopathic practitioner prescribed allopathic medicine his action was one of trespasses into other field which was prohibited and as such his action amounted to actionable negligence. A homeopathic
practitioner treated patient in allopathy system and prescribed some antibiotic for fever without even there being positive diagnosis, the patient died. He was awarded compensation to the tune of Rs. 3,00,000.00

All most all types of pollution's can be controlled and removed by the District and Sub-divisional Magistrates or by Magistrates specially empowered for the purpose. They have to exercise powers under section 133 (for issuance of a conditional injunction order against a particular person), under section 143 (for issuance of an absolute order against general public not to repeat or continue a public nuisance) and under section 144 (for issuance of an order in urgent cases of nuisance or apprehended danger) of the Criminal Procedure Code, 1973. Due to these enactments, there has been very satisfactory response from judiciary: In B.L. Wadhera Vs. Union of India21 AIR 1996 SC 2969. The Apex Court gave the following guidelines - (a) All hospital with 50 bed and above should install incinerators or any other effective alternate method. Under their own administrative control. (b) The incinerator or alternative methods should be fitted with necessary pollution control mechanism, approved and confirming to the standards laid down by the central pollution control board. (c) The Central Pollution Board
and the State Pollution Control Boards should regularly send its inspection teams in different areas to ascertain that the collection, transportation and disposal of garbage/wastes is carried out satisfactorily. Denial of Preservation of human life - liable for compensation in: Paschim Banga Khet Mazdoor Samiti Vs. States of West Bengal. "One Hakim Sheikh met with an accident and suffered serious injuries. When he approached the Government hospitals, admission was denied on account of non-available of beds and finally he got himself admitted in a private hospital and thus, incurred very heavy expenses for the medical treatment. Aggrieved by the attitude of the state run hospitals, he filed a writ petition claiming compensation on the contention that right to access to treatment which is an essential of health was denied and the right to life has been deprived by the State.

The Supreme Court admitted the petition and awarded a compensation of Rs. 25,000/- and made the following observations: "The Constitution envisages the establishment of a welfare state of the federal level as well as at the state level. In a welfare state the primary duty of the Government is to secure the welfare of the people. Providing adequate medical facilities for the people is an essential part of the obligation undertaken by the Government in a
welfare state. The Government discharges this obligation by running hospitals and health centres which provide medical care to the persons seeking to avail these facilities. Article 21 imposed an obligation on the state to safeguard the right to life of every person. Preservation of human life is, thus, of paramount importance. The Government hospitals run by the state are duty-bound to extend medical assistance for preserving human life. Failure on the part of a Government hospital to provide timely medical treatment to a person in need of such treatment results in violation of his right to life guaranteed under Article 21."
CITATION


6. Harihar Polyfibres v. Sub-Divisional Magistrate, Haveri, 1997 Cri LJ 2731 at 2733, 2734 (Kant)


8. V.S. Damodaran Nair State, AIR 1996 Ker 8 at 14


12. AIR 1984 802, quoted in Obayya Pujari V. Member Secretary, K.S.P.C.B., Bangalore.


14. Professor, P.G. Dept. of Law Utkal University, Vani Vihar Bhubaneswar - 751 004.


16. 1957 (1) WLR 582.

17. See while house V. Jordan, 1981 (1) WLR 246.

18. 1957 (1) WLR 582.

