CHAPTER - 4

LEGAL DIMENSIONS OF RIGHT TO HEALTH UNDER VARIOUS LEGISLATIONS

I. INTRODUCTION

In India, the government's concern for health and safety of its people is indicated by the legislations enacted for health care. Recently Article 21 of the Indian Constitution has been interpreted to incorporate the right to health in right to life and hence this right having now acquired a constitutional status through judicial activism, can be judicially enforced.\(^1\) The Directive Principles of State Policy provided against the exploitation of weaker sections of society, including children, and mandate the state to raise the levels of nutrition, the standard of living and improve public health. Protection improvement of environment and safeguarding forests and wildlife is also an obligation of the State.\(^2\) These are contained in Articles 39, 47, 48A in Part IV of the Constitution. Numerous statutory enactments also safeguard the health of those employed in factories, large scale industrial undertakings and mines, the health of women and children and also protect human environment. These statutory enactments cover a wide range\(^3\) of area including food safety legislations,\(^4\) labour laws,\(^5\) and

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\(^1\) Right to Health : Limits of Recognition, [http://www.nliu.com/art1.htm](http://www.nliu.com/art1.htm).
\(^2\) Apart from the Constitutional obligations, the definition of health in the Preamble of the WHO Constitution, which defines health as a state of complete physical, mental and social well being and not merely the absence of diseases or infirmity; in also the major obligatory force.
\(^3\) The Juvenile Justice Act, 1986; the Mental Health Act, 1987; the Epidemic Disease Act, 1948; the Consumer Protection Act, 1986; the Vaccination Act, 1888 and other later Vaccination Acts are the few examples which cover wide range of health care activities in various fields.
\(^5\) The Factories Act, 1948; Mines Act, 1952; Plantation Labour Act, 1951; Beedi and Cigar Workers Act, 1966; Dock Workers Act, 1986 and the Employees State Insurance Act, 1948 are few of the important legislations.
environmental legislations,\(^6\) and in fact, accord with the spirit of the Constitution.

Furthermore, to make freedom disease effective, various statutory provisions have been enacted to protect the health interests of the people. These include: The Indian Penal Code, 1860; the Fatal Accidents Act, 1855; the Dangerous Drugs Act, 1930; Prevention of Food Adulteration Act, 1954; the Medical Termination of Pregnancy Act, 1975; and the Transplantation of Human Organs Act, 1994 etc. We have all over the country, several hospitals, consumer tribunals and plural process of healing, at the service of the people, some run by the State, charitable institutions and by various private agencies for health protection.

II. RIGHT TO HEALTH UNDER VARIOUS LEGISLATIONS

Human life is precious and every person has a fundamental right to live with dignity. It is the duty of a welfare state to protect and develop the life of every citizen. Every nation has evolved its own system of laws to ensure the health rights of every citizens. These laws aim to establish humane system of health care based on the principles of equity, justice and efficiency. Right to health and health care is a fundamental right under Article 21 of the Constitution of India. This has also been emphasized by the Supreme Court of India in several rulings. This Article of the Constitution casts a special obligation on the State to protect citizen's life from medical and other forms of negligence.\(^7\) The State's concern for the health and safety of its people is indicated by the large number of legislators, especially on health and an equally large number of provisions on health in


Miscellaneous Acts. The Indian Supreme Court has interpreted Article 21 of the Indian Constitution in the Marshallian spirit and has broadened its scope repeatedly, relying on general legal doctrines, international conventions and fascinatingly, the Directive Principles of State Policy, thus making some of them enforceable. The Courts in India have shown keen interest in protecting the health of the people in the society and have accepted it in clear cut manner that administrative as well as judicial wings of the State are under a duty not to adopt an indifferent attitude in this respect. Right to health is one of the various indivisible rights that have been recognized by the Supreme Court under Article 21.

(i) Medical Health Laws

In India, the right to practice in allopathic, homeopathic, ayurvedic, unani and other systems of medicine is regulated by central and state legislation. So it is the duty of the medical professionals to be aware about the basic laws. These requirements have become almost obligatory ever since the Supreme Court judgment of 1995 in the case of Indian Medical Association v. V.P. Shantha, whereby the medical services have been brought under the purview of the Consumer Protection Act of 1986. Code of Medical Ethics, Dentist Act, 1948; the Pharmacy Act, 1948; the Pre-natal Diagnostic Techniques

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8 Chief Justice Marshall said the Constitution was “made for ages to come”, and consequently had to be adopted to the various crises of affairs – M.C. Cullah v. Mayland, (1819) 4 Wheel 17 US 316.
11 Right to Food, Right to Shelter, Right to Clean decent environment, Right Against Corruption, Right to Education, Right to Livelihood, Right to Education, Right to Privacy and Right to have proper roads are few of the rights which have been incorporated into Article 21 of the Indian Constitution. These rights shifted the focus of Article 21 from negative to positive obligations of the State.
(Regulation and Prevention of Misuse) Act, 1994 etc. are some prominent Central Acts which provide minimum standards for medical education, enrolment of doctors and also regulate their professional conduct by formulating the Code of Medical Ethics. In order to understand the efficacy, functioning and regulation of medical professionals under the aforesaid Central Acts it is necessary to examine them. In *C.E.S.C. Limited v. Subhash Chandra Bose*, in his minority judgment Ramaswami, J. referred Article 25(2) of the Universal Declaration of Human Rights, Article 7(b) of the International Covenant on Economic, Social and Cultural Rights, and Article 39(e) of the Constitution of India and held that the right to health and medical care is a fundamental right. Right to livelihood springs from the right to life guaranteed under Article 21. The health and strength of workers is an integral facet of right to life. The aim of fundamental rights is to create an egalitarian society to free all citizens from coercion or restrictions by society and to make liberty available for all. Right to human dignity, development of personality, social protection, right to rest and leisure as fundamental human rights to common man mean nothing more than the status without means. To the tillers of the soil, wage earners, labourers, wood-cutters, rickshaw pullers, scavengers and hut dwellers the civil and political rights are mere ‘cosmetic rights’ socio-economic and cultural rights are their means and relevant to them to realize the basic aspirations of meaningful right to life.

In the following section an attempt has been made to give a brief survey of these legislations:

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13 AIR 1992 SC 573. The case was heard by the three Judges Bench of the Supreme Court consisting of Ranganath Mishra, C.J., M.M. Punchi and K. Ramaswami, JJ. Judges were differing in their views. The majority view was taken by Rangnath Mishra, C.J. and Punchhi, J. and the minority view by K. Ramaswami.
Doctors have an onerous responsibility to the public. Their profession demands utmost devotion and sincerity. Since they deal with the lives of people, it is expected of them that they take the maximum care. Physicians should try to improve their medical knowledge and skill, and should make available to their patients and colleagues the benefit of their professional attainments. The honoured ideals of the medical profession imply that the responsibilities of the physician extends not only to individuals but also to society.\textsuperscript{15} The press has been highly appreciative when the doctors really do their duty with devotion and dedication. When few bottles of highly contaminated bottles of life saving fluids were seized by the alert doctors at the capitals Ram Manohar Lohia hospital before they could be administered to critical patients, it was given wide publicity by the press.\textsuperscript{16}

The report on Lok Nayak Jaiprakash Narain Hospital that its operation theatres are high risk zones speaks volumes about the health care being provided in one of the capital's prestigious hospitals. For lack of facilities critical patients are either being discharged or being kept on medicines so to be a recognized medical practitioner a person should possess a valid/recognized medical qualification or medical degree and should be registered with the relevant council or board.\textsuperscript{17}

\textsuperscript{14} The Medical Council of India is empowered under Section 33 of the Indian Medical Council Act 1956 to formulate a Code of Medical Ethics for doctor. A copy of the Code along with a declaration is given to all the new entrants at the time of registration and the applicant is obliged to read and abide by the same. (A full text of the code of Medical Ethics formulated by the Medical Council of India).

\textsuperscript{15} Code of Medical Ethics, para 2.


\textsuperscript{17} Ibid.
(B) Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994

The Act provides for the regulation of the use of pre-natal diagnostic techniques for the purpose of detecting genetic or metabolic disorders, chromosomal abnormalities or certain congenital malformations and sex linked disorders and prevention of misuse of such techniques for the purpose of pre-natal sex determination leading to female foeticide. The Act bans the use of medical techniques and technologies for pre-natal diagnostics except in cases where the pregnant woman is above 35 years of age, has a history of two or more abortions or foetal loss, has a history of being exposed to potentially teratogenic drugs, radiation, infection or hazardous chemicals or has a family history of mental retardation or physical deformities. The Act also declares illegal any advertisement regarding the availability of pre-natal sex detection facilities at clinics, laboratories or centres. The regulation of these centres is to be achieved through Governmental appointed bodies.

(C) The Medical Termination of Pregnancy (MTP) Act, 1971 and MTP Rules, 1975

This law provides the liberalized conditions for women to seek abortion, and doctors to do it. Following conditions are mentioned in the law when a pregnant woman can get her aborted:

(a) Therapeutic: When the continuation of pregnancy endangers the life of women or may cause grave injury to her physical or mental health.

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18 For detail see Pre-Natal Diagnostic Technique (Regulation and Prevention of Misuse) Act 1994.
(b) Social: When economic and social environment is not suitable for continuation of pregnancy and secondly contraceptive failure.

(c) Humanitarian reasons (e.g. rape),

(d) Eugenic reasons: When there is a risk of the child born with serious physical or mental handicaps (e.g. congenital defects, etc.).

(e) When pregnant women is mentally not sound (e.g. Schizophrenia, mania etc.), written consent of the guardian is necessary for abortion of such women.

Medical termination of pregnancy can be done by registered medical practitioner registered under the MCI (Medical Council of India) Act only and those who have undergone 6 months housemenship or 3 years post graduate training in obstetric and gynecology or any register medical practitioners who have conducted 25 cases of medical termination of pregnancy in approved institution, not by the practitioners of other system of medicine. When pregnancy is less than 12 weeks duration then one medical practitioner can perform the (MTP) Medical Termination of Pregnancy Act 1971, but if the duration of pregnancy is more than 12 weeks but less than 20 weeks then two medical practitioner should consult each other and certify that if pregnancy is not terminated may endanger the life of that woman or mental on physical injury or pregnancy will give rise to congenital defect in child.

The Medical Termination of Pregnancy (MTP) can be conducted in governmental hospital/nursing homes/centre approved the Directorate of Health Services, or by Chief Medical Officer of district.
(D) Transplantation of Human Organs Act, 1994\textsuperscript{20}

This Act repeals the Ear Drums and Ear Bones (Authority for use of Therapeutic Purposes) Act, and Eyes (Authority for Use for Therapeutic Purposes) Act, 1982.

Various terms are defined in detail, some of the important terms are as follows:

(a) Brain-stem death\textsuperscript{21} - the stage at which all functions of the brain-stem have permanently and irreversibly ceased and is so certified by registered medical practitioners or board of experts, or any authority which have power to do so.

(b) Deceased Person\textsuperscript{22} - a person in whom permanent disappearance of all evidence of life occurs, by reason of brain-stem death or in a cardiopulmonary sense, at any time after life birth has taken place.

(c) Donor\textsuperscript{23} - any person, not less than eighteen year of age, who voluntarily authorizes the removal of any of his human organs for therapeutic purpose.

Other terms like human organs, near relatives, therapeutic purpose, transplantation, and payment are also defined. Any person more than 18 years authorizes the removal, before his death, of any human organ of his body. Any written authority given before his death or willingly given authority to any of his near relatives can be accepted or he doesn't showed unwillingness before death, of any human organ of his body. Any written authority given before his death or willingly given authority to any of his near relatives, can be accepted or he

\textsuperscript{20} For detail see 'Transplantation of Human Organs Act, 1994.'
\textsuperscript{21} Section 2.
\textsuperscript{22} See Section 2; \textit{ibid.}
\textsuperscript{23} \textit{Ibid.}
doesn’t showed unwillingness before death, then person possess in his
dead body is authorized for removal of organs. Before removal of body
organs, at least registered medical practitioner should certify that life
or brain-stem function have ceased.

A dead body lying in a hospital or prison and not claimed by any
of the near relatives within forty eight hours from the time of the death
of concerned person, a person incharge of any other authorized person
who strongly believe that body will not be claimed authorizes for
removal of body organs. No hospital or place is legally authorized to
remove the human organs unless appropriate authority like state or
central government authorizes and register it.24

Any illegal supply or giving commitment or publishing/advertise
ment to supply or human organs or giving human organs on
payment by an individual or society, or organization, or agent are
considered as an offence and punishment may be awarded.25

(E) Mental Health Act, 1987

Under the Mental Health Act, 1987,26 a “Mentally Ill Person”
means a person who is in need of treatment by reason of any mental
disorder other than mental retardation.27

Mental hospitals and nursing homes can be established or run
only on obtaining a licence from State or Central authority for mental
health services, and would be regulated for proper functioning and care
of the mentally ill. Psychiatric services provided from a general hospital

24 Sections 10-12 and 14-17; ibid.
25 Sections 18-22; ibid
26 For detail see “Mental Health Act”.
27 Sub-section (1) of Section 2; ibid.
or nursing home would not be covered by the licensing and regulating rules.28

Any person aged eighteen and above can voluntarily get admission for inpatient treatment. In case of minor (less than 18 years of age) mentally ill can be presented for admission by the guardian as a voluntary patient. The medical officer-in-charge, should be satisfied about the need of inpatient treatment.29

Patients admitted on voluntary basis, if they request for discharge, are obligated to be discharged by the medical officer-in-charge within 24 hours of receiving the request, provided the medical officer is convinced that the discharge will not harm the interest of the voluntary patient. In such case, the medical officer would constitute a Board of two medical officers and seek their opinion. If the Board is of the opinion that such voluntary patient needs further treatment in the mental hospital or mental nursing home, the medical officer shall not discharge the voluntary patient but continue his treatment for a period not exceeding 90 (ninety) days at a time.30

Admission to mental hospital can also be made on request of a relative or friend of the patient if the patient is not in a position to express willingness for admission as voluntary patient, provided the medical officer-in-charge is satisfied, that is in the interest of the patient to do so. This application should be accompanied by two medical certificates (one from a medical officer who is working in governmental service) stating that the person has such mental illness and it requires inpatient observation and treatment.31

28 Sections 3-10; *ibid.*
29 Sections 15, 16, 17; *ibid.*
30 Sub-section 3 of Section 18; *ibid.*
31 Sub-sections 1 and 2 of Section 19; *ibid.*
No person admitted on the request of another person can be kept in the Mental Hospital for than 90 days unless admitted under a Reception Order.\textsuperscript{32}

Apart from voluntary admission, a mentally ill person can be admitted through reception order. An application for reception order may be made by the Medical Officer-in-Charge of a mental hospital, by the spouse or by any other relative of the mentally ill patient for admission to the Magistrate. The application should be accompanied by two medical certificate from two independent medical practitioners certifying the need for admission for treatment, and that is in the interest, for personal safety of the patient, or that of others. The medical practitioners should have seen the patient within the last ten days prior to the application. The Magistrate can pass the Reception Order or Rejection to the application, after personally reviewing the documents and personally examined the alleged mentally ill (unless for reasons which he considers expedient not to personally examine). The consideration of the application should be made in the presence of applicant, the allegedly mentally ill person, and the person appointed by the allegedly mentally ill to represent him.\textsuperscript{33} A reception order is valid upto 30 days only or till discharged.\textsuperscript{34} A mentally ill patient admitted by relative or friend can also apply to the Magistrate for discharge.\textsuperscript{35} Detailed procedures are laid down for being taking into custody by the police, confinement and security of mentally ill persons or prisoners in mental hospital.\textsuperscript{36}

\textsuperscript{32} Sub-section 2 of section 19; \textit{ibid.}
\textsuperscript{33} Section 22; \textit{ibid}
\textsuperscript{34} Section 31; \textit{ibid}
\textsuperscript{35} Sub-section 3 of Section 19; \textit{ibid.}
\textsuperscript{36} Sections 23 and 25; \textit{ibid.}
Detailed procedure are laid down for ensuring proper care and custody to a mentally ill person by his legal relatives, through the police stations.\(^37\)

The Act provides for regular, thorough supervision of mental hospitals and nursing homes by monthly joint inspection of three visitors designated by the State authority for mental health services.\(^38\)

Any person (other than a prisoner) admitted to a mental hospital who feels he has recovered from his illness can apply for discharge to the Magistrate, supported by a medical certificate from the medical officer incharge of the hospital;\(^39\) he can be allowed to take leave from the hospital on request of his relatives or friends for a specified period.\(^40\)

Detailed procedures of safety in hospital, or during leave of absence or transfer to the another hospital has been laid down in Sections 45, 46, 47. Similarly, safe custody and protection of property of the patients has been defined in Sections 50-77.

Physical or mental cruelty of mentally ill patients is forbidden. Similarly, conduct of research on a mental patient is forbidden, unless voluntarily consents is obtained. The human rights of a mentally ill person are protected under Section 81. Penalties and fines for contravening the provisions are enlisted in the Act.\(^41\)

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\(^{37}\) Section 25; \textit{ibid.}

\(^{38}\) Section 37; \textit{ibid.}

\(^{39}\) Section 43; \textit{ibid.}

\(^{40}\) Section 46; \textit{ibid.}

\(^{41}\) Sections 82 and 87; \textit{ibid.}
The Epidemic Diseases Act, 1897

The Act was passed to enable State governments to take measures to contain and to prevent the spread of any dangerous epidemic diseases if the existing laws are found to be inadequate to meet such contingencies. Hence, such orders and regulations are usually applicable while the danger of the epidemic exists or is perceived to exist.

This is a very brief legislation consisting of four sections. Section 1 makes the Act applicable to whole of India. Section 2 concerns special measures for control of epidemic diseases. Under Section 2 of this Act, if the state government is satisfied that an epidemic disease has occurred in any part of the State or the State is threatened by such an epidemic and considers that the provisions of the existing laws are insufficient to meet the requirements, it may take or empower any of its officers to take/prescribe such suitable measures after duly notifying the public. It may also determine the manner and by whom any expenses incurred shall be paid including compensation, if any. All measures are to be observed by the public or a person or a class of persons as it shall deem necessary to prevent the outbreak or spread of such disease. Any person disobeying any order or regulation made under this Act shall be deemed to have committed an offence is punishable.\(^43\)

The State government may also take measures without prejudicing the provisions of the Epidemic Act and prescribe regulations for inspection of persons traveling by road, rail, air or sea or other means and consider segregation of persons suspected of being infected with any such disease either in a hospital, temporary

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\(^42\) For detail see “The Epidemic Diseases Act, 1897”.

\(^43\) Section 188 of the Indian Penal Code.
accommodation or other suitable means. Section 2(a) of the Act empowers the central government to take similar action when an epidemic occurs in India or a part of it. In *Shiv Charan Das v. State*, the High Court observed that Section 2 of the Epidemic Diseases Act authorizes the Government not only to promulgate a regulation itself but also to require or empower any other person to take such measures as may be necessary. It is, therefore, permissible under that section for the Government to authorize the Medical Officer of Health or the Chairman of a Municipal Board to issue the necessary regulation to prevent epidemic diseases, and that is done, no difficulty can arise in the strict compliance with the provisions of Section 195(1)(a) of the Criminal Procedure Code, 1973 (2 of 1974), in case the regulation is broken by any one." Section 3 lays down penalty for violation of the Act and reads as follows:

"Penalty – Any person disobeying any regulation or order made under this Act shall be deemed to have committed an offence punishable under Section 188 of the IPC (Indian Penal Code) 45 of 1860."

The last section provides protection to persons acting under the Act. It states that no suit or other legal proceeding shall lie against any person for anything done or in good faith intended to be done under this Act.

(G) The Drugs and Cosmetic Act, 1940

The Drugs and Cosmetic Act is mainly aimed to regulate the import, manufacture, distribution and sale of Drugs and Cosmetic, presumably for maintaining high standards of medical treatment.

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44 1958 ALJ 617 at 618-19.
45 Section 4 of the Epidemic Diseases Act, 1897.
46 For detail see Drugs and Cosmetic Act, 1940.
All medicines (Ayurvedic, Sidha and Unani) for internal or external use of human beings or animals and all substances (other than food) intended to be used for or in the diagnosis, treatment, mitigation or prevention of any disease or disorder in human beings or animals including preparation applied on human body or to destroy insects. The central or state governments have power to make rules and appoint inspector to control or inspect any drug or cosmetic for its standardization and safety which can be tested in the Central or State Drug laboratory. The Government can prohibit manufacturing, importing or selling of any drug or cosmetic. Violation of law by any person or corporate manager or owner is liable for punishment for a term which may extend to 3-10 years and shall also be liable to fine which could be five hundred to ten thousand rupees or with both.

(H) The Drugs and Magic Remedies (Objectionable) Advertisement Act, 1954

Advertisement includes publication of the visual and written material in the press and other popular media including notices, circulars, labels, wrappers; as also audio/audio visual transmissions announcing and/or displaying the subject-matter. Drugs include medicines for internal and external use for humans and animals, substances used for diagnosis, mitigation or prevention of diseases and any article other than food intended to affect or influence in any way the structure or any organic function of the body.

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47 Section 3; ibid
48 Section 7; ibid
49 Sections 27 to 30; ibid.
50 For detail see “The Drugs and Magic Remedies (Objectionable) Advertisement Act, 1954”.
51 Section 2(b).
The Act provides for prevention of advertisements which may be exploited by unscrupulous and commercially oriented personnel for including people for self medication of fraudulent, or exploitative or dangerous and harmful nature.\textsuperscript{52}

The Act prohibits taking part in the publication of any advertisement relating to a drug which directly or indirectly gives a false impression regarding its true character or makes a false claim or is otherwise misleading.\textsuperscript{53}

Any person who has read, seen or heard such an advertisement is empowered to lodge a complaint with the police or the Court at the place where such an advertisement was encountered and the offence is cognizable wherein the advertiser, publisher, printer and editor or anyone directly involved are all individually liable.\textsuperscript{54} Penalty for violation of the Act for the first offence is imprisonment upto six months or fine or both. For subsequent conviction, imprisonment may extend to one year.\textsuperscript{55}

(I) \textbf{The Patent Act, 1970}\textsuperscript{56}

The Government of India initiated to amend the Patent Act, 1970 to introduce product patent protection to drug, medicine or food. A Patent Amendment Bill was introduced to this effect in the 13\textsuperscript{th} Lok Sabha but the Bill lapsed due to the dissolution of Lok Sabha. In the last week of August 2004, the cabinet decided to refer the Bill to a Group of Ministers (GOM) to study the implications of contentious issues in the Bill. The provisions of the referred bill were identical to

\begin{itemize}
  \item \textsuperscript{52} \textit{Ibid.}
  \item \textsuperscript{53} Section 4; \textit{Ibid.}
  \item \textsuperscript{54} Section 9(a); \textit{Ibid.}
  \item \textsuperscript{55} \textit{Ibid.}
  \item \textsuperscript{56} For detail see “The Patent Act 1970”.
\end{itemize}
the lapsed bill. This was a matter of concern as the Bill in its present form seriously compromised on the accessibility and availability of medicines, two important components of right to health. The right to life and health is a fundamental right guaranteed to every person living in India and is non-negotiable. As the health is one of the fundamental basic needs of all human beings. In legal terms, fundamental human rights treaties recognize the right to the enjoyment of the highest attainable standard of physical and mental health. Health policies encompass a number of elements from prevention to cure and access to drugs.

(ii) Food Laws

Food is the basic necessity. The growth of a human being depends upon and is governed by the quantity and purity of food that he eats. Food can be solid and Liquid. The most important food law is the Prevention of Food Adulteration Act, 1954. Food being a basic need, certain items of food are also covered under the Essential Commodities Act. Adulteration of food stuff has become so rampant and the evil is so wide-spread and persistent that drastic remedy was required to remedy the cancerous growth of anti-social behaviour. Everyday the newspapers are full of incidents involving death or hospitalization because of large scale adulteration in water, milk, meat and cooked food.

(A) The Prevention of Food Adulteration Act, 1954

The Act\(^{57}\) provide the protection from adulteration/ contamination of food that may lead to the health risk of consumers. The Act deals

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57 The subject of adulteration of food-stuffs and other goods was included in the Concurrent List as item No. 18 of list 3 of 7\(^{\text{th}}\) Schedule to our Constitution where after a Central Act named "Prevention of Food Adulteration Act, 1954" was enacted to ensure uniformity, which extends to whole of India.

58 For detail see "The Prevention of Food Adulteration Act, 1954".

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with the frauds also that can be perpetrated by the dealers by supplying cheaper or adulterated foods. The Act regulates the use of chemicals, pesticides, flavours and other additives in food preparation. Through this Act there is a control over dumping of sub-standard foods. Enrichment of flour, bread, or other cereals with vitamins or minerals, iodization of salt, vitaminization of vanaspati oil, addition of vitamin “C” in certain foods can be done under the provision made in this Act. Different definitions of food, adulteration, misbranding, etc., are described in the Act. Centre is empowered to appoint an Advisory Committee called the Central Committee for Food Standard. In any dispute and adulterated sample need to examined by the Court. The Central Food Laboratories gives its final opinion on the subject. These laboratories are located in Calcutta, Ghaziabad, Mysore and Pune. There are approximately 84 Food Laboratories in the country at district/ regional/ state level working for the purpose of the prevention of Food Adulteration Act, 1954. Powers are given to the State Governments to appoint Public Analyst and Food Inspectors who control the food supply, and marketing of foods. It is the duty of inspector to draw and dispatch samples to a laboratory. Central Government is empowered to define the standards of quality, control over production, distribution and sale of food, packing labeling, licensing and controlling the food additives. There is a provision of penalty if anybody break the law for a maximum imprisonment of 1 year or a minimum fine or Rs. 2000 in the first instance and for imprisonment of 6 months which may extend 6 years and cancellation of license on the second of subsequent offence. There is a penalty for violation of rules with regard to seized article subsequently found adulterated and contaminated with injurious substances when consumed food adulterated food is likely to cause death or injury to the body or amount to grievous hurt can be punished

59 Section 2; Ibid
60 Section 3; Ibid
61 Section 11; Ibid
according to Section 320 of the Indian Penal Code. There is an imprisonment of not less than 3 years but which may extend to the life term and with the fine which shall not be less than Rs. 5000.⁶²

(iii) Occupational Health Laws

The Joint International Labour Organization/ World Health Organization Committee on occupational Health has stated that the general aims of occupational health should be the promotion and maintenance of the highest degree of physical, mental and social well-being of workers in all occupations, the prevention among workers of departures from health caused by their working conditions, the protection of workers in their respective employments from risks resulting from factors adverse to health, the placing and maintenance of the workers in an occupational environment adapted to their physiological and psychological needs.⁶³

With increase in the number of industries and the absence of any legislation to look into the basic needs of the workers and also having realized that it was the man behind the machine who was more important in maximizing the profits of the organization, a number of occupational health laws were framed.⁶⁴ Among the various laws which govern the conditions in the industry and also safeguarded the health and welfare of the workers, the few significant ones are the following:

(A) The Factories Act, 1948

The Factories Act is the principal legislation, which governs the health, safety and welfare of workers in factories. The Act extends the

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⁶² Section 16; ibid.
⁶⁴ Ibid.
whole of India except Jammu & Kashmir. The Act addressed the issues of safety, health, and welfare. Many amendments were aimed to keep the Act in tune with the developments in the field of health and safety. However, it was not until 1987 that the element of occupational health and safety, and prevention and protection of workers employed in hazardous process, got truly incorporated in the Act.\textsuperscript{65}

A factory under the Act is defined as a place using power, employs 10 or more workers or 20 or more workers without power. However, under Section 85, the state governments are empowered to extend the provision of the Act to factories employing fewer workers also. This section has been used to extend the coverage of the Act to work places like power looms, rice mills, flour mills, oil mills, saw mills, pesticide formulating units and other chemical units where hazards to health are considered to put workers at risk. The Act does not permit the employment of women and young in a dangerous process or operation. Children, who have not attained an age of 15 years, are not permitted to be hired.\textsuperscript{66} The Act deals with provision of environmental sanitation that protect the worker from hazardous environment.\textsuperscript{67} Cleanliness of the working place, privy benches, stairs, walls etc. are explained.\textsuperscript{68} Disposal of wastes and effluents should be without any risk.\textsuperscript{69} Ventilation, temperature inside factory, dust and fumes emission, lighting, artificial humidification, over crowding (minimum of 50 cubic metres per person) are specified.\textsuperscript{70} There should be a provision for safe and cool drinking water and provision for safe and cool drinking water and provision of water in the latrine and urinal. One latrine for 25 female workers but one for 25 male workers upto 100 and one for 50 thereafter one urinal for 50 persons upto 500 men and after that one

\begin{itemize}
\item \textsuperscript{65} Sections 11 to 20 of the Factories Act.
\item \textsuperscript{66} Section 11; \textit{ibid}.
\item \textsuperscript{67} Section 12; \textit{ibid}.
\item \textsuperscript{68} Sections 13-17; \textit{ibid}.
\item \textsuperscript{69} Sections 21-40; \textit{ibid}.
\item \textsuperscript{70} Section 42-48; \textit{ibid}.
\end{itemize}
for every 100 more. Safety measures like fencing of machines, protection of eyes by use of goggles, precautions against fire, dangerous fumes, etc. are defined.\textsuperscript{71} Facilities for washing, and sitting, canteens, crèche (one for more than 30 women) and first and appliances are provided.

One Welfare Officer for 500 or more workers is suggested. There is provision for one weekly holiday, and not more than 48 hours in a week an adult worker should work. There is at least half an hour rest after a stretch of 5 hours of continuous work. No women should be employed between 7 p.m. and 6 a.m. No person less than 14 years of age should work in the factory. No child should work more than 4 hours a day and should not work in the night between 10 p.m. and 6 a.m. one full wage leave should be given to an adult worker for every 20 days of work and one for every 15 days to the child worker. 12 weeks of maternity leave should be given to a woman. If an accident occurs in any factory causing death or bodily injury or prevents a worker from working for more than 48 hours, the manager must immediately send notice to the prescribed authority (i.e. Labour Commissioner). Following are the Notifiable Diseases:

1. Lead poisoning or its sequelae
2. Land tetra-ethyl poisoning
3. Phosphorus poisoning or its sequelae
4. Mercury poisoning or its sequelae
5. Manganese poisoning or its sequelae
6. Arsenic poisoning or its sequelae
7. Poisoning by nitrous fumes
8. Carbon bisulphite poisoning

\textsuperscript{71} Section 49.
9. Benzene and its derivatives poisoning
10. Chrome Ulceration or its sequelae
11. Anthrax
12. Silicosis
13. Poisoning by halogens or its derivatives of hydro carbons
14. Pathological manifestation due to radium, radio active substances, or x-ray
15. Primary epitheliomatous cancer of the skin
16. Toxic anemia
17. Toxic jaundice due to poisonous substances
18. Oil acne or dermatitis due to mineral oil or its derivatives in any form

However, the Act do not have provision for some important places of work like hospitals, fire stations, and others where serious health and safety risks may exist. The process of automation and the industrial revolution heralded by micro-electronics is which has resulted in computer based production methods, increasing use of robots, lasers, and new welding technologies have totally transformed the workplace. Consequent on this change, the role of labour inspection has also changed and needs reorientation. Inspectors need additional skills and expertise and a new approach when assessing and evaluating workplace hazards. This has not happened in India. The increasing complexity of workplace and transfer of technologies due to a burst in economic activities requires that inspectors should possess reasonable amount of knowledge of occupational safety and health.

In the case of Consumer Education and Research Centre\textsuperscript{72} Ramaswami, J. held that the right to health, medical aid to protect the

\textsuperscript{72} Consumer Education and Research Centre v. Union of India, AIR 1995 SC 922. The case was heard by a three Judges Bench consisting of A.M. Ahmadi, C.J., M.M. Punchhi, and Ramaswamy. JJ. The decision of the Court was delivered by Ramaswami, J.
health and vigour of a worker while in service or post retirement is a fundamental right under Article 21, read with Articles 39(e), 41, 43, 48-A and all related to Articles and fundamental human rights to make the life of the workman meaningful and purposeful with dignity of persons. Articles 1 and 25(2) of the Universal Declaration of Human Rights, the Charter of United Nations, Articles 21, 38(1), 46, 39(e), 42, 43, 48-A of the Constitution of India, Article 2(b) of the International Covenant on Economic, Social and Cultural Rights, and relied on a number of decisions of the Supreme Court. Relying on a number of decisions of the apex Court, the learned judge stated that in an appropriate case, the court would give appropriate directions to the employer, be it the state or its undertaking or private employer to make the right to life meaningful; to prevent pollution of work place; production of the environment; protection of the health of the workman or to preserve free and unpolluted water for the safety and health of the people. The authorities or even private persons or industry are bound by the directions issued by the Court under Article 32 and Article 142 of the Constitution.

(B) The Maternity Benefit Act, 1961

This Act came into force in November 1963 and has undergone six amendments since then i.e., during 1970, 1972, 1973, 1976, 1988 and 1995. As the number of women employees was increasing, this legislation was passed with the object of doing social justice to women workers employed in factories, mines and plantations. It is basically meant to provide maternity leave and benefits to women employees. This Act applies to every establishment, be it a factory, mine or plantation including any such establishment belonging to Government

73 Consumer Education and Research Centre v. Union of India, AIR 1995 SC 992 at 940.
75 For detail see Maternity Benefit Act, 1961.
and to every establishment wherein persons are employed for the
exhibition of equestrian, acrobatic and other performances. It also
applies to every shop or establishment within the meaning of any law
for the time being in force in relation to shops and establishments in a
State, in which 10 or more persons are employed, or were employed on
any day of the preceding 12 months. No employer shall knowingly
employ a woman in any establishment six week immediately following
the day of her delivery nor shall a woman work in any establishment
during this period including miscarriage or medical termination of
pregnancy.\footnote{Section 4; ibid.} Similarly, no pregnant woman will be subjected to work of
an arduous nature or which involves long hours of standing during the
period of one month immediately preceding the period of six weeks
before her expected date of delivery or during any period during the six
weeks for which the pregnant woman does not avail leave of
absence.\footnote{Section 6; ibid.}

Women employees are entitled to maternity benefits amounting
to a period of 12 weeks of wages of which not more than six weeks
shall precede the date of her expected delivery subject to the fact that
she has served for a minimum period of 80 days in the 12 months
immediately preceding the date of her expected delivery. In case of
death of either the mother or the child prior to delivery, the maternity
benefits are available upto and including the date of death. However, in
case of the death of the mother during her delivery, the child is entitled
to the complete maternity benefits for the whole period or till the period
of his death within the period.\footnote{Section 5; ibid.}

The woman entitled to maternity benefit under this Act is required
to give a notice regarding the same as per the prescribed form to her
employer for payment to her or her nominee and will undertake not to work in any establishment during the period.\textsuperscript{79} She will also notify the date from which she will be absent from work; which should not exceed a duration of six weeks from her expected date of delivery. Initial payment for the absence prior to the delivery will be paid in advance and the remaining payment will be affected on furnishing proof of delivery. Further, failure to give notice does not disentitle a woman to the maternity benefits and she may give the notice as soon as possible after her delivery.\textsuperscript{80}

If the employer has not provided for the pre and post-natal care free of charge, the woman employee is entitled to receive medical bonus of Rs. 250 which may be revised from time to time in keeping with the cost of living.\textsuperscript{81} In case of miscarriage a woman is entitled to six weeks leave with pay at the rate of maternity benefit immediately following the day of her miscarriage/MTP (Medical Termination of Pregnancy) on production of proof thereof.\textsuperscript{82} Section 9A provides for leave with wages for a period of two weeks immediately following tubectomy.

A woman suffering from illness arising out of pregnancy, delivery, premature birth of child, miscarriage, MTP (Medical Termination of Pregnancy) tubectomy operation and the like is entitled to one months additional leave with wages at the rate of maternity benefit independent of her entitlements under Sections 6 and 9.\textsuperscript{83}

On rejoining after her delivery, a woman is entitled to two breaks in her day's schedule for nursing the child until the child attains the age

\textsuperscript{79} Section 6; \textit{Ibid}
\textsuperscript{80} Section 7; \textit{Ibid}
\textsuperscript{81} Section 8; \textit{Ibid}
\textsuperscript{82} Section 9; \textit{Ibid}
\textsuperscript{83} Section 10; \textit{Ibid}
of 15 months independent of the normal breaks. A woman cannot be
dismissed during the period of her pregnancy nor can any retrograde
steps be initiated with regard to the term and conditions of service. The
only exception being on account of gross misconduct where the
employer may by order in writing communicated to the woman, deprive
her of maternity benefit and/or medical bonus. The woman, however,
has the right to appeal to the prescribed authority within a period of 60
days.

The employer cannot deduct the wages of a woman entitled to
maternity benefits because of the nature of work assigned to her by
virtue of the provisions contained in Section 4(3) or for breaks allowed
for nursing the child under Section 11.

(C) The Atomic Energy Act, 1973

X-rays have a potential of causing cancers, genetic mutations
and congenital malformations and hence they should be used very
judiciously and with the utmost of safety precautions to prevent harm to
patients and others who may receive radiation during a diagnostic
procedure. The rules framed under the Atomic Energy Act provide for
the Atomic Energy Regulation Board (AERB) to prescribe a safety code
and regulations for diagnostic X-Ray units in the country. Accordingly,
the Atomic Energy Regulation Board was constituted by Government of
India in November, 1983 and the rules framed by it for diagnostic X-
Rays are as follows:

AERB Code No. SC/MED2: “Safety Code for Medical Diagnostic
X-Ray Equipment and Installations”. The Code was issued on 30

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84 Section 11; Ibid.
85 Section 12; Ibid.
86 Section 13; Ibid.
88 Atomic Energy Regulation Board.
December, 1986. This safety code details the mandatory requirement for the equipment layout, operation, safety procedures, appointment of safety officer, minimum qualifications and experience of the personnel, etc. The State Government is to create a stipulated implementing agency for enforcement of the provisions. The Code has different sections dealing with introduction, definition, built-in safety specifications for medical diagnostic X-Ray equipment, specifications for radiation protection devices, X-Ray Room layout, operational safety, patient protection, radiation protection programme, personnel required and responsibilities and regulatory control.

(D) The Employee's State Insurance Act, 1948

The Act\cite{89} to provide for certain benefit to employees in case of sickness, maternity and employment injury and to make provisions for certain other matters. The scheme covers all employees in respect of wages not exceeding Rs. 3000 per month excluding over time wages. It is financed by contributions payable by the employer and the employees at the rate of 4 percent and 1.5 percent respectively of the wages. An employee has normally to contribute for a minimum number of days in contributory period to be entitled to benefits in the corresponding benefit period except in case of Disablement and Dependant's Benefits.\footnote{90} Sickness benefit, extended sickness benefit, maternity benefit and medical care are subject to fulfillment of contributory conditions, whereas disablement and dependant's benefit for an employment injury are payable without regard to satisfaction of contributory conditions. The duration of benefit is 91 days, two consecutive benefit periods in case of sickness benefit, 124 days in case of extended sickness benefit and 3 months in case of maternity benefit. Disablement and Dependant's benefits are payable at the rate

\footnote{89}{For detail see The Employee's State Insurance Act, 1948.}
\footnote{90}{Benefits afforded by the Scheme are, sickness benefit, extended sickness benefit, maternity benefit, medical care, disablement benefit, dependants benefit, funeral expenses.}
of about 70 percent of wages. Funeral expenses are payable as a lump sum not exceeding Rs.1000/-.

(E) The Dangerous Machines (Regulation) Act, 1983

A large number of accidents occur every year during the threshing season injuring persons operating power threshers, many of whom are permanently disabled. A major contributory factor is the unsafe design of power threshers and lack of safety features. It was therefore considered necessary to regulate trade and commerce in an production, supply distribution and use of power threshers to ensure that they conform to prescribed standards of safety. The Act seeks to achieve that object.

(F) The Dock Workers (Safety, Health and Welfare) Act, 1986

The objective of this Act is the safety, health and welfare of dock workers in respect of all parts and all ships. There is also a provision for the appointment of Chief Inspectors and Inspectors of dock safety with appropriate powers for enforcing the provisions of the Act and holding inquiries into cases of accidents and disease. Obligations are also imposed on dock workers to follow certain safety practices. Punishments for offences against the Act, with provision for enhanced punishment in case of second and subsequent conviction, is provided.

(G) The Public Liability Insurance Act, 1991

The Act is to provide for public liability – insurance for the purpose of providing immediate relief to the persons affected by accident occurring while handling any hazardous substance and for matters connected these with or incidental thereto. This Act made it mandatory for occupiers of hazardous activity to do public liability
insurance to provide minimum relief to the victims. Few important provisions under the said Act are as follow.\textsuperscript{91}

Section 3(1) of the said Act provides, "where death or injury to any person (other than a workman) damage to any property has resulted from an accident or the owner shall be liable to give such relief as is specified in the schedule for such death, injury or damage.

Section 4(1) of the Act reads, "Every owner shall take out, before he starts handling any hazardous substance one or more insurance policies providing for contracts of insurance thereby he is insured against liability to give relief under sub-section (1) of section 3.

Provided that ally owner handling any hazardous substance immediately before the commencement of this Act shall take out such insurance policy or policy as soon as may be and in any case with in a period of one year from such commencement".

Section 14(1) of the Act provides, "wherever contravenes any of the provisions of section 4 or fails to comply with any direction issued under section 12, he shall be punishable with imprisonment for a term which shall not be less than one year and six months but which may extend to six years, or with fine which shall not be less than one lakh rupees or with both."

(2) Whoever, having already been convicted of an offence under sub-section (1) is connected for the second offence, he shall be less than two years but which may extend to seven years and with fine which shall not be less than one lakh rupees".
In terms of transparency requirements and public involvement in the regulatory process there are drawbacks in the Act. There is operational and institutional structure problems while considering the application of these legislation. We know that in practice, when ever the accident takes place, it takes years to fix the liability and the quantum of compensation is very small. The officers of the insurance companies do not pay any attention unless they are given bribes. In such a situation the Government should keep a close watch on it. Only the enactment of law will not serve any purpose. It is also the duty of Government to ensure proper implementation of the Act.

(iv) Child Health Laws

Only healthy children make healthy adults. About three-fourths of Indian children are malnourished. One third of children are born underweight. All India infant mortality rate is around 70 per 1,000 live births compared to around 10 in the developed countries.\(^{92}\)

Child health does not function in isolation. It is a part of the overall health scenario. If the general quality of life and health of population, especially women, improves, child health will automatically improve. In case of consumption of alcohol and cigarettes during pregnancy is harmful to the unborn child causing congenital deformity and even miscarriage.\(^{93}\) Those who both drink and smoke have 50 stillbirths per 1,000 deliveries, compared to half this rate in those who only drink but do not smoke.\(^{94}\) But legal action against such women is difficult in the absence of specific substantive and procedural provisions.\(^{95}\) The same is true of alcohol excessively give birth to

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children with fetal alcohol syndrome women addicted to cocaine and marijuana give birth to babies having drug withdrawal syndrome and congenital defects. The enormity of the problem is evident from the fact that in US alone, 7.5 million children are born annually with such defects. India still has unacceptably high infant mortality rate. A major cause of infant mortality is malnutrition and diarrhea. Both are closely related to lack of breast-feeding and improper quality and use of breast milk substitutes.

The following three legislative measures in this regard are important:

- The Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992;
- The Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Rules, 1993; and
- Prevention of Food Adulteration (Fifth Amendment) Rules, 1991.


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96 Ibid.
The Prevention of Food Adulteration Rules,\textsuperscript{99} 1991 as amended by Prevention of Food Adulteration (Third Amendment) Rules,\textsuperscript{100} 1999 contain special provisions related to infant foods.

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

The main aim of the Act\textsuperscript{101} is to prohibit the engagement of children in certain employment and to regulate the conditions of work of children in certain other harmful employment. This repealed the Employment of Children Act, 1938. It extends to the whole India. According to this Act Child means a person who has not completed his 14 years of age.\textsuperscript{101} No child shall be employed in any occupation, transport, railways, catering establishment at a railway station or in train, construction or port, railways, catering establishment at a railway station or in train, construction or port, biddi making, carpet making, cement factory, cloth printing, dyeing, weaving, mica-cutting and splitting, soap tanning, wood-clearing, matches, explosives and firework.\textsuperscript{102}

The Central Government shall form “Child Labour Technical Advisory Committee” to advise the Central Government for the purpose of addition of any other occupations or process.\textsuperscript{103} No child shall work for more than 6 hours per day and three hours continuous before he has had an interval for rest for at least one hour. He will neither be allowed to work between 7 p.m. and 8 a.m., nor allowed to do overtime. He will be given a weekly full wage holiday.\textsuperscript{104} If any establishment has children as the workers should inform the inspector who will inspect the conditions and nature of work and also certify age of the child.\textsuperscript{105} Each

\textsuperscript{99} For detail see Prevention of Food Adulteration Rules, 1991.
\textsuperscript{100} For detail see Child Labour (Prohibition and Regulation) Act, 1986.
\textsuperscript{101} Section 2; \textit{ibid.}
\textsuperscript{102} Section 3; \textit{ibid.}
\textsuperscript{103} Section 5; \textit{ibid.}
\textsuperscript{104} Sections 7-8; \textit{ibid.}
\textsuperscript{105} Sections 9-10; \textit{ibid.}
establishment where a child is working make sure for his health and safety. Any violation of the Act may lead to the punishment with imprisonment or fine or both.

(B) The Juvenile Justice Act, 1986

The Act\textsuperscript{106} provides for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles, and for the adjudication of certain matters relating to, and disposition of delinquent juveniles. In the Act, Juvenile means a boy who has not attained the age of 16 years or a girl who has not attained the age of 18 years. Neglected juvenile means a juvenile who – i) is begging, ii) lives in brothel, or with a prostitute, iii) who is being abused or exploited or iv) destitute. Delinquent juvenile means a juvenile who has found to have committed an offence.\textsuperscript{107}

It is the responsibility of the state to look into the problem for juvenile social mal adjustment and make special efforts to mobilize all possible resources of the family, the community, and social organization. Any juvenile, who is likely to be abused, exploited and inducted into criminogentic life and is need of legal support to be appropriately rehabilitated. The Act has also described special offences in respect of juvenile like, punishment of cruelty to juvenile, employment for begging, giving intoxicating liquor or narcotic drug or psychotropic substance and exploitation of juvenile employee.

(C) The Child Marriage Restraint Act, 1929

The aim of the Act\textsuperscript{108} is to prevent child marriage so that child can get an opportunity to fully develop before getting the responsibility of marriage in their adulthood. The child marriage is also linked with

\textsuperscript{106} For detail see Juvenile Justice Act, 1986.  
\textsuperscript{107} Section 2; \textit{ibid}.  
\textsuperscript{108} For detail see Child Marriage Restraint Act, 1929.
population control that is why it was necessary to increase the age of marriage. Child means a person who, if male, has not completed 21 years of age and if a female, has not completed 18 years of age. Being a male above eighteen years of age and below twenty one, contract of marriage shall be punishable with simple imprisonment which may extend to fifteen day or with fine which may extend to one thousand rupees, or with both. Parents or guardian or in any other capacity, lawful or unlawful, who does any act to promote the marriage or permits it to be solemnized or negligently fails to prevent it from being solemnized, shall be punishable with simple imprisonment which may extend to three months and shall also be liable to fine. The Act do not provide punishment to the woman.

(D) Children as Victims of Drugs

Children, because of their tender age, are particularly prone to be swayed into addiction under unhealthy influences and to be used as an instrument in drug trafficking. There is widespread use of illicit drugs among street children. Even amongst children in educational institutions, use of drugs is increasing. There are innumerable documented instances to show that children of the poor are introduced and addicted to drugs only to be manipulated as tools in drug trafficking by organized criminal syndicates.\(^{109}\)

Under the Juvenile Justice (Care and Protection of Children) Act 2000, it is an offence to give or cause to be given to any juvenile or child, any intoxicating liquor or any drug or psychotropic substance

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\(^{109}\) Today drug abuse has become a menace as it is prevalent amongst children belonging to all strata’s of the society. The district mental health programme is throwing up increasing evidence of inhalant drug abuse in the Chandigarh city. Camps conducted under the programme in different colonies show that children as young as five years are inhaling drugs like eraser fluids, solvents like taulene (used for fixing punctures), petrol, diesel. This is happening, despite the ban on sale of correction fluids in Chandigarh. Experts demand curbs on easy and cheap availability of inhalants like whiteners. Visit [http://www.tribuneindia.com/2007/20070411/cht1.htm](http://www.tribuneindia.com/2007/20070411/cht1.htm), (accessed on September 27, 2009).
except upon the order of a duly qualified medical practitioner or in case of sickness. The punishment for this offence is imprisonment for a term which may extend to three years and fine.\textsuperscript{110}

There are several lacunae found in the Act. Although the Act gives the members of the Child Welfare Committee (CWC) power to function as a magistrate, and pronounce punishments, but members of the CWC have hardly ever used this opportunity. Though the formation of the Commissions is a step forward in recognizing child rights. Despite the 2006 amendment in the said Act mandating that every district in the country must have a CWC and Juvenile Justice Board (JJB) within one year from the notification of the new Act, the Government itself admits that many states and UTs have not established any. Some states do not have enough JJBs to deal with the number of children coming in conflict with law. There is lack of implementation because of lack of role clarity within the judiciary, administration and lack of resources. Another problem with the said Act is that its members have a dual role of counseling children as well as awarding punishments. Since the implementation of Juvenile Justice Laws by most states was tardy. The National Human Rights Commission (NHRC) is playing a more proactive role in ensuring the monitoring of the implementation. The amended law makes it mandatory for the states to set up Juvenile Justice Boards and protection homes at district levels. But states are dragging their feet on

\textsuperscript{110} Section 25 The Juvenile Justice (Care and Protection of Children Act). 2000. This Act deals with the law relating to juveniles in conflict with law and children in need of care and protection, by providing for proper care, protection, and treatment by catering to their development needs, and by adopting a child friendly approach in the adjudication and disposition of matters in the best interest of children, and for their ultimate rehabilitation through various institutions established under the Act. The said Act received the assent of the President of India on December 30, 2000. The Act contains total 70 sections. The said Act also amended in 2006, known as the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006 No. 33 of 2006 (22 August, 2006).

(E) \textbf{National Plan of Action for Children, 2005}\footnote{ibid.}

Further, to secure and strengthen the health status of children the National Plan for Children was initiated in the year 2002 by inviting comments and inputs from all concerned Ministries, Departments at the Centre level, from the State Governments and UT Administrations. An Advertisement was also published in the newspapers to invite comments from the public as well, resulting in framing of the National Plan of Action for Children 2005. This plan commits itself to ensure all rights to all children upto the age of 18 years. This calls for collective commitment and action by all sectors and levels of government and partnership with families, communities, voluntary sector and children themselves. This plan will be implemented throughout the country through national measures and through State Plans of Action for Children. In recognition of the fact, that 41 percent of India’s population is below 18 constituting, a significant national assets, the plan re-affirms the nation’s commitment wisely, effectively, and efficiently invest its national resources to fulfill its commitment to children. The National Plan of Action for Children, 2005 is divided into following four sections:
Guiding Principles of National Plan of Action, 2005 are:

a) to regard child as an asset and a person with human rights;

b) to address issues of discriminations emanating from biases of gender, class, caste, race, religion and legal status in order to ensure equality;

c) to accord utmost priority to the most disadvantaged, poorest of the poor and least served child in all policy and programmatic interventions;

d) to recognize the diverse stages and settings of childhood and address the needs of each, providing to all children the entitlements that fulfill their rights and meet their needs in each situations.
(a) Child Health

The goals relating to health lay down in the plan are:\textsuperscript{114}

- To reduce infant mortality rate to below 30 per 1000 live births by 2010.
- To reduce child mortality rate to below 31 per 1000 live births by 2010.
- To reduce neonatal mortality rate to below 18 per 1000 live births by 2010.
- To explore possibilities of covering all children with plan for health insurance.
- To reduce Maternal Mortality Rate (MMR) to below 100 per 1,00,000 live births by 2010.
- To prevent and progressively eliminate child marriage and under age child bearing by enforcing the Child Marriage (Restraint) Act, 1929, now it is amended in 2006 known as the prohibition of Child Marriage Act, 2006.\textsuperscript{115}
- To eliminate child malnutrition as a national priority.
- To reduce five malnutrition and low birth weights by half by 2010.
- To ensure adequate neonatal and infant nutrition.
- To reduce moderate and severe malnutrition among preschool children by half.
- To reduce chronic under nutrition and stunted growth in children.

\textsuperscript{114} Ibid.

\textsuperscript{115} It provides for the prohibition of the solemnization of child marriages and for matters connected with child marriages. The act makes an offence punishable, cognizable and non-bailable. Despite the existence of legislation banning it, child marriage continues to be social reality in India today. Visit www.unicef.org.india/child-protection.1536.htm. (accessed on September 24, 2009).

• Universal equitable access to and use of safe drinking water and improved access to sanitary means of excreta disposal by 2010.

• All households to have sustained access to potable drinking water by 2012, to be undertaken in a phased manner with annual targets.

• 100 percent of rural population to have access to basic simulation by 2012.

• To cover 100 percent urban population with low cost sanitation and safe water disposal facilities by 2010, and build an enabling environment for sanitation and hygiene that promotes prevention of pollution of all fresh water bodies.

The health of child has been taken by the government as a serious issue under different policies i.e. National Population Policy, 2000 and National Health Policy, 2002.

(b) Child Development

The goals lays down under this head are .

• To universalize early childhood services to ensure children’s physical, social, emotional cognitive development.

• To ensure that care, protection and development opportunities are available to all children below 3 years.

• To ensure integrated care and development and pre-school learning opportunities for all children aged 3 to 6 years.

Ibid.
To provide day-care and crèche facilities to parents in rural and urban areas.

- Assurance of equality status for girl child as an individual and a citizen in her own right through promotion of special opportunities for her growth and development.

- To ensure survival, development and protection of girl child and to create an environment wherein she lives a life of dignity with full opportunity for choice and development.

- To stop sex selection and female foeticide and infanticide.

- To ensure the girl child’s security and protect her from abuse, exploitation, victimization and all other forms of violence.

- To protect the girl child from deprivation and neglect and to ensure the girl child equal share of care and resources in the home and community and equal access to services.\(^\text{117}\)

- To take measures to protect girl children from any treatment which undermines their self esteem and causes their enclose on from social mainstream and also to break down persistent gender stereotype.

- To ensure equal opportunity for free and compulsory elementary education to all girls.

- To ensure full opportunities to all adolescents girls and boys in the age group of 13 to 18 years to realize their rights and develop their full potential as human beings.\(^\text{118}\)

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\(^{117}\) In Haryana, State Government has introduced a new scheme for the girls child which is named ‘LADLI’. The objective of the scheme is to raise the status of the girl child in the family and in society and to change the mindsets of the people for proper rearing of the girl children and enduring their right to birth and survival. Under the scheme all parents residents of or domiciled in Haryana will be provided financial incentive @ Rs. 5000 per year for upto five years if their second girl child is born on or after 20\(^\text{th}\) August 2005. National Report on ‘A World fit for Children’, Ministry of Women and Child Development, Government of India, 2007.

\(^{118}\) The Government has also started Rashtriya Swasthya Bima Yojna under the women and children labour welfare schemes, transportation of pregnant women and children during emergency from the village to CHC/district. The scheme of Kishori Shakti Yojana for adolescent girls has also been started to raise the level of nutrition. [http://www.delhiplanning.nic.in/pd/2008-09](http://www.delhiplanning.nic.in/pd/2008-09) (accessed on July 19, 2009).

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- To provide the adolescents with education and development opportunities so that they can participate in the life and progress of community as productive citizens.
- To eliminate child marriages by 2010.
- To ensure right to survival, care, protection and security for all children with disability.
- To ensure the right to development with dignity and equality creating an enabling environment where children can exercise their rights, enjoy equal opportunities and full participation in accordance with the UN Convention on the Rights of the Child, and other laws dealing with Child Rights in India.
- To ensure inclusion and effective access to education, health, vocational training along with specialized rehabilitation services to children.
- To eliminate disability due to poliomyelitis by 2007.
- To conserve and protect the natural environment and safeguard natural resources, for the good and well being of all children.
- To ensure children’s survival, health and food security through conservation and safe use.
- To create and uphold a safe, supportive and protective environment for all children within and outside the home.
- To prevent children from getting into conflict with law.
- To recognize, promote and protect the rights of children in conflict with law through preventive, protective, reformative and rehabilitative policies, laws, plans, strategies, programmes and interventions.
- To protect all children, both girls and boys from all forms of sexual abuse and exploitation.
- To prevent use of children for all forms of sexual exploitation including child pornography.
- To develop new and strengthen existing legal instruments to prevent sexual abuse and exploitation of children.

- To stop sale of children and all forms of child trafficking, including for sexual purpose, marriage, labour, adoption, sports entertainment and illegal activities like organ trade, begging and drug peddling.

- To eliminate child labour from hazardous occupations by 2007 and progressively move towards complete eradication of all forms of child labour.

- To protect children from all kinds of economic exploitation.

- To stop the growth of HIV/AIDS and sexually transmitted infections by 2010.

- To reduce the proportion of infants infected with HIV by 20 percent by 2007 and by 50 percent of all such children by 2010.

(c) **Child Participation:** The goals laid down under this section are:

- To promote within the family, community, schools and institutions as well as in judicial and administrative proceedings, respect for the views of all children, including the views of the most marginalized, especially girls, and facilitate their participation in all matters affecting them in accordance to their age and maturity.

- To make all children aware of their rights and provide them opportunities to develop skills to form and express their views, build self-esteem, acquire knowledge, from aspirations, build competencies in decision making and communication, and gain confidence which will empower them to become actively involved in their own development and all matters concerning and affecting them.
• The Department of Women and Child Department shall create suitable mechanisms to ensure this by establishing:

a) National Commission for the Protection of Child Rights including the setting up of State Commissions.
b) Central Nodal Authority for combating trafficking for commercial sexual exploitation, including the setting up of the State authorities.
c) Creations of other needs based mechanisms for child protection as and when required.

• This plan will be regularly monitored at the National, State and District levels to assess progress towards the goals and targets. A comprehensive system would be developed and operated to collect and analyze disaggregated data on children, based on age, gender, cultural and socio-economic grouping.

• Efforts will be made to strengthen the existing data collection mechanisms so that quality data on various measurable development is generated.

• Periodic and annual reviews will be conducted at the national and state level in order to more effectively address the obstacles and accelerate progress on the NPA goals.

• Appropriate mechanisms for effective monitoring and evaluation will be set up at the national, state, district block and village level for reporting and periodic review of the targets.

(v) Women's Health Laws

When we discuss law related to women's health, it needs to be emphasized that we have to deal with health in its comprehensive
meaning. Thus, not only laws specifically related to women's physical, mental or social health are important, but even the laws that empower women are relevant. This is because women's empowerment is an undisputed determinant of women's health.

The Beijing Declaration on Women\textsuperscript{120} gives a wider dimension to the right to health. It states:

"Women have the right to the enjoyment of the highest attainable standard of physical and mental health. The enjoyment of this right is vital to their life and well-being and their ability to participate to all areas of public and private life. Health is a state of complete physical, well-being and not merely the absence of disease or infirmity. Women's health involves their emotional, social and physical well-being and is determined by the social, political and economic context of their lives, as well as by biology.\textsuperscript{121}

Thus, women health should also involve their emotional, social and physical well being and is determined by the social, political and economic context of their lives, as well as biology. Prevailing laws, and their implementation to ensure the well being of women and granting them equal status in the society. To reiterate, when we discuss laws relating to women's health, it needs to be emphasized that we have to deal with health in its comprehensive meaning. Thus, not only laws specifically related to women's physical, mental or social health is important, but even the laws that empower women are relevant. This is because women's empowerment is an undisputed determinant of women's health.\textsuperscript{122}

\textsuperscript{122} Mahalwar K.P.S., "Indian Constitution and the Weaker Sections", 2007 at p.96.
(A) The Medical Termination of Pregnancy Act, 1971

The Act\textsuperscript{123} is essentially designed to ensure safeguarding of women’s health and specifies the conditions under which medical termination of pregnancy is permissible, personnel who are legally authorized to perform the terminations and the statutory facilities in which the process can be undertaken. The MTP (Medical Termination of Pregnancy Act) has been discussed earlier. The implementation of the Act has resulted in saving the life and health to innumerable women who were earlier forced to fall into the clutches of quakes for seeking illegal abortions.

The issue of reproduction has always been central to women’s lives. In all cultures and ages women have sought ways and means to either prevent conception, or get rid of an unwanted pregnancy, to voluntarily remain child free, or to deal with involuntary childless. Intervention in reproduction is not of recent origin. Contraception and abortion have been known for long time. Up until the Middle Ages in Europe (and in developing countries to some extent even until this day), women practised as healers and midwives, providing contraceptive measures, performing abortions and offering concoctions to ease the pain of labour, according to methods and skills handed down from generation to generation.

An extremely significant development took place with the passing of “The Medical Termination of Pregnancy (MTP) Act” in 1971 which became effective from April, 1972. Until then the abortion laws in India had been very restrictive. The most important reason given for liberalization was to counter the hazard of the large number of illegal abortions. Since the concept of family planning was already accepted,
it was assumed that the liberalization of the abortion law would meet with support rather than opposition from religious and professional groups. The legislation provided recourse to abortion under broad health (physical and mental) grounds on eugenic indications, under juridical conditions (such as incest or rape), and for social reasons such as mental or social injury to the mother. The law did not have population control as its stated objective. However, the provisions of the law were liberal enough for those who wished to avail themselves of it to do so. The Commission stated: ‘...abortion also can be used as a means to control family size as is being done currently in several countries. In which family planning or contraception and abortion are in two parallel categories, both of which lead to population control (Government of India: 1966). It is noteworthy that Indian women obtained the right to abortion without a struggle or even a campaign on this issue, whereas it is still an explosive issue in many countries, predominantly Catholic countries as well as in the US where the opposition to abortion is the strongest and is organized in a pro-life lobby. The population control motive is likely to have played an important role in the liberalization of abortion in India. The easy availability of abortion did not make it an issue of ‘self-determination’ for women in India.

During the past three decades, there has been liberalization of abortion laws throughout the world. In India, abortions were governed exclusively by the Indian Penal Code and the Code of Criminal Procedure. It was considered a crime except when performed to save the life of a pregnant woman.

The Medical Termination of Pregnancy Act (MTPA) is a health care measure which helps to reduce maternal morbidity and mortality resulting from illegal abortions. It also affords an opportunity for motivating such women to adopt some form of contraception.
MTPA was enacted purely to safeguard the rights of women and the doctors who performed abortion. Previously, abortion was an offence under the Indian Penal Code except when it was done to save the life of woman. This led to illegal abortions. According to the objects and reasons of the MTPA, doctors had often been confronted with gravely ill or pregnant women whose uterus has been tempered with a view to causing an abortion who consequently suffered very severely. The legislation was conceived – (1) as a health measure – where there is a danger to life or risk to physical or mental health of the woman, and (2) on humanitarian grounds such as when a lunatic woman was raped, etc. and (3) eugenic grounds where there is a substantial risk that the offspring would suffer from deformities and diseases.

The MTPA allows abortion if the doctor is of the opinion that the continuance of the pregnancy would endanger the life of the pregnant woman or involve grave injury to her physical or mental health; or there is a substantial risk that the child would suffer from disabling physical or mental abnormalities. The anguish caused by pregnancy as a result of rape, or as a result of failure of any device limiting the number of children may be presumed to constitute a grave injury to the woman’s mental health. The medical practitioner can take into account the pregnant woman’s actual or reasonable foreseeable environment to determine the advisability of abortion. If the pregnancy is twelve weeks old, the opinion of one registered medical practitioners is required. In theory, the law recognizes women’s right, as the medical practitioner is required. In theory of the law recognizes women’s right, as the medical practitioner has to consider only her consent. The matter is thus purely between the two and even the husband’s consent becomes unnecessary. In reality, however, a woman’s right to abortion is very restricted, and mostly, it turns out to be a family decision. Various court judgments have hold that abortion of a foetus without the husband’s
consent would amount to cruelty under the Hindu Marriage Act and hence is a ground for divorce.

Under the MTPA, the pregnancy of a girl below 18 years of that of a lunatic can be terminated only with the consent in writing of her guardian. The MTPA permits the pregnancy of a 'lunatic' (as defined under the Lunacy Act and hence will include the mentally ill and mentally disabled) with the written consent of her guardian provided the doctor is of the opinion that the pregnancy will cause injury to the woman's physical or mental health. No law permits sterilization to be performed on the mentally ill or disabled. The issue is complex, involving a woman's right over her body. Besides, given over utter callousness towards the under-privileged, any such freedom to perform sterilization will be misused. Besides, there are degrees of retardation and some women are capable of taking care of themselves through in a limited way. At the same time, there is genuine anguish of many parents that their mentally retarded daughters might become victims of pregnancy due to sexual abuse and about their daughter's hygiene after their lifetime.

MTPA recognizes 'failure of contraceptives' as a ground for seeking abortion. This relief is restricted, however to married women. Unwed pregnant women are forced to mention rape or grave injury to mental or physical health in order to seek abortion. Since the rules in government hospitals are rigid, such women prefer to go to private clinics or quacks.

In India, merely the fact that abortion legislation is liberal does not guarantee that women have access to legal abortion facilities. Incidence of illegal abortions is alarmingly high. It is 10 times as many as illegal abortions are carried out as legal ones and at least 80 percent of women admitted to hospital with complications have had
abortions performed by unqualified people. Around one-tenth of maternal deaths in the country are due to septic abortions. About seven million induced abortions take place every year. Abortion is advocated openly by government authorities. One hoarding spotted in Bombay read: ‘Carrying again? You need not worry. Get your pregnancy terminated. Abortion is legal’. It is clear that abortion is regarded by the authorities as a family planning method. On paper, however, abortion is not part of the family planning programme and is ostensibly only a health measure. Studies show that high percentage of women seeks help for abortion at a late stage of pregnancy. This is due to reasons of their legal rights to abortion, ignorance regarding the availability of legal abortion facilities and above all due to inadequate health care services. Mainly the better educated/informed and economically well-off women find their way to legal abortion clinics, while women services, providers of which also have a generally low educational level and many not themselves understand the instructions for correct use of the abortion pill. These women could use it without the supervision of trained health workers. They are less likely to have access to the necessary information. When complications occur, medical help will often be inaccessible to them.

Although induced abortion was legalized in India in 1971. The number of legal abortions in India has risen rapidly since 1972, but it has leveled off at about 600,000 annually. The fact that many legal abortions performed in private facilities are probably not reported may affect the data. In addition, a number of illegal abortion procedures are in use, from modern surgical techniques carried out by private practitioners without the requisite licenses to a variety of folk methods. The actual numbers of illegal, unsafe abortions performed and the extent of associated morbidity and mortality are unknown. In one hospital study, infection resulting from abortion was the single highest cause of death (26 percent of direct obstetric deaths and 18 percent of
deaths from all causes). In community based studies of Andhra Pradesh and Karnataka, illegal abortions were estimated to be responsible for about 6 and 3 percent of total maternal deaths, respectively. The studies indicated that about two-thirds of all abortions deaths involved induced abortions and the other one-third miscarriages. According to the Andhra Pradesh study, roughly one-half of the abortion deaths were caused by hemorrhage and the other half by infection. The Indian Council of Medical Research carried out a study of induced abortion in the states of Haryana, Orissa, Rajasthan, Tamil Nadu, and Uttar Pradesh in 1983-84. It found that for the five states combined, 6 of each 1,000 pregnancies ended in legal abortions and 213 per 1,000 in illegal abortions. Assuming this relationship holds for subsequent years for the rest of India, the approximately 600,000 legal abortions reported in 1990 indicate that a total of about 1.3 million illegal abortions are performed annually in the country. For the five states combined, only about 55 percent of the abortions were carried out in the first trimester, and of these only about one-quarter were provided by doctors (government or private) or other health staff. A study funded by the Ford Foundation argues that previous research seriously underestimates the magnitude of illegal abortion and suggests that nearly 7 million induced abortions occur annually. These figures imply that for every legal abortion in India, 10 more are performed illegally. The study also estimates that the number of abortion-related deaths is significantly higher than was previously reported, accounting for at least 15 percent of all maternal deaths. Thus, it is clear that medical terminations performed by qualified personnel, which are often performed at facilities distant from women's homes and may be prohibitively expensive, are competing with more convenient, less expensive alternatives performed locally, which many believe are less dangerous for women than surgical techniques. The constraints involved in delivering medical terminations suggest that increasing the number of procedures performed at public sector
facilities will require an increase in the number of procedures performed at public sector facilities will require an increase in the number of approved facilities, improvements in the quality of services provided, and public education. Devolving authority from specialists and training a wider range of health providers to perform terminations in the first trimester can also associated with unsafe practices, particularly in rural areas. The complications of unsafe abortions should be promptly referred and treated. The high levels of abortion in India underscores the need to make contraceptives more widely available so that women can avoid unwanted pregnancies in the first place.

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

This Act\textsuperscript{124} provides for regulation of the pre-natal diagnostic techniques for the purpose of detecting any genetic or metabolic disorder, chromosomal abnormalities or certain congenital malformations and sex linked disorders and prevention of misuse of such techniques for the purpose of pre-natal sex determination for female foeticide. The Act thus aims at preventing the killing of baby girls even before they are born. However, it is doubtful whether the practice of pre-natal sex determination followed by abortion in case of female child has decreased to any significant extent.

Maharashtra was the first State to pass the Pre-natal Diagnostic Techniques Act in 1988 under public pressure. The Act bans the use of medical techniques and technologies for pre-nataliagnostics except in cases where the pregnant woman is above 35 years of age, has a history of two or more abortions or foetal loss, has a history of being exposed to potentially teratogenic drugs, radiation, infection or

\textsuperscript{124} For detail see Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act.
hazardous chemicals declares illegal any advertisement regarding the availability of pre-natal sex detection facilities at clinics, laboratories or centres. The regulation of these centres is to be achieved through government appoint bodies.

Informed consent of the pregnant woman has to be taken and also a copy of the same to be given to her before such tests can be conducted. Act also prohibits disclosure of the sex of the foetus to the woman or her relatives by words, signs or any other manner.

The Act defines offences and lay down penalties for contravention of the provisions of the Act. A significant aspect is that under Section 24, unless the contrary is proved, the court shall presume that the pregnant woman has been compelled by her husband or the concerned relative to undergo pre-natal diagnostic tests and such person shall be liable for punishment for abetment of the offence. The Act makes an offence under the Act cognizable, non-bailable and non-compoundable.

Five million missing girls later, the country has seen its first ever conviction for foetal sex determination. After 12 years of existence of PNDT Act, first time in Haryana a doctor and his assistant has been given two years imprisonment and a fine of Rs. 5,000 each for violating the Pre-Natal Diagnostic Technique (Regulation and Prevention of Misuse) Act, 1994. Another conviction was in Punjab for improper maintenance of records and the doctor got away with a fine. According to Sabu George, “sex selection is a high volume, low risk business. Volumes have to be high because one or two cases do not get the errant doctor much money and the risk low because hardly anyone is caught. According to Dr. Bedi, “It is a Rs. 500-1000 crore industry if you take into account that five to seven lakh fetuses are aborted in the country every year at a cost of Rs. 10,000-15,000 each. So doctors
won't stop conducting ultrasound tests till there is deterrent." The deterrent will also come in the form of convicted doctor losing his/her registration. Debarring is inherent in the law.

(C) Drugs and Cosmetic Act, 1940

While this Act\textsuperscript{125} is not primarily related to women, yet is relevant to their health. This is so because the use of cosmetics is more widespread among women. Cheaper cosmetic of poor quality are known to cause various types of allergy and toxicity, including lead toxicity. To that extent, this Act is related to women's health.

(D) Maternity Benefit Act, 1961\textsuperscript{126}

As the number of women employers are increasing, this legislation was passed with the object of doing, social justice to women workers employed in factories, mines and plantations. It is basically meant to provide maternity leave and other benefits to women employees and enabling them to fulfill their commitment to nursing their babies till attainment of an age of 15 months.

The Act prohibits the employer from engaging or making a woman work for six weeks after her delivery or miscarriage. The employer is also required not to engage a woman in an arduous task, one which involves hours of standing on or which in any way is likely to interfere with her pregnancy, the normal development of the foetus or is likely to cause miscarriage or otherwise adversely affect her health provided she requests the employer to this effect. This stipulation applies to one month before the date of her expected delivery, or any six weeks before the expected delivery. Woman has a right to payment

\textsuperscript{125} For detail see Drugs and Cosmetic Act, 1940.
\textsuperscript{126} For detail see "Maternity Benefit Act", 1961.
of maternity benefit for the three months. To claim this benefit of wages, however, she must have been in employment for at least eighty days in the twelve months immediately preceding the date of their expected delivery. A woman is also entitled to medical bonus of Rs. 250 if no pre-natal confinement and post-natal care is provided free of charge by the employer. This applies also to a woman who has miscarriage, she is entitled to leave for a month for any illness arising out of the pregnancy, delivery, premature delivery or miscarriage. The medical bonus may be revised from time to time in keeping with the cost of living.

In case of miscarriage of MTP, a woman is entitled to six weeks leave with pay at the rate of maternity benefit immediately following the day of her miscarriage/MTP on production of proof thereof. Section 9A provides for leave with wages for a period of two weeks immediately following tubectomy. A woman suffering from illness arising out of pregnancy, delivery, premature birth of child, miscarriage, MTP, tubectomy operation and the like is entitled to one months additional leave with wages at the rate of maternity benefit of her entitlements under Section 6 and 9.

The Act also stipulates that she is allowed two nursing breaks in the course of her work till the child attains fifteen months independent of the normal breaks. Woman cannot be dismissed during the period of her pregnancy nor can any retrograde steps be initiated with regard to the term and conditions of service. The only exception being on account of gross misconduct where the employer may be order in writing communicated to the women, deprive her maternity benefit and/or medical bonus. The woman, however, has the right to appeal to the prescribed authority within a period of 60 days. The employer can not deduct the wages of a woman entitled to maternity benefit because of the nature of work assigned to her by virtue of the provisions
contained in Section 4(3) or for breaks allowed for nursing the child under Section 11.

The Act is applicable to factories, mines and plantations. Government can also by certification extend its applicability to other classes of establishment-industrial, commercial, agricultural or otherwise.

The Government of India has recently increased the maternity leave entitlement from 90 days to 135 days. Fifteen days paternity leave to fathers has now also been provided for.

Strangely, the statute provides for forfeiture of maternity benefit. If a woman works in the establishment during the period of authorized absence, her claim to maternity benefit can be forfeited. In the prevailing unequal situation some employers force their employees to work and take refuge under this provision. The Act provides for inspectors empowered to examine its violation. A few years ago a circular was issued to Central Government employees restricting the benefits to married women. This caused various protests and the circular was withdrawn. Such a move was clearly against the spirit of the Act which recognizes the women’s right to health and does not concern itself with existing norms of morality and is truly a welfare legislation. The Act also mentions about the provision of crèches for children have any provision of crèche. Act also provides a clean work environment, effective ventilation and temperature, and all other amenities. Conversely, in most of the establishments the laws are blatantly violated.
(a) Family Planning Methods

The use of condoms to prevent conception has been known for a long time. As well as abstinence, withdrawal and other traditional sexual practices which contributed to birth control. Research in animal and human reproduction made great strides in the twentieth century. With the development of the contraceptive pill in the early 1990s, and later, other contraceptive methods, fertility management through medical technology became more efficient and reliable.

According to guidelines of the Helsinki Declaration, in any research on human beings, each potential subject must be adequately informed of the aims, methods, anticipated benefits and potential hazards of the study and the dis-comfort if any entail. This is to prevent human beings from guinea pigs. Various methods of family planning like pills, injectable contraceptives, implants and sterilization are discussed below for the purpose of women’s health issues.

(b) Pills

The one area where there is a need to examine a legislation is in the field of family planning. The pill, which has been in the market since the 1960s, was considered safe for long, as the side-effects came to be known much later. Unlike in the West where it is not available without a doctor’s prescription. In India pills like Mala-D advertising campaign by the government sponsored media. While this will be no doubt beneficial to woman as she would be examined on an individual basis, in reality medical facilities are unavailable or difficult to reach for a large number of people. In such a case a rigid rule might make even the existing facilities inaccessible to the average woman who does not want a pregnancy.
(c) The Injectable Contraceptive

One of the injectable is Net-en and its import has been permitted since late 1984. Net-en is a bimonthly injection that inhibits the production of gonadotropin. It does not need any chart as in the case of Pill or periodic check-ups as in IUDs.

In March 1985, research trials of Net-en were held at a Rural Health Centre in Patancheru, Street Shakti Sangathana got word of it. They tried to dissuade the doctors from conducting trail as they had read about the side effects of the drugs and the lack of adequate long-term studies with it. They would not conceive if they took the drug, but were not told about its side effects nor that they were participating in a trial, the case is still in the Court. Depo Provera is another injectable contraceptive that is available without a prescription. Both these drugs are the subject matter of litigation. In the absence of any legislation to define and regulate such contraceptives (many of them prohibited in the countries of their origin or sold under strict conditions) activist groups have been forced to take these issues to Court. Depo Provera has been approved for use. Earlier it was contraceptive was banned in the country of origin. The government gave its approval in 1994 and launched in India. There are number of contradictions for the use of these drugs, but primary health centres in India have hardly any facilities for such large-scale investigation and maintenance. Moreover, the staff is often poorly-trained callous or careless, and under compulsion to meet impossible targets, which creates a great potential for abuse.

(d) Implants

Work on contraceptives in the form of implants first began in the 1960's. The idea was to find a way to put hormones in some kind of
capsule that would gradually release them into the body over a period of time to prevent pregnancy. A number of different hormones and different types of capsules were tested, as well as different sites on the body for places to implant. The most widely used is Norplant. Norplant has been tested and used mainly in less developed countries.

A small study done by the Forum for Women and Health Bombay that Norplan is effective for a certain period. Otherwise it have also a lots of side effects.

(e) Sterilization

The most common method of contraception used in many developing countries such as India (besides abortion) is sterilization, and of this the major share is that of female sterilization. Laparoscopic sterilizations are often done in sub-optimal conditions, either in institutional or mobile settings. In rural areas, camps are organized in temporary locations such as school buildings or some other public facility on special occasions. In these camps, a single surgeon performs 300-500 laparoscopies in 10 hours per day, which works out to one operation every two minutes. With the minimal care that is necessary for such an operation, only a maximum of 50 a day would be possible. There was a report from Kumbakonam that 1,225 women were operated upon in one day. In such a setting, it must be expected that the attitude of the health personnel would be callous. Obviously, follow up care is not part of such mass programme which provides the facility of sterilization and move on. Often these areas do not have hospitals or clinics where women have problems can go for help.
(f) Reproductive Technology

Reproductive technologies designed to intervene in the process of human reproduction for the prevention of conception and birth which includes contraceptives as well as methods of pregnancy termination. Since prevention and termination of pregnancy has been analysed under family planning method, therefore the reproductive technology which helps in aiding or stimulating reproductive process. Reproduction technology is used for assisting reproduction in terms of aiding or stimulating reproduction like artificial insemination, in vitro fertilization etc. Reproductive technologies are also used for genetic purposes and for prenatal diagnosis which includes sex-detection and sex-pre selection. The uses of technologies for assisting reproduction are extremely controversial; different interest groups in society have contributed to the debates with regard to their own sets of values, norms and interests. Childless individuals and couples see in these technologies a possibility to realize their desire for a child, which they expect to be supported by the providers for the technology and health care facilities. Researchers in human reproduction see it as an opportunity to do fundamental research in studying the processes of conception, the beginning of human life, and perhaps to manipulate and have more these technologies are concerned with their repercussions on society and see in these developments the potential so far reaching manipulation of the beginning of life, eugenic selection and increase in the control of women’s bodies and lives.

(g) Artificial Insemination

Although non-medical artificial insemination has been around for a long time, the first known attempts date from 1799. The successful use for artificial insemination in humans dates from the 1870s. In artificial insemination a woman is inseminated with a man’s sperm, produced
after masturbation, without having sexual intercourse. It is a simple
procedure entailing sperm being deposited in woman's vagina close to
the cervix. The sperm used could be that of her husband or partner –
referred to as Artificial Insemination by a Donor sperm (AID). The latter
is resorted to when the husband/partner is infertile, has a low sperm
count, or a genetic disorder which the parents do not want to pass on
to the offspring.

(h) **In-Vitro Fertilization (IVF)**

In Vitro Fertilization (IVF) of eggs from mammals began to be
developed in the 1930’s, however, research in eggs taken from women
took long to develop. IVF (In-Vitro Fertilization) is at basis of a number
of other techniques, making possible other manipulations, such as pre-
implantations, such as pre-implantation diagnosis of embryo for genetic
disorders and sex-selection, Durga Agarwal, born on 3rd October, 1978,
was hailed as the first India ‘test tube baby’ and second in the world,
but her claim to birth through IVF was contested, leading to suicide by
Subhash Mukherjee, the doctor who claimed credit for it. Until the mid
1980s infertility treatment basically consisted of trying to diagnose the
cause of infertility, rather than providing a way out. Then came
corrective surgery in the form of tuboplasty, lately microscopic
tuboplasty. Generally, it ended with the doctor giving up and the couple
having to resign themselves to their fate, accepting childlessness or
going in for adoption wither within the family, or through an adoption
agency.

(i) **Surrogacy**

In the joint family system surrogate mothering (social, not
biological) is common; widowed family members and older daughters
also ‘mother’ children. The fulfillment is stressed rather than the
biological process of child birth. The extraordinary and rapid advance of biological and genetic technology is going to give rise to new and complicated issues in the future that were unknown in our country. The status of children born by artificial insemination, the legal status of surrogate mother, is just some of the issues that might come to the courts in the future.

(E) Equal Remuneration Act, 1976¹²⁷

The main provisions of the Act is to provide equal remuneration to men and women workers for the same or similar nature of work and prohibition of discrimination against women in the matter of employment. Appointment of authorities by the appropriate government to hear and decide claims and complaints, to hear appeal and to investigate whether the provisions of the Act are being complied with.

(F) Immoral Traffic (Prevention) Act, 1956¹²⁸

India is a signatory to the International Convention for the Suppression of Immoral Traffic of May 1950. Accordingly, India passed the Suppression of Immoral Traffic in Women and Girls Act in 1956 (SITA) which was passed in Parliament and enforced since 1958. The object of this Act is to give effect to the declaration contained in Article 23 of the Constitution which prohibits traffic in human beings and makes any contravention of the prohibition an offence, punishable in accordance with the law. The Act prevents an offence, punishable in accordance with the law. The Act prevents sexual exploitation of women and girls for commercial purposes. However, it does not abolish, forbid, prohibit or ban prostitution but prohibits soliciting, reducing, etc. in public places. In 1986, a major amendment

¹²⁸ For detail see “Immortal Traffic (Prevention) Act, 1976”.

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incorporated in 1986 to include male prostitutes, the Act was renamed as Immoral Traffic (Prevention) Act.

(G) **Dowry Prohibition Act, 1961**

This Act was made more stringent in 1985 and 1986 and corresponding amendments were made in the IPC and the Indian Evidence Act. However, the dowry problem continues and even has spread to communities where the system did not exist, thereby putting the efficacy of the law in doubt.

(H) **National Commission for Women Act, 1990**

Successive Commissions on Women have noted in their reports the unequal status of women in every sphere of life and had suggested the setting up of an agency to fulfill the surveillance functions as well as to facilitate redressal of grievances of women. The country cannot progress as long as inequality persists with reference to half of its population. As a result the National Commission for Women was set up consisting of a Chairperson and six members. The main task of the Commission shall be to study and monitor all matters relating to the constitutional and legal safeguards provided for women, to review the existing legislations and suggest amendments, wherever necessary. It will also look into the complaints and take *suo moto* notice of the cases involving deprivation of the rights of women in order to provide support, legal or otherwise, to helpless women.

(I) **The Child Marriage Restraint Act, 1929**

It was amended by Act 2 of 1978, which raised the minimum age of marriage to 18 for girls and 21 for boys. This had indeed been very

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129 For detail see “Dowry Prohibition Act, 1976”.
130 For detail see “National Commission for Women Act, 1990”.
131 For detail see “The Child Marriage Restraint Act, 1929”.

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progressive since earlier the minimum age of marriage for girls and boys was 14 and 18 respectively. This was subsequently amended in 1949 to raise the age to 15 for girls while no change was affected in case of boys.

(vi) Health Rights of Persons with Disabilities

The Constitution of India contains provisions in the form of directives to the States for the protection and empowerment of the disabled. India is a founder member of the United Nations and has ratified various conventions for the protection of the rights of the people. The adoption of declarations at the international level had a tremendous impact on the Indian Legislature. The Government for the first time in 1987 has made an effort by enacting the Mental Health Act. During the 1990s the government had come out with 3 comprehensive legislations for the protection and rehabilitation of persons with various forms of disabilities. The enactment of the Rehabilitation Council of India Act, 1992; the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995; The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999, are steps in the right direction. While recognizing the plight of children especially juveniles the government has enacted the Juvenile Justice (Care and Protection of Children) Act, 2000.\textsuperscript{132}

(vii) Environment Laws

Environment means our surroundings. The concept is to whatever object that is surrounding us. Einstein once remarked, "The Environment is everything that is not me. The term 'Environment' is

\textsuperscript{132} Butterworths, Legal Framework for Health Care, in India, 264, (2002).
derived from the French word ‘environ’ or ‘environner’ meaning “around”, “roundabout”, “to surround”. Etymologically, environment is that of surroundings which influences an organism. Thus, environment may be defined as “sum total of all condition and influences that effect development and survival of life of organism.”

Environment of Pollution is natural as well as made by men. Pollution of air and water is man made and is serious than the natural pollution. Over population, faulty drainage system, seepage from improperly constructed or improperly placed septic tanks, cesspools, leaking sewer lines, industrial wastes and dumping and covering of vegetable materials in garbage etc. are the main cause for making the air as well as water polluted through human excreta. Though, we have Air (Prevention and Control of Pollution) Act, 1974, still air and water pollution has not been controlled to the desired extent. An enactment namely Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 has been made for the purpose of ensuring a healthy environment and to provide right to live with dignity. The main aim of this is to analyse the law relating to healthy environment vis-à-vis human excretion.

A clean environment is a pre-requisite for good physical health. The U.N. Conference on the Human Environment held at Stockholm in June, 1972 in which India also participated decided that appropriate steps be taken for the protection and improvement of human environment pursuant to this decision, the Parliament enacted the Environment (Protection) Act, 1986. The idea behind enacting this Act is to coordinate activities of various regulatory agencies, creation

134 Id., at 371-372.
135 The term ‘environment is defined widely enough to include water, air and land and the inter-relationship which exists among and between water, air and land, and human beings and other living creature, plants, micro organisms and property.
of authorities with adequate powers for environmental protection, regulation of discharge of environmental pollution and handling of hazardous substances, speedy response in the event of accidents threatening environment and deterrent punishment to those who endanger human environment, safety and health.

The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act,\textsuperscript{136} 1993 is another legislative measures which seeks to eliminate the dehumanizing practice of employment of manual scavengers and protect human health and environment. The Act prohibits the construction or continuance of dry latrines.

In the light of socio-economic justice assured in our Constitution, right to health is fundamental human right. The maintenance of health is constitutional goal whose realization requires interaction of many social and economic factors.\textsuperscript{137} \textit{Pt. Parmanand Katara v. Union of India},\textsuperscript{138} the Supreme Court directed private doctors or hospitals to extend services to protect the life of the patient, be an innocent or a criminal liable to extend services to protect the life of the patient, be an innocent or a criminal liable for punishment in accordance with law. In \textit{K.C. Malhotra v. State of M.P.}\textsuperscript{139}, the Court observed:

"... the inhabitants of the locality may be of backward class or weaker sections of the society or community at large have got fundamental right under Article 21 of the Constitution entitling them to live as human beings in the area. The nalla must be covered and there should be proper lavatories for public

\begin{itemize}
    \item \textsuperscript{136} \textit{Workers of C.E.S.C. Limited v. Subhash Chandra Bose}, (1992) 1SSC 441.
    \item \textsuperscript{137} AIR 1994 M.P. 48.
    \item \textsuperscript{138} Id., at 51-52.
    \item \textsuperscript{139} AIR 1997 MP 191.
\end{itemize}
conservancy, which should be regularly cleaned. Public health and safety cannot suffer on any count and all steps are to be taken for the improvement of public health as among its primary duties”.\textsuperscript{140}

In \textit{Niyamakendram, Blue Mountain Building, Kochi v. Secretary, Corporation of Kochi},\textsuperscript{141} the Kerala High Court decided to step in and bail out corporation from its precarious position in order to protect health of the citizens, which is part of the fundamental right to life and liberty. The matter was related to mosquito menace and no tangible action on part of the officer to combat mosquito menace by tackling it at war footing was taken. Court observed:

\textit{\ldots A stage has come for this Court to abnegate its role as an umpire to enter the play ground assuming the role of salutary player to protect human right \ldots The Court has assumed to role of a “garbage supervisor, but the burnt of that cross is worth bearing, having regard to the ultimate benefit it may bring to the people. It is high time to remind the public authorities to shed their ego about the Court verdicts passed in public interest which must be accepted in the right spirit bearing in mind the paramount consideration of the health and well being of the people as imperatively implicit in the right to life guaranteed under Article 21 of the Constitution.}^\textsuperscript{142}
In Murli S. Deora v. Union of India,\textsuperscript{143} the Supreme Court has held that passive smoking in public places is indirect deprivation of life without any process of law. The statement of objects and reasons of the Cigarettes and other Tobacco Production, Supply and Distribution Act, 1975 and the Cigarettes and other Tobacco Products (Prohibition and Advertisement and Regulation of Trade and Commerce, Production and Distribution) Bill, 2001 intends to protect the environment and control the pollution. The Bench comprising M.B. Shah and R.P. Sethi, JJ. observed:

"Fundamental Right guaranteed under Article 21 of the Constitution of India, \textit{inter alia}, provides that none shall be deprived of his life without due process of law. There is no reason why a non-smoker should be afflicted by various diseases including lung cancer or of heart, only because he is required to go to public places. It is indirectly depriving him of his life without any process of law. Undisputedly, smoking injurious to health and may affect the health of smokers but there is no reason that health of passive smokers should also be injuriously affected. In any case, there is no reason to compel non-smokers to be helpless victims of air pollution."\textsuperscript{144}

Besides, these Miscellaneous Acts there are some other civil laws like law of torts and Civil Procedure Code, Contract Act, 1872 and criminal laws like Indian Penal Code and Criminal Procedure Code which contains the provisions of health and punishments in the violation of health protection laws.


\textsuperscript{144} Ibid., obtained from Ganesh Chandra Bhat v. Distt. Magistrate, Almora; AIR 1993 All. 291, 298.
The history of the development of tort litigation, especially with regard to medical negligence cases, is of recent origin in India. It has its roots in the English Common Law, of *ibi remedium ibi jus* (Where there is a remedy, there is a right) to *ibi jus ibi remedium* (where there is a right there is a remedy). Its transplantation in India by Courts, to exercise their power to administer law according to ‘justice, equity and good conscience’ indicate that the torts are primarily those wrongs for which either statutory remedies are not available or, if available, are inadequate or inappropriate. Further, in formulating the concept of actionable wrong, courts are in fact not only identifying the interests which require protection but also the circumstances under which they need to be protected. With changes in social, political and economic conditions, there inevitable changes in the nature and extent of the protected interests. Finally, the interests are preserved and promoted through the grant of civil right of action for unliquidated damages to the aggrieved person. Further, in a tort of medical negligence, the cause of action is personal against the person who has been negligent in discharging his duties, and that the cause of action does not survive against his estate or the legal representative. There has been steady growth of tort litigation in India in the area of medical negligence. This is primarily due to lack of awareness about ones own rights, the spirit of tolerance, the expenses involved and the delay in disposal of cases in Civil Courts etc.

145 Sir John Salmond defined ‘tort’ as a civil wrong for which the remedy is an action for damages and which is not exclusively the breach of a contract or breach of a trust or other merely equitable obligation.


147 Balbir Singh Makol v. Chairman, M/s. Sir Ganga Ram Hospital & Ors. (2001), 1 CPR 49.

There are more than 200 Central and State Legislations (enactments) that have some bearing on the environmental protection. However, in substantial number of these statutes, the environment concern appears to be incidental in nature. The following are some Acts which have some bearing on environmental protection:

1. The Air (Prevention and Control of Pollution) Act, 1981
2. The Ancient Monuments and Archaeological Sits and Remains Act, 1958
5. The Damodar Valley Corporation Act, 1948
6. The Easement Act, 1882
7. The Environment Protection Act, 1986
8. The Factories Act, 1948
10. The Insecticides Act, 1968
11. The Indian Boiler’s Act, 1923
12. The Indian Fisheries Act, 1897
13. The Indian Forest Act, 1927
14. The Indian Penal Code, 1860
15. Indian Ports Act, 1908
16. The Industries (Development and Regulation) Act, 1951
17. The Merchant Shipping Act, 1958
20. The Northern India Canal and Drainage Act, 1873
22. The Poison Act
23. The Prevention of Food Adulteration Act, 1954
24. The Police Act, 1861
26. The River Boards Act, 1956
27. The Sarais Act, 1867
28. The Urban Land (Ceiling and Regulation) Act, 1976
29. The Water (Prevention and Control of Pollution) Act, 1974
31. The Wild Life (Protection) Act, 1972

(viii) Emerging Issues

With the advancements in Medical Science and Technology several issues in health and medicine have emerged which require legislative intervention and control. To take some examples, the pre-natal diagnostic techniques were developed to detect genetic and other abnormalities at a fetal stage. However, because of the preference for a male child in our society, these tests were misused for gender detection followed by abortion if the test revealed a female foetus. Despite the law, however, sex detection tests continue. The procedure being extremely simple and private it is very difficult to trace out the cases of female foeticide. Social awareness along with improvement in the social and economic status of girls alone can make the idea behind
This law Pre-natal Diagnostic Techniques (Prevention of Misuse) Act meaningful.\textsuperscript{149}

Another fall out of medical advancement which necessitated the enactments of the Transplantation of Human Organs Act of 1994.\textsuperscript{150} This Act is enacted to provide for the regulation of removal, storage and transplantation of human organs for the therapeutic purposes and for the prevention of commercial dealings in human organs and for matters connected there with on incidental thereto.

Another emerging issue is the increasing popularity of assisted reproductive techniques by couples who have difficulty in procreating in the normal natural way. Artificial insemination, surrogate motherhood, test tube babies and in vitro-fertilization are known to be in practice though there are no guidelines nor any law on the same so far. The Delhi Government has however, passed the Artificial Insemination (Human) Act, 1995.\textsuperscript{151}

This Act is to provide for the regulation of donation sale and supply of human semen and ovum for the purpose of artificial insemination and for matters connected therewith or incidental thereto. The Act also provides for strict testing of the semen against (HIV) H infection and also prohibits the segregation of XX or YY chromosomes so that pre-conception sex selection is not possible.

(A) The Prohibition on the (Advertisement and Sale of Tobacco) Act, 2003 \textsuperscript{152}

Even though the ITC and the Hotel and Restaurant Association have challenged the Indian smoke-free law, to come into effect from

\textsuperscript{149} International Conference on Global Health Law, 62, (1997) (Dec).
\textsuperscript{150} For detail see Transplantation of Human Organs Act, 1994.
\textsuperscript{151} For detail see Artificial Insemination (Human) Act, 1995.
\textsuperscript{152} For detail see The Prohibition on the (Advertisement and Sale of Tobacco) Act, 2003.
October 2, a survey has shown that a majority of Indians are in favour of the law. The survey conducted between August 9 to 24, 2008 shows that 97 percent respondents want smoke-free public and workplaces, restaurants and bars. Importantly, 84 percent Urban Indians believe exposure to second-hand smoke is serious, something the new Indian smoke-free law hugely recognizes. Presenting new evidence, Monica Arora of HRIDAY, which works with the Health Ministry on anti-tobacco campaign said : We are not concerned about the outcome of petitions challenging the smoke free law. Supreme Court while hearing a similar matter in 2001 had held that a person’s right to life is supreme, right to life include right to health." Indian Smoke-free law defines public place as any place which general public can visit, as a matter of right or not.


Bio-Medical Waste (also popularly called as health care waste) is a by-product of health care and includes sharps, on-sharps, blood, body parts, chemicals, pharmaceuticals, medical devices and radioactive materials. Generation of bio-medical waste in sizeable quantities, depending upon the number of patients and the nature of activity, is an unavoidable side effect of health care delivery which primarily and predominantly takes with in its fold processes like diagnosis, treatment, surgical intervention, post operative care, rehabilitative care, clinical research, clinical trials etc. Inadequate and poor handling or management of this waste exposes health-care workers, waste handlers, patients and the community in general to infections, toxic effects and serious fatal consequences as well.

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(C) Mental Health Act, 1987

The Mental Health Act\(^{156}\) is a comprehensive legislation which provides for the creation of Mental Health Authorities,\(^{157}\) establishment and regulation of psychiatric hospitals and nursing homes,\(^{158}\) rules governing admission and detention of patients,\(^{159}\) liability of the government to meet cost of maintenance of mentally ill persons detained in psychiatric hospitals and nursing homes most importantly for the protection of human rights of mental ill persons.

(D) Rehabilitation Council of India Act, 1992

The Rehabilitation Council of India Act\(^{160}\) was enacted by the government in 1992, providing for the setting up of the Rehabilitation Council at the National level with the specific objective of recognition and regulation of the conduct of the institutions providing education and other facilities. The Council under Section 18 of the Act is mandated to prescribe minimum standards of education required for granting a recognized rehabilitation qualification.

(E) Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995

This Act\(^{161}\) is enacted to take certain steps for the prevention of occurrence of disabilities within the limits of their economic capacity and development by the appropriate government. The appropriate governments shall by notification make schemes to provide aids and

\(^{156}\) For detail see Mental Health Act, 1987.
\(^{157}\) Sections 3 and 4; ibid.
\(^{158}\) Sections 5-14; ibid.
\(^{159}\) Sections 15-36; ibid.
\(^{160}\) For detail see Rehabilitation Council of India Act, 1992.
\(^{161}\) For detail see Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995.
appliances to persons with disabilities. Apart from the above Act contains provisions for regulating the establishment of Institutions,\textsuperscript{162} provisions for social security including rehabilitation measures.\textsuperscript{163}

(F) The National Trust for Welfare of Persons With Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999\textsuperscript{164}

The government has enacted the legislation providing for the setting up of a body at the national level for the welfare of persons with Autism Cerebral Palsy, Mental Retardation and Multiple Disabilities and matters connected therewith or incidental thereto. The Hon'ble Minster for Social Justice and Empowerment in a recently held conference organized by the Indian Law Institute at New Delhi, gave an assurance to set up the National Trust with appropriate powers.\textsuperscript{165}

Except this, another emerging issues increasing these days are mobile phone, computer application which are recent scientific achievements in modern era, but studies shows that mobile phones users may be placing their health at risk. The study done in several cities of U.S. among nearly 30,000 mobile phone users revealed that the cause of accidental death had been the increasing minutes of use of the mobile phone.\textsuperscript{166} One research conducted in UK showed that the mobile phone exposure an hour before sleep adversely affects deep sleep. It also could result in lack of concentration and confusion. There is also a rising fear regarding human health getting affected due to exposure to electromagnetic fields. One of the big concerns regarding

\begin{footnotesize}
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\item \textsuperscript{162} Sections 51-56; \textit{ibid.}
\item \textsuperscript{163} Sections 66-68; \textit{ibid.}
\item \textsuperscript{164} For detail see The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999.
\item \textsuperscript{165} The National Trust under the 1999 Act was accordingly constituted in June 2000.
\item \textsuperscript{166} 'Mobile Phone Radiation Hazards'. http://www.ntc.org.sd/download/mobile%20%20hazard.pdf (accessed on July 19, 2008).
\end{enumerate}
\end{footnotesize}
the effects from exposure to non-ionizing electromagnetic fields is the cancer and related syndromes.\textsuperscript{167}

In mid-1992 a lawsuit was filed in an US Court in Florida by David Reynard alleging that using a cell phone had caused his wife a fatal brain cancer. But, the suit was dismissed by the Federal Court in 1995 for lack of valid scientific evidence.\textsuperscript{168} In addition to the radiation caused by the mobile phone, base stations and associated antennas are another source of radiation. The radiated energy is restricted to certain safe margin indicated by the International Commission on Non-Ionising Radiation Protection. A survey study in France dealt with individually reported symptoms from people living within 300 meter radius of towers in rural areas and 100 meter in urban areas. Symptoms reported were fatigue, headache, sleep disturbance and loss of memory. Many people believed that the towers in the radio mobile systems caused symptoms such as anxiety, nausea and tiredness. Some users of mobile phones reported feeling of several unspecified symptoms during and after the phone use, ranging from burning and tingling sensations in the skin of the head, fatigue dizziness, loss of mental attention, disturbed reaction time and memory retentiveness, headaches, disturbance of the digestive system.\textsuperscript{169} All of these feelings were typical of electrical sensitivity and attributed to psychological stress.

In the light of this, WHO issued in the year 2000,\textsuperscript{170} guidelines to be strictly adhered worldwide so to protect everyone in the population: mobile phone users, those who work near or live around base stations, as well as people who do not use mobile phones. It recommended

\textsuperscript{167} Ibid.
\textsuperscript{168} Ibid.
\textsuperscript{169} Ibid.
adoption of precautionary measures by governments of each nation and individuals like limited use of cell phones, use of “handfree” devices so to keep phones away from the head and body, not to use mobile phones while driving and reduction of exposure to RF fields etc. ¹⁷¹

Mobile phones may also interfere with certain electro medical devices, such as cardiac pacemakers and hearing aids. In hospital intensive care departments, mobile phone use can be a danger to patients and should not be used in these areas. Similarly, mobile phones should not be used in aircraft as they may interfere with its navigation systems. ¹⁷²

Guidelines also suggested need for fences or barriers or other protective measures for some base stations (principally, those located on building rooftops) so to preclude unauthorized access to areas where exposure limits may be exceeded. Setting base stations near kinder gardens, schools and playgrounds should need special consideration. Also an open communication and discussion between the mobile phone operator, local council and the public during the planning stages for a new antenna can help create public understanding and greater acceptance of a new facility. ¹⁷³

Cell phones are an inevitable part of our lifestyle and work environment. At the same time, it is not logical to eliminate the radiation of these systems, radiation is an inherent characteristic thereof. The Indian courts are also giving attention to the mobile phone health hazards.

¹⁷¹ Ibid.
¹⁷² Ibid.
¹⁷³ Ibid.
In *Reliance Infocom Ltd. v. Chemanchery Grama Panchayat & Others*, a general direction to the TRAI to make periodical inspection to ascertain whether radiation emanated from the mobile base stations would cause any health hazards to the people of the locality. This judgment shows that radiation hazards posed by mobile handsets are real and in a way justifies the growing international concern and the expensive and costly researches ongoing for more than a decade in this regard.

Indeed, an effective system of health information and communications among scientists, governments, industry and the public is needed to raise the level of general understanding about mobile hone technology and reduce any mistrust and fears, both real and perceived. This information should be accurate and at the same time be appropriate in its level of discussion and understandable to the intended audience.

Similarly, there are several health problems associated with computer use which in the present times has become indispensable and one of the health hazard resulting from its use is called Cumulative Trauma Injuries (CTD;s). As with any task done repeatedly, working on a computer for long periods of time can cause inflammation of tendons, nerve sheaths and ligaments and damage to soft tissues. Depending on an individual’s sensitivity to the repeated movements of keyboarding, the cumulative effect can be disabling. Resulting conditions are called Cumulative Trauma Disorders (CTD’s).

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174 AIR 2007 Kerala 33. The Division Bench comprised of K.S. Radhakrishnan and K. Padmanabhan Nair, J.J. (In the instant case, in para 8 at 37) it was pointed out that the licence granted be cancelled by the panchayat on the basis of an apprehension that the radiation might cause health hazards to the people of the locality. The Court said that if the installation of tower and the emission of electromagnetic waves causes any air pollution, affecting human health, the pollution board can take appropriate measures under Air (Prevention and Control of Pollution) Act, 1991.

types of forearm and wrist CTDs from computer use are carpal tunnel syndrome, tenosynovitis, epicondylitis, tendonitis, and ganglionic cysts. If you experience pain, numbness, tingling, or weakness in muscles or movement of arms, hands and fingers, it could be a sign or symptom of a CTD.

Neck and shoulder pain and stiffness can occur from improper placement of the computer monitor, mouse or document you are working from. Many people who use computers for prolonged periods of time complain of eyestrain, eye fatigue, eye irritation and blurred vision. Computers give off very low frequency and extremely low frequency radiation. Radiation is strongest at the back of the computer machine. The backs of computer monitors should be at least three to four feet from the user. Unfortunately, there are no regulatory mechanism or guidelines issued either by the WHO or any nation including India to deal with various health hazards resulting from excess use of computers.

Another emerging issue popular these days are the hazards of plastic bags. Before the advent of poly-bags, people did shop, buy things, bring eatables from the market, and did the same marketing as

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176 The syndrome may be associated with repetitive occupational trauma (cumulative trauma disorders); e.g., injuries, rheumatoid arthritis, pregnancy and other conditions. Symptoms include burning pain impairment of sensation in the distribution of the median nerve may occur. http://ctd.mdbm.org/detail.go?type=disease&ab=MESH & acc = D002349 (accessed on July 2, 2009).

177 It is an unusual manifestation of leprosy even though musculoskeletal swelling, and difficulty in moving the particular joint where the inflammation occurs. (http://medind.nic.in/jaa/to2/3/iaat0213p69.pdf. (accessed on July 2, 2009).

178 It is also referred as “tennis elbow”. It is a very common cause of elbow pain that occurs overtime from repeated use of the muscles of the arm and forearm, leading to small tears of the tendons (a structure that connects muscle to bone). (http://en.wikipedia.org/wiki/) accessed on July 2, 2009).

179 It is a common condition that can cause significant pain. Tendonitis occurs when there is inflammation of tendons — the point where a muscle attaches. It can affect all parts of body. (http://en.wikipedia.org/wiki/) (accessed on July 2, 2009).

180 It is a swelling that often appears on or around joints and tendons in the hand or foot. It is most frequently located around the wrist and on the fingers. (http://en.wikipedia.org/wiki/-Ganglion-cyst). (accessed on July 2, 2009).

181 Ibid.
is done now. The raw material for the bag was decided by its usage, such as cloth bags for lighter items, Gunny bags/Jute bags for voluminous and heavier goods. The bags were washable and reusable. But the onset of the use of plastic bags gradually, exposed its numerous health hazards. From mega grocery store chains and retail outlets to pushcart vendors, eateries and restaurants, the plastic bag is found to be the wonder solution to storage and cartage. Hence plastic bags are ubiquitous in cities, towns and hill stations.

The land littered by plastic bag garbage not only presents an ugly and unhygienic seen but also this "Throw away culture" resulting from their use has found their way into the city drainage system, resulting in blockage as well as erosion of soil, creating unhygienic environment resulting in health hazard and spreading of water borne diseases. The waste materials collected are of all types including plastic materials. In the form of plastic cups, plastic bottles etc. indiscriminately are burnt on the roadside polluting the area with thick smoke which produce toxic gases posing a health hazard. Inhaling of such gases causes lung diseases and even cancer.

Whereas burning of waste material in public is a serious offence and violation of municipal corporation bylaws. Use of plastic bags has resulted in killing of hundred of thousands of birds, whales, and turtles every year the world over.

Surprisingly, the world annual average usage of plastic is alarming 18 Kg per year. And average Indian uses one kilogram of

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183 The first plastic sandwich bags were unveiled in 1957 in US.
plastic per year.\textsuperscript{185} And more than a 100 million tones of plastic is produced world wide each year.\textsuperscript{186}

The Plastics Committee of Pollution Control Board said that the daily use of grocery bags for sundry purposes is the real culprit as far as the volume and dispersing is concerned. In Bangalore, an estimated 500,000 polybags are used per day every day forming about 25 percent of all forms of plastics used.\textsuperscript{187}

Consequential harmful effects of poly bags can be following:\textsuperscript{188}

- Rag pickers are prone to skin infections, respiratory ailments while collecting polybags for recycling.
- Recycled polybags are not suitable to carry food.
- Polybags being non-biodegradable accumulate in the soil suffocating the plant and animal life.
- Animals may eat/swallow the polybags. Recently a local newspapers carried a cover story “Polybags kill 18 deer in the national park in Bangalore”. On post-mortem, passage with polybags eaten caused the death.
- Polybags are silent killers.
- Drains clogged by plastic bags
- Soil life suffocated by menace of polybags.
- Therefore, non-biodegradable plastic accumulation has become a growing monster.

\textsuperscript{185} Ibid.
\textsuperscript{186} Though plastics have opened the way for a plethora of new inventions and devices. It has also ended up threatening the public health. India is the fourth highest Asian importer of plastic waste behind Hong Kong, Philippines, Indonesia. \url{http://www.plastmart.com/upload/literature/plastic-destroying-unit-profile.asp} (accessed on July 7, 2008).
\textsuperscript{187} \url{http://little.ecofriends.org/polybag.htm} (accessed on July 7, 2008).
\textsuperscript{188} Ibid.
Polythene bags dumped near residential houses are breeding places for mosquitoes which causes dengue fever, filariasis and malaria. Use of polythene bags less than 40 micron thickness cause more harm not only to the environment, but public health as well.

In brief, the plastic hazard caused due to non-judicial usage of plastic poly bags and their subsequent disposal into water bodies, land and burning, results in the gradual loss of the existing ecological balance and causes related health hazards.

Keeping in mind, the environmental pollution caused due to extensive use of used polythene packaging material, many states in India including the Union Territory, Chandigarh has imposed a ban on the use of plastic bags.

Further, it can be stated that plastic recycling can be used as an alternative method to prevent plastic from entering our environment and thus reducing the menace. The plastic weaving concept or recycling technology is based on the fact that plastic bags which are thin an have average life time of 2 to 3 hours and are discarded. They are responsible for clogging, choking, flooding death and destruction.

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190 The name of states which includes ban of plastic bags use are: Andhra Pradesh, Delhi, Goa, Himachal Pradesh, Orissa, Nagaland, Pondichery, Punjab, U.P., Mumbai, H.P. Bangladesh band its use in 2002 to solve the problem of blocked drains and flooding. Infact, the three R's of polythene use i.e. reuse, reduce and recycle which is a popular mantra amongst school children, must be taken seriously now by each one of us along with total ban on its use or at least use of thin poly bags. http://cesorissa.org/pdf/newletter6.pdf. (accessed on July 2, 2009).

191 The Chandigarh administration has imposed a complete ban on the use and sale of polythene bags in the city. The date of notification is 30th July, 2008. It is imposed from 2nd October, 2008. The orders have strictly banned the use, storage import, selling, transportation and disposal of polythene and plastic carry bags by any person in the city. No shopkeeper, vendor, wholesaler, retailer, trader or hawker can use polythene anymore. Violators of this act can be given rigorous imprisonment extended upto five years or fine of Rs. One lakh or both depending on the extent of violators. For the habitual violators, an additional fine of Rs. 5.000 per day shall be imposed and there are provisions of imprisonment upto seven years depending upon the violation. http://www.igovernment.in/site/Chandigarh_imposes_complete_ban_on_using_polybags. (Accessed on August 20, 2009).

Instead if they are collected, even from roads, they can be washed cleaned, dried out into strips and woven into the basic plastic textile fabric which can then be stitched into various products like mats, folders, handbags and purses. In this manner, plastic waste becomes more manageable and less destructive.\textsuperscript{193}

As we know, science has spared no field untouched, it has discovered a treatment for wrinkles too. Botox injection is the most common cosmetic operation. Botox is a drug made from a toxin produced by the bacterium clostridium botulinum. It is the same toxin that causes a life threatening type of food poisoning.\textsuperscript{194} A new study warned in London that Botox injections can lead to depression. Scientists have found that they also stop people from being able to express their feelings visually that leads to them keeping emotions bottled up inside and perceiving the world in a negative way.\textsuperscript{195} There are other risks of Botox like headache, temporary eyelid droop, nausea, squint/double vision, facial pain, redness at the injection site and muscle weakness. Pregnant women and people having any problem related to nervous system are not advised to take Botox.\textsuperscript{196} Sometimes it gives temporary relief of spasticity but may cause paraesthesias and muscle damage if used repeatedly.\textsuperscript{197} Again, till today, there is no regulatory mechanism or laws/guidelines to check the abuse of Botox either under any Central Law or under ICMR guidelines.

There are also the hidden hazards of microwave cooking. Although microwave ovens are an important cooking and food heating

\begin{flushright}
\textsuperscript{193} \textit{Ibid.}
\textsuperscript{194} \url{http://www.nlm.nih.gov/medlineplus} (accessed on July 3, 2009).
\textsuperscript{197} \url{http://www.udaan.org/botulinum/botulin.html} (accessed on July 3, 2009).
\end{flushright}
tool in many modern homes. But the research shows that microwave oven cooked food suffers severe molecular damage. When eaten, it causes abnormal changes in human blood and immune system. Persons working in microwave fields have reported headaches, eyestrains, over all fatigue and disturbance of sleep. These effects have been associated with the interaction of the microwave fields with the central nervous system of the body.\textsuperscript{198} The heating of milk in a microwave actually destroys much of the milk’s nutritional value; and the milk’s natural immunity and disease fighting qualities are negated. Other negative effects from microwave ovens include brain damage by causing electrical impulses in the brain to become confused or simply “short out” due to eating the reduced or altered nutritional content of “microwaved” food. Eating microwaved food have also been linked to heart attacks and cancers and can result in memory loss, lack of plastic microwavable containers being noted to cause cancers.\textsuperscript{199} And, again there is no law or guidelines of the governments of the world to monitor the use of microwave cooking.

Briefly speaking, the rapid industrialization, unsafe working environment, improper installation and incorrect handling of mechanical devices generating electromagnetic waves at home and exposure to cooking fuel, has resulted in escalating environmental pollution and deterioration in the quality of indoor air.\textsuperscript{200} This exposes even the foetus to many known and unknown pollutants with recognized harmful effects. So, the foetus is no longer sheltered in the mother’s womb. It is threatened by the noxious environmental pollutants generated by modern agricultural and industrial practices crossing the physical barrier between a mother and her foetus. Noxious

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{198} http://www.ccohs.ca/oshanswers/phys/microwave-ovens.html. (accessed in July 6, 2009).
\item \textsuperscript{199} http://www.greenprophet.com/2008/08/12/microwave-oven-healthy. (accessed on July 6, 2009).
\item \textsuperscript{200} Ranjit Singh, “The Threat to the Foetus from Environmental Degradation”. 13 KULR at 352 (2006).
\end{enumerate}
\end{footnotesize}
environmental pollutants generated by agriculture and industrial variants are playing havoc with the growth of the foetus.\(^{201}\)

We must remember that science does not exist in isolation from the larger community that feels effect of its research. The complex sensitive issue like when human life actually deems to begin i.e. at the conception or at the time of birth can only be addressed if scientific research is in congruent with fundamental values. In the end, it can be said that both law and science without conscience ultimately result in the death of the soul, and this has to be avoided for better future of mankind.\(^{202}\)

On the other hand liability of health professional under the Contract Act,1872 mainly depends on the express or implied terms agreed upon by the patient or his representatives and the doctor or hospital. Consent for treatment on payment of fees on the part of a patient can be treated as an implied contract with the doctor who by undertaking treatment on acceptance of fees, promises to exercise proper care and skill. The Indian Contract Act,1872 contains detailed provisions with regard to offer, acceptance, proposal, vicarious liability etc. A detailed review and examination of the cases reveals that, though the provisions have a direct bearing on the services being provided by doctors and hospitals, it has a very limited application to medical negligence.\(^{203}\)

There is also a legal provisions in the Consumer Protection Act, 1986 for the protection of health. Although these provisions are of recent origin in India but such a laws are very necessary to protect the

\(^{201}\) Ibid.

\(^{202}\) Supra n 70 at 173.

consumers from hazard to their health and safety, and to make available to them consumer justice that is speedier and cheaper. Laws were therefore, enacted mandating, regulating and overseeing health care establishments and institutions.\textsuperscript{204} During the last two decades, attention has turned to the quality of the health services.\textsuperscript{205} Consumers have not only been conferred a right to access health care but also to receive quality treatment. Consequently, closer attention is being provided. In many developed and developing countries powerful consumer organizations have been instrumental dealing with the consumer protection laws and in expanding the horizon of such laws.\textsuperscript{206}

In Indian Penal Code, 1860 there are many sections\textsuperscript{207} which relates to the Criminal Liability of Health providers and standards of Health care. Any aggrieved person or his family members may lodge a complaint with the police for registration of the First Information Report (FIR). He may seek the assistance of police by dialing 100 or any other specific number. There is no fixed format for writing the complaint one can write accurately in a language of his choice, give full details as to

\begin{footnotesize}
\begin{enumerate}
\item Butterworths. Legal Framework for Health Care in India, 95, (2002).
\item Cosmopolitan Hospitals v. Vasantha P. Nair, (1990)
\item For instance one Section related to health provisions under Indian Penal Code 1860 is Section 268. A person is guilty of a public nuisance, who does any act, or is guilty of an illegal omission, which causes any common injury, danger, or annoyance to the public or to the people in general who dwell or occupy property in the vicinity or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right. A common nuisance is not excused on the ground that it causes some convenience or advantage.
\end{enumerate}
\end{footnotesize}
names of the accused, place of commission of offence, date and time etc. The complaint may be submitted either orally or in writing and in both the events it is the responsibility of the police officer to register his complaint. One should avoid delay in registering the complaint. If there is any delay the reasons for the delay may be stated in the complaint. The complainant is also entitled to have a copy of First Information Report (FIR) and can demand for the same. If a police officer refuses to register a complaint he can approach the higher officials or send the same by registered post or otherwise he can move a private complaint under Section 200\textsuperscript{208} of the Code of Criminal Procedure, 1973 before a Magistrate or a petition may be filed before the High Court in the concerned State under Article 226 of the Constitution for appropriate directions. A complaint may also be lodged with the Executive Magistrate under Sections 133 to 135\textsuperscript{209} of the Code of Criminal Procedure 1973. The aforesaid provisions can be invoked to eliminate ‘quacks’ or persons practicing unauthorisedly in any area and are a threat to the lives of the public.\textsuperscript{210}

### III. SUM UP

The States concern for the health and protection of its people depend on the large number of legislations and provisions on health in other legislations and their implementation. A major health hazard

\textsuperscript{208} Section 200 of Cr.P.C. (Code of Criminal Procedure, 1973) lays down the preliminary procedure which a Magistrate shall follow on receiving a complaint.

\textsuperscript{209} Section 133 lays down the conditional order for removal of nuisance under six categories (1) the lawful obstruction or nuisance to any way river or channel, lawfully used by the public or to public place. (2) the conduct of any trade occupation or the keeping of any goods or merchandise, injurious to the health or physical comfort of the community; (3) the construction of any building or the disposal of any substance as is likely to occasion conflagration or explosion; (4) a building, tent or structure or a free as is likely to fall and cause injury to persons; (5) an unfenced tank, well or excavation near a public way or place and (6) a dangerous animal requiring destruction, confinement or disposal. Section 134 deals with service or notification of order served and section 135 deals with person to whom order is addressed to obey or show cause.

today is adulteration of food stuffs, drugs and environment pollution. Apart from provisions in the Penal Code and Constitution there are special laws to prevent adulteration of food, production of spurious and substandard drugs and on environment protection.

There are also laws to protect the health and safety of women, workers and children under the labour laws, certain kind of hazardous jobs are prohibited for women. There are also various Acts for the betterment of the children. But with the advancements in medical science and technology several issues in health and medicine have emerged which require legislative invention and control.\textsuperscript{211}