CHAPTER VII

Right to Health as a Fundamental Human Right in India: Constitutional and Judicial Responses
Chapter VII

Right to Health as a Fundamental Human Right in India: Constitutional and Judicial Responses

7.1 Constitutional responses to Fundamental Rights and the Directive Principles of state policies

Lord Denning, in the foreword to the book "The Supreme Court of India" by Rajeev Dhavan, on page vii wrote, "It is the role of the Judges in developing the law.

He must consciously seek to mould the law so as to serve the needs of the time. He must not be a mere mechanic, a mere working mason, laying brick on brick, without thought to the overall design. He must be an architect-thinking of the structure as a whole-building for society a system of law which is strong, durable and just. It is on his work that civilized society itself depends." ¹

Our country's future depends on the capacity of our people for self-government. India is only as strong as the character and will of the people who comprise it and judiciary is no exception. If more people are willing to cheat than enforce the law, the freedom we enjoy today will soon become as much a relic of history as the bygone glory of Greece and Rome. We together owe an obligation to posterity and a duty to the nation. No democratic system or rule of law can survive on indiscipline and dishonesty. The constitution cannot function in a society devoid of virtues. There is nothing wrong with the system but certainly there is something with many who man the system.

Our Constitution is essentially based on an egalitarian philosophy, the concept of socioeconomic justice, the theory of welfare state, secularism, dignity of the individual, unity in diversity and the spirit of 'Salus Populi Suprema lex'

The judiciary is dedicated to the task of upholding the force of law and subduing law of force by feeling the nation's pulse, to enforce the rule of law as against rule of arbitrariness.

What the people of India ensured to themselves have been broadly stated in the Preamble as Justice, Liberty, Equality and Fraternity. The several provisions in the Constitution do spell out the various aspects of these guarantees. The Supreme Court of India has faced the challenges of a Welfare State in such a unique manner. It has accepted new concepts of 'locus standi' and 'public interest litigation'. It has interpreted the constitutional provisions relating to the fundamental rights and the directive principles of state policy in a harmonious manner, thus enabling the citizens of India to march towards the goal of socioeconomic justice. It laid down that there is harmony and balance between the fundamental rights and the directive principles and this harmony and balance is one of the basic features of the Constitution.²

The initial years of the Supreme Court of India saw the adoption of an approach characterised by caution and circumspection. Being steeped in the British tradition of limited judicial review, the Court generally adopted a pro-legislature stance. This is evident
from its rulings in cases such as A.K. Gopalan v. State of Madras. However, the judges of the Apex Court did not take long to make their presence felt and began to actively pursue the function assigned to them by the Constitution, as perceived by them.


It was in 1995 in Consumer Education and Research Centre v. Union of India, that the Supreme Court for the first time explicitly held (at SCC p. 70, para 24) that "the right to health ... is an integral facet of [a] meaningful right to life". This case was concerning the occupational health hazards faced by workers in the asbestos industry. Reading Article 21 with the relevant directive principles guaranteed in Articles 39(e), 41 and 43, the Supreme Court held that the right to health and medical care is a fundamental right and it makes the life of the workman meaningful and purposeful with the dignity of person. Discussed in Paschim Banga Khet Mazdoor Samity case, where the Court addressed the issue of adequacy and availability of emergency medical treatment. In this case, Hakim Sheikh, a member of the Paschim Banga Khet Mazdoor Samity, fell off a train and suffered serious head injuries. He was brought to a number of State hospitals, including both primary health centres and specialist clinics, for treatment of his injuries. Seven State hospitals were unable to provide emergency treatment for his injuries because of lack of bed space and trauma and neurological services. He was finally taken to a private hospital where he received his treatment. Feeling aggrieved by the callous and insensitive attitude of the government hospitals in Calcutta in providing emergency treatment the petitioner filed a petition in the Supreme Court and sought compensation. The issue presented to the Court was whether the lack of adequate medical facilities for emergency treatment constituted a denial of the fundamental right to life under Article 21.

It was held that Article 21 of the Constitution casts an obligation on the State to take every measure to preserve life. The Court found that it is the primary duty of a welfare State to ensure that medical facilities are adequate and available to provide treatment and for the violation of the right to life of the petitioner, compensation was awarded to him.

In M. Vijaya v. Chairman, Singareni Collieries, Hyderabad Vijaya, whose husband was an employee of the company for the past 17 years, underwent a hysterectomy at the Company's hospital in January 1998, for which her brother donated blood. Fifteen days later, she fell sick and was advised further tests, which revealed that she was HIV positive. Her husband tested negative, while her brother tested positive. In its counter-affidavit, the hospital not only disclosed facts about the widespread prevalence of HIV/AIDS in the collieries but also admitted that it had not tested the blood of the donor before accepting it. This, the Court said, was negligence on the part of doctors and could not be condoned. The Court
awarded compensation as a public law remedy in addition to and apart from the private law remedy for tortious damages. The Court directed Singareni Collieries to pay Rs one lakh towards medical costs, in addition to the special or general claims for damages that the petitioner might make.

The movement of judicial view from the early discussions on health to the late nineties clearly shows that the right to health and access to medical treatment has become part of Article 21. A corollary of this development is that while so long the negative language of Article 21 was supposed to impose upon the State only the negative duty not to interfere with the life or liberty of an individual without the sanction of law, judges have now imposed a positive obligation upon the State to take steps for ensuring to the individual a better enjoyment of his life and dignity.

1. Supreme Court has shown that judges have enormous potential to effect change in society when they so desire. Therefore, despite being non-justiciable in the Constitution, the social rights in the directive principles have nevertheless been made enforceable and have been treated as justiciable by the Supreme Court. However, as we see in the above discussion, the implementation of judicial orders still remains a big issue. We can see that a positive response has been received more often in situations where public interest litigations were backed by strong civil society movements and campaigns at the ground level, to push the slow and lethargic administration of the State into action.  

The Constitution must be given a meaning and interpreted and implemented in a manner which makes all the three organs of the Government, the legislature, the executive and the judiciary — responsible ultimately to the people, their welfare, their liberties and their rights. Those who would give protection only to fundamental rights and give a subordinate place to the social rights in the directive principles of State policy are guilty of doing violence to the Constitution.

7.2 Right to Health and Health Care : Judicial Approaches

In one of the earliest instances of public interest litigations - Municipal Council, Ratlam vs. Vardichand & Ors, the municipal corporation was prosecuted by some citizens for not clearing up the garbage. The corporation took up the plea that it did not have money. While rejecting the plea, the Supreme Court through Justice Krishna Iyer observed: “The State will realize that Article 47 makes it a paramount principle of governance that steps are taken for the improvement of public health as amongst its primary duties.” The Apex Court held that, ...A responsible Municipal Council constituted for the precise purpose of preserving public health and providing better finances cannot run away from its principal duty by pleading financial inability. Decency and dignity are non-negotiable facets of human rights and are a first charge on local selfgoverning bodies. Similarly, providing drainage system — not pompous and attractive, but in working condition and sufficient to meet the needs of the people — cannot be evaded if the municipality is to justify its existence... The sub- Divisional Magistrate, Ratlam, was moved to take action under Section 133 CrPC to abate the nuisance by ordering the municipality to construct drains to wash the filth and stop the stench. The Supreme Court also held that it was not just a matter of the health of a
private individual; but the health, safety and convenience of the public at large was at stake.

2. In 1991, in CESC Ltd. vs. Subash Chandra Bose, the Supreme Court relied on international instruments and concluded that right to health is a fundamental right. It went further and observed that health is not merely absence of sickness: "The term health implies more than an absence of sickness. Medical care and health facilities not only protect against sickness but also ensure stable manpower for economic development. Facilities of health and medical care generate devotion and dedication to give the workers' best, physically as well as mentally, in productivity. It enables the worker to enjoy the fruit of his labour, to keep him physically fit and mentally alert for leading a successful economic, social and cultural life. The medical facilities are, therefore, part of social security and like gilt edged security, it would yield immediate return in the increased production or at any rate reduce absenteeism on grounds of sickness, etc. Health is thus a state of complete physical, mental and social well being and not merely the absence of disease or infirmity. In the light of Arts. 22 to 25 of the Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights and in the light of socio-economic justice assured in our Constitution, right to health is a fundamental human right to workmen. The maintenance of health is a most imperative constitutional goal whose realisation requires interaction by many social and economic factors."

3. In Mahendra Pratap Singh vs. Orissa State The petitioner, an ex-sarpanch of Pachhikote Gram Panchayat approached the court for issuance of appropriate writ commanding the opposite parties to take effective measures to run Primary Health Centre at Pachhikote within Korei block in the district of Jaipur by providing all amenities and facilities for proper running of the said health centre. The Government of Orissa decided to open certain primary health centres in different areas in 1991-92 subject to fulfilment of certain conditions, on basis of demands of the local people and public at large. This is a very important judgement commending the right to health for a general population.

4. In P. Rathinam vs. Union of India the Supreme Court held that Section 309 of the Indian Penal Code that penalizes suicide is unconstitutional and it struck down this provision. The Court held that the right to life guaranteed by Article 21 of the Constitution includes within it 'right not to live' and thus the right to commit suicide is part and parcel of the fundamental right to live.

5. However, very soon, a larger Bench of the Supreme Court in the case of Smt. Gian Kaur vs. State of Punjab , overruled this decision and upheld the validity of Section 309 thereby again reviving the position under which attempt to commit suicide is treated as a crime. The Court held that 'right to life' did not include right to die. This was especially so if the natural course of life was being terminated. However, in matters concerning persons who were suffering from vegetative state or were terminally ill the Court observed that such a case since a person could no more be said to be living with humandignity, the taking away of life could be considered legal.

6. In CERC vs. Union of India, the Supreme Court was dealing with the rights of
workers in asbestos manufacturing and health hazards related to it. The Court noted that the right to health and health care of a worker is a component of the fundamental right to life guaranteed under Article 21 of the Constitution of India. The Court observed: Article 38(1) lays down the foundation for human rights and enjoins the State to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice, social, economic and political, shall inform all the institutions of the national life. Art. 46 directs the State to protect the poor from social injustice and all forms of exploitation. Article 39(e) charges that the policy of the State shall be to secure "the health and strength of the workers". Article 42 mandates that the States shall make provision, statutory or executive "to secure just and humane conditions of work". Article 43 directs that the State shall "endeavour to secure to all workers, by suitable legislation or economic organisation or any other way to ensure decent standard of life and full enjoyment of leisure and social and cultural opportunities to the workers". Article 48-A enjoins the State to protect and improve the environment. As human resources are valuable national assets for peace, industrial or material production, national wealth, progress, social stability, descent standard of life of worker is an input. Art. 25(2) of the UDHR ensures right to standard of adequate living for health and well being of the individual including medical care, sickness and disability,

Article 2(b) of the International Convention on Economic, Social and Cultural Rights (ICESCR) protects the right of worker to enjoy just and favourable conditions of work ensuring safe and healthy working conditions. The right to health to a worker is an integral facet of meaningful right to life to have not only a meaningful existence but also robust health and vigour without which worker would lead life of misery. Lack of health denudes his livelihood. Compelling economic necessity to work in an industry exposed to health hazards due to indigence to bread winning to him and his dependents should not beat the cost of the health and vigour of the workman. Facilities and opportunities, as enjoined in Article 38, should be provided to protect the health of the workman. Provision for medical test and treatment invigorates the health of the worker for higher production or efficient service. Continued treatment, while in service or after retirement is a moral, legal and constitutional concomitant duty of the employer and the State. Therefore, it must be held that the right to health and medical care is a fundamental right under Article 21 read with Articles 39(c), 41 and 43 of the Constitution and make the life of the workman meaningful and purposeful with dignity of person. Right to life includes protection of the health and strength of the worker is a minimum requirement to enable a person to live with human dignity

Health of the worker enables him to enjoy the fruit of his labour, keeping him physically fit and mentally alert for leading a successful life, economically, socially and culturally. Medical facilities to protect the health of the workers arc, therefore, the fundamental and human rights to the workmen. Therefore, right to health, medical aid to protect the 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, 48A.

The Court also held that the right is available not just against the State but also against
private employers.

In **State of Punjab vs. Mohinder Singh Chawla**, the Supreme Court observed: It is now settled law that right to health is integral to right to life. Government has constitutional obligation to provide the health facilities. If the Government servant has suffered an ailment which requires treatment at a specialised approved hospital and on reference whereat the Government servant had undergone such treatment therein, it is but the duty of the State to bear the expenditure incurred by the Government servant. Expenditure, thus, incurred requires to be reimbursed by the State to the employee. The High Court was, therefore, right in giving direction to reimburse the expenses incurred towards room rent by the respondent during his stay in the hospital as an inpatient.

In **T. Ramakrishna Rao vs. Hyderabad Development Authority**, the Andhra Pradesh High Court observed: Protection of the environment is not only the duty of the citizens but also the obligation of the State and its all other organs including the Courts. The enjoyment of life and its attainment and fulfillment guaranteed by Article 21 of the Constitution embraces the protection and preservation of nature's gift without which life cannot be enjoyed fruitfully. The slow poisoning of the atmosphere caused by the environmental pollution and spoliation should be regarded as amounting to violation of Article 21 of the Constitution of India.

In **Virender Gaur vs. State of Haryana**, the Supreme Court held that environmental, ecological, air and water pollution, etc., should be regarded as amounting to violation of right to health guaranteed by Article 21 of the Constitution. The hygienic environment is an integral facet of the right to healthy life and it would not be possible to live with human dignity without a humane and healthy environment.

In **Consumer Education and Research Centre vs. Union of India**, and in **Kirloskar Brothers Ltd. vs. Employees' State Insurance Corporation**, the Supreme Court held that right to health and medical care is a fundamental fight under Article 21 read with Article 39(e), 41 and 43,

In **Subhash Kumar vs. State of Bihar**, the Supreme Court held that right to pollution-free water and air is an enforceable fundamental right guaranteed under Article 21.

In **Shantitstar Builders v. Narayan Khimalal Totame**, the Supreme Court opined that the right to decent environment is covered by the right guaranteed under Article 21.

In **M.C. Mehta vs. Union of India**, the Supreme Court imposed a positive obligation upon the State to take steps for ensuring to the individual a better enjoyment of life and dignity and for elimination of water and air pollution. The state is duty bound for the maintenance and improvement of public health to fulfill its constitutional obligations cast on it under Article 21 of the Constitution.

In **S.K. Garg vs. State of U.P.** decided on 21.12.98, The Court was dealing with conditions of public hospitals. The Petition had been filed raising concerns about the pitiable nature of services available in public hospitals in Allahabad. Complaints were made concerning inadequacy of blood banks, worn down X-ray equipment, unavailability of essential drugs and unhygienic conditions. The Court appointed a Committee to go into these aspects and report back to the Court. The High Court held: "In our opinion, the allegations in the petition are serious. It is indeed true that most of the Government Hospitals in Allahabad
are in a very bad shape and need drastic improvement so that the Public is given proper medical treatment. Anyone who goes to the Government Hospitals in Allahabad will find distressing sanitary and hygienic conditions. The poor people, particularly, are not properly looked after and not given proper medical treatment. Consequently, most people who can afford it go to private nursing homes or private clinics. There are many complaints that the staff of the Government Hospitals are often in collusion with the Doctors who run private nursing homes, and deliberately do not look after the patients who come to Government Hospitals so that they may be driven to go to private nursing homes and they often advise patients to go to a particular nursing home. All this needs to be thoroughly investigated. This is a welfare State, and the people have a right to get proper medical treatment. In this connection, it may be mentioned that in U.S.A. and Canada there is a law that no hospital can refuse medical treatment of a person on the ground of his poverty or inability to pay.

In *Paschim Banga Khet Mazdoor Samiti vs. State of W.B.* the Supreme court held that, "Providing adequate medical facilities is an essential part of the obligation undertaken by the State in a welfare state. The Government discharges this obligation by running hospitals and health centres. Article 21 imposes an obligation on the State to safeguard right to life of every person."

In the case of *People's Union of Civil Liberties vs. Union of India*, public interest litigation was filed against the Government for backing out of a project to build a psychiatric hospital-cum-medical college in Delhi. The plan had been approved but when it was found that over Rs. 40 crores would be the expenditure, the Delhi Administration expressed its inability to fund such a project and the Central Government refused to take on its responsibility. The Supreme Court held that setting up of a psychiatric hospital in the capital city was necessary. Once land has been earmarked and on principle a decision taken that hospital should be shifted and part of it should be converted into a teaching institution while the other part should be a hospital, funding should not stand in way of locating such a hospital. As it was difficult to fund such a huge amount in a single year, it was to be taken up as a continuous project spread over a period. Hence, the Central Government and the Delhi Administration were directed to recommence and finish the project.

Violation of Article 21 by the State will give rise to a claim under public law remedy. The State is also vicariously liable for acts of its agents or police or Government hospitals.

There are two kinds of civil remedies, viz., public law and private law remedy. Private law remedy involves action under torts or contract, whereas in the former, the claim is against the State for a wrong committed by it or persons acting under it. Both remedies exist independent of each other.

In *Marri Yadamma vs. State of Andhra Pradesh* the deceased was an under trial who died of 'congestive cardiac failure'. The Court held that under trials have the right to adequate medical care. The petition was filed by his spouse alleging negligence on part of the jail authorities and jail doctor in not providing appropriate treatment on time or referring to a specialist to determine the root cause of the ailment. The deceased was in the jail for a span of nearly six months during which he complained of abdominal pain, giddiness, vomiting etc. No effort was made to diagnose the cause of the deceased condition. The High Court observed that the condition of the deceased at the time of his death was such

CH. VII - Right to Health as a Fundamental Human Right in India: Constitutional and Judicial Responses
that it could have developed over a period of time and not immediately. Thus, it was abundantly clear that no care or caution was taken by the Respondents to get the deceased examined by a Surgeon or a specialist, even though he had often complained of various ailments. The high court stated that on arrest a prisoner merely loses his right to free movement. All other rights, including the right to medical treatment remains intact and it cannot be violated. The jail authorities had infringed a fundamental right of the deceased therefore the State was liable to compensate his widow as a public law remedy for an amount of Rs.2 lakh.

In Noorunissa Begum vs. District Collector, Khammam the Petitioner’s husband died in jail due to negligence on the part of the jail authorities in providing timely medical care and attention. On an inquiry it was found that few days prior to the death, he had complained of chest pain and on the fatal day when he collapsed there was a delay of nearly four ours to arrange for an escort to take him to a government hospital. There was no hospital or medical facility within the jail premises. The jail authorities defended allegations of negligence in discharge of their duty on the ground that under Andhra Pradesh Prisoners (Attendance in Court) Rules, 1977, no prisoner could be taken out of prison without armed police escort, and that the delay in shifting the deceased to the hospital was due to delay in arranging armed police force escort.

The high court reiterated the law laid down by Supreme Court in Parmamanand Katara case wherein it was stated that no state action or provision of law can intervene in ensuring timely treatment to a person in need of medical care, and held the jail authorities negligent and the State liable to pay Rs.1,50,000 as compensation to the Petitioner.

In the State of Punjab vs. Mohinder Singh Chawla, the Respondent was suffering from a heart ailment, which required replacement of two heart valves. Since the facility for such treatment was not available in the State hospital, the State Medical Board granted permission for treatment in AIIMS, New Delhi. Later the Respondent approached concerned authorities for reimbursement of medical expenditure.. room rent paid to the hospital because of a change in the State policy for employees and ex-employees that excluded expenses incurred on diet, stay of attendant and stay of patient in hotel/hospital. Thus, the issue before SC was the extent of State’s responsibility to provide medical facilities to its employees. The State justified its policy on the ground that the ancillary expenses saddled it with needless heavy burden that limited its capacity to provide treatment for general patients. The Supreme Court held that the rent of room for an in-patient is an integral part of the expenses incurred on medical treatment, and could not therefore, be excluded.

In Surjeet Singh vs. State of Punjab, the court held, in circumstances where the state-run hospitals lacked expertise to treat a specific ailment, the Respondent State’s health policy ruled that its employees and ex-employees could receive medical treatment in non-Government hospitals so specified in the policy that would be reimbursed, when the state policy permitted treatment in private hospitals so earmarked. Therefore, a government employee could claim reimbursement at such rates as are applicable to the identified private hospitals.

In Devindar Singh Shergil vs. State of Punjab, dealt with a retired government employee. The Appellant, a retired government official, who had approached the...
graduate Institute of medical Sciences (PGI), Chandigarh for kidney treatment, was declined admission as no accommodation was available. Due to malignant growth of kidney, the Appellant immediately left for UK and got himself treated. Later he filed his claim for reimbursement of the entire amount but the Medical Board sanctioned an amount that would have been incurred if the Appellant was treated at PGI, which qualified to Rs. 20,000. The Supreme Court dealt with the issue "as to why the petitioner should not be reimbursed for medical expenses to the extent of the expenditure which may have been involved for his treatment/operation if carried out in any of the recognized institutions/hospitals in India". Since the AIIMS was one such recognized hospital under the State Policy, the Supreme Court held that the Appellant was entitled to reimbursement at the AIIMS rate and further, as an admitted fact, if the Appellant would have been treated in India he would have been entitled to reimbursement of expenses on medical consumable, pharmaceutical items, therefore, he would also be entitled to reimbursement of such expenditure. The Respondent State was directed to pay Rs.22,000 as per AIIMS rates for surgery and Rs.73,000/- for expenditure incurred on medicines.

However in a later judgment in State of Punjab vs. Ram Lubhaya Bagga the Supreme Court observed that the State had an obligation to provide health care facilities to government employees and to citizens, the obligation was only to the extent of its financial resources for fulfilling the obligation. The State Health Policy for its employees and exemployees promulgated in 1991 provided for reimbursement of medical expenses incurred either in earmarked hospitals or at other hospitals, at the rate prevailing in such specified hospitals. This policy imposed a heavy financial burden on the State and it issued a new policy under which there was no impediment or procedural hurdle in receiving treatment at any hospital but the reimbursement of medical expenses was to be restricted to such rates as fixed by the Director, Health and Family Welfare, Article 41 of the Constitution also acknowledges the limited means of the State to serve the public and states that the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want. Hence, the principle of fixation or rate and scale under the new policy was justified and could not be held as infringing 'right to life'.

In a very landmark judgment in Ram Datt Sharma's case, the Rajasthan High Court dealt with responsibility of the railways in providing health care facilities to its passengers. The complaint was that neither in the trains nor on the platforms was adequate medical facilities provided and this caused tremendous hardship to commuters, especially on long distance trains. The court held that the right to health care was a fundamental right of all citizens, including passengers, and made the following directions: (i) Instructions shall be issued by Railway Board to Zonal Railway to keep reserve a Coupe’ of four berths in long distance train that shall carry sign board ‘MEDICAL FACILITIES’ with symbol of Red Cross. Team of one Medical Officer, one male nurse and one attendant shall board train and travel in it after a distance of 500 Kms. or as directed by the Railway Board the team already travelled shall be replaced by another team. Many other mandatory rules were prescribed by the court.
Similarly, in Dr. Sarosh Mehta vs. General Manager, Central Railways in a Writ Petition No. 2405 of 2001 in the Bombay High Court the issue was the liability of Suburban Railways in Mumbai in providing health care facilities for travelers, especially in view of frequency of accidents. Some very important directions were issued by the court for providing emergency medical facilities.

In Directorate of Enforcement vs. Ashok Kumar Jain, the Court held that the police are as much under a statutory obligation to preserve the life of persons under its custody by ensuring medical care and treatment, and taking into account the condition of their health. However, the right of such persons cannot be used as shield to hinder police investigation.

In D.K. Basu vs. State of West Bengal, The Supreme Court prescribed a number of guidelines to be mandatorily followed by arrested persons. Two of these directions pertained to health. The Court observed: The arrestee should, where he so requests, be also examine at the time of its arrests and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee. The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health services of the concerned State or Union territory, Director, Health Services shall prepare such a panel for all Tehsils and Districts as well.

CH. VII - Right to Health as a Fundamental Human Right in India: Constitutional and Judicial Responses

1. The public Charitable Trust registered under the provisions of the Bombay Public Trusts Act, 1950 (for short 'BPT Act') which are running Charitable Hospital, including nursing home or maternity home, dispensaries or any other centre for medical relief and whose annual expenditure exceeds Rs.5 lakh are 'state-aided public trust' within the meaning of clause 4 of section 41AA.

2. The public Charitable Trust covered by aforesaid clause 1 shall be under legal obligation to reserve and earmark 10 per cent of the total number of operational beds for indigent patients and provide medical treatment to the indigent patients free of cost and reserve and earmark 10% of the total number of operational beds at concessional rate to the weaker section patients as per the provisions of section 41AA of the BPT Act.

3. In an emergency, the Charitable Hospitals must admit the patient immediately and provide to the patient 'Essential Medical Facilities' for all life saving emergency treatment.

The Supreme Court has held that the failure to provide timely medical care amounts to violation of the fundamental right to life. The state has an obligation to provide medical facilities in such circumstances, and financial inability or lack of infrastructure is no justification to avoid this obligation. Whenever the state fails to discharge its constitutional obligation, the patient or immediate kin may approach either the Supreme Court or the High Court.
In Dr. Laxman Balkrishna Joshi vs. Dr. Trimbak Bapu Godbole 28 has held that neither government nor even private hospitals can refuse treatment in a medico-legal emergency.

Labonya Moyee Chandra vs. State of West Bengal * SC decided on 31/7/1998, This case reflected the lack of seriousness of the State in executing its duties and the implementation of the directions and recommendations in Paschim Banga Khet Mazdoor Samiti case. The patient was an old woman residing in a village near the city of Burdwan who was denied admission in SSKM, a state hospital on account of non availability of bed even though her condition was recorded as critical. the Supreme Court held the state liable to compensate the Appellant for the cost of the pacemaker assessed at Rs.25, 000. Further, the State government was directed to take follow up action on the implementation of the recommendations under the earlier case.

Parmanand Katara vs. Union of India29 was a petition filed by a human rights activist seeking directions against the Union of India that every injured citizen brought for treatment should be instantaneously given medical aid to preserve life and thereafter the procedural criminal law should be allowed to operate in order to avoid negligent death. The Petitioner had appended to the writ petition a report titled ‘Law helps the injured to die’ published by the Hindustan Times that told the story of a hit-n-run case where the victim was denied treatment by the nearest hospital and asked to approach another hospital authorized to handle medico-legal cases but situated 20 km away. The victim succumbed to his injury on the way to the other hospital. The Supreme Court held that- Preservation of human life is of paramount importance. That is so on account of the fact that once life is lost, the status quo ante cannot be restored as resurrection is beyond the capacity of man. The patient whether he is innocent person or liable to be punished under the laws of the society, it is the obligation of those who are in charge of the health of the community to preserve life so that innocent may be protected and the guilty may be punished. Social laws do not contemplate death due to negligence to tantamount to legal punishment. A doctor at the Government hospital positioned to meet the State obligation is, therefore, duty bound to extend medical assistance for preserving life.

In Supreme Court Legal Aid Committee vs. State of Bihar 30 the Supreme Court held that the responsibility to provide immediate medical treatment to an injured person in a medico-legal case extends even to the police.

Poonam Sharma vs. Union of India31 is another case pertaining to the liability of police and government hospitals in medico-legal case, the Petitioner's husband met with an accident while driving in an allegedly drunken state. The police took him to a government hospital for a check up where the doctor on duty stitched up an inch long cut on his scalp and gave him Brufen tablets. The next day his family bailed him out and took him to another hospital where he succumbed to brain haemorrhage. Thus, in light of the facts and circumstances of the case and that the deceased was only 30 years old drawing a salary of Rs.3,000 per month, the high court ordered Rs. 2 lakh as compensation to the Petitioner.
7.3 HIV/AIDS and Law

After the first few cases of HIV were detected in 1986 the government of India constituted the National AIDS Committee in 1986 under the Ministry of Health and Family welfare and representatives from different sectors and similarly the State AIDS Control Societies were formed in various states.

Lucy D' Souza vs. State of Goa was one of the first litigations on the issue of HIV/AIDS in India. S. 53(1) (vii) of the Goa Public Health Act, 1987, empowered the government to isolate a person suffering with AIDS. The Act did not specify a particular period of isolation or where it should take place, but that isolation was acceptable for such person, and at such institution or ward as may be prescribed. In the matter of notice and hearing prior to the action of isolation the court held that there were many provisions and actions where compliance with this principle of natural justice not possible. The court was also of the opinion that the condition of prior hearing and notice would frustrate the provision of isolation. Such a hearing could be given after the isolation.

7.4 Blood Banks

In the case of Common Cause vs. Union of India, the Supreme Court laid down guidelines regarding operation of blood banks. The issue raised before the court was that the deficiencies and shortcomings in collection, storage and supply of blood through blood centers operating in the country could prove fatal. Blood is one of the mediums through which HIV/AIDS is transmitted. Blood has become a commodity. Some people become professional donors as it is a source of earning for them. Blood banks play an important role at different stages of medical treatment. Since the supply of wrong type or contaminated blood can cost lives of patients, the Court felt that it was essential to regulate the donation of blood and its quality. Under the Drugs and Cosmetics Act, 1940 blood is treated as a 'drug' for the purpose of regulating its collection, storage and supply. The Supreme Court issued many directions concerning operation of blood banks.

In Mr X of Bombay Indian Inhabitant vs. M/s. ZY the issues raised concerned not only the right to employment of an HIV affected person but also the safety of other employees and the responsibility of the employer to provide medical treatment to its employees who are suffering from HIV/AIDS. The high court held that an HIV affected person could not be denied employment or be discontinued unless it was medically shown that he was suffering from such a disease that can be transmitted through daily chores.

In M. Vijaya vs. The Chairman and Managing Director, Singareni Collieries Company Ltd., the Andhra Pradesh High Court held that it was the duty of the hospital to check whether the blood was infected or not, and the lack of proper equipment to detect the virus was not an excuse. The high court went beyond the point of medical negligence and laid down important guidelines for the effective implementation of the programmes to curb the spread of the virus and to deal with the people who have been tested positive of HIV.

Mr. X vs. Hospital Z brought the issue of privacy before the courts. The petition dealt with two issues; firstly, right to privacy of a patient, specially an HIV/AIDS patient and secondly, the right of an individual to be safeguarded from any threat to her health. The Petitioner was tested positive for HIV by the Respondent hospital, which acted upon the
discovery and informed Petitioner's fiancée about this condition because of which the marriage was called off and his community ostracized him. The Supreme Court observed that the relationship between doctor and patient was that of trust. Nevertheless, an HIV infected person has a right to lead a normal life but not at the cost of others. Further, to condemn a person to death by transmitting AIDS not only violates his/her right to life but is also punishable under provisions of Indian Penal Code. Sections 269 and 270 of the Penal Code. The hospital's act was to protect the life of another person therefore, they could not be held liable for consequences of their act. 37

7.5 Liability of the State

In P of Bombay vs. Union of India *2001 Calcutta High Court 17 (2004) the questions raised before the Calcutta High Court were regarding the negligence of the concerned public hospital in blood transfusion through which the petitioner was infected with HIV. The union government took the responsibility for the petitioner, and gave a job and compensation of Rs 10 Lakhs to the petitioner.

7.6 Medical practice

Cross Practice May a homoeopath prescribe allopathic drugs?

In Poonam Verma vs. Ashwin Patel, 38 the Supreme Court made its famous observation: A person who does not have the knowledge of a particular system of medicine but practices in that system is a quack and a mere pretender to medical knowledge or skill, or to put it differently, a charlatan. The Court went on to observe that no person can practice a system of medicine unless he is registered either under the Central Indian Medical Register or the State Register to practice that system of medicine; and only such persons as are eligible for registration and possess recognised degrees as specified under the concerned Central and State Act may so practice. The mere fact that during the course of study some aspects of other systems of medicine were studied does not qualify such practitioners to indulge in the other systems.

May an ayurvedic doctor prescribe allopathic drugs?

In Mukhtiar Chand (Dr.) vs. State of Punjab, the primary question before the Supreme Court was "who may prescribe allopathic medicines?"

This case raises questions of general importance and practical significance; questions relating not only to the right to practice medical profession but also to the right to life that includes the health and well-being of a person. The controversy in these cases was triggered by the issuance of declarations by the state Governments under clause (iii) of Rule 2(ee) of the Drugs and Cosmetics Rules, 1945 (for short 'the Drugs Rules') which defines "Registered Medical Practitioner". Under such declarations, notified vaids/hakims claim right to prescribe Allopathic drugs covered by the Indian Drugs and Cosmetics Act, 1940 (for short 'the Drugs Act'). Furthermore, vaids/hakims who have obtained degrees in integrated courses claim right to practise allopathic system of medicine. The Apex Court observed that the Rule 2(ee) only defines the expression 'registered medical practitioners' and does not provide as to who can be registered. Therefore, the Court read the notification in consonance with laws regulating and permitting medical practice. As a rule medical practitioner can practice in that system of medicine for which he is eligible.

CH. VII - Right to Health as a Fundamental Human Right in India: Constitutional and Judicial Responses
registered as a medical practitioner. Under the IMC Act, 1956 there are two types of registration: under ‘State Medical Register’ and ‘Indian Medical Register’. According to Section 15(2) of the IMC Act only those who are enrolled in any State Medical Register can practice allopathic medicine in the State. Section 15(1) provides that qualifications specified in the Schedules of the Act shall be sufficient for enrolment in the State Medical Register. However, such qualification is not a necessary pre condition for registration. ‘State Medical Register’ is a contradistinction to ‘Indian Medical Register’ and is maintained by the State Medical Council constituted under any State law that regulates the registration of medical practitioners. It is thus possible that in a State, the law governing registration may enable a person to be enrolled on the basis of qualifications other than the ‘recognized medical qualification’. On the other hand, ‘recognized medical qualification’ is a perquisite for enrolment in Indian Medical Register.

The Supreme Court held that benefit of Rule 2(ee) and the notifications issued there under would be available in those States where the privileges to practice any system of medicine is conferred upon by the State law for the time being in force, under which medical practitioners of Indian Medicine are registered in the State. Lastly, doctors urged that integrated courses in ayurvedic medical education includes to an extent the study of modern scientific system of medicine. The right to practice a system of medicine is derived from the Act under which a medical practitioner is registered; whereas the right which the holders of a degree in integrated courses of Indian Medicine are claiming is to have their prescription of allopathic medicine honoured by a pharmacist or a chemist under the Pharmacy Act and Drugs Act. The Supreme Court held that the right to prescribe drugs is a concomitant of the right to practice a system of medicine. Appellants cannot claim such a right when they do not possess the requisite qualification for enrolment in the State Medical Register.

Even if a non-allopathic medical practitioner does not have the right to practice allopathic medicine, he can prescribe allopathic medicine that are sold across the counter for common ailment.

7.7 Standard of Medical Education

The Medical Councils constituted under different Central and State Acts are sole statutory bodies under their respective Acts and regulate the course of admission, standard of education and quality of practice. Provisions made by the Medical Council in the exercise of such powers can neither be transgressed by any authority nor are they subject to judicial review unless the Act itself provides certain exceptions and confers or delegates any power to any other authority.

7.7.1 Unlicensed Practitioners

Practising Different Systems of Medicine: In State of Tamil Nadu vs. M.C. George, W.A. No. 108 of 2005 decided by the Tamil Nadu High Court the Petitioner was a hereditary practitioner of Siddha medicine. The Division Bench said that the Petitioner did not have any need to register himself since under the Indian Medicine Central Council Act, if a person had been practicing Indian medicine for a period of five years at the time of the commencement of the Act; he had a right to continue practicing Indian medicine. The
Court held that the Petitioner could continue to practice Siddha without registration. It needs to be noted of course, that this right is only for those who were already practicing Indian medicine for five years at the time of commencement of the law and not the subsequent entrants.

The Court also observed: that in our country, like in other countries, since ancient times medicine has been practiced and a medical system has been evolved. We had renowned medical practitioners like Sushrut and Charak who are internationally known. In fact, no society can get along without medical practitioners. In every society some people fall sick and get diseases, thus requiring medical treatment. In our country, the Siddha, Ayurveda and Unani systems were evolved, which were traditionally indigenous systems of our country. Medical practitioners of these systems would often pass all their medical knowledge to their children or disciples and often this knowledge were kept secret from others. Thus, this knowledge was passed on from generation to generation, but it was only given to the children or the devoted disciples and kept secret from others. Many of the treatments in our indigenous medical systems are very effective and there is no reason why we should not utilize the wisdom of our ancestors. In our opinion, we should encourage indigenous systems of medicines, though with scientific discrimination and after experimentation. However, it is also important that quackery should be suppressed, because it is also true that quackery is widely prevalent in our country, as poor people often cannot afford the fees of qualified doctors. Hence, a balance has to be maintained.

In the case of Electropathy Medicos of India vs. State of Maharashtra, Decided by Bombay High Court on 13.8.2001, a college was conducting a three year course in electropathy, a branch of medicine contended to be different from homeopathy, ayurveda and allopathy. The State Government had issued a notification directing that such a course was not recognized and no degrees or diplomas could be offered. The Petitioners contended that electropathy was founded in the 19th Century in Italy and provided a sound system of medical practice. The high court, however, rejected this and ordered:

The petitioner-society is directed to close down all courses in electropathy/electrohomoeopathy forthwith.

Quacks: In the case of D.K. Joshi vs. State of U.P., (Civil Application No. 2016 of 1996 decided by the Supreme Court on 25.4.2000) public interest litigation was filed demanding that the State Government take steps to stop unqualified practitioners from practising in Agra and the surrounding areas. The Court felt that adequate steps were not taken by the administration and issued directions in respect of the entire state as follows:

The Secretary, Health and Family Welfare Department, State of U.P. shall take such steps as may be necessary to stop carrying on medical profession in the State of U.P. by persons who are unqualified unregistered.

In the case of Shri Sarjoo Prasad vs. State of Bihar, the Patna High Court was concerned with the right of practice of occupational therapists/physiotherapists. To begin with, after studying the literature in detail the court held that occupational/physiotherapy is a recognized form of medical practice. However, the court further observed that unless the concerned qualification finds a place in the schedule to the Medical Council Acts and the holders of the qualifications are registered under that Act, they have no right to practice.
modern scientific medicine or prescribe allopathic drugs.

India is a place where various systems of medicine are practised. The legislature however recognizes five main systems, namely allopathy, ayurvedic, unani, siddha and homeopathy. In order to practice medicine, the practitioner has to have a recognized qualification from a recognized institute. In all other cases, the practice of medicine is prohibited. The law does not recognize an inherent right to practise medicine, but is subject to national and state laws.

As set out in the judgment of the Supreme Court in the case of Jacob Mathew vs. State of Punjab The standard of care, when assessing the practice as adopted is judged in the light of the knowledge available at the time of the incident, and not at the date of trial. When the charge of negligence arises out of a failure to use some particular equipment, the charge would fail if the equipment was not generally available at that point of time on which it is suggested should have been used. In this decision the Supreme Court also observed that for inferring negligence on the part of a professional, including a doctor, additional considerations apply. A simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of a medical professional. So long as a doctor follows a practice acceptable to the medical profession of that day, he cannot be held liable for negligence merely because a better alternative course or method of treatment was also available or simply because a more skilled doctor would not have chosen to follow or resort to that practice or procedure which the accused followed.

7. As regards criminal liability of medical practitioners, Supreme Court in a recent judgment in the case of Dr. Suresh Gupta vs. Govt. of Delhi* curtailed criminal proceedings against medical negligence to incidents of gross negligence. It held that a medical practitioner cannot be held punishable for every mishap or death during medical treatment. No criminal liability should be attached where a patient's death results from error of judgment or an accident. Mere inadvertence or some degree of want of adequate care and caution might create civil liability but would not suffice to hold him criminally liable.

Even where gross negligence is alleged, a prima facie case must be established before a magistrate at the first instance as was pointed out in Dr. Anand R. Nerkar vs. Smt Rahimbi Shaikh Madar* 1991(1) Bom. C.R. (p. 629) It is necessary to observe that in cases where a professional is involved and incases where a complainant comes forward before a Criminal Court and levels accusations, the consequences of which are disastrous to the career and reputation of adverse party such as a doctor, the court should be slow in entertaining the complaint in the absence of the complete and adequate material before it.

7.7.2 Jurisdiction of Consumer Courts

Medical negligence gives rise to civil and criminal liability. We have already mentioned that as regards civil wrongs, an aggrieved person can claim compensation either through a civil suit or a complaint lodged with consumer forum. Since the enactment of Consumer Protection Act, 1985 there has been a significant rise in medical negligence cases being filed.

8. In Indian Medical Association vs. V.P. Shantha*, The Court held that proceedings under the Consumer Protection Act are summary proceedings for speedy redressal and
the remedies are in addition to private law remedy. The Supreme Court also laid down guidelines for prosecuting doctors:

1. A private criminal complaint should not be entertained unless the complainant has produced prima facie evidence in the court in the form of a credible opinion given by another competent doctor to support the charge of rashness or negligence.

2. The investigating officer, before proceeding against a doctor, should obtain an independent medical opinion preferably from a doctor in government service qualified in that branch of medical practice.

The accused doctor should not be arrested in a routine manner unless his arrest is necessary. Consumers under the Consumer Protection Act and may claim damages for injury caused by the negligence of the doctor, hospital or nursing home.

In the case of Dr. J.J. Merchant vs. Shrinath Chaturvedi, the Supreme Court observed that in matters involving complicated questions of fact that require recording of evidence, the consumer forum has the discretionary power to direct the complainant to approach civil court for appropriate reliefs. Nevertheless, the procedure provided in the Act is adequate vis-à-vis civil suit to decide medical malpractice cases involving complicated questions of law and fact.

In Spring Meadows Hospital vs. Harjot Ahluwalia the Supreme Court was concerned with the rights of a parent when a child dies due to medical negligence. It was argued by the hospital that the parents were not consumers under the Act so could not get any relief. The Court rejected this argument and observed that even parents were covered under the Act and there was nothing in the law which prevented the parents as well as the child from recovering damages.

In the case of Sailesh Munja vs. All India Institute of Medical Sciences (AIIMS), the hospital claimed that since the treatment was subsidized by the hospital it would not be covered under the Act. The National Commission rejected this argument and held since the treatment was subsidized and not totally free; the hospital would be covered under the Consumer Protection Act.

In Suhas Haldulkar vs. Secretary, Public Health Dept., State of Maharashtra, the National Commission held that since the hospital concerned was a Government hospital where patients are treated wholly without charge, a complaint before the Consumer Forum was not maintainable. The Complaint was dismissed since all the patients were treated free of charge but with liberty to the Complainant to approach the civil court. If of course some of the patients were being charged for the services provided, the Court would have had the jurisdiction even if the concerned patient was treated free of charge.

7.7.3 Duties of the doctor towards a patient

In Dr. Laxman Balkrishna Joshi vs. Dr. Trimbak Bapu Godbole the patient had died due to shock when the Appellant attempted a reduction of fracture without taking elementary caution of giving anesthesia. In the light of the surrounding circumstances it was held that the Appellant was negligent in applying too much of force in aligning the bone.

In Shyam Sunder vs. State of Rajasthan, the doctrine of res ipsa loquitur was again discussed. The normal rule is that it is for the plaintiff to prove negligence, but, in some cases, considerable hardship is caused to the plaintiff, as the true cause of the
accident is not known to him, but is solely within the knowledge of the defendant who caused it. The plaintiff can prove the accident but cannot prove how it happened (so as) to establish negligence on the part of the defendant. This hardship is sought to be avoided, in certain cases, by invoking the principle of res ipsa loquitur, where the thing is shown to be under the management of the defendant or his servants, and the accident is such, as, in the ordinary course of things, does not happen if those who have the management use proper care, then it affords reasonable evidence, in the absence of an explanation by the defendant, that the accident arose from want of care.

In S. Mittal vs. State of U.P., the Court was concerned with negligence in eye camps. An eye camp was organised for extending expert ophthalmic surgical treatment to patients of a particular place in Uttar Pradesh. The operated eyes of several patients were, however, irreversibly damaged, owing to post-operative infection of the “intra ocular cavities of the eyes”, caused by normal saline used at the time of surgery. A public interest litigation was filed, praying (apart from other relief) for compensation to victims for negligence in the arranging of the eye operations. The Supreme Court directed the State Government to pay Rs. 12,500 compensation to each victim (in addition to Rs.5,000 already paid). The Supreme Court observed that (a) It was no defence, that the treatment was gratuitous or free. (b) The State Government would be liable for negligence in such activities.

In Mohd. Ishfaq vs. Dr. Martin D’souza, the patient was put on haemodialysis and was asked to undergo a kidney transplant. He was administered amicacin 500 mg injections twice a day for 10 days at the end of which he lost his hearing totally. The National Commission held that it was the responsibility of the hospital to monitor the patient and modify the dosage as per the available literature and failure to do so amounted to negligence. The patient was ordered to be paid Rs. 4 lakh as compensation for treatment and Rs. 2 lakh towards the mental agony suffered by him. Can a doctor charge for facilities he does not offer?

In State of Punjab vs. Shiv Ram, the Supreme Court was dealing with a case where sterilization had failed and the woman gave birth to a child. This was in a State hospital. The State argued that there was always a small chance of failure in such procedures and the failure of sterilization did not mean that the doctor was negligent.

Cases of medical negligence are rising rapidly especially in the consumer courts. However getting fellow doctors to testify even in cases which are self evident is a very difficult task. With the recent decisions of the Supreme Court in matters concerning criminal negligence, it is going to be even more difficult for doctors to be prosecuted under the criminal law.

7.8 Definition of Drugs

Due to the stringent licensing, manufacturing, stocking and selling provisions pharmaceutical companies are always on the look out for getting their products exempted from the definition of drugs. It is in the interest of manufacturers to avoid obtaining such licenses as then anything can be sold without adhering to strict quality control norms. By and large, however, the courts have given a liberal meaning to the term ‘drug’ and not allowed easy escape routes for these companies.
Cadila Pharmaceuticals Ltd. vs. State of Kerala 51 dealt with the definition of the term drug. Many ingestible are given fancy names in order to claim that they are not 'drugs'. The Petitioner manufactured EC 350 (Vitamin E and C) capsules and Cecure (multi-vitamin capsules) that were sold in medical shops as 'dietary supplements'. The issue before the Court was whether vitamin capsules fall under the definition of 'drugs' under the Drugs and Cosmetics Act and therefore, required license. These vitamins capsules therefore squarely fall within the definition of 'drugs' under the Act.

Similarly, in Chimanlal vs. State of Maharashtra52 the issue before the Supreme Court was whether 'absorbent cotton, wool, roller bandages and gauze' are drugs under the Act. The Supreme Court held that the definition of 'drugs' in S.3(d) of the Drugs Act is comprehensive enough to cover not only medicines but also substances intended to be used for or in treatment of diseases of human beings. 'Absorbent cotton, wool, roller bandages and gauze' are substances used for or in treatment of disease, and hence are 'drugs' for the purposes of the Act. The main object of the Act is to prevent sub-standard drugs, presumably for maintaining high standards of medical treatment. That would certainly be defeated if the necessary concomitants of medical or surgical treatment were allowed to be diluted.

In Prabhudas Kalyanji Adhia vs. State of Maharashtra53 the Bombay High Court was concerned with a case where the Appellant was convicted of selling a substance which he described as D.D.T. Compound without a license. His contention was that though the compound did use D.D.T. it was not meant for medical use and this was also made clear on the label. The Court held him guilty by reasoning that while implementing laws meant for public benefit popular meaning should be given to words. Thus, to a common person D.D.T. is a drug and even if it is not meant to be used as medicine a license would be required.

Spurious and Dangerous Drugs

S.R. Pvt. Ltd vs. Prem Gupta, Drug Controller (India) New Delhi 54 was a case dealing with a ban on spurious drugs. There are many occasions when the Government totally bans the manufacture or sale of certain drugs. The question before the courts has been whether the Government can do so and further what is the scope of the Court's interference in such matters.

In Systopic Laboratories Pvt. Ltd. vs. Dr. Prem Gupta & Ors.55 Various pharmaceutical companies had challenged a notification by the Government banning the manufacture and sale of corticosteroids with another drug for internal use for treatment of asthma under Section 26 A of the Drugs Act. Accordingly, the expert committees recommended a total prohibition and the Government agreed with this. The Supreme Court found nothing wrong with such a prohibition and held that the Courts would not interfere in such matters when the Government has acted on the advice of expert committees. 56

7.9 Right to healthcare

In Vincent Panikulangara vs. Union of India57 the Public Interest Law Service Society, Cochin, filed a petition in the Supreme Court asking directions for banning import, manufacture, sale and distribution of such drugs as had been recommended for banning
by Drugs Consultative Committee set up by the Government and also asked for the cancellation of licenses granted in respect of these drugs. By April 1992, a total 45 categories were banned by various gazette notifications, but brand names and even generic names were not publicized widely. 58

Another public interest litigation was filed in the Supreme Court by the Drug Action Forum (DAF), Karnataka along with the All India Drug Action Network (AIDAN) in November 1993. The Supreme Court directed a ban on the manufacture of fixed dose combinations of Analgin known by any brand name. By March 1998, a few more drugs were taken up by DTAB for scrutiny and Baralgan was banned. A petition on the drug price control was filed by the AIDAN, the Medico Friends Circle (MFC), the Low Cost Standard Therapeutics (LOCOST) and the Jan Swasthya Sahyog in 2003. This petition seeks to ensure that the medicines/drugs set out in the National Essential Medicines List 2003 are available at affordable prices for the poor by bringing all of them under price control.

In Hamdard Dawakhana vs. Union of India the constitutionality of the Act was challenged before the Supreme Court on the ground that it violates the freedom to speech and expression under Article 19(1)(a).22 The Supreme Court upheld the Constitutionality of the Act and to begin with held that though it was true that advertisements were protected under Article 19(1)(a) concerning freedom of expression, commercial advertisements were not so protected. The Court further held: The advertisements prohibited by S.3 of the Act relate to commerce or trade and not to propagation of ideas, and advertising of prohibited drugs and commodities of which the sale in not in public interest, cannot be speech within the meaning of freedom of speech and would not fall within Art/.19(1)(a).

In Rajangam, Secretary, Dist. Beedi Worker's Union vs. State of Tamil Nadu, the issue concerned conditions of work of employees in beedi manufacturing and allied industries. A large number of children are employed in this work. The Supreme Court passed many directions. In Bandhua Mukti Morcha vs. Union of India, a PIL was filed against the employment of children below 14 years of age in the carpet industry in Uttar Pradesh and in most cases; the children were forced to work.

The Bandhua Mukti Morcha vs. Union of India case dealt with the issue of the release of bonded labourers especially from stone quarries from Haryana. The Supreme Court appointed a committee to inquire into the conditions of the stone quarry workers. The committee reported that due to a large number of stone crushing machines operating at the site, the air was laden with dust making it difficult to breathe.

In the ASIAD Construction Workers Case (People's Union for Democratic Rights vs. Union of India; another Bench of SC had held that the State was under a constitutional obligation to see that there was no violation of the fundamental right of any person, particularly when he belongs to the weaker section of the community and is unable to wage a legal battle against a strong and powerful opponent who is exploiting him. The Supreme Court also issued various directions to the State and Central Governments and some of the important directions concerning health.

The Bombay High Court in Citizens Action Committee, Nagpur vs. Civil Surgeon, Mayo (General) Hospital, Nagpur and Ors put in detail the responsibilities of the
Municipal Corporation, in monitoring the civil hospitals and the other basic amenities in the city.

The High Court of Madhya Pradesh in Hamid vs. State of M.P. held that the citizens have right to clean and safe drinking water. The court stated, Under Article 47 of the Constitution of India, it is the responsibility of the State to raise the level of nutrition and the standard of living of its people and the improvement of public health. It is incumbent on State to improve the health of public providing unpolluted drinking water.

The Supreme Court in Murl S Deora vs. Union of India and Ors, recognized the harmful effects of smoking in public and also the effect on passive smokers, and in the absence of statutory provisions at that time, prohibited smoking in public places such as, 1. auditoriums, 2. hospital buildings, 3. health institutions, 4. educational institutions, 5. libraries, 6. court buildings, 7. public office, 8. public conveyances, including the railways.

In Dr. Upendra Baxi vs. State of Uttar Pradesh, the Supreme Court was called upon to enforce the human rights of the occupants of State Protective Homes for women. The Court ordered a medical panel to examine the inmates at the Agra Home and submit the report. The Report showed that 33 out of 50 inmates had varying degrees of mental disability and had not been examined at the time of admission to the Home. Despite this the Superintendent had released 14 of them without determining their mental state and with no money to cover even their train fare to their home towns. The Court recommended that psychiatric treatment be provided to the mentally ill inmates, for which the record of the time and place of the treatment should be maintained. Rakesh Chandra Narayan vs. State of Bihar, was a case, which arose out of a letter written to the Chief Justice of India by two residents of Patna regarding conditions of mental hospital near Ranchi. It was a state run hospital directly under the Ministry. The State has to realise its obligation and the Government of the day has got to perform its duties by running the hospital in a perfect standard and serving the patients in an appropriate way. The court gave directions for providing proper nutrition, pur drinking water, proper sanitation etc. in the hospital.

Sheela Barse vs. Union of India dealt with children who were kept in jails across the country for 'safe custody' as allegedly they are physically and mentally retarded. Court observed: Meanwhile, there are a few matters which need our urgent directions. It seems that there are a number of children who are mentally or physically handicapped and there are also children who are abandoned or destitute and who have no one of take care of them. They are lodged in various jails in different states. The State Governments must take care of these mentally or physically handicapped children and remove them to a Home where they can be properly looked after and so far as the mentally handicapped children are concerned, they can be given proper medical treatment and physically handicapped children may be given not only medical treatment but also vocational training to enable them to earn their livelihood.

Another case filed by Sheela Barse dealt with children and women committed to jails as lunatics in Calcutta. The Supreme Court appointed a committee to visit the jails and give its report. Subsequent to this, the Court transferred the matter to the respective High Courts in India asking them to look into the matters.

In Saarthak Registered Society and another vs. Union of India, as a continua-
tion to the above order, the Supreme Court passed the following directions:

1. Every State and Union Territory shall undertake an assessment survey and file the report on the following aspects:

   a. Estimated availability of mental health resources including psychiatrists, psychologists, psychiatric social workers and nurses in both public and private sector

   b. Type of Mental Health Delivery System available in the State including available bed strength, outpatient and rehabilitation services

   c. An estimate of the Mental Health Services that would be required considering the population of the State and the incidence of mental illness. Etc.

In Veena Sethi vs State of Bihar, Writ Petition (Cri) No 73 Of 1982 a letter was sent to Justice Bhagwati by the free Legal Aid Committee on the basis on an article in a newspaper on 17/12/1981. It was registered as a petition under Art 32 of the Constitution. The Legal Aid Committee, Jamshedpur, through its lawyer Veena Sethi, directed that all charges be dropped against 16 prisoners kept in the Hazaribagh jail for over 25 years because they were of "unsound mind". The Supreme Court said that there must be an adequate number of institutions for looking after mentally sick prisoners and that the practice of sending persons of unsound mind to jail for safe custody was not a healthy or desirable one because jail was not an appropriate place for treating those who were mentally ill. The Court directed the jail superintendent to have such mentally ill undertrials examined by psychiatrists every six months and submit a report to the District Judge.

In S.P. Sathe vs. State of Maharashtra, the Bombay High Court regulated the prescription of indiscriminate electric shocks to mentally ill persons. The directions included that reports be made whenever electric shocks were given by a prison psychiatrist. A writ petition in the High Court of Bombay at Panaji challenged the practice of administering ECT without anaesthesia at the Institute of Psychiatry and Human Behaviour (IPHB), Panaji, Goa.

   The practice was barbaric, inhuman and hence in violation of Article 21 of the Constitution; in violation of Section 81 (Chapter VIII) of the Mental Health Act, 1987, providing that no mentally ill person be subjected during treatment to indignity or cruelty. The ECT was also being administered without the patients' informed consent.

In Javed vs. State of Haryana and Ors, The litigants challenged the constitutionality of a coercive population control provision in the Haryana Panchayati Raj Act of 1994 (the Haryana Provision) that governs the election of panchayat (village council) representatives in Haryana. The Haryana Provision disqualifies "a person having more than two living children" from holding specified offices in panchayats. The objective of this two-child norm was to popularize family planning—the implication being that the restrained reproductive behavior of elected leaders would be a model for other citizens to follow. The court held that the classification is intelligible and is not arbitrary or discriminatory. and stated in its order The disqualification enacted by the provision seeks to achieve the objective by creating a disincentive.

In State of Haryana vs. Smt. Santara, in a judgement delivered in 2000, the Supreme Court upheld the judgement of the High Court awarding compensation to Mrs. Santara, who gave birth to a daughter in spite of a sterilization operation carried on her
earlier. This is one of the cases of proved negligence during the sterilization operations.

The doctors and the hospital authorities denied any kind of negligence in the sterilization operation. In the course of suit it was proved that only the left fallopian tube had been closed and the right one left untouched. The Court held that as the sterilization operation was conducted under a government scheme the state was vicariously liable for the failure and the additional burden the family would face due to the birth of the child and held that the state was liable to pay to compensation to the mother as birth of one more girl has lead to the additional burden on the family.

**Achutrao Haribhau Khodwa vs. State of Maharashtra and Ors** was one of the worst cases of medical negligence especially in a sterilization operation. Chandrikabai the victim in this case had got herself admitted in the Civil hospital at Aurangabad, on July 10, 1963. Chandrikabai delivered a male child on July 10, 1963. As she had got herself admitted to this hospital while undergoing a sterilization operation a mop (towel) had been left inside the body of Chandrikabai and she died due to this on July 24, 1963. In an appeal filed by the husband of the Chandrikabai before the Supreme Court, the vicarious liability and the negligence of doctors was discussed in detail and at the end of the appeal the Court came to the conclusion that the state was vicariously liable for the negligence of its doctors and restored the order passed by the trial court in awarding compensation to the husband of Chandrikabai.

In **Arun Balakrishnan Iyer and Anr vs. Soni Hospital and Ors** AIR 2003 Mad 389, the Madras High Court held that, the removal of the uterus without the consent of the petitioners did not give rise to an actionable claim; but, the defendants were bound to pay compensation for the negligence during the operation and the mental agony the petitioner went through because of the negligence. The court came to conclusion that there was negligence on the part of the doctors in leaving the abdominal pad in the stomach of the plaintiff but held that the plaintiffs could not be compensated for the removal of the uterus. The plaintiffs had in all demanded compensation of Rs. 15 lakh, but the court awarded compensation of Rs. 3.35 lakh.

In **Ms.X vs. Mr. Z and Anr** 74, the Delhi High Court held that an aborted foetus was not a part of a body of women and allowed the DNA test of the aborted foetus at the instance of the husband though the application was opposed by the wife and she had stated that it would be the invasion of her privacy to carry out the DNA test on the aborted foetus. The court held that, the foetus is no more a part of the body of the petitioner. The petitioner indeed has a right of privacy but is being not an absolute right. In that view of the matter, in the peculiar facts, it cannot be termed that the petitioner has any right of privacy. The DNA test of the aborted foetus was allowed by the Delhi High Court.

In **Cehat and Ors. vs. Union of India** 75 a public interest litigation filed for the implementation of the Pre Natal Diagnostic Techniques and (prevention of misuse) (PNDT) Act. The act was amended during the course of this petition and the Apex Court passed various orders for the effective implementation of the Act. In this case, CEHAT, MASUM an NGO and Sabu George an individual activist filed a petition before the Supreme Court stating that the PNDT act was not being implemented properly resulting in the falling female child sex ration in the country. The Supreme Court came down heavily on
the central government and also the state government for failure to implement the act. It stated in its order that the so-called economically progressive states were also lagging behind in the female child sex ratio and had failed in the proper implementation of the Act. The Act was amended while the petition was pending in the Supreme Court and several directions were passed by the Supreme Court for its proper implementation.

In a case of Samar Ghosh vs. Jaya Ghosh, in 2007, the Supreme Court in a 71-page verdict has held that undergoing vasectomy or sterilization operation by either of the spouses without the other's consent is a strong reason for the aggrieved partner to allege mental cruelty and seek divorce. Writing the judgment, Justice Bhandari said if a man underwent sterilisation without medical reasons and without the consent or knowledge of his wife and similarly if a woman underwent tubectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act might lead to mental cruelty. The bench also held that "a unilateral" decision of refusing to have intercourse for "considerable period" without any "physical incapacity or valid reason" may also amount to mental cruelty. This case is a major blow to women's rights and in fact also goes against the MTP act which clearly states that consent of husband is not required if the women fulfils the conditions and wants to end her pregnancy.

National Human Rights Commission as an alternative way of protecting human rights. Despite its weak foundation, NHRC (India) is effective and demonstrates that human rights protection does not have to rely entirely on the courts. Gradually it has become locus of human rights awareness at the national level.

The other important issues that NHRC has been concerned with are issues relating to HIV/AIDS and human rights. These include: consent and testing, confidentiality, discrimination in health care, discrimination in employment, women in vulnerable environments, children and young people, people living with or affected by HIV/AIDS and marginalized populations. After taking suo motu cognizance of the calamity arising from the devastating earthquake, which hit large areas in the state of Gujarat in 2001, NHRC constantly monitored the relief and rehabilitation measures undertaken by the government in the earthquake hit areas.

The most infamous case is that of Ajoy Ghose who spent 37 years in jail till November 1999. Arrested for killing his brother in 1962, he was subsequently certified as insane. While he was in prison, the trial judge and all the witnesses died. His mother too expired after which he passed through serious emotional upheaval. And since he was legally declared a lunatic, he was not tried. It was under the initiative of the then Chief Justice of India and now NHRC chairman, Justice A.S. Anand, that he was shifted from Kolkata's Presidency Jail to a Missionaries of Charity home. The Punjab and Haryana High Court has accepted in toto NHRC's recommendations for mentally challenged prisoners languishing in the jails of the two states.

7.10 Occupational Health

The commission took suo motu cognisance of a news item in the Sunday Observer in September 1996 captioned 'Death in the Air' and called for a report from the government of Madhya Pradesh. The report indicated that there were 134 slate factories which were set up in Mandsaur District of Madhya Pradesh. A majority of the workers employed in these
factories had been affected by the inhalation of silicon dust. The government had taken steps to provide medical facilities and ensure that all these workers were covered under the Employees State Insurance (ESI) scheme. There was a mobile van in operation to provide medical facilities to the workers. They were even provided with pensions on the declaration that the disease affected the worker, which was an occupational hazard. The district administration had advised owners of these factories to install BHEL machinery to minimise dust particles. However, many of the owners of these factories were unable to meet the cost of the sophisticated machinery. This resulted in the spread of silicosis dust and affected the workers’ health. The labour inspectors had visited the factories and prosecuted those who were not applying the minimum standards laid down. Having regard to the provisions of the Indian Constitution as well as to the International Human Rights instruments with regard to the right to life the commission gave the following directions to the state for compliance in future:—

1. To ensure the establishing of BHEL machinery in the factories to prevent dust pollution and to ensure that pollution free air is provided to workers.
2. Periodic inspection, on a monthly basis, by the Labour Department and reports made to the State Human Rights Commission for monitoring.
3. Widows and children of deceased workers to be taken care of by the factory owner by providing assistance.
4. To ensure that child labour is prevented by the following methods:
   a) Establishing schools at the cost of factory owners, with assistance from the State for the education of workers’ children.
   b) The provision of periodic payments for their education and insurance coverage at the cost of factory owners.
   c) The position of mid-day meals and clothing to dependent children or children of deceased workers.

7.11 Starvation Deaths

On December 3, 1996, the commission took cognizance of a letter from Chaturanan Mishra, then Union Minister for Agriculture regarding starvation deaths due to the drought in Bolangir district of Orissa. In a similar matter a writ petition 16 was filed by the Indian Council of Legal Aid and Advice and others before the Supreme Court of India under Article 32 of the Constitution. The commission observed that starvation deaths reported from some pockets of the country are invariably the consequence of mis-governance resulting from acts of omission and commission on the part of the public servant. The commission strongly supported the view that to be free from hunger is a Fundamental Right. Starvation, hence, constitutes a gross denial and violation of this right. 19 The commission organised a meeting with leading experts on the subject, in January, 2004 to discuss issues relating to Right to Food. NHRC report confirmed that at least 17 of the 21 starvation deaths reported in 1996-97 in Orissa were due to chronic hunger and malnutrition. All the deaths were in Kalahandi, Bolangir and Koraput or the severely deprived KBK region of Orissa. The report attributes the deaths to prolonged malnutrition and hunger compounded by extensive crop damage, poor income and inadequate relief measures. The commission has approved the constitution of a core group on Right to Food that can advise on issues referred to it and
also suggest appropriate programmes, which can be undertaken by the commission.

7.12 Mental Health

The commission also directed all the states and UTS not to chain the mentally ill persons. The issue came up earlier on the basis of a complaint from Prof. Dr. Nazneen of Shri Meenakshi Government College for Women, Madurai regarding the plight of mentally ill patients staying in Sultan Alayudeen Durgah, Goripalayam, Madurai (Tamil Nadu). Taking cognisance of the matter, the commission had constituted a committee to visit the Durgah and make specific recommendations in regard to the proper care and treatment of the patients.

The commission took suo-motu cognisance of a media report, which showed gory details of inhuman treatment meted out to inmates of an unlicensed mental asylum run by a quack at Saharsa in Bihar. The managements of the mental hospitals at Ranchi, Agra and Gwallor came under the scrutiny of the Hon’ble Supreme Court through Writ Petitions (C) No. 339/96, No. 901/93, No. 80/94 and No. 448/94 filed by social activists. The Supreme Court in its order dated 11th November 1997 requested the National Human Rights Commission to be involved in the supervision of the functioning of these three hospitals. In pursuance of the Order, the commission has been monitoring the functioning of these hospitals through its Special Rapporteur. It had constituted an expert group on 31st December 2001 for rehabilitation of long stay patients who are languishing in these three mental hospitals even after having been cured of mental illness.

7.13 Public Hearings on Right to Health Care

In November 2003, the commission approved a proposal received from the Jan Swasthya Abhiyan (Peoples’ Health Movement—a network of 1000 NGOs working in the health sector) to hold public hearings on Right to Health Care in five regions of the country followed by one at the national level in New Delhi. Subsequently, the western region hearing was held at Bhopal, Chennai, Lucknow, Ranchi and Guwahati. During these public hearings, selected cases or instances, wherein individuals or groups who have suffered denial of right to health care and have not received mandated health care from a public and private health facilities were presented. The commission brought victims, NGOs and concerned authorities on the same platform, which helped in the resolution of individual problems, identification of systemic problems and forging of partnerships. Over 1000 victims from marginalised sections presented their testimonies. The Commission and the concerned authorities are redressing their complaints.

Special presentations were made on issues such as women’s right to healthcare, children’s right to healthcare, mental health rights, right to essential drugs, health rights in the context of the private medical sector, health rights in situations of conflict and displacement, health rights in the context of the HIV/AIDS, and occupational and environmental human rights. In addition, the National Action Plan to operationalise the ‘Right to Health Care’ was proposed.

7.14 Organ Transplantation

The Transplantation of Human Organs Act, 1994 is a recent law and the judicial decisions are few.
It was enacted with a dual objective—to encourage voluntary donations of organs and to prevent commercial exploitation and organ trade. This law legalizes transplantation of human organs in cases of live donor, brain dead donors and donors who are considered dead in a conventional sense. The Act lays down detailed procedure for organ transplantation including setting up of various committees. Transplantation is permitted only in those hospitals which are specifically registered for the purpose.

In Santosh Hospitals Pvt. Ltd. vs. State Human Rights Commission the Madras High Court was considering a case of a hospital registered for kidney transplants. The complainant had undergone a kidney transplantation at this hospital under a visiting surgeon. Under the law such transplantation is permitted only in cases of relatives or out of love and affection. The donor complained to the State Human Rights Commission that though the donee had agreed to pay him Rs. 1,50,000 for his kidney he had been paid only Rs. 45,000. In the case it came out that the consent letter from the Authorisation Committee was a bogus one. The hospital tried to wash its hands off by arguing that it had only given surgical facilities to the doctor concerned and it was not otherwise concerned with this transplantation. The Human Rights Commission recommended a CID enquiry into the whole episode and further recommended that Rs. 30,000 be paid to the donor by the government. This order was challenged in the Madras High Court. To begin with, the high court held that the State Human Rights Commission had no jurisdiction in the matter since its jurisdiction under the Act which set it up was confined to dealing with actions of public servants and neither the hospital was a public hospital nor was the doctor a public servant. Thus the court quashed the order of the State Human Rights Commission. However, the court felt that the issue was very important any way and directed the Authorities to investigate the matter and punish the culprits.

S. Malligamma vs. State of Karnataka is a disturbing judgment. Live organ donations are permitted either in cases of near relatives or when it is done out of love and affection. This is to prevent widespread sale of kidneys by poor persons. Whether there exists a relationship of love and affection has to be decided by the Authorisation Committee. It was a case of kidney donation where the donors and donees were not related. They were not from the locality or place of origin and they were not from the same caste. The Authorisation Committee and the Single Judge of the high court rejected the application as there was no proof of any nature that the transplantation arose out of any love and affection between the parties, which is the legal requirement. The Division Bench, however, in effect allowed the transplantation by holding that if there was no proof of coercion such transplantation has to be allowed.

7.15 Prisoners And Health

In Ramamurthy vs. State of Karnataka the Supreme Court stated that ...the century old Indian Prison Act, 1894 needs a thorough look and is required to be replaced by a new enactment which would take care of the thinking of Independent India and our constitutional mores and mandate. The Supreme Court noted the century old Indian Prison Act, 1894 needs a thorough look and is required to be replaced by a new enactment which would take care of the thinking of Independent India and our constitutional mores and mandate. The Supreme Court noted the court that the century old Indian Prison Act, 1894 needs a thorough look and is required to be replaced by a new enactment which would take care of the thinking of Independent India and our constitutional mores and mandate. The Supreme Court noted the court that Society has an obligation towards prisoner’s health for two reasons: firstly, the prisoners do not enjoy the access to medical expertise that free citizens have. Their incarceration places limitations on such access, choice of physician, modes of taking second opinion, and access to any
specialist. Secondly, because of the conditions of their incarceration, inmates are exposed to more health hazards than free citizens.

Prisoners therefore, suffer from a double handicap.

In CEHAT vs State of Maharashtra and Ors Writ Petition No 3047 of 2004 decided on April, 20th 2005, the petitioners asked for the formation of a committee comprising a dietician and doctor to review the diet scales for prisoners in the jail, as their was discrimination being practised in jails based on the origin of the inmates. The court formed a committee and asked them to recommend new or modified diet scales based on physical needs and not on origin of prisoners. The committee suggested separate diet scales for males and females alongwith pregnant and nursing women and children. The state government agreed to implement the recommendations of the committee. The court also directed the jail authorities to follow rule 37 of the Maharashtra prison diet 1970 strictly. According to the rule a prisoner convict or undertrial should be given court before the laves for his hearing to the court and incase he is not been to prison it is the duty of the officer to provide whim with food if he will reach prison late after the hearing of his case.

R D Upadhyaya vs. State of AP, "2006 (4) SCALE 336 the Supreme Court carried out an in-depth examination of the issue and gave extensive directions with regard to the children of women prisoners, in a judgment delivered on April 13, 2006. The court took note of various provisions in the Constitution as well as laws enacted for the benefit of children. The court referred to a study on children of women prisoners in India, carried out by the National Institute of Criminology and Forensic Sciences. The salient features of this study are:

- Most children were living in difficult conditions and suffered deprivation relating to food, healthcare, accommodation, education and recreation.
- There were no programmes for the proper bio-psycho-social development of children in prisons. Their welfare was mostly left to the mothers. There was no trained staff to take care of the children.
- In many jails, women inmates with children were not given any special or extra food. In some jails, extra food was given in the form of a glass of milk; in others, separate food was being provided only to children over the age of five. The quality of food supplied was the same as that given to adult prisoners.
- No special consideration was given to childbearing women. The same food and facilities were given to all women, irrespective of whether their children were living with them or not.
- No separate or specialised medical facilities for children were available in jails.
- Most mother prisoners felt that the stay in jail would have a negative impact on the physical and mental development of their children.
- A crowded environment, lack of appropriate food and shelter, deprivation of affection by other members of the family, particularly the father, were perceived as stumbling blocks in the development of these children in their formative years.
- Mother prisoners identified food, medical facilities, accommodation, education, recreation and the separation of children from habitual offenders as six areas that require urgent improvement.
There were no prison staff specially trained to look after children in jails. Also, no separate office with the exclusive duty of looking after the children or their mothers. Firstly, the judgment makes clear that a child shall not be treated as an under trial/convict while in jail with his/her mother. Such a child is entitled to food, shelter, medical care, clothing, education and recreational facilities as a matter of right. The Court directed that before sending a pregnant woman to jail, the authorities must ensure that the jail has the basic minimum facilities for delivery as well as prenatal and post-natal care for both mother and child. If a woman prisoner is found to be pregnant at the time of her admission, or afterwards, arrangements must be made to get her examined at the district government hospital. The state of her health, pregnancy and probable date of delivery should be ascertained and proper prenatal and post-natal care provided in accordance with medical advice. The Supreme Court has laid down uniform guidelines applicable to all prisons in the country:

7.16 Conclusion
Establishing universal healthcare through the human rights route is the best way to fulfill the obligations mandated by international law and domestic constitutional provisions. International law, specifically ICESCR, the Alma Ata Declaration, among others, provide the basis for the core content of the right to health and healthcare.

Healthy living conditions and access to good quality health care for all citizens are not only basic human rights, but also essential prerequisites for social and economic development. Hence it is high time that people's health is given priority as a national political issue. The current health policies need to be seriously examined so that new policies can be implemented in the framework of quality health care for all as a basic right.

Indian Judiciary has included right to health in Article 21 which guarantees right to life and personal liberty. However for effective implementation of this right cooperation from other government organs, NGO’s, civil Society and medical professionals is required.

FOOT-NOTES
1 H G Balkrishna, New Dimensions of Law And Justice
2 Hon'ble Mr Justice A.M. Ahmadi, Judicial Process: Social Legitimacy and Institutional Viability, (1996) 4 SCC (Jour) 1
3 (1995) 3 SCC 42
5 (2001) 5 ALD 522 (LB),
7 AIR 1980 SC 1622
8 AIR 1992 SC 573,585)
9 1980 Cri LJ 1075 2 AIR 1997 Ori 3
10 AIR 1994 SC 1844
11 (1995) 2 SCC 648

CH. VII - Right to Health as a Fundamental Human Right in India: Constitutional and Judicial Responses
CH. VII - Right to Health as a Fundamental Human Right in India: Constitutional and Judicial Responses

12 (1995) 3 SCC 42
12a (1997) 2 SCC 83
13 1995 (2) SCC 577
14 (1995) 3 SCC 42
16 AIR 1991 SC 420: (1991) 1 SCC 598
17 (1990) 2 SCJ 10: AIR 1990 SC 630 = 1990 1 SCC 520
19 AIR 2002 AP 164
20 (1997) 2 SCC 83
21 (1996) 2 SCC 336
22 (1998) 8 SCC 552
23 (1998) 4 SCC 117
24 (See also K.P. Singh vs. Union of India (2001) 10 SCC 167)
25 AIR 2005 RAJ 317
26 (1998) 2 SCC 105
27 AIR 1997 SC 610
28 AIR 1969 SC 1 2 8
29 AIR 1989 SC 2039
30 (1991) 3 SCC 482
31 AIR 2003 Delhi 50
32 AIR 90 BOM 355
33 AIR 1996 SC 929
34 AIR 1997 BOM 406
35 2002 ACJ 32
36 AIR 2003 SC 664
37 *See also, Dr. Tokugha Yepthomi vs. Appollo Hospital and Annr AIR 1999 SC 495
38 (1996) 4 SCC 332
39 (1998) 7 SCC 579
39a 2003 1 BLJR 686
40 (2004) 6 SCC 422
41 1991(1) Bom. C.R. (p. 629)
42 (1995) 6 SCC 651
43 (2002) 6 SCC 635
44 (1998) 4 SCC 39
45 2004 3 CPR 27 (NC)
46 1994 3 C.PJ 89
47 AIR 1969 SC 128
48 AIR 74 SC 876
49 (1989) 3 SCC 223