

An analysis of Right to Health through the lens of various laws and Judicial Pronouncements in India

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Abstract: *The structural paradigm that defines and highlights human existence thrives on one basic yet the most fundamental premise and that is good health. It is on this foundation stone that the other rights rest as the exercisability of all other rights would remain futile in the absence of good health. The cyclical pattern reflects the existence of humans, the rights conferred on the human being and the exercising of such rights by him/her. The moot point is whether such rights can freely be exercised in the absence of good health. The answer would emphatically be in the negative as it is only in a good state of health that one can avail the other rights conferred on him/her. Health denotes a sound balance of the mind and body. It extends to the physical, mental and spiritual wellbeing of an individual. While good health is the right of all, the right to have access to mechanisms for safeguarding health is also available to everyone in the form of constitutional principles and the various laws existing in the domain. In India, the Right to Health as a substantial right is not embedded in the texts of the Constitution yet its importance has been in the limelight time and again through various judicial pronouncements, legislations and through liberal interpretations of some of the existing rights in the Constitution of India. It was owing to the ideals of the framers of the Constitution that many provisions for safeguarding public health found base in the texts in the Constitution of India under the head of Directive Principles of State Policies. The defining role of the Supreme Court as the guardian of human rights has been crucial in giving an outline to the parameters that surround the concept of Right to Health. The focus is thus to study the paradigm shift of the origin of Health as right and relevance of Right to Health and whether the Constitution mandates such a right and the new dimensions that have been associated with this right.*

Key Words: *Right to health, legislations, fundamental right, Constitution.*

“Our greatest happiness does not depend on the condition of life in which chance has placed us, but is always the result of a good conscience, good health, occupation, and freedom in all just pursuits” – THOMAS JEFFERSON¹

1. INTRODUCTION:

Health, though a relative term, is an all-encompassing concept shrouded with multiple rights. The recognition of the importance of health is certainly not of recent origin as it can be traced back to the ancient times as well when more traditional forms of medicines (as that of Ayurveda, Homeopathy, Yoga etc) were predominant. The branch of health and medicine grew on parallel lines and with the passage of time each demanded development pertaining to various aspects. Post the advent of the Constitution of India, health gradually found its way permeating into its fabrics, some explicitly as highlighted in Article 47 of the Directive principles of State Policies of the Constitution of India, while some gained momentum impliedly owing to the liberal course of interpretation undertaken by the judicial branch of our country, the paradigm example being that of Article 21 that covered the Right to life and Personal Liberty. The Right to life ingredient of Article 21 laid foundation from which emanated a whole new facet of the concept of the health and the allied rights associated with the concept. There has always been a clear interface between health and law and this is evident for the multiple court pronouncements and from the various enactments in which health does find mention. However, there still exists a palpable void reflecting in the lack of implementation at various levels. The concept of health has certainly gained impetus in letters through various provisions of the Constitution of India and several enactments yet on ground level the practical implementation as has been witnessed time and again has portrayed a blur picture of its realization. India, being a signatory to the various International instruments has been shrouded with a major responsibility to adhere to the Global standards and at the same time expected to strengthen its own base in expanding the idea of Right to Health as a Fundamental Right.

2. THE GENERAL AND SPECIAL LAWS GOVERNING RIGHT TO HEALTH:

2.1 CONSTITUTION OF INDIA

The Constitution of India is the paradigm source of all other laws that are fundamental in governance of the various sectors in the country. Every right whether found prominently in the text of the Constitution or indirectly through the judicial interpretations emanates from the letters of the Constitution of India.

It is a legal document that acts as a parent document which rests on two-fold principles;

- Lays down fundamental principles on which rests the essential fabrics of the society
- Lays down rules of governance that implies the ways in which the society is to be governed.

¹ Served as the third President of the United States

The essence of the Constitution is parallel to Kelsen's² theory of Grundnorm. That there lies an underlying basic norm on which rests all other norms. Norms basically refers to certain rules of functioning and codes of conduct. The Constitution is the supreme norm and that all other norms derive legality from the basic norm. The grundnorm with regard to the Constitution would be the basic structure³ of the Constitution. The Constitution includes not only the express provisions and implied provisions and the judicial decisions rather it also includes practices and conventions developed by the Constitutional functionaries. The Constitution is silent on certain issues and on those issues if there is no judicial decision then the concerned Constitutional functionaries develop practices and conventions. However, as was held in *B.R. Kapoor v. State of Tamil Nadu*⁴ that these practices have to be healthy practices and the concerned functionary has to act according to Positive Morality which means that adherence has to be given to the general principles of the Constitution. Positive morality here implies that the Constitutional functionary essentially deriving its existence and powers from the Constitution is essentially to act in accordance with the essential principles of the Constitution. Even if he has discretionary powers such powers are guided powers and it has to be guided by basic principles such as that of non-arbitrariness, fairness, reasonableness and should also be in sync with the principles of Natural justice. Even prior to the commencement of the Constitution there existed the concept of Constitutionalism. The central idea of Constitutionalism is that there can be a supreme document based upon some basic principles and philosophies and that document is effective enough to control, stabilize, and regulate the society. These principles are not external to the society rather they are found within the society itself and these are those principles that bring about coherence in the society. If the Constitution is based upon these principles and not influenced by some external factors then it will be effective enough in guiding the society. It is the identity and similarity of these principles within the society on which rests the effectiveness of the Constitution.

The society is dynamic and therefore the Constitution has to adapt itself to the dynamism and for that purpose through amendments, development of new practices and conventions, judicial interpretations, the Constitution may change itself so as to cater to the changing circumstances but the essence of the Constitution, i. e. the basic structure of the Constitution must never change. It is not only the idea that there exists a Constitution in place but the idea that it is constantly at work that is fundamental in the understanding of it an ever-evolving document.

There are two main forms of interpretation behind the applicability of the principles of the Constitution. They are;

- Heydon's⁵ rule or the mischief⁶ rule: the main idea is that the underlying philosophy behind any provision should be the removal of any mischief in the society. The mischief rule centered around the idea that the main purpose behind any statutory enactment should be the removal of any mischief that the particular enactment is aimed at removing and thereby advancing the remedy to do away with the existing mischief. This is done to suppress any form of ambiguity that is reflective in the aim of any enactment.
- Rule of Purposive Interpretation: any interpretation has to be done while upholding the purpose and spirit of the Constitution. That interpretation which serves the purpose of justice even if that amounts to a slight digress from the norms should be adopted while making decisions. However, digress should not violate the basic structure and the principles of the Constitution.

2.2 DIRECTIVE PRINCIPLES OF STATE POLICY AND ITS RELATION TO VARIOUS ASPECTS OF HEALTH

The DPSPs are laid down in Part IV of the Constitution of India. It basically stands for certain duties that has been cast on the state in order to protect the rights of the citizens and to which the citizens of the country resort to for effective implementation of their rights and to save them from any infringement or encroachment thereon. In relation to health there are certain Articles in the DPSPs that reflect the essence of public health and the role of the state in performing its duties towards effective realization of the goals of public health. The articles have been enumerated as under;

- ARTICLE 38⁷ – under this article there is no direct mention of public health but the attainment of social order is not possible without public health in place. Thus, achieving the standard of public health and the measures taken by the state form an important component of a just social order. The welfare of people can only be taken care of if there is a well-established mechanism of public health. Without the idea of a sound health for the citizens the idea of welfare and social order seems like a utopia as the enjoyment of the welfare benefits would be futile if there was a maligning health standard in the society.
- Article 39(e)⁸ – this article highlights the importance of safeguarding the health of the working population of the country. No one should be forced into working conditions detrimental for the health owing to any sort of economic handicap that the person may be a victim of.
- Article 39(f)⁹ – this article aims at the role of the state in directing its policies and programmes towards the development of children while according them equal and effective opportunities to allow them the space to grow in a healthy manner. While ensuring this the state government should also ensure that no child is a victim of any form of exploitation and that no child faces any form of abandonment whether it is in moral regard or in the material regard. Each child should be guarded in their right to live a life with dignity. Each of the opportunities can only come to life through the exercise of such rights and that is

² (1881-1973), Austrian Jurist and philosopher of law.

³ Propounded in the case of *His Holiness Kesavananda Bharti Sri Padgalvaru v. State of Kerela* (1973 SC)

⁴ Writ Petition (civil) 242 of 2001

⁵ Mischief rule was established in Heydon's case (1584) EWHC Exch J36.

⁶ <http://e-lawresources.co.uk/Mischief-rule.php>

Accessed on 19.04.2020.

⁷ "State to secure a social order for the promotion of the welfare of the people..."

⁸ "...that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength."

⁹ "...that the state shall, in particular, direct its policies towards securing that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment..."

only possible if they child is living a life of sound health. The holistic idea of a sound health is what will enable the child to be able live a wholesome life of dignity and to be capable of exhausting opportunities that are provided by the state. Thus, health has a fundamental role to play in the development of a child.

- Article 41¹⁰ - while emphasizing on the latter part of the article we often come to note that the role of the state should be in being able to provide for substantial assistance to people in special circumstances as when there is a need for it. Such action is to be taken in situations of unemployment or owing to reasons of old age or any form of disability that amounts to a handicap preventing people from exercising their rights to the optimum. Old age and sickness or disablement affects the health of the people thereby narrowing their opportunities and it therefore calls upon the attention of the state to work effectively in this domain. Whenever there is need for any public assistance in this regard the state should take action so as to be able to cater to their needs. The assistance could be in any regard and the field of health could be one of the aspects as well. If an ailing person requires medical assistance and is denied the same the state should step in to ensure that medical assistance is provided to the ailing person.
- Article 42¹¹ - this article enshrines upon the state to make provisions to devise mechanism for just and humane conditions of work. The word 'just' implies that the conditions under which a person works should be based on ethical and moral standards and should not be anything of substandard level. This ensures a sense of fairness at places of work. The word 'humane' calls for a more compassionate ground for work. These conditions have a considerable impact on the well-being a person both at the physical and mental level. Thus, it is of paradigm importance that the state looks in the conditions of work where the working population thrives. Unhealthy conditions at the work front can have debilitating effect on the health of individuals. It is of utmost importance that the work culture that contributes to the input of the country is kept healthy and thus working in conditions that offer promising results is the need of the hour and a deliberate effort on the part of the state machinery is a must to realise this goal and bring such a picture to life. As was held in *P. Sivaswamy v. State of Andhra Pradesh*¹² by the Supreme Court that under article 42 of the Constitution the state is under an obligation to make effective provisions for just and humane conditions of work. The apex court in yet another landmark judgment, *Bandhua Mukti Morcha v. Union of India*¹³ held that the right to live a life of dignity emanates not only from Article 21 of the Constitution but its root is also traceable back to Articles 39(e) and (f), 41 and 42 under the Directive Principles of State Policies.
- Article 47¹⁴ - the key words in this article are nutrition, standard of living and public health. All these factors are important indicators of health. It is incumbent upon the state to take care that the standard levels of nutritional needs of people are met efficiently. The important aspect of Right to life is that every being is entitled to a decent standard of living as it is vital to the essence of a meaningful life. While keeping a check on these factors the state is also to ensure that there is no misuse or abuse of any substance or any intoxicating drinks the purpose of which is to only serve as medicinal supplements. Abusing such substances can have deleterious impact on one's health and thus the state is to supervise that the availability of such substances are supervised.
- Article 48A¹⁵ - this article lays emphasis on the duty of the state to safeguard the environment. The causal relation of this article to the aspect of health is that environment is an important factor that determines the health of an individual. Environmental factors such as pollution can have a glaring impact on the health thus measures should be taken by the state to ensure that the surroundings should be well maintained as that goes in tandem with the health a people.

2.3 CONSTITUTIONAL PROVISIONS- FUNDAMENTAL RIGHTS THAT HAVE A RELATION TO THE ASPECT OF HEALTH

- Article 21: Article 21 serves as the base from which many rights have been derived and given substantial recognition. This article lays stress on the protection of life. Life is not guaranteed by the state as it is inherent in the very existence of an individual. What is guaranteed is the protection of that life and to make sure that the right to life of one person is not encroached upon by another person or even by the state. Life does not entail merely living but it stands for a meaningful existence and for this meaningful existence there exists allied rights that need recognition to make the idea of right to life a more holistic one. It branches out to other rights as well and within that ambit is a wide arena of rights that covers rights such as the right to live with dignity, the right to free medical aid, the right to a clean environment and many more. The word 'life' under this Article has been cloaked with interpretations by the Judiciary to give meaning to several unstated rights among which Right to Health has also been recognised and given due importance through a series of judgments.
- Article 23(1) – this article lays down the prohibition of traffic in human beings. Traffic in human beings is an offence from a larger point of view and from the point of health in the case of women who are victims of trafficking often are subjected to prostitution which can spread diseases like HIV/AIDS. This can have a debilitating effect on the health of women who fall prey to such heinous acts. The gory effect is on the physical well-being of a person as well as on the mental well-being. Being exposed to such heinousness can also hamper the psychology to a great extent and thus care has to be taken of the fact that the prohibition imposed on such acts is strictly adhered to. Health implies both physical as well as mental health. Every individual has a right over his/her body and a violation of this right goes against the right to life essence of an individual. Thus, being an

¹⁰ “...that the state shall within its economic capacity and development...provide public assistance in cases of unemployment, old age, sickness and disablement..”

¹¹ “providing for just and humane conditions of work and maternity relief”

¹² AIR 1998 SC 1863 , 4 SCC 466.

¹³ AIR 1984 SC 802

¹⁴ “...duty of the state to raise the level of nutrition and the standard of living and to improve public health.”

¹⁵ “protection and improvement of environment and safeguarding the forests and wildlife...”

important aspect of fundamental right, it is incumbent upon the state to ensure that strict action is taken against those who violate the prohibitions as laid down under this article.

- Article 24¹⁶ - this article is directed towards recognizing the fundamental right of children and the significance of growth in tender years. A child below the age of 14 years on being exposed to any hazardous environment can be subjected to severe health issues, both physical and mental health. This right first found substance in the Employment of Children Act, 1938. This act listed down the activities that could be hazardous for children below the age of 14 years. But there were some lacunae in the sense that it failed to include activities such as working at construction sites as being hazardous. Later through a judgment in People's Union for Democratic Rights v. Union of India¹⁷ the apex court held that construction work and such allied projects qualified to be a part of list of hazardous activities. In yet another landmark case, M.C. Mehta v. Union of India¹⁸ the apex court held that children should not be made to work or employed in factories that deal in manufacturing of matchboxes and any fireworks. Such activities can impact children by exposing them to harsh conditions and it can even lead to fatal accidents in some cases. Care should be taken to penalize factories that are involved in the employment of children of tender age in such factories. The Child Labour (prohibition and regulation) Act, 1986 in its definition of child lays down that anyone who is under 14 years of age category qualifies to be a child and is thus entitled to the protective provisions laid down for him/her. Section 3 of the enactment spells out the principle of article 24 of the Constitution in reiterating the fact that child labour should be prohibited in hazardous activities. Such activities also include carpet weaving. The noble idea behind ensuring such protective shield to the child of such tender age was that a child is rightfully entitled to education at that age and not meant to spend the phase of childhood in being engaged in activities that rob him of his childhood. The aim should be expansion of the abilities and not exposure to health hazards. This right is parallel to the principles as laid down by the International Labour organization (ILO). The ILO explicitly lays down that child labour is a gross violation of the human rights and fundamental rights. Child labour leads to physical and psychological damage of the child and obstructs the developmental aspect. The convention¹⁹ which is one of the instruments of the International Labour Organisation lays down the specific age for employment of children to different kinds of work. It lays down that the general minimum age for employment age of children should be 15 years (13 years for light work) and the minimum age for employment to hazardous work should be 18 years (16 years under strict conditions and supervision). Thus, the highlight of protecting children from engagement in hazardous activities is not just a part of Indian Constitution but also stems out from many other instruments.
- Article 243-G²⁰(panchayats) and 243 -W²¹(municipalities) – it is not only the duty of the state to safeguard the rights of the citizens but this field of duty also branches out to the Panchayats. Adequate measures have to be taken by the respective panchayats in ensuring that health related measures are taken and that the duties towards safeguarding the same are efficiently performed. The entries in the eleventh schedule that have a direct bearing on health-related factors are;
 - Safe drinking water.
 - Health and sanitation measures that include access to basic health care.
 - Measures to ensure family welfare.
 - Ensure women and child development.
 - Taking care of the welfare of the handicapped and mentally retarded sections of the society.
 - Constant water supply for essential industrial and commercial purpose.
 - Measures for solid waste management.
 - Timely regulation of slaughter houses and tanneries.
- The Three Lists of the Seventh Schedule – the Union List, the state list and the concurrent list – all the three-list entail list of items that falls with the domain of the Central Government, the state Government and jointly the Centre and the state Governments respectively. There are items mentioned in each list that are reflective of the aspect of health that each of such items is directed towards. Each of the item form essential component that determine the various factors pertaining to health cumulatively and some of the items mentioned in each list are;

¹⁶ “No child below the age of fourteen years shall be employed to work in any factory or mine or employed in any hazardous employment.”

¹⁷ (AIR 1982 SC)

¹⁸ AIR 1991 SC

¹⁹ Minimum Age Convention, 1973(No. 138)

²⁰ Powers, authority and responsibilities of Panchayats Subject to the provisions of this Constitution the Legislature of a State may, by law, endow the Panchayats with such powers and authority and may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats, at the appropriate level, subject to such conditions as may be specified therein, with respect to

(a) the preparation of plans for economic development and social justice;

(b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule

²¹ Powers, authority and responsibilities of Municipalities, etc Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow

(a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to

(i) the preparation of plans for economic development and social justice;

(ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;

(b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule

- Union List²² : port quarantine that includes hospitals, regulation of labour and measures for safety in mines and oil fields, census as census helps gather relevant data and enables the government to set up health services and also helps in understanding the welfare of the family and a general idea of the existing population helps in understanding the disparity that may exist both at the central as well as the regional level, the duties that are to be imposed on products like tobacco.
- State List²³ : items such as public health and sanitation, regulation of the sale, manufacture and production of intoxicating liquors, relief measures for the disabled and unemployed, water supply, canals and irrigation facilities, regulation of burials and burial grounds and cremation grounds.
- Concurrent list²⁴: issues like lunacy and mental deficiency, population control and planning, welfare of labour that includes the conditions of work, provident funds, compensation, medical education, medical professions, statistics pertaining to births and deaths.

3. RIGHT TO HEALTH AS RECOGNISED UNDER VARIOUS STATUTES:

Apart from the Constitution of India and its various articles that are indicative of Right to health as a Fundamental Right, there are various legislations passed and statutorily recognized in India that derive its source and power from the Constitution of India and are also reflective of the principles that advocate the cause of health and reiterates the fundamental essence that Right to Health has.

MEDICAL HEALTH LAWS

- **CODE OF MEDICAL ETHICS** – the word ethics stands for certain moral principles and adherence to the same. Ethics are generally inherent in the nature of profession and thus form an integral part of any profession. The Right to Health envisages not just life with adequate food, clothing and shelter rather it also entails the right to be free from any diseases to be able to live a wholesome life. Whenever the health is affected by factors known or unknown the common resort is to approach a medical professional. The medical professional cannot be guided by immoral principles in dealing with the person who has sought medical help. It is this jurisprudence behind the medical profession that calls for certain guiding principles that amounts to ethical considerations and practices in dealing with the cases at hand. Along with the responsibility towards the stakeholders comes an added responsibility of being able to function on parallel grounds as that of values. The responsibilities are highly loaded with values. Often doctors and medical professionals are given the respect and status of God as they have in them the ability to save lives on the basis of expertise they hold. But to enable people to freely approach the medical experts there needs to be a relationship of trust between the patients and doctors. This relationship of trust also falls under the value-laden aspect of ethics. The larger goal of medical profession is to serve humanity and thus the foremost consideration guiding any medical expert is to undertake the art of healing and not to be swayed by financial gains or even prioritizing monetary benefits over the cause of humanity. The doctor patient relation qualifies to be a healthy one if the principles laid down are adhered to. The aim of the code of medical ethics is thus to create a strong foundation for upholding the cause of humanity that serves the larger goal of ensuring health to all despite factors that disable some to approach and seek medical help. These codes bind not legally but morally and thus have a great impact on the sustenance of good health which is the paradigm aspect of one's Right to Health. Some of the duties of doctors are to provide effective treatment to patients and also maintain secrecy in cases that require the maintaining secrecy, to obtain informed consent from patients before exposing them to any form of medical examination or any medical procedure, regular reporting of cases of deaths that occur in the hospitals, reporting of cases that are covered under privileged communication but that fall within the criteria of exception, to attend cases of accidents and provide immediate relief to victims of accidents as that should be the basis of prioritizing treatment rather than expecting compliance of procedures in the first place, attending emergency cases without undue delay, conducting regular medico legal examinations under guided supervision, regular notifying of the number of births and deaths in the hospital as that forms an integral component of maintaining relevant data, the doctors and other medical personnel should refrain from engaging in unethical practices such as that of indulging in advertisement, illegally running of a medical shop, practicing euthanasia illegally as that is in gross violation of the right to life as guaranteed under the fundamental rights as guaranteed under the Constitution of India.
- **THE DRUGS AND COSMETICS ACT, 1940** – this act was brought in place to regulate the sale of drugs and cosmetics. This also covers the aspect of import, manufacture and distribution of such drugs and cosmetics. The legislative intention behind this act was to ensure that there is substantial compliance to the standards laid down for the quality of drugs and cosmetics bought into the market and that there is adherence to the compliance mechanisms for the sale, manufacture or import of any such drugs and cosmetics. The act also enables that such sale or manufacture of drugs and cosmetics has to be done by qualified persons only. It also aims at preventing the sale of substandard drugs that could have a harmful impact on the consumer. The word 'drug'²⁵ as defined in the act includes all forms of medicines that are used externally or administered internally both on humans as well as animals. These medicines or substances are used for an array of purposes ranging from diagnosis, treatment, mitigation or prevention of any disease(s) in both humans as well as animals. Since there is wide usage of medicines in today's day and age and the high degree of dependency on such substances make it further more incumbent upon

²² List I – Union list.

²³ List II – State list.

²⁴ List III - Concurrent list.

²⁵ Section 3

authorities to maintain stringent checks on the compliance mechanisms that the variety of drugs and medicines have to go through. Any lapse in this area can have serious ramifications and may result in detrimental effects on health. The definition of drug not only comprises of medicines and substances but also covers external equipments that are used in the early diagnosis and treatment of different kinds of diseases. Whether such devices have conformed to the safety and standard norms are aspects that fall within the domain of this act. This act also lays down clearly as to the prevention of sale of misbranded drugs²⁶, adulterated drugs²⁷, any spurious drugs²⁸. The act authorizes the Central Government²⁹ to prohibit the import of certain drugs and cosmetics if the prohibition lies in the larger interest of the public. Such prohibition can be done on certain grounds if the drugs have the capacity to harm human beings or animals or if the drug has no therapeutic purpose or value to it even if it claims some value, the Government is authorized to put restrictions on the import of such drugs. The act specifies the standards of quality³⁰ that the drugs are to adhere to, the standards have been enumerated in the second schedule to the act. The act covers penalties³¹ for violating the provisions of the act. The Drugs and Cosmetics (Amendment) Act 2008 further enhanced the penalties and punishments substantially to the effect that there would be life imprisonment for offenders dealing in drugs that are adulterated or spurious and that can cause grievous hurt. The minimum sentence prescribed could be extended to life imprisonment. This stringent punishment can act as a deterrent factor against such malpractices in the domain of drugs and other therapeutic substances that can ultimately result in great detriment to health. Right to Health also envisages the right to quality drugs and as such the assessment criteria as laid down under the act is important. However, the act wasn't free from receiving flak on account of few lacunas. The act at the foremost is an old act that dates back to 1940. The times have undergone tremendous change ever since then and thus the act seems deficient to be able to meet the humungous change of the present times. Despite the amendments that have been made in the act it still lacks behind in not bringing within its ambit the myriad range of drugs and the regulations that follow. The difference between effectiveness and efficacy of a drug still remains blur, and clarity is needed for better understanding of the terms and meaning that follow suit. The Lancet Journals clearly spells out this point by providing that - "*The Cochrane Collaboration defines efficacy as the "extent to which an intervention produces a beneficial result under ideal conditions", and effectiveness as the "extent to which a specific intervention, when used under ordinary circumstances, does what it is intended to do". In requiring new drugs to be "effective for use" since 2001, India's rules have imposed a high standard that should not be confused with "efficacy" which applies in ideal clinical conditions and is generally determined in trials done in tightly defined populations. The 2013 Bill, however, does just that, undermining the need for evaluation of effectiveness.*"³² Also, the provisions pertaining to clinical trials also need to be re- assessed as the provisions related to clinical trials are still weak. Emphasis should be more drawn to the fact as to why and when clinical trials are needed rather than on 'how' they are to be conducted. Thus, a more meaningful revision of the act is needed that would strengthen the regulatory mechanisms as set up under the act and enable more clarity and specificity on certain provisions in the act. This would be a milestone towards the fulfillment of the aim of Right to Health for all.

- **THE DRUGS AND MAGIC REMEDIES ACT** – the underlying aim of this act was to work on the level of awareness regarding certain beliefs of people and to put a curb on the advertisements of certain drugs or magic remedies that claimed to have life changing effects. Being driven to such advertisements was not very difficult as there was prevailing lack of awareness in the society. Another major cause could be for people looking for quick remedy especially the poor sections of the strata who could be easy victims to get swayed by such advertisements in order to be able to procure a reasonable and quick treatment through such magic remedies or such drugs that claimed to have miraculous benefits. Cases were on the rise where people would fall prey to such advertisements and thus it was pertinent for the government to draw up a legislation to put hold on such practices and also to make it penal in most cases. The term 'magic remedy'³³ under the act refers to various forms of talisman (it could mean an object like a ring or any kind of stone the use of which was advertised to attract luck and healing), any kind of mantra the recitation of which could offer healing benefits. The main motive behind these claims would be to lure people into believing the claims and derive monetary benefits out of it. India is a country where belief and faith has always formed a very strong base. Running on this faith is the belief of hundreds of scores of people dependent on the traditional ideas and the embedded systems. Though the purity of such traditional belief system could not be denied but gradually the misuse of such belief system to mould it into fooling the less aware mass of people was also an existing fact that needed to be redressed and this act serves the basis for the same. People have often been carried away by the words of sages who often offered alternate means of cure and most of the time their words carried some weight as many of them had dedicated a great span of their life into studying the traditional patterns of healing that could include the use of certain objects or stones. But with the rapid growth of commercial sphere many self proclaimed god men use their traits on innocent people to draw them into believing that magical remedies would offer them faster results. It was to remove this existing mischief that this act found base in the list of legislations.

²⁶ Section 9

²⁷ Section 9 A

²⁸Section 9B

²⁹ Section 10A

³⁰ Section 16

³¹ Section 27 to 30

³² [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(14\)60059-3/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(14)60059-3/fulltext)

Accessed on 20.04.2020.

³³ Section 2 – a talisman, mantra, kavacha, and any other charm of any kind which is alleged to possess miraculous powers for or in the diagnosis, cure, mitigation, treatment or prevention of any disease in human beings or animals or for affecting or influencing in any way the structure or any organic function of the body of human beings or animals.

Some of the examples of such advertisements could include;

- Offering guaranteed cure for life threatening diseases like cancer or AIDS,
- Offering alternate cures for epilepsy that would certainly cure it from the roots.
- In another glaring example “Consumer Education and Research Society, Ahmedabad, brought to the notice of the regulatory authority in Gujarat, sale and promotion of certain health gadgets by Conybio Health Care, in violation of Drugs and Magic Remedies (Objectionable Advertisements) Act. Company was found promoting and distributing sun shades to cure migraine and sun stroke, socks for acidity, pillow covers for spondylitis, palm guards for Parkinson's disease, eye-shades for sinusitis, T-shirts for high or low blood pressure, short pants that cure gas, acidity, prostate, piles, urinary system problems, bed sheets for paralysis strokes. When the regulator asked the company to produce scientific evidence to support the effect of infrared rays which it claimed to be present in the products, the company said it had never undertaken such studies by any recognized Indian Misleading Advertisements and Consumers Institute. Subsequently, the regulator prohibited the sale and promotion of the products.”³⁴ The act prohibits the advertisements³⁵ and the participation of any person in the publication of any such misleading advertisements that offered guaranteed cure for specific diseases or disorders. The act also prohibits the advertisements pertaining to any drug the nature of which would be to provide a false impression³⁶ of the drug and that the drug would provide miraculous cures. The act however has not escaped from receiving flak as the act itself is quite narrow in including specifically advertisements in the print media but a direct mention of advertisements on the internet and television has not been clearly included within the ambit. The act also does not include people who make spiritual claims and offer promising results to people. A stringent action is needed in this regard as the present time has witnessed many people who come forward with such spiritual claims and deceive people who are less aware and end up investing a huge sum of money. There is a need for more self-regulation and the clear identification of spots and areas in which people can be easily fooled as consumers. A strict call should be taken against doctors who exhibit advertisements that are misleading. There should be a committee set up in collaboration with the drug controllers, the pharma associations and doctors to look into such matters and report the same immediately. Pre vetting (pre clearance) can be beneficial to curb the advertisements from even entering the market. The punishment should be made more severe for certain advertisements as that would act as a deterrent against people indulging in such advertisements. There should be regulation of TV channels to stop them from displaying any kind of misleading advertisements.

• NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985(NDPS)-

This act finds its Constitutional base in Article 47³⁷ of the Constitution of India. The statutory mechanism was already in place in the form of acts such as Opium act of 1857 and 1878, the Dangerous Drugs Act of 1930. It was to fill in the lacunae in these acts that a need for a more comprehensive form of legislation was felt and thus the NDPS act was brought in place.

Drug abuse has been a lingering problem in India. The impact of drug abuse can have a glaring effect on a number of factors and health is one of the prime factors. Drug abuse not only affects the physical health but has a debilitating effect on the mental health of a person as well. The dependency and later transformed form of addictiveness on certain substances can even lead to fatal ends if not checked upon at the right time. In terms of health, it can severely affect the mortality rate, morbidity rate, can cause psychiatric and physical disorders, in many cases even lead to depression when there is a withdrawal of such drugs from being used. To control and keep a check on such illicit use of drugs the joint effort would be needed in terms of devising health measures as well as mechanisms to control trafficking or smuggling of such drugs would be needed. The act enables stringent provisions by providing better control and regulation of operations that are pertaining to such drugs and substances as mentioned in the act. It also lays down that any property over which trafficking or smuggling of such substances is taking place is liable to be forfeited. The provisions of this act are in keeping with the principles laid down in many international conventions. The term narcotic drug³⁸ includes coca leaf, cannabis, opium, poppy straw and many other manufactured goods. Psychotropic substance includes all those substances which can either be natural or synthetic those are included in the list of psychotropic substances. The central government³⁹ is authorized to take measures for combating the menace of drug abuse and illicit trafficking and also measures to spread awareness and education about such substances. In terms of health the Central Government makes provisions for aftercare and rehabilitation of addicts.

• THE EPIDEMIC DISEASES ACT, 1897-

The aim of this act was in the domain of public health and keeping a check on the control of epidemic diseases. Recently owing to the spread of the corona virus (2019) that shook the world, many states have invoked the provisions of this act to take adequate measures in preventing the rampant spread. The act empowers both the central and state governments to take certain measures in preventing the spread of epidemic diseases. The act comprises of just four sections. Sections 2 and 2A empower the state and central governments respectively to take measures such as that of issuing public notice laying down regulations that are to be followed during the epidemic phase. Section 3 of the act is to be read with section 188⁴⁰ of the Indian

³⁴ CERS Press Release, Nov 21, 2003.

³⁵ Section 3

³⁶ Section 4

³⁷ “state shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health”

³⁸ Section 2

³⁹ Section 4

⁴⁰ Disobedience to order duly promulgated by public servant.—Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management,

Penal Code, 1860(IPC). Any person found to have flouted the regulations laid down by the government shall be punished under section 188 of IPC. The recent (year 2020) pandemic situation owing to the Coronavirus outbreak has further increased the responsibility of the government in laying down broad regulations and considering the seriousness of the COVID- 19(Novel Coronavirus) case any person who violates the regulations laid down by the government will be penalized under section 188 of IPC and the latter part of the section will be applied to him/her as it would amount to posing a danger to human life. Under section 188 of IPC the ingredient of intention is not needed and a bare knowledge of the incident and its consequences is sufficient to hold the person guilty of the act and thus he/she can be held liable under section 188 of IPC. Under section 4 of the Epidemic Diseases Act, public servants are provided protection against any legal action while they are discharging their duties towards maintaining the law-and-order situation in the areas that are under the regulatory norms. In doing so if they happen to take any step that goes beyond the limits of the discretion they are guarded against legal action in the sense if the exceeded use of power or authority has only been done in good faith.

In conjunction with section 188 of IPC there are other relevant provisions of the IPC that can be attracted in cases of epidemic diseases; Section 269⁴¹ prescribes punishment of six months and/or fine in case there is a lapse or any negligent action by anyone and that negligent act can amount to the spread of the infectious diseases thereby posing a threat to human life. Section 270⁴² is more stringent as compared to section 269 of IPC in the sense that it prescribes a harsher punishment of imprisonment of up to two years and/fine. Section 270 is directed towards punishing malignant actions in the spread of infectious diseases which may result in danger to human life. The term malignant in the context of diseases implies something that is virulent and highly infectious. Owing to the pandemic scenario of COVID 19, the government has also laid down rules and regulations for observing quarantine for a period specified (currently the period of 14 days has been prescribed for observing quarantine). If there is any lapse on the part of anyone and if quarantine rule is disobeyed, this act of disobedience attracts section 271⁴³ of IPC which prescribes a punishment of six months and/or fine for violating the quarantine rule during an epidemic or a pandemic. The act however needs a revisit in being more explanatory in nature. The diseases that fall under the epidemic category has not yet found place in the act despite the bill introduced in the year 2017, Public Health (Prevention, Control and Management of Epidemics, Bio Terrorism and Disasters) bill. The bill hasn't seen the light of the day yet. Also, the act lacks in the outlook to face modern day realities on account of sudden outbreaks. A brief understanding of few terms considering the recurring use of these terms in the present times;

QUARANTINE – the dictionary definition of the term quarantine entails the meaning of it as “a state, period, or place of isolation in which people or animals that have arrived from elsewhere or been exposed to infectious or contagious disease are placed.”⁴⁴

EPIDEMIC – refers to the widespread occurrence of an infectious disease in a community at a particular time.⁴⁵

PANDEMIC – a disease that is prevalent over a whole country or the world.⁴⁶

• THE TRANSPLANTATION OF HUMAN ORGANS ACT, 1994 (THOA) –

The point that is of relevance from the health perspective is transplantation of human organs for ‘therapeutic purposes. The term therapeutic purpose implies the “*systematic treatment of any disease or the measures to improve health according to any particular method or modality*”.⁴⁷ To enable cure and treatment of certain diseases the transplantation of organs plays a vital role in the up keep of a sound health. But such transplantations require a system of regulation as without the existence of such regulatory mechanism in place there are grave chances of misuse that may tantamount to commercial dealing of organs thereby defeating the noble purpose behind transplantation of organs. The act envisages provisions that lay down the authorities that can be involved in the granting and supervision of transplantations, it also covers the areas defining as to who is capable of donating organs and who is fit to undergo transplantation with the organ that has been donated. It lays down the criteria for being a donor or donee. The act also lays down safeguards for hospitals⁴⁸ that are legally registered to conduct such transplantations and measures for preservation and safety of the organs kept for transplantation are also provided under the act.

disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both; and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. Explanation. —It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.

⁴¹Section- 269. Negligent act likely to spread infection of disease dangerous to life. —Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

⁴² Section -270. Malignant act likely to spread infection of disease dangerous to life. —Whoever malignantly does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

⁴³Section - 271. Disobedience to quarantine rule.—Whoever knowingly disobeys any rule made and promulgated [by the 2[***] Government 3[***] for putting any vessel into a state of quarantine, or for regulating the intercourse of vessels in a state of quarantine with the shore or with other vessels, or for regulating the intercourse between places where an infectious disease prevails and other places, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

⁴⁴ <https://www.lexico.com/en/definition/quarantine> - accessed on 21.04.2020

⁴⁵ <https://www.lexico.com/en/definition/epidemic> - accessed on 21.04.2020

⁴⁶ <https://www.lexico.com/en/definition/pandemic> - accessed on 21.04.2020

⁴⁷ <https://www.lawinsider.com/dictionary/therapeutic-purposes> - accessed on 21.04.2020

⁴⁸ Chapter III of the act.

However, despite the penal provisions laid down in the act there is rampant commercial dealing⁴⁹ of organs and thus more stringent actions are needed to curb such illicit practices and maintain the sanctity of the act.

4. LAWS ON ENVIRONMENT AND HEALTH:

It is pertinent to note that there is a profound impact of environment of the health of an individual. The relation of man with that of his environment and vice versa is of fundamental importance that makes environment an essential determinant in the field of health. The sustenance of good health depends on the environmental factors and beyond. Healthy and clean environmental conditions imply healthy life whereas a disturbed environment is indicative of the imbalance that is reflective in the health cycles of individuals thriving in those environmental conditions. The WHO defines environment in its relation to health as *“all the physical, chemical and biological factors external to a person, and all the related behaviours.”*⁵⁰ The two categories of environment are inter-related and dependent. Man-made environment can have direct bearing on the natural environment as it can alter the conditions of natural environment. The setting up of industries and factories, the technological innovations etc. can have a grave impact on the surroundings hampering the layers of the physical environment. Thus, care has to be taken to raise the accountability levels of people in their actions towards the natural environment. The Biosphere environment that comprises of air, water, land and all life forms can have a direct bearing on human life. Any disruption with the quality of air or water can impact human life as their existence is heavily dependent on air and water. Poor quality air can result in numerous health hazards and water if not palatable can further lead to ill effects on health. Thus, harmony is needed to maintain balance between the forms of environment for sustenance of human life.

On the international front the importance of environment and its sound impact on human survival was recognized through -

- **STOCKHOLM CONFERENCE, 1972** - this was the first ever conference on environment and sustainable development. It was held on account of the growing concerns with regard to the environmental hazards that had become a major concern for many countries. The aim of the conference was to carve out substantial plans in enabling the governments to preserve the environment. The declaration of the conference emphasized on the relation of right and duty between man and environment. While every human had a right to a clean environment and a corresponding duty to save and preserve the environment. The conference listed down few factors responsible for degradation of the environment that entailed industrial waste, emissions from factories, technological advancements too could have a bearing on impacting the environment, chemicals from industries etc. The declaration thus sought to undertake studies in the area of conducting scientific studies into the effect of various pollutants on the environment. Also, to lay down international standards for pollutants.

The Stockholm conference laid the foundation for further environment related conferences that worked towards the preservation of environment. The Earth Summit in 1992 was indicative of the global attention and shift towards the environment and the concerns surrounding it. The summit reflected the relation between man, environment and the climate. Scientific studies conducted in this regard found that human activity could have a major impact on environment and climate. Thus, the significance of the human- environment relation had found base in many international conferences and even till today it remains a topic of concern as the challenges posed by global warming has crippled the environment on a massive scale and measures to battle the same has been at the forefront concern of experts in the environmental field as well as experts in the field of health.

- **INDIAN SCENARIO ON ENVIRONMENT AND HEALTH** – In India the importance of environment and environmental protection aspects are embedded in the Constitution of India in the form Directive Principles of State Policies as well as in the form of Fundamental Rights.

It is pertinent to note that Article 21 has undergone various interpretations and expansion with the judiciary extending the meaning and bare text of the Constitution that lays down the Right to life and Right to personal liberty. Two major breakthroughs that the widening scope of Article led to were;

- a. That Article 21 and the various laws impacting personal liberty has to pass the test of Articles 14(Right to Equality) and Article 19 (various Freedoms guaranteed to citizens) as was held by the Supreme Court in *Maneka Gandhi v. Union of India*⁵¹ and that any act of deprivation of liberty had to be tested on the anvil of fairness, it should have been just and reasonable, the test of reasonableness was also laid down by the Supreme Court in *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi*⁵².
- b. The second breakthrough was that Article 21 paved way for many implied fundamental rights that gained ground owing to the judicial interpretations over time. Out of these branched out rights emerged the Right to a clean environment as a part of Right to life.

There has been an array of cases that later paved the way of associating environment and its relation and to health as well as human activities that could profoundly impact the environment in myriad ways. The Right to life entailed the Right to a wholesome environment as was laid down in *Subhash Kumar v. State of Bihar*⁵³, the devising of the polluter pays principle which implies that the polluter account for the remedial as well as compensatory mechanisms to victims of pollution as was laid down in

⁴⁹ <https://mumbaimirror.indiatimes.com/mumbai/crime/im-a-victim-of-organ-trafficking-not-a-criminal/articleshow/68473716.cms> - accessed on 21.04.2020

⁵⁰ <https://www.healthypeople.gov/2020/topics-objectives/topic/environmental-health> - accessed on 22.04.2020

⁵¹ AIR 1978 SC 597, 623 – 4.

⁵² AIR 1981 SC 746, 749-50

⁵³ AIR 1991 SC 420, 424

India Council for Enviro-legal Action. Union of India⁵⁴, the precautionary principle envisaged by judicial interpretations that implied that the onus lied on the developer or industrialist to prove that their action was benign in nature in impacting the environment as was laid down in Vellore Citizens' Welfare Forum v. Union of India⁵⁵. The list of cases is not exhaustive and over the years many facets have evolved pertaining to the new dimensions of Right to clean environment and health and role of human activities impacting the same.

DIRECTIVE PRINCIPLES OF STATE POLICIES – the 42nd amendment to the Constitution of India added Article 48(a) in Part IV of the Constitution of India that provides for the protection and preservation of the environment as well as safeguarding of forests and wildlife. This article imposes a duty on the state to ensure that measures are taken concerning the same. While under Part IV A that deals with Fundamental duties, Article 51A⁵⁶ enshrines upon the citizens of the country to be dutiful towards safeguarding the environment.

ENVIRONMENTAL EDUCATION - To achieve and realize the Right to clean environment and thereby achieving the aim of healthy body and mind in a healthy environment it is of fundamental importance that education be fostered in this area as it is through the tool of education that awareness about various aspects of environment and health can be made. Environmental Education has been explained⁵⁷ by UNESCO to be inclusive of self-realization based on moral principles as a duty to maintain and safeguard the surroundings as well the imparting of ideas and values around the same Impacting health is a list of many diseases⁵⁸ the cause of which has been partly attributed to environmental causes as well. Some of the diseases are;

- Cancer
- Heart disease
- Diabetes
- Malaria
- Depression
- Parkinson's disease
- Obesity

The list is not exhaustive and new challenges before the environment and human- environment inter relation have been giving way to a host of new diseases.

The food production for instance requires the use of pesticides and fertilizers and that impacts the environment in an unhealthy way. Deforestation on a massive scale has proved detrimental to health as well.⁵⁹ Deforestation can be a major cause of air pollution and air pollution in itself has exposed scores of people to severe health hazards ranging from respiratory diseases.⁶⁰ There have been legislative efforts towards safeguarding the environmental health. The legislations in this regard are;

- **The Environment (Protection) Act, 1986** – this act was a huge milestone towards realizing the ideal of healthy environment. The act empowers Central Government to take actions for the preservation of environment and also actions against people indulging in activities that have a glaring effect on the environmental health.
- **The Water (Prevention and Control of Pollution) Act, 1974** – this act was brought into force to deal with the factors that lead to water pollution, for the prevention as well as control of water pollution. The act lays down certain prohibitory norms relating to discharge of pollutants in water; also, it lays down compliance measures to be adhered by industrial units the violation of which would attract penalties. Water is an important natural resource thus maintaining the wholesomeness is crucial also because it has to be palatable for human consumption. Water pollution can have grave impact on human life⁶¹ as well as marine life. Dumping of plastic wastes is one of the major causes that lead to water pollution.⁶² Thus there should be adequate measures by the authorities in place to combat issues that add to the problem of water pollution.
- **The Air (Prevention and Control of Pollution) Act, 1981** – this act was brought in place to lay down provisions for the prevention and control of air pollution. Air pollution can lead to the causation of several diseases and can have a serious impact on an individual's health.⁶³ The act in turn lays down norms for prohibiting polluting fuels and other substances that add to air pollution. The act also lists down the compliance safeguards for the use of certain appliances as certain appliances add to pollution levels from its emissions. Thus, it is important to keep the pollution levels in check and regular monitoring of the emission levels. Severe pollution levels can lead to fatal ends owing to causes such as permanent brain

⁵⁴ (Bichhri Case) AIR 1996 SC 1446, 1466; Vellore Citizens' Welfare Forum v Union of India, AIR 1996 SC 2715, 2721; S. Jagannath v Union of India (Shrimp Culture Case) AIR 1997 SC 811, 846, 850

⁵⁵ AIR 1996 SC 2715, 2721; S. Jagannath v Union of India (Shrimp Culture Case) AIR 1997 SC 811, 846, 850; A.P Pollution Control Board v Prof. M.V. Nayadu AIR 1999 SC 812, 819

⁵⁶ 51A(g) – it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures

⁵⁷ "Environmental education is the process of recognizing values and clarifying concepts in order to develop skills and attitudes necessary to understand and appreciate the interrelatedness among man, his culture, and his bio-physical surroundings. It also entails practice in decision making and self-formulation of a code of behavior about problems and issues of environmental quality."

⁵⁸ <https://www.thehastingscenter.org/briefingbook/environmental-health/> - accessed on 22.04.2020

⁵⁹ <https://www.timesnownews.com/mirror-now/in-focus/article/cutting-down-of-trees-in-mumbais-aarey-forest-will-do-more-harm-than-we-know/484890> - accessed on 22.04.2020

⁶⁰ <https://www.who.int/airpollution/infographics/Air-pollution-INFOGRAPHICS-English-1.1200px.jpg?ua=1> – accessed on 22.04.2020

⁶¹ <https://www.theworldcounts.com/challenges/planet-earth/freshwater/deaths-from-dirty-water> - accessed on 22.04.2020

⁶² <https://www.theguardian.com/environment/2019/aug/05/plastic-poverty-and-paradox-experts-head-to-the-ganges-to-track-waste> - accessed on 22.04.2020.

⁶³ <https://www.who.int/airpollution/news-and-events/how-air-pollution-is-destroying-our-health> - accessed on 22.04.2020

damage as being just one the several causes.⁶⁴ To live a wholesome life environmental factors such as that of clean water and air require being wholesome as well. To realize one without the other is not comprehensible.

- **The National Green Tribunal Act, 2010** – this act was brought in place for setting up of a National Green Tribunal (NGT) that would expedite disposal of cases pertaining to environmental issues. Recently the NGT was in news as it dealt with the issue of illegal mining in the North Eastern State of Meghalaya.⁶⁵ The issues of illegal mining have claimed several lives and stringent measures in this regard was the need of the hour. This was not just in violation of environmental norms but also in gross violation to Right to life guaranteed by the Constitution of India. The Meghalaya illegal mining issue claimed several lives some of whom were children below the age of 14 years and that again flouts the protection against exploitation as guaranteed by the Constitution of India. A concerted effort in this direction was needed to deal with the ills against the environment as well as protecting the rights of humans affected by factors related to environment.
- **Hazardous Waste Management Regulations** - hazardous waste is defined as “*Hazardous waste means any waste which, by reason of any of its physical, chemical, reactive, toxic, flammable, explosive or corrosive characteristics, causes danger or is likely to cause danger to health or environment.*”⁶⁶
- **Public Liability Insurance Act, 1991** – this act was basically aimed at providing damages to people who had been victims of any form of accidents owing to the handling of hazardous substances. This act brought within its ambit every owner who was working in the field which required handling of hazardous substances or any hazardous chemicals.

5. OCCUPATIONAL HEALTH LAWS:

- **The Workmen’s Compensation Act, 1923** – the main aspect of this act was to foster compensatory mechanisms for workers who had been victims of any occupational accidents and thereby sustained injury during the course of employment in the industry. The underlying principle behind the promulgation of this act was that considering the perils that workers undertake while engaging with complex machinery in the industry exposes them to severe challenges thus affecting their health and even at times endangering their lives. There was a need for mechanisms in place to save workers from any injury sustained or “*arising out of*” and “*in the course of employment*”. This act also had provisions for speedy disposal of case related to industrial accidents and for providing compensation to the victims of such accidental hazards. The act provides for compensation in cases⁶⁷ where either death results from the injury or the injury leads to a form of permanent total disablement.
- **The Employees’ State Insurance Act, 1948** – enacted with a more social perspective, this act was another milestone in providing insurance to employees in general and in certain health facilities. This instilled a certain level of security in the mind on employees engaged in the work field. The act aimed at providing insurance in cases like sickness⁶⁸, maternity benefits⁶⁹, and other employment injury⁷⁰. The act also had provisions providing for the families of the employee to be given in kind in the form of medical benefit⁷¹ for the employee as well as for his/her family⁷². Family would include the employee’s dependents.
- **The Factories Act, 1948** – this act is one the most comprehensive piece of legislations covering several aspects encompassing safety, health, welfare and security of workers. The health aspect in this act is covered under Chapter III of the act which lays down various factors that are to be taken care of at the work front to enable workers to work in a healthy environment. The main components of this chapter entail cleanliness⁷³ which implies that the factory area is to be kept clean and free from any effluvial that may arise from any drainage or other reasons, proper mechanisms for disposal of wastes and effluents⁷⁴, maintenance of proper channels of ventilation and temperature⁷⁵ that would enable the circulation of fresh air and a temperature that would make it conducive for the workers to work in that environment and prevent any injury to health, mechanisms to prevent the accumulation of any dust and fume⁷⁶ the inhalation would cause damage to the health of workers thus measures have to be taken to install exhaust appliances that would help in the prevention of such accumulation of dust and fume in the factory, artificial humidification⁷⁷ for factories that require the increase in humidity levels adequate measures have to be taken to check that the humidification does not exceed the prescribed standards. The prescribed tests have to be undertaken before engaging in artificial humidification, there should be adequate measures to prevent overcrowding⁷⁸ in any factory as overcrowding could pose a threat to the health of workers in the factory, installations of proper lighting⁷⁹ facilities natural or artificial in factories that enable conditions suitable for working, in every factory there should be regular supply

⁶⁴ <https://www.nytimes.com/2019/11/01/world/asia/delhi-pollution-health-emergency.html> - accessed on 22.04.2020

⁶⁵ <https://economictimes.indiatimes.com/news/politics-and-nation/ngt-imposes-rs-100-crore-fine-on-meghalaya-govt-for-failing-to-curb-illegal-mining/articleshow/67388967.cms?from=mdr> – accessed on 22.04.2020

⁶⁶ <https://www.epa.gov/hw/learn-basics-hazardous-waste> - accessed on 22.04.2020

⁶⁷ Section 4

⁶⁸ Section 46(a)

⁶⁹ Section 46(b)

⁷⁰ Section 46(c)

⁷¹ Section 46(e)

⁷² Section 46(f)

⁷³ Section 11

⁷⁴ Section 12

⁷⁵ Section 13

⁷⁶ Section 14

⁷⁷ Section 15

⁷⁸ Section 16

⁷⁹ Section 17

points for wholesome drinking water⁸⁰ for workers with easy access from the distance of their working points, following the prescribed measures as laid down under the act there should be effective arrangements for facilities of latrines and urinals⁸¹ for workers while they are at the factory, providing adequate number of spittoons⁸² at various points in the factory and also maintenance of the cleanliness and hygiene levels of the same. All these factors in conjunction will help in keeping a tab on the health of workers at the factory as each component is essential to foster smooth functioning of the factory while also maintaining health and hygiene conditions of workers engaged in the factory.

- **The Maternity Benefits Act, 1961** – this act stems from the want for equal status and opportunity and status for the women gentry. Viewed from the point of gender justice this act provides certain benefits to women. The idea though is not of recent origin and traces back to the year 1919 when the International Labor Organization (ILO) adopted the Child Birth Convention which was one of the first conventions on gender equality. It was in 2019 that this convention completed 100 years on maternity protection. The emphasis of the convention was on paid leave during the period of childbirth on the lines of employment protection measures. It was in 2019 that the International Labour Conference (ILC) adopted the ILO Centenary Declaration for the Future of Work, the main agenda of this declaration was “*achieving gender equality at work through a transformative agenda.*”⁸³ The Child Birth Convention laid down a period of twelve weeks’ leave for women working in certain industries and commercial set ups. The act was amended in 2017⁸⁴ to increase the period of leave from 12 weeks to 26 weeks. The act not only gives leave to biological mothers but also extends to adoptive mothers as well and the period of leave given is 12 weeks from the date of adoption. Post completion of 26 weeks leave period the woman is also given the option of working from home. This option of work from home is subjective to the type and nature of work and is also open to modifications by the employer that could mean levying of certain terms and conditions. The amendment has also made it mandatory for establishments with 50 or more women employees to introduce crèche facility. However, the missing point in this regard is that the age of children to be allowed in crèche facilities has not been stated in the act. The major contributions of the amendments will help in the adherence to the principles as laid down by the World Health Organization. The WHO mandates that children require at least 24 weeks of breastfeeding post birth as that helps in the development of child. The extended period of leave also ensures that both the mother and child get a decent period of rest and this helps safeguard the health rights as well as prevents the dropout levels of women from workforce on account of inadequate maternity leave. The downside of the amendment could impact the employment rate of women as employers may refrain from employing women considering the economic impact it may have on the employer. As far as the women in the unorganized sector are concerned there are not adequate provisions for providing them the institutional support. Although they derive benefits from several schemes and the benefits are mostly in the form of cash. There is a need for a proper institutional back up in place. It is also important to note that there needs to be sufficient measures for taking care of the economic burden of various employers who provide such leaves and this can be done if it is not solely left on the employer to bear such costs but if there is sufficient collaboration by the government through its various social insurance schemes then that could enable in reducing the financial burden of the employer. Another important aspect that could well be recognized under the act is the concept of paternity leave. Though paternity leave forms a part of certain government jobs and few private jobs as a part of their policies, yet there is no uniform recognition of this concept. There should certainly be few weeks assigned for paternity leave in all sectors to allow men to equally participate in the phase of parenthood. A joint participation of both mother and father in the early days of parenthood will ensure better care for the child as well as for the mother.
- **The Dock Workers (Safety, Health and Welfare) Act, 1986**- this act aimed at providing safety and security and certain health protections to the workers engaged in the docks. Such measures include providing safety equipments, decent lighting at all points in the dock areas, established sanitary facilities, mechanisms for medical supervision at regular intervals inclusive of provisions for first aid and rescue facilities, thorough investigation of occupational accidents and providing effective relief in cases of such occupational accidents.

6. WOMEN AND HEALTH PROTECTION LAWS:

- **Pre- Conception and Pre- Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 (PNDT)** - the main agenda behind the promulgation of this act was to target the declining sex ratio in the country. This act took shape more in the form of a social legislation. The act also aimed at preventing the misuse of pre-natal diagnostic techniques either before or after conception, also putting a ban on sex selection as that was one of the primary causes of female foeticide in the country. The act laid down the cases in which pre-natal diagnostic techniques could be used and the conditions that followed such diagnosis. The act had also been amended in the year 2003 to be renamed as The Pre- Conception and Pre- Natal Diagnostic Techniques (Prohibition of Sex Selection) Act (PCPNDT ACT). The underlying philosophy of this act was the embedded reflections of patriarchy because of which the birth of a female child was not seen with as much as gusto as that of a male child. As a result of this it was the women who had to undergo sex determination and on being declared that the fetus is a female, she was subsequently made to undergo abortion and this act continued until she could finally bear a male child. This was detrimental on many grounds. The primary factor being that it impacted the health of a woman having to undergo several tests pertaining to sex determination as well as having to face abortion. It impacted not just the physical health of the woman but also mental health as having to deal with the trauma of not being able cater to the norms of the family and losing

⁸⁰ Section 18

⁸¹ Section 19

⁸² Section 20

⁸³ https://www.ilo.org/gender/Events/WCMS_715815/lang--en/index.htm - accessed on 24.04.2020

⁸⁴ <https://labour.gov.in/sites/default/files/Maternity%20Benefit%20Amendment%20Act%2C2017%20.pdf> – accessed on 24.04.2020

a child at the hands of the societal beliefs had a glaring impact on her. Another major factor was the growing incidents of female feticide and infanticide. There were clinics that were not even well equipped with the diagnostic techniques and such administration and use of diagnostic techniques could prove equally fatal for the woman as well as the child in the womb. And the major reason why there were clinics for sex determination was not to check into the development of the child in the womb but to primarily determine if the child was a female or a male and accordingly the act of abortion would follow. This evil had to be checked upon and thus there was a need for a more stringent mechanism in place to impose severe punishment on clinics and people who abet such acts of sex determination for evil purposes or that goes against the will of the woman as well as against the moral and humanitarian grounds. This act was thus brought in place to check on the existing evil. It was in the year 1988 that Maharashtra became the first state to ban sex determination by enacting the Maharashtra Regulation of Pre- Natal Diagnostic Techniques Act.⁸⁵ The aim was to protect the Right to Health of a woman by allowing her the right to her body and not letting it be violated by the miscreants for the purposes of illegal abortions.

- **The Medical termination of Pregnancy Act, 1971** – this was enacted to legalize abortions for up to 20 weeks of pregnancy on account of certain conditions and only if the authority to undergo abortion was provided by a registered medical practitioner. The primary cause for such abortion was that if the continuation of the pregnancy would be detrimental to the health of the pregnant woman, both physical and mental health and even in cases where bearing of such child could pose a threat to her life. Another cause was if such continuation of pregnancy would pose a threat to the child in the womb in the sense that if the fetus showed some abnormalities, if the pregnancy was caused as a result of rape, then in such cases too abortion was permissible as the continuance of such conception could take a toll on the mental health of the woman who had been a victim of such a heinous crime. Other cases in which abortion was permissible was on account of failure of not using contraceptives by a married couple and if pregnancy happened because of such reason then abortion could be allowed provided the conditions laid down in the act were met. However, there were grave challenges that India witnessed in the sense that every year approximately 10 women died as a result of abortion as such abortions were outside the parameters of health facilities as were generally prescribed.⁸⁶ The act of 1971 needs to be revamped to keep pace with the changing times and the introduction of modern-day medicine systems. There have been many cases related to abortions that could have a grave impact on the health a woman and each of such factor needs a thorough understanding and thus a clear insight on the same is what is needed to be introduced in the act. There may be situations in which abortions can be sought after a period of 20 weeks of pregnancy, adequate measures and guidelines in that regard is needed if such pregnancy would mean health risk and life threat to both the mother as well as the child.

7. LAWS ON FOOD AND COMPONENTS OF HEALTH RIGHTS:

- **Food Security Act** – the act was enacted with the idea of combating aspects of malnutrition and to check on the availability of food grains at subsidized rates to a major part of the population. India has a large part of its population living in poverty and as a result of which the deprivation of food and essential nutrients also goes hand in hand with the prevailing poverty indexes reflective in India. It was thus felt that certain measures needed to be brought in place so as to do away with the vice of starvation and thus the Food Security Act was brought in place. This was also referred to as the Right to Food Act. Right to Health cannot be realized without having access to basic nutritional aspects necessary for the survival of human beings. Food thus forms an important component of the Right to Health. The National Food Security Act entailed benefits such as mid-day meal schemes and maternity benefits. The act has been viewed upon as a reform in the sector of public distribution system as well as a chance to shift focus on the increase of investment in human capital. But the ill side of the act has often been pointed towards the fact that mere sufficiency of combating malnutrition is not the solution but to also get into the causes behind it. Also, the provision of providing food grains at subsidized rates to parts of the population has to be done on a uniform scale and measures for ensuring such transparency also needs a check. The investment estimated per year records a high of almost close to 2 crores⁸⁷ and keeping a tab on accurate allocations of such funding is also essential to see that the purpose of the act is achieved.
- **Prevention of Food Adulteration Act, 1954** – adulteration of food can pose serious threat to the health and well-being of individuals. In many cases it can even lead to fatal results. The cases of food adulteration have always been a prevailing problem in India.⁸⁸ Until recently the country has faced major adulteration issues in food items and milk has been one such item that has been under scrutiny several times. Adulteration of milk could even lead to fatal health issues as that of cancer.⁸⁹ The Prevention of Food Adulteration Act was enacted way back in the year 1954 and cases of serious food adulterations is still rampant thus there is a serious need to relook into the provisions of the act and make it more stringent. Setting up of an Institutional body with increased levels accountability and responsibility to conduct regular inspections of the food sector would help in easing out such cases of adulteration and thereby reducing its impact on the health of people.

8. DISABILITY AND PROTECTIVE LEGISLATIONS:

- **THE MENTAL HEALTH ACT, 1987 (now the act of 2017)** – among the various components that account for a holistic health mental health occupies a considerably important part. The rights of mentally ill people are as important as the rights of people who are free from any mental illness. The act of 1987 was replaced by the act of 2017 (Mental Health Act, 2017) on

⁸⁵ <https://pib.gov.in/newsite/feacontent.aspx?relid=71711> - accessed on 25.04.2020

⁸⁶ <https://www.livemint.com/science/health/why-india-needs-a-new-mtp-act-1567317067262.html> - accessed on 25.04.2020

⁸⁷ <https://www.brookings.edu/research/food-security-the-act-and-beyond/> - accessed on 27.04.2020

⁸⁸ <https://www.dw.com/en/food-adulteration-a-rising-problem-in-india/a-5958444> - accessed on 27.04.2020

⁸⁹ <https://www.dnaindia.com/health/photo-gallery-over-65-milk-samples-in-india-adulterated-says-report-this-is-how-it-affects-your-body-2672677/which-adulterants-give-milk-their-thickness?-2672679/can-milk-adulteration-result-in-cancer?-2672680> – accessed on 27.04.2020

account of not giving due recognition to the right of mentally ill people. The 2017 act defines mental illness as “a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behavior, capacity to recognize reality or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs, but does not include mental retardation which is a condition of arrested or incomplete development of mind of a person, specially characterized by sub normality of intelligence”⁹⁰. This new act had broadened the scope of the definition. The act fosters the rights of mentally ill people in the access to health care of services of sound quality, their right to have an advance directive in place (an advance directive basically implies having a surrogate decision maker in place in times when such person making the decision is incompetent to do so, such an advance directive has to be made and subsequently vetted by a medical practitioner). The act has also been commendable in its attempt to decriminalize attempt to suicide and to take adequate measures for rehabilitation of such people who take such drastic steps owing to their incapacity to make rational decisions but one drawback that follows is that in cases of dowry related deaths or bride burning cases if this angle of presumption surfaces, then many culprits may walk scot free. Thus, there is a need to redefine provisions with more clarity so as to differentiate cases thereby resulting in justice to the genuine cases and rightful punishments for offenders. The act reinstates the Right to live with dignity of persons suffering from mental illnesses and that no discrimination should be made on any ground against them. Though broad in outlook this act is not free from certain shortcomings. The act necessitates the access of quality and affordable health care but keeping the mind the grim situation of the still developing health care systems for general health care it is difficult to comprehend a developed health care system in the field of mental health. Also, the level of awareness on mental health related issues still weighs on a narrow plane and thus the concept of advance directives also still lacks realization, the person suffering may be bereft of making rational decisions on nominating a relative and conversely the nominee may not be aware of the pros and cons of the directives and the issues pertaining to mental health and so a lot more has to be done on the awareness front relating to the allied Rights. Mental health can affect people from all walks of life and the most sought-after solace is to reach out to health care systems to get issues of mental health treated but there are times when people providing medical and health care services get affected by mental health issues themselves. The Pandemic situation of COVID -19 has reinstated this fact where frontline workers in the area of health have been troubled by issues of mental health. A recent research conducted in the year 2020 in this field has found out that many health workers have been subjected to issues of mental health like insomnia or stress at various levels⁹¹. Thus, attention is also to be driven towards the fact that not only people approaching health care but also people providing health care need to be given adequate care so as to allow them to cope with the challenges as well as the pressure of such testing times.

- **Rights of Persons with Disabilities Act, 2016** – the act recognizes as many as 21 forms of disabilities. The act lays down that the appropriate government must take adequate measures to ensure that the persons with any form of disabilities are not denied the various rights that are available to them. Free education for children of the age group of 6 to 18 years, reservations in jobs, campaigns for awareness, access to services such as health care cannot be denied to any person suffering from disability and any such denial would attract penalty as prescribed under the act.

9. CHILDREN AND THE RELATED HEALTH CARE LEGISLATIONS:

- **Child Labour (Prohibition and Regulation) Act, 1986** – on the lines of Article 24 of the Constitution of India, legislations have also been made to prohibit the engagement of children in hazardous activities. Such engagement can have ill impact on the physical and mental well-being of children and thus measures have to be taken to encourage the development and participation of children in the field of education rather than working in places that are detrimental to their health. The main object of the act is to regulate the conditions under which children of a certain age are employed.
- **The Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation and Production, Supply and Distribution) Act, 1992(IMS)** – the aim of this act was to protect breast feeding and aspects related to it. It also laid down checks upon the marketing and promotional activities of manufacturers dealing with baby products pertaining to infant milk substitutes as well as to regulate and check upon the infant feeds available in the market. Breast feeding has been considered beneficial for the development of a child and to promote their sound development of health. This act was also promulgated to promote breast feeding on account of the health benefits for the child. The act was further amended in the year 2003 to broaden the scope of the act.

10. CRIMINAL LAWS AND THE ASPECTS OF HEALTH:

- **Indian Penal Code, 1860(IPC)** – Chapter XIV of the IPC covers aspects of health and the specific sections in that regard are sections 268 to sections 278. It makes punishable such acts as creating public nuisance⁹², any negligent act that would amount to spreading infection of disease posing a danger to life⁹³, any malignant act that would amount to the spreading infection of disease posing a danger to life⁹⁴, disobedience of rules laid down by the appropriate government for the observance of quarantine measures⁹⁵, adulteration of food and drinks making it unfit for consumption and which is intended for sale⁹⁶, despite knowing the fact that any food item or drinks have become noxious and still selling or exposing such

⁹⁰ Section 2 of Mental Health Care Act, 2017

⁹¹ <https://www.frontiersin.org/articles/10.3389/fpsy.2020.00306/full> - accessed on 27.04.2020

⁹² Section 268

⁹³ Section 269

⁹⁴ Section 270

⁹⁵ Section 271

⁹⁶ Section 272

products for selling in the market⁹⁷, adulteration of drugs so as to render it unfit to serve its purpose by either reducing its efficacy or making it noxious in any way⁹⁸, selling of adulterated drugs as laid down in section 274⁹⁹, selling of drugs as a different drug or preparation¹⁰⁰, engaging in fouling water of any public spring or reservoir thereby rendering it unfit to be used for the ordinary purpose for which it was being used¹⁰¹ and making the atmosphere noxious for the health of people in an area and for neighboring areas as well. The provisions of IPC were recently attracted along with the provisions of the Epidemic Diseases Act to battle the violation of the regulations as laid down by the respective governments in light of the pandemic of COVID – 19¹⁰².

- **Code of Criminal Procedure, 1977** – under chapter X of the code the Magistrate or the Sub-divisional Magistrate and any other executive magistrate has been empowered to order any person who is said to be engaged in the occupation of any goods or keeps any goods that may be injurious to the health of the community, the said authorities can accordingly make an order for due removal of such goods.¹⁰³ Thus elements of protection of health have also been traced and found in the criminal law legislations.

11. CONCLUSION AND THE WAY FORWARD:

Right to Health is an indispensable right which forms the bedrock of the existence of human beings. This right has surfaced even more over the past year and a half (beginning of March, 2020) because of the havoc that the pandemic has wreaked on the country and the world at large. The Coronavirus pandemic situation has yet again sparked debates about the importance and realization of Right to Health. The courts have also exercised vigilance in the arena of formulating guidelines for the various health agencies in the country. The existence of all the laws pertaining to the realization of Right to Health only speaks volumes of the fact that health has been attributed a great degree of significance for the existence and survival of human beings. It is the anvil and threshold of “health” that would encourage individuals to also be able to exercise the other rights available to them as citizens of the country. However, it is not mere availability of laws that would suffice as it is the implementation of all the laws that is the need of the hour. The present scenario calls for more vigilance on the parts of the states and its agencies to formulate action plans for dealing with the crisis situation that India is currently crippled with. A cooperative stand between the Central and State Governments will help in better handling of the Pandemic which has now taken form of National Health emergency. The infrastructural preparedness in terms of health care institutions and increase in the number of health care personnel is a dire need and this void should be expeditiously filled by the respective agencies in power. It is only in filling this lacuna that the holistic realization of optimum health for all would seem an attainable goal.

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⁹⁷ Section 273

⁹⁸ Section 274

⁹⁹ Section 275

¹⁰⁰ Section 276

¹⁰¹ Section 277

¹⁰² <https://economictimes.indiatimes.com/news/politics-and-nation/covid-19-govt-warns-of-action-under-ipc-for-violating-quarantine/articleshow/74812467.cms?from=mdr> – accessed on 27.04.2020

¹⁰³ Section 133