Law Journals
A Treasure Trove of Legal Knowledge.

Indian Journal of Health and Medical Law
Volume 1, Issue 1
(January-June)
www.stmjournals.com

Health Legislations in India: Legal Tools for Promotion and Protection of Right to Health in the Country

Niddhi*
Independent Legal Practitioner, Bihar State Bar Council, Near MLA Flat, High Court, Veerchand Patel Path, Patna, Bihar, India

Abstract

In this article, we critically review the health- related legislations literature and its role in promotion and protection of right to health, in India. We first focus on the Constitutional provisions that are available for securing the public health on various level (social, economic and environmental) along with various other constituents affecting the public health and law enactments available for more efficient public health management. Then, we explain how these laws' effects can feed back in the construction of a contemporary framework to appropriately use modern legal tools for complex health challenges, and ensure that everyone, everywhere in the country shall have access to healthcare services which is their fundamental right without facing any financial crisis. Our exposition is accompanied by a synthesis of the available quantitative empirical results.

Keywords*: Health laws, right to health, public health, health legislations in India, healthcare laws, Constitutional provisions for right to health*

****Author for Correspondence*** E-mail: niddhiakhouri@gmail.com

INTRODUCTION

"Health is wealth" is the essence behind the establishment of the World Health Organization (WHO) and the WHO has left no stone unturned till date to certify our planet as a better place to live long and healthy life free of all kinds of devilish health issues. The World Health Organization with a strong motto to draw global attention towards the major global health awareness for the very first time in the year 1948 decided to celebrate "World Health Day" in World Health Assembly on 7 April every year worldwide. The first World Health Day was celebrated in the year 1950 when WHO was found or established so it's also known as the founding day of WHO.

Every year on World Health Day, various governments and non-governmental organizations working towards public health issues acknowledges the local, regional and international events organized by the WHO on a particular theme like in the year 2015 it was "Food Safety" in the year 2016 it was "Diabetes" in the year 2017 it was "Depression: Let's talk" and for this year 2018 it has come up with the theme "Universal Health Coverage: Everyone, Everywhere, followed by a slogan "Health for All".

India under the bellwethers of WHO is continuously progressing towards securing to all its citizens a long, healthy life. In India our constitution which is the supreme law of our country secures right to health as one of the most important fundamental right. Not only the fundamental right but the very soul & spirit of our Constitution, the Preamble itself through its socio-economic goals provide a big scope to protect the objective of the Constitution through its provision *"to secure to all its citizens social, economic and political justice, liberty of thought, expression, belief, faith and worship; equality of status and opportunity, and to promote among them all, fraternity assuring the dignity of the individual and the unity and integrity of the Nation"*.

The term "health" has very nicely been explained in the case of *C.E.S.C. Ltd. v. Subhash Chandra Bose, (1992) 1 SCC 441 at 463* as it implies more than an absence of sickness. Health is a state of complete physical, mental and social wellbeing. Medical care and health facilities not only protect

against sickness, disease or infirmity but also make right to life meaningful. Because of the vibrant interpretation given by the Summit Court to article 21 of the Constitution, it has become the thrust and throb of the Constitution itself. The judicial grammar of interpretation of article 21 has expanded the meaning and scope of the word "life". It has been judicially interpreted that the word "life" does not mean mere animal existence—it has to mean a life befitting human dignity. The right to livelihood is also a part of this article (*Olga Tellis v. Bombay Municipal Corpn., AIR.1986 S.C. 180; (1985) 3 SCC 545*).

The Apex Court accepted the right to health as a fundamental right when it observed in *Vincent v. Union of India, A.I.R. 1987 S.C.990 at 995*:
"A healthy body is the very foundation for all human activities. That is why the adage "Sariramadyam Khalu Dharma Sadhanam". In a welfare State, therefore, it is the obligation of the state to ensure the creation and the sustaining conditions congenial to good health".

CONSTITUTIONAL PROVISIONS RELATING TO HEALTH IN INDIA

Fundamental Rights

Part III and Part IV of our Constitution containing the Fundamental Rights and Directive Principles of State Policy makes the way to achieve the objectives stated in the Preamble. Now let's take the tour to understand the significant role of Right to health as a fundamental right in infusing the very objective of the Preamble imbibed under the Constitution.

The Apex Court in the case of *M.G. Badappanavar v. State of Karnataka* AIR 2001 SC 260 has opined that:
"Equality is the basic feature of the Constitution of India and any treatment of equals unequally or unequal as equals will be violation of basic structure of the Constitution of India."

Right to equality now has two expressions that is 'equality before law' and 'equal protection of law' and in no way the two could be same even if there may be much in common between them as established by the Supreme Court of India in the case of *Sri Srinivasa Theatre v. Govt of Tamil Nadu* AIR 1992 SC 1004.

The very first expression certifies that no person is above law and there shall not be any special privilege for any person before the law of the land. The second expression ensures that the law provides equal treatment without any discrimination on any ground to all its citizens in equal circumstances.

In a very famous case of *LIC of India v. Consumer Education and Research Centre* AIR 1995 SC 1811 the Supreme Court of India established the rule of equality in protection of health of country people. In this landmark case the LIC, a statutory body launched a life insurance scheme opened only for a specific class of people i.e. for government, semi-government service class people or reputed commercial firms' people. This scheme was declared unconstitutional being violate of Article 14 of the Constitution. In its arguments The LIC pleaded that this salaried group of lives formed a class with a view to identify health conditions. But the Apex Court rejecting this pleading submitted by the LIC, laid down that "The classification based on employment in government, semi-government and reputed commercial firms has the insidious and inevitable effect of excluding lives in vast rural and urban areas engaged in unorganized or self-employed sectors to have life insurance offending Article 14 of the Constitution and socio-economic justice." Hence equality principle should be applied whenever the health facilities are provided by the Government.

Article 14 of the Constitution lays down that "The State shall not deny to any person equality before the law or the equal protection of the laws with the territory of India". In the case of *Shri Baby P. Versus M/s Hindustan Petroleum Corporation Limited, Mumbai* 2016 (2) KLT 938, Article 14 of the Constitution clearly spells that the State has to encourage and has to empower the blind persons who have physical disabilities to compete with an able- bodied person. The equal opportunities for blind person cannot be separated from his disabilities, such as persons like drivers or such other functionaries who may require

vision for carrying out the function. The blind person is also able to discharge same functions as that of able bodied person without any impediment so far as LPG distributorship is concerned.

In the case of *Vijay Sharma Versus Union of India* AIR 2008 Bom 29: 2008, it was held by the Hon'ble High Court of Bombay that *"A prospective mother who does not want to bear a child of a particular sex cannot be equated with a mother who wants to terminate the pregnancy not because of the sex of the child but because of other circumstances laid down under the Medical Termination of Pregnancy Act".*

Article 21 the thrust and throb of the Constitution itself lays down "Protection of life and personal liberty".

In the case of State of *Punjab Versus Mohinder Singh Chawla* AIR 1997 SC 1225 the Apex Court held that the right to life includes right to health and in the case of *Balram Prasad Versus Kunal Saha* (2014) 1SCC 384, it was held by the Supreme Court of India that right to life and personal liberty under Article 21 of the Constitution also includes right of the patient to be treated with dignity.

It was observed in the case of *Occupational Health & Safety Association Versus Union of India* AIR 2014 SC 1469 that right to health i.e. right to live in a clean, hygienic and safe environment is a right flowing from Article 21 of the Constitution.

Thus, it includes:

(a) The right to live with human dignity as was held in *Francis Coralie Mullin Versus Administrator, Union Territory of Delhi* AIR 1981 SC 746 Justice Bhagwati observed in this case that "We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessaries of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings."
(b) Right to healthy environment as held in the landmark case of *M.C. Mehta Versus Union of India* (1987) Supp SCC 131 and *Bandhua Mukti Morcha Versus Union of India* AIR 1984 SC 802.
(c) Donation of organ by husband to his ailing father cannot be objected to by wife on ground of violation of her fundamental right to life as was held in *Sumakiran Mallena Versus Secretary, Medical & Health Secretariat Building, Saifabad* AIR 2008 (NOC) 374 AP

Right to healthy environment includes as following:

(i) Pollution free water and air as held in *Dr. B.L. Wadehra verus Union of India* AIR 1996 SC 2969 and *Indian Council for Enviro-legal Action Versus Union of India* AIR 1996 SC 1446
(ii) Protection against hazardous industries as held in *Vellore Citizens Welfare Forum Versus Union of India* AIR 1996 SC 2715
(iii) Emergency medical aid as held in *Pt. Parmanand Katara Versus Union of India* AIR 1989 SC 2039

In *Paschim Banga Khet Mazdoor Samity Versus State of West Bengal* AIR 1996 SC 2426 and *Parmanand Katara Versus Union of India* AIR 1989 SC 2039 it was decided by the Hon'ble Supreme Court that failure on part of a government hospital to provide timely medical treatment to a patient in need of such treatment amounts to violation of the right to life. The Court further stated that it is the Constitutional obligation of the State to provide adequate medical services to the people. Whatever is necessary for this purpose has to be done."

In *Veena Versus State of Bihar* AIR 1983 SC 339, imprisonment of a person declared insane was held unconstitutional and hence violative of Article 21.

There are numbers of judgments by the Supreme Court of India which includes many of the inadmissible Directive Principles embodied under Part IV of the Constitution as admissible like right to pollution free water

and air; right of every child to a full development and free education up to 14 years of age; maintenance and improvement of public health; maintaining hygienic condition in slaughter houses etc.

The Constitution Bench of Chief Justice Dipak Misra and Justices AK Sikri, AM Khanwilkar, DY Chandrachud and Ashok Bhushan on March 7, 2018 in a PIL filed by NGO Common Cause, *Common Cause Versus Union of India AIR 2018 SC 1665* seeking declaration of *"Right to die with dignity"* as a fundamental right within the fold of "*Right to live with dignity"* guaranteed under Article 21 of the Indian Constitution. The Hon'ble five Judges bench held that *right to die with dignity* is a fundamental right. The Bench thus legalised passive euthanasia and a living will. The Court observed that:
"The right to life and liberty as envisaged under Article 21 of the Constitution is meaningless unless it encompasses within its sphere individual dignity. With the passage of time, this Court has expanded the spectrum of Article 21 to include to include within it the right to live with dignity as component of right to life and liberty"

The Bench also held that the right to live with dignity also includes the smoothening of the process of dying in case of a terminally ill patient or a person in Persistent vegetative state with no hope of recovery.

"A failure to legally recognize advance medical directives may amount to non-facilitation of the right to smoothen the dying process and the right to live with dignity. Further, a study of the position in other jurisdictions shows that Advance Directives have gained lawful recognition in several jurisdictions by way of legislation and in certain countries through judicial pronouncements".

Earlier five Judges bench in the Apex Court in the case of *Gian Kuar Versus State of Punjab* AIR 1996 SC 1257 held both euthanasia and assisted suicide as unlawful by stating that punishing the attempt to commit suicide is non-violative of Article 21 overruling the judgement in *P Rathinam Versus Union of India (1994) 3 SCC 394* but in the landmark judgement of *Aruna Ramchandra Shanbaug v. Union of India (2011) 4 SCC 454* the Apex Court passed a historic judgement-law permitting Passive Euthanasia in the country under certain strict conditions.

Article 24 of the Indian Constitution prohibits trafficking of human beings, begars and forced labour or in other words it protects the right against exploitation.

India considered as Asian hub for human trafficking and forced labour. About 80% of the trafficking is done for sexual exploitation and rest is for bonded labour. The trafficking victims exploited in the commercial sex industry are forced to have sex with infinite inhuman people resulting in being ashamed of themselves filled with severe guilt, depression, anxiety leading to attempt suicide or carrying Sexual Transmitted Infections like HIV/AIDS resulting in a life worse than hell. Not only this but victims are unacceptable to their families even after being rescued and are unable to lead a family life for a long period. Their progress is delayed even when all is in place for their rehabilitation and reintegration because of the stigma put on them by the society.

Article 23 and Article 24 together works as founding pillars of the legal framework in addressing human trafficking in India, and besides these two prominent provisions, there are several other legal frameworks working as tools to address human trafficking in India discussed as follows:

Indian Penal Code (IPC): There are certain provisions relevant to trafficking of which the prominent are Section 366A which lays down Procuration of a minor girl (below 18 years of age) from one part of the country to the another is punishable, Section 366B providing law against importation of a girl below 21 years of age is punishable, Section 372 restricting selling of girls for prostitution, Section 373 making buying of girls for prostitution a punishable offence, Section 374 defining punishment for compelling any person to labour against his will Beside all the above mentioned legal provisions under Section 370 and 370A IPC, the Bureau has also started collecting data under this section after enactment of the criminal law

(amendment) Act ,2013. Trafficking in Women and Girls Act in 1956 popularly known as SITA and Immoral Traffic (Prevention) Act, 1956 (ITPA) have been enacted by the lawmakers for the purpose of prohibiting the heinous crime of human trafficking in India which is hollowing the health and life of victims.

Forced labour as prohibited under the Constitution has led to enactment of several legislations like Minimum Wages Act, 1948; the Contract Labour (Regulation and Abolition) Act, 1970; Child Labour (Protection and Regulation) Act, 1986; Juvenile Justice (Care and Protection of children) Act, 2000; The Children (Pledging and Labour) Act, 1986; The Bonded Labour System (Abolition)Act, 1976. In December 2015, as a result of public interest litigation, The Supreme Court directed the Central govt. to develop comprehensive anti-trafficking legislation by June 2016.

In the very famous *People's Union for rights v. Union of India AIR 1982 SC 1473* popularly known as Asiad case on the subject line of bonded labour, the Hon'ble Supreme Court declared bonded labour as volatile of human dignity and contrary to the basic human values. The Court directed to abolish all forms of forced labour within the inhibition of Article 23 and made no difference whether the person who is forced to give his labour or service to another is remunerated or not. Justice Bhagwati strongly placed that:
" where a person is suffering from hunger or starvation , when he has no resources at all to fight disease or to feed his wife and children or even to hide their nakedness, where utter grinding poverty has broken his back and reduced him to a state of helplessness and despair and where no other employment is available to alleviate, the rigor of his poverty, he would have no choice but to accept any work that comes his way, even if the remuneration offered to him is less than the minimum wage. He would be in no position to bargain with the employer. And in doing so he would be acting not as a free agent with a choice between alternatives but under the compulsion of economic circumstances and the labour or service provided by him would be clearly 'forced labour'."

In another landmark case on prohibition of bonded labour i.e. in the case of *Bandhua Mukti Morcha versus Union of India AIR 1997 SC 2218,* the Court took initiative by taking cognizance of the complaints of the large numbers of workmen like non-availability of pure drinking water, conservancy facilities, absence of medical facilities etc. and gave directions to the Haryana State authorities to remove these complaints and provide the necessary facilities to them. The Court also observed that construction work is a hazardous employment and so no child below 14 should be allowed to work in construction work. The same principle was reiterated in the case of labours working on *Salal Hydro Project v. State of Jammu and Kashmir AIR 1984 SC 177* where the Court directed the Central Government to enforce this prohibition. The Court observed that ...the problem of child labour is a difficult problem... and so an attempt has to be made to reduce, if not eliminate, the incidence of child labour.

Again in *M.C. Mehta versus State of Tamil Nadu AIR 1997 SCC 699* and *Bandhua Mukti Morcha Versus Union of India AIR 1997 SC 2218,* the Supreme Court issued an elaborated guidelines with strict directions in regard with the education, health and nutrition of child labour and directed to establish child labour rehabilitation welfare fund in which offending employer should deposit Rupees 20,000 and further directed for giving employment to the adult member of such child labour rehabilitation centre.

There are some major acts framed to address the illegal acts of forced and bonded labour under the flagship of Article 24 of the Constitution like The Factories act, 1948; The Mines Act, 1952; The Plantation Labour Act, 1951; etc. All these legal frameworks prohibit labour of persons below 14 years of age. The Employment of Children Act, 1938 was the very first step towards the child labour legislation but was repealed by The Child Labour (Prohibition and Regulation) Act, 1986 which specifies in its schedule certain occupations and processes where employment

of children in prohibited. According to Section 3 of the Act, no child shall be employed or permitted to work in any of the occupations set forth in part A of the Schedule or in any workshop wherein any of the processes set forth in part B of the Schedule such as small hotels, restaurants, shops, dhabas, catering establishment at a railway station, Work relating to selling of crackers and fireworks in shops, Abattoirs/slaughter Houses, Mines (underground and under water) and collieries, Beedi making, building and construction industry etc.. The Hon'ble Supreme Court of India in a landmark case of *Laxmikant Pandey Vs. Union of India AIR 1984 SC 469* directed certain guidelines governing the rules for Inter-Country adoption. The case was instituted on the basis of a letter addressed to the court which was later on treated as writ petition by a lawyer, Laxmikant Pandey alleging that social organisations and voluntary agencies engaging in the work of offering Indian children to foreign parents are indulged in malpractices which is resulting in impoverishment and sexual exploitation of children. In this case the Court held that the welfare of the entire community depends on the health and welfare of its children.

DIRECTIVE PRINCIPLES OF STATE POLICY

Article 39 lays down certain principles of policy to be followed by the state. Article 39(e) and (f) are specifically relating to health. Article 39(e) proved protection to the health and well-being of the citizens by providing the guideline 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 whereas Article 39(f) provides that the children are given opportunity and facilities to develop in a healthy manner and in condition of freedom and dignity and that the childhood and youth are protected against exploitation and against moral and material abandonment. Provisions of Articles 39(e), 39(f), 41 and 47 can be pressed into service to make suitable provisions regarding child labour as observed in *M.C. Mehta Versus State of Tamil Nadu.*
Similarly, in the case of *Vishal Jeet. Versus Union of India AIR 1990 SC 1412* an Advocate filed public interest litigation seeking proper medical aid, shelter, education and training in various disciplines of life of red light area workers and forced prostitutes and the Apex Court showing its great concern towards this issue directed certain law enforcement guidelines including directions to the state Government for setting up rehabilitation centres for children found begging in streets and also the minor girls pushed into 'flesh trade' to protective homes referring to Articles 23, 39(e) and 39(f).

Adding another feather into wings for children protection legislation was enactment of Prohibition of Child Marriage Act, 2006 with purpose of securing fundamental rights to health, education and safety of children and The Juvenile Justice Act (Care and Protection) Act, 2000 which consolidated and amended several provisions for the children in conflict with laws and for the child in need of care and protection. This law is especially relevant to children who are vulnerable and are therefore likely to be inducted into trafficking.

Article 41 lays down the provisions in relation with right to work, to education and to public assistance in certain cases which explains further the State shall, within the limits of its economic capacity and development, make effective provision for securing the, right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want. In the prominent case of *Sambhavana versus University of Delhi AIR 2013 SC 3825*, the Supreme Court imposed the duty of the State to make effective provisions for securing *inter alia*, the rights of the disabled and those suffering from other infirmities within the limits of economic capacity and development under Article 41.

Article 42 lays down the law for the State to make provision for securing just and humane conditions of work and for maternity relief. The Maternity Benefit Act, 1961 is one of legislation framed under the flagship of Article 42, which give the women workers a relief during and after pregnancy and continuous amendments are being made with purpose to provide best health and maternity benefits to female pre and post pregnancy.

Article 43 requires that the State shall endeavour to secure, by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or c-operative basis in rural areas. According to Fair Wages Committee Report: "The living wage should enable the male earner to provide himself and his family not merely the basic essentials of food, clothing and shelter but a measure of frugal comfort including education for the children, protection against ill-health, requirement of essential social needs and measures of insurance against old age." Thus, living wages means the provision for the bare necessities plus certain amenities considered necessary for the wellbeing of the workers in terms of his social status. Minimum Wages Act, 1948 is an act framed for enforcement of Article 43 though minimum wages is not enough for an earner to provide himself and his family beyond basic essentials of life.

Article 47 of the Constitution provides that the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the 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. The Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985 is a legislation put to force to give life to the words of Article 43. In *Juhi Kumari Versus State of Bihar 2011 (59) BLJR 2662* Hon'ble Court held that the Directive Principles of State Policy are now not only enforceable at the behest of a citizen, but a constitutional obligation of the State to be performed on its own, without waiting for a citizen to demand for it.

Article 48A requires that the State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country. Various environmental enactments like Environment Protection Act, 1986, Air Act, 1981; Water Act, 1974 has been passed in order to obligate with Article 48A. The Court in the case of *M.C. Mehta v. Union of India* JT (2002) 3 SC 527, has observed: "Articles 39(e), 47 and 48 A by themselves and collectively cast a duty on the state to secure the health of the people improves public health and protect and improve the environment."

OTHER CONSTITUTIONAL PROVISIONS

Article 242 of Constitution of India: Coorg Rep by the Constitution (Seventh Amendment) Act, 1956, Section 29 and Schedule PART IX A THE PANCHAYATS provides that the legislature of a State may by law, endow the municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and provide with respect to the performance of functions and implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule to the Constitution which include at item 6, 'Public health, sanitation conservancy and solid waste management'. Similar provision is made for the panchayats under Article 243-G read with the Eleventh Schedule (item 23), of the Constitution. Various municipal laws prescribe duties of such local authorities in the sphere of public health and sanitation which include establishment and maintenance of dispensaries, expansion of health services, regulating or abating offensive or dangerous trades or practice, providing a supply of water proper and sufficient for preventing danger to the health of the inhabitants from the insufficiency or unwholesomeness of the existing supply, public vaccination, cleansing public places and removing noxious substances, disposal of night soil and rubbish, providing special medical aid and accommodation for the sick in the time of dangerous diseases, taking measures to prevent the outbreak of diseases etc. Therefore, whenever there is failure of these statutory obligations of the local authorities the citizens can approach the High Court under Article 226 of the Constitution for seeking a mandamus to get the duties enforced.

Article 243W of the Constitutions provides power, authority and responsibilities of municipalities. A municipality may be of three

types in terms of **Article 243-Q**. These are Nagar Panchayat, Municipal Council and Municipal Corporation. The function which enables them to function as institutions of self-government are the matters listed in the twelfth schedule. The relevant health related matters are reproduced as follows:

5. Water supply for domestic, industrial and commercial purposes;
6. Public health, sanitation conservancy and solid waste management.
9. Safeguarding the interest of weaker sections of society, including the handicapped and mentally retarded.
16. Vital statistics including registration of births and deaths.
17. Regulations of slaughter-houses and tanneries.

It has been rightly said by Dr. Shankar Dayal Sharma that "Our Constitution is not merely a political document which provides the framework and institutions for democratic governance—our Parliament, the Executive and the Judiciary. It provides a framework for the economic and social emancipation of society and particularly, the poor, the underprivileged and the downtrodden. As Granville Austine has said, "the core of the commitment to the social revolution lies in Parts III and IV, in the Fundamental Rights and in the Directive Principles of State Policy. These are the conscience of the Constitution." It is of profound import that the Fundamental Rights are enforceable by Courts of Law. Article 32 of the Constitution guarantees the implementation of these Rights. This is a very crucial safeguard against excesses by executive authority and casts a very heavy responsibility on our Judiciary, a vital pillar of our democratic polity, to ensure that fundamental human freedoms are guaranteed.

ENVIRONMENTAL LEGISLATIONS AND PUBLIC HEALTH

Human beings seriously affecting environments and environmental resources in various ways by consuming or enjoying it in various ways which has resulted in environment affecting human beings by impacting human health, either directly by exposing people to harmful agents, or indirectly, by disrupting life-sustaining ecosystems.

Although the exact contribution of environmental factors to the development of death and disease cannot be precisely determined, the WHO has estimated that thirteen million deaths annually are attributable to preventable environmental causes [1]. The report also estimates that 24% of the global disease burden (healthy life years lost) and 23% of all deaths (premature mortality) are attributable to environmental factors, with the environmental burden of diseases being 15 times higher in developing countries than in developed countries, due to differences in exposure to environmental risks and access to health care

Huge economic development and population growth in India and world are resulting in continuing environmental degradation and the peoples in environment polluted areas are infected by pollution related diseases. Due to air pollution the incidence of respiratory diseases leads to increase and water pollution triggers the number of patients suffering from acute water borne diseases. Especially in India 60 per cent of flue, typhoid, jaundice and other kidney and liver related problems, malaria, almost all gastro-intestinal and respiratory diseases, and significant proportion of skin diseases, are caused because of poor environmental conditions.

Keeping its main focus on making environmental health potent and balancing the ecological treasures for securing the well-being of human health, numbers of environmental and environmental health legislations have been discussed here.

ENVIRONMENT PROTECTION LAWS

The concentrated emphasis on protection and conservation of environment and sustainable use of natural resources in order to secure and enhance environmental health of the country is reflected in the constitutional framework of India and also in the international commitments of India but still it is far away from satisfactory performance. After the Stockholm Conference on Human Environment, the National Council for Environmental Policy and Planning was set up in 1972 within the Department of Science and Technology to establish a regulatory body to look after the environment-related issues. This

Council later evolved into a full-fledged Ministry of Environment and Forests (MoEF) in the year 1985. The MoEF and the pollution control boards ("CPCB", i.e., Central Pollution Control Board and "SPCBs", i.e., State Pollution Control Boards) together form the regulatory and administrative core of the sector (http://www.mondaq.com/india/x/624836/Waste+Management/Environment+Laws+In+India).

Some of the important legislations for environment protection are as follows:

- *The National Green Tribunal Act, 2010*: The National Green Tribunal Act, 2010 (No. 19 of 2010) (NGT Act) has been enacted with the objectives for the establishment of a National Green Tribunal for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto".[6] (NGT Act 2010). The Act envisages establishment of NGT in order to deal with all environmental laws relating to air and water pollution, the Environment Protection Act, the Forest Conservation Act and the Biodiversity Act as have been set out in Schedule I of the NGT Act.
- *The Air (Prevention and Control of Pollution) Act, 1981:* The Air (Prevention and Control of Pollution) Act, 1981 (the "Air Act") enacted with the objective to provide for the prevention, control and abatement of air pollution and for the establishment of Boards at the Central and State levels with a view to carrying out the aforesaid purposes.
- *The Water (Prevention and Control of Pollution) Act, 1974:* The Water Prevention and Control of Pollution Act, 1974 (the "Water Act") obligates the provisions for the prevention and control of water pollution and to maintain or restore wholesomeness of water in the country and prohibition of discharge of pollutants into water bodies beyond a given standard and lays down penalties for non-compliance.
- *The Atomic Energy Act, 1982* deals with the radioactive waste.
- *The Environment Protection Act, 1986*: The Environment Protection Act (1986) is the guardian Act of all environmental legislations as it plays the role of filler in the gaps of other environment legislation. The disaster of Bhopal gas tragedy on December 3 1984, in which more than 40 tons of methyl isocyanate gas leaked from a pesticide plant in Bhopal, India, immediately killing at least 3,800 people and causing significant morbidity and premature death for many thousands more aroused an urgent need for enforceability international standards for environmental safety, and preventative strategies to avoid similar accidents in future and industrial disaster preparedness and the Environment Protection Act (1986) came into effect. The Act obligate the central government to protect and improve environmental quality, control and reduce pollution from all sources, and prohibit or restrict the setting and /or operation of any industrial facility on environmental grounds.

The Central Government has made the following rules for the protection and health and environment in execution of Section 6, 8 and 25 of the Environment (Protection) Act, 1986:

- *The Hazardous Micro-organisms Rules, 1989* for the manufacture, use, import, export and storage of hazardous Micro-organisms/Genetically engineered organisms and cells.
- *Hazardous wastes (management and handling) rules, 1989* for the management and handling of the hazardous wastes which would affect the health of the people
- *The Biomedical waste (Management and Handling) Rules, 1998* which is a legal binding on the health care institutions are framed to streamline the process of proper handling of hospital waste such as segregation, disposal, collection, and treatment.
- *Recycled Plastics Manufacture and "Usage Rules, 1999* for the manufacture

and use of recycled plastics carry bags and containers.

- *Municipal solid wastes (management and handling) rules, 2000* have been framed to regulate the management and handling of municipal solid wastes.
- *Noise pollution (regulation and control) rules 2000* have been framed because the increasing ambient noise levels in public places from various sources like industrial activity, construction activity, generator sets, and loudspeakers. Public address system, music system, vehicular horns etc. have deleterious effects of human health and the psychological well-being of the people. So in order to regulate and control noise producing and generating source with the objective of maintain the ambient air quality standards in respect of noise the rules are being framed.
- *The Ozone Depleting Substances (Regulation and Control) Rules, 2000* have been framed to regulate ozone depleting substances.
- *The batteries (management and handling) rules 2001* have also been made.

MEDICAL LAWS

Our Parliament has passed a large number of enactments to rejuvenate healthcare and its delivery in India.

Following legislation are in force in order to govern the manufacture, sale, import, export and clinical research of drugs and cosmetics in India.

- *The Drugs and Cosmetics Act, 1940:* This Act cast obligation to regulate the import, manufacture, distribution and sale of drugs and cosmetics. Provisions of this are in addition and not in derogation of the Dangerous Drugs Act, 1930 (Section 2). The Act requires provisions for the constitution of Drugs Technical Advisory-Board (Section 5) to advise the Central and the State Governments on technical matters, the Central Drugs Laboratory (Section 6) to can out analysis and testing of drugs and cosmetics, and the Drugs consultative committee (Section 7) to advise the Central and State Government and the Drugs Technical Advisory Board on any matter tending to secure uniformity throughout the country in the administration of this Act. It lays the circumstances under which a drug is deemed it is misbranded (Section 9), adulterated (Section 9A) and spurious (Section 9B) as well as circumstances under which a cosmetic is misbranded (Section 9C) and spurious (Section 9D). It bans import of goods (Section 10), which are prohibited by the law, and any such import cannot be treated as lawfully imported goods. It also prohibits the manufacture, sale, distribution of drugs and cosmetics which are not of a standard quality or misbranded or adulterated or spurious and which are injurious to health (Section 10). It also makes provision for the appointment of inspectors (Sections 21, 22 and 23) to inspect any premises where drugs and cosmetics are manufactured, take samples, examine any record, document, and register and seize the same if he has reason to believe that it may furnish evidence of the commission of an offence punishable under this Act.
- *The Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954:* This Act prohibits the advertising of remedies alleged to possess magic qualities and to provide for matters connected therewith a person from taking part in publication of any advertisement referring to any drug which suggests use of the drug for:
  a) the procurement of miscarriage in women or prevention of conception in women; and
  b) the maintenance or improvement of the capacity of the human being for sexual pleasure;
  c) the correction of menstrual disorders in women;
  d) the diagnosis, cure, mitigation, treatment or prevention of any venereal disease.
- *The Narcotic Drugs and Psychotropic Substances Act, 1985:* The Act is passed to consolidate and amend the law relating to narcotic drugs, to make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substance and to provide for the forfeiture of property derived from, or used in, illicit traffic in narcotic drugs and psychotropic substances, to implement the

provisions of the International Conventions on Narcotic Drugs and Psychotropic Substance and for matters connected therewith.

- *The Epidemic Diseases Act, 1897:* This Act has been enacted to provide for the better prevention of the spread of Dangerous Epidemic Diseases. Whereas it is expedient to provide for the better prevention of the spread of dangerous epidemic disease.

Section 3 of the Act makes an offence under section 188 of the Indian Penal Code for any person disobeying any order or regulation made under the Act. It also affords protection to persons acting under the Act by stating in Section 4 that no suit or other legal proceeding shall lay against any person for anything done or in good faith intended to be done under this Act.

- *The Transplantation of Human Organs Act, 1994:* The Transplantation of Human Organs Act, 1994 was enacted by the Parliament under Clause 1 of Article 252 of the Constitution during 1994 and it came into force in February 1995.

The Act aims to provide for the regulation of removal, storage and transplantation of human organs for therapeutic purposes and for the prevention of commercial dealings in human organs. The Act defines "therapeutic purpose" (section 2(o)) as a systematic treatment of any disease or the measures to improve health according to any particular method or modality; and "Transplantation"(section 2(p)) means the grafting of any human organ from any living person or deceased person to some other living person for therapeutic purposes.

The Act lays down for the authority to be given by the donor (section 3), who is not less than 18 years of age before his death. Such authority has to be given in the presence of two or more witnesses, at least one of whom must be a near relative. Any person in lawful authority of the dead body can also give authorization for the removal of any organ for therapeutic purposes provided that the donor had no objection before his death and the no near relative has such objection. The removal of the organ shall be made by a registered medical practitioner under the Indian Medical Council Act. The medical practitioner must get the certification of death or the certification of brain stem death by the Board constituted as per the provisions of the Act (**section 3(6))**. If the deceased is less than 18 years of age, then the parents may give authorization of their dead child.

The Government of India enacted the Transplantation of Human Organs (Amendment) Act, 2011 that allows swapping of organs and widens the donor pool by including grandparents and grandchildren in the list. Some of the important amendments under this Act to promote organ donation are as follows.

1. Provision of 'Retrieval Centres' for retrieval of organs from deceased donors and their registration under the amended Act.
2. Definition of near relative expanded to include grandparents and grandchildren.
3. Brain death certification Board has been simplified and more experts have been permitted for this certification.
4. 'Mandatory' inquiry and informing option to donate in case of unfortunate event of brain stem death of ICU patient for the purpose of organ donation.
5. Mandatory 'Transplant Coordinator' for coordinating all matters relating to removal or transplantation of human organs.
6. National Human Organs and Tissues Removal and Storage Network at one or more places and regional network.
7. National Registry of Donors and Recipients.
8. Removal of eye has been permitted by a trained technician to facilitate eye donation. In addition to the above mentioned amended Act, the Government also framed *Transplantation of Human Organs and Tissues Rules (THOT), 2014* with the objective to remove the impediments to organ donation while curbing misuse/misinterpretation of the rule

- *The Mental Health Act, 1987:* Mental Health Act was passed on 22 May 1987. The law was described in its opening paragraph as "An Act to consolidate and

amend the law relating to the treatment and care of mentally ill persons, to make better provision with respect to their property and affairs and for matters connected therewith or incidental thereto and it was superseded by the Mental Health Care Act passed on 7 April 2017, and was described in its opening paragraph as "An Act to provide for mental healthcare and services for persons with mental illness and to protect, promote and fulfil the rights of such persons during delivery of mental healthcare and services and for matters connected therewith or incidental thereto.

- *The Mental Healthcare Act, 2017:* This Act was passed on 7 April 2017, on the auspicious occasion of World Health Day will come into force from 7 July, 2018**.** It makes provision for a range of effective mental health services to be provided at public health facilities in each district. It also provides for free treatment of homeless persons with mental illness and those living below the poverty line. All medicines for treatment of mental illness on the essential drugs list will be made available free of charge at government health facilities. It also makes it mandatory for insurance for mental illness treatment on an equal basis with insurance for physical illness.

Advanced directive is one of the most innovative provisions of the Act. For the first time in India, persons with mental illness will have the right to specify in advance their choice of treatment and name their own representative to ensure their treatment wishes are carried out when they are actually ill and not able to decide themselves.

However, this Act contains few lacunae which is creating a state of confusion and may create chaos in the healthcare industry also may lead to failure in casting its all-round obligation towards mental patients in the country. The researcher has tried to discuss few negative points of this Act here:

(i) The Act recognizes mental illness as a clinical issue which can only be treated by medicines and clinical procedures. As per the definition of this Act 'mental health professional' is restricted to clinical psychiatrists and professionals holding a postgraduate degree in Ayurveda, homoeopathy, Siddha and Unani—all on the clinical side. It is including specialists from non-allopathic fields of medicine making it commendable, but again psychotherapists and psychoanalysts have been excluded without justifying the reason behind this act.

(ii) The Act proposes an 'advance medical directive' through which individuals can dictate how they "wish to be" and "wish not to be treated" and can nominate a member who can make decisions on their behalf if they lose their mental capacity but it fails to make the picture clear about the procedure for making advance medical directive.

(iii) The Act provides for the constitution of an expert committee for periodic review and effective implementation of the Act. Neither the Act nor the rules define the constitution, procedure and terms of reference of the committee. Absence of such clarity can affect transparency negatively.

The gaps need to be filled on early basis or the dawdling execution of Act may fail to solve the main purpose of the same.

Other Legislations for the conduct of Medical Profession:

1. Indian Medical Council Act, 1956
2. Indian Medicine Central Council Act, 1970
3. Indian Nursing Council Act, 1947
4. Dentist Act, 1948
5. The Pharmacy Act, 1948
6. The Homeopathy Central Council Act, 1973

All these laws broadly deal with the setting of Medical Councils at national and state levels and empower them with the powers, inter alia, to lay down minimum standards for medical education, enrolment of doctors and also regulate their profession by formulating the Code of Medical Ethics.

OCCUPATIONAL HEALTH LAWS

Apart from Directive Principles of State Policy, there are numerous other legislations which provide laws and regulations for

securing the health of workers, both men and women, ensuring that children are not abused at a tender age; that citizens are not forced by economic necessity to enter into vocations which are not suited to their age or strength; that just and humane conditions and maternity relief are provided at the workplace; and that the government shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry. On the basis of these Directive Principles, the Government of India declares its policies, priorities, strategies and purpose through the exercise of its power.

Labour and Industrial Law legislations in India can be classified into pre-independence and post-independence eras. The Fatal Accidents Act, 1855, Indian Boilers Act, 1923; Workman's Compensation Act, 1923; Trade Unions Act, 1923, The Children (Pledging of Labour) Act, 1933; The Employees Liability Act, 1938, The Industrial Employment (Standing orders) Act, 1946; The Industrial Disputes Act, 1947 etc., are the beneficial as well as protective legislations. After independence, more than 100 enactments were made by Central and various State Governments to regulate working conditions, obligations, rights of employers and workmen. Following are few important legislations and their provisions relating to occupational health are being given below.

Employees' State Insurance Act, 1948: The Employees' State Insurance Act, 1948, has been enacted with the objective to provide security to the industrial worker. The object of the Act is to introduce social insurance by providing certain benefits to employees in case of sickness, maternity, disablement or death due to employment injury. The Act provides for health care and cash benefits to the employees working in factories using power and employing 10 or more persons and establishments/shops not using power and employing 20 or more persons and the factories or establishments is insured as provided under the Act. The worker covered under the scheme is entitled to get medical benefits from the day he enters into insurable employment which includes free medical treatment in case of sickness, injury and maternity. His family members are also entitled to get free medical care as explained under the Act. Dependents Of an insured person who dies during employment are also provided with compensation. Insured women are given benefit in case of confinement, miscarriage or sickness arising out of confinement and premature birth of child.

The Factories Act, 1948: The Factories Act, 1948 has been enacted for occupational safety, health and welfare of workers at work places and to provide congenial atmosphere, healthy and clean surroundings to the workers during the working hours and for the improvement of industrial efficiency.

Section 11 deals with the cleanliness of the factory and lays down some precautions to be taken like:

- Daily sweeping of floor, benches of workrooms, staircases and passages;
- Use of disinfectant on the floor at least once in a week;
- Effective drainages if the floor is liable to become wet in the course of any manufacturing process;
- Painting and varnishing of walls, partitions, all ceilings and tops of rooms, doors and window frames periodically.

Section 12 deals with the effective arrangements for the treatment of wastes and effluents due to manufacturing process. Section 14 deals with the effective measures to keep the work-rooms free from dust and fume. It also prohibits the use of internal combustion engine unless the exhaust is conducted into the open air and effective measures have been taken to prevent such accumulation of fumes. Section 15 empowers the State Government to make rules relating to artificial humidification. The Act prohibits factory rooms from being overcrowded to an extent injurious to the health of the workers employed therein and so provides for fixed number of workers to be posted on each work-room of factory. It provides for the maintenance of sufficient and suitable lighting, natural, artificial or both and wholesome drinking water at suitable points situated for all workers employed, such points

must not be situated within six metres of any washing place, urinal, latrine, spittoon, open drain where sullage and effluents are carried, provision for cool drinking water during hot weather is made where more than 250 workers are employed. Section 19 provides for the latrines and urinals to be conveniently situated, separate enclosed accommodations for male and female workers which are adequately lighted and ventilated and be kept at all times in a clean and sanitary conditions. It also provides for sufficient number of spittoons at convenient places in a clean and hygienic condition. Chapter IV of the Act deals with the safety measures and compulsory fencing of machinery shall be properly maintained. It allows examination or operation of machinery only by a specially trained adult male worker. It prohibits employment of young person on dangerous machines without full instruction to the dangers and precautions to be observed, sufficient training provided under adequate supervision by a person who has a thorough knowledge and experience of the machine. It lays down for precautions to be taken against dangerous fumes, gases and in case of fire etc. Chapter IV-A deals with provisions relating to hazardous processes and constitution of sit appraisal committee to examine the factory carrying on hazardous processes. Facilities for washing, storing and drying clothing, sitting, first-aid appliances, canteens, shelter rooms, rest rooms, lunch rooms and crèches are provided under Chapter V which deals with the welfare of the workers. Chapter VI deals with the working hours of adults which provides for weekly hours, weekly holidays, compensatory holidays, daily hours, interval for rest, night shifts, extra wages for overtime, restriction on double employment and restrictions on employment of women. Chapter VII deals with the employment of young persons and prohibits employment of child who has not completed 14th year of age. It also provides for obtaining certificate of fitness if any young person is to be employed. It lays down the working hours of children, register of child workers and medical examination of such child at regular intervals. The Act provides for penalties for contravening the provisions of the act.

- *The Maternity Benefit Act, 2017:* This is an amended Act of the Maternity Benefits Act, 1961 and is applicable to all those women employed in factories, mines and shops or commercial establishments employing 10 or more employees. Major provisions of the Act are as follows:
    - This Act provides the duration of paid maternity leave available for women employees to 26 weeks. However, for those women who are expecting after having 2 children, the duration of the leave remains unaltered at 12 weeks.
    - It provides the paid maternity leave for 8 weeks before the expected date of delivery.
    - It also provides that woman who adopts a child will be given 12 weeks of maternity leave from the date of adoption.
    - It also has introduced an enabling provision relating to "work from home" that can be exercised after the expiry of 26 weeks' leave period. Depending upon the nature of work, a woman can avail of this provision on such terms that are mutually agreed with the employer.
    - It has mandated crèche facility for every establishment employing 50 or more employees also permitting women employees to visit the facility 4 times during the day.
    - It has mandated the employers to educate women about the maternity benefits available to them at the time of their appointment.
- *The Mines Act, 1952* The Act is aimed for the regulation of labour and safety in mines. It seeks to regulate the working conditions in mines by providing for measures required to be taken for the safety and security of workers employed therein and certain amenities for them.
- *The Plantation Labour Act, 1951* This Act provides laws for the welfare of labour and to regulate the conditions of work in plantation. It does not include any factory to which the provisions of Factories Act, 1948 applies. Penalties are imposed for contravening any provisions of the Act.
- *Employees Compensation (Amendment) Act, 2017:* It is amended Act of its principal Act "Employees Compensation Act, 1923" which was also amendment to "Workmen Compensation Act". This Act aims to cast obligation upon the employers

to pay compensation to workers for accidents arising out of and in course of employment. It has substituted the word "workman" with "employee" so that the law is applicable to all types of employees and is gender neutral whereas the Workmen Compensation Act, 1923 defined the term "Workman". It also amended Schedule II to increase the list of persons who are included in the definition of workmen. For example, the Act only included those people who were employed in repairing or altering any article in a place with more than 20 employees. The Act includes all persons employed in such work by omitting the requirement that the place should have 20 employees. The compensation to employees in case of injury or death is a percentage of their monthly wage or a specified amount, whichever is more. It provides compensation of Rupees 1, 20,000 in case of death and Rupees 90,000 in case of permanent disablement. It allows the central government to revise the monthly wage from time to time. The employee shall be reimbursed for any medical expense incurred for treatment of injuries during the course of employment.

WOMEN AND HEALTH LAWS

Prominent legislations in relation with women's health are being discussed below:

- *Pre-conception and Pre-natal Diagnostic Techniques (Regulation and Prevention of misuse) Act, 1994:* In accordance with this Act**,** pre-natal diagnostic techniques shall be used only if the following conditions are fulfilled:
    - Age of the pregnant woman is above thirty-five years;
    - The pregnant woman has undergone two or more spontaneous abortions or foetal loss;
    - The pregnant woman has been exposed to potentially teratogenic agents such as drugs, radiation, infection or chemicals;
    - The pregnant woman has a family, history of mental retardation or physical deformities such as spasticity or any other genetic disease;
    - Any other condition as may be specified by the Central Supervisory Board.

The Act permits pre-natal diagnostic techniques to be used only for the purposes mentioned below:

i. Chromosomal abnormalities;
ii. Genetic metabolic diseases;
iii. Hemoglobinopathies;
iv. Sex-linked genetic diseases;
v. Congenital anomalies;
vi. Any other abnormalities or diseases as may be specified by the Central Supervisory Board.

Punishment and penalties are imposed on those who violate the provisions of the Act like advertisement relating to pre-natal determination of sex and so on.

- *The Medical Termination of Pregnancy Act, 1971:* This Act made the abortions legal up to 20 weeks of pregnancy. The provisions of the Act are as follows:
    - The termination of pregnancy requires the opinion of two doctors.
    - The abortion can happen if the physical or mental health of the mother is in danger due to pregnancy.
    - If there is a risk of the birth of a handicapped or malformed baby.
    - Pregnancy of unmarried girls under 18 years of age, with the consent of the guardian.
    - Pregnancy resulting due to rape.
    - Pregnancy resulting due to the failure of sterilisation.

CHILDREN AND HEALTH

Few important legislations related with children's health are being discussed below:

- *The Child Labour (Prohibition and Regulation) Act, 1986:* The Act has been enacted to prohibit the engagement of children in certain employments and to regulate the conditions of work of children in certain other employments. The Act has the following objects:
    1. To ban the employment of children;
    2. To lay down a procedure to decide modifications to the Schedule of banned occupations or processes;

3. To regulate' the conditions of work of children in employments where they are not prohibited from working;
4. To lay down enhanced penalties for employment of children in violation of provisions of this Act, and other Acts which forbid the employment of children;
5. To obtain uniformity in the definition of "child" in the related laws

The implementation of the Act is done through the inspector who shall have the notice of establishments employing children, nature of occupation, etc. and stringent penalties are imposed under the Act for employing any person less than the prescribed age or for violating the provisions of the Act.

- *The Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992:* The objective of this Act and its amendment is to promote breast feeding of new born children and infants. It also looks to ensure that infant foods are regulated and used appropriately. The Act lays down standards and quality control requirements, where it prohibits all persons from producing, selling or distributing any infant milk substitutes, feeding bottles or infant foods unless they confirm to the standards specified under the Prevention of Food Adulteration Act, 1954. All such containers should bear the standard mark specified by the Bureau of Indian Standards Act, 2016.
- *The Juvenile Justice (Care and Protection) Act, 2015:* This Act came into effect with the objective to consolidate and amend the law relating to children alleged and found to be in conflict with law and children in need of care and protection by catering to their basic needs through proper care, protection, development, treatment, social re-integration, by adopting a child-friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation through processes provided, and institutions and bodies established, herein under and for matters connected therewith or incidental thereto.

The Act is in pursuance of Constitutional provisions like Article 15(3), 39(e)(f), 45, 47 and after adoption and ratification of the Convention of the Rights of the Child, 1989; United Nations Standard Minimum Rules for the administration of Juvenile Justice, 1985 (the Beijing Rules) and the United Nations Rules for the Protection of Juveniles Deprived for their Liberty (1990) and all other relevant instruments.

FOOD RELATED LAWS

Food Safety and Standards Act, 2006: The Food Safety and Standards Act, 2006 (hereinafter referred to as "**FSSA**") overrides all other food related laws. It specifically repealed eight laws which were in operation prior to the enforcement of FSSA:

- The Prevention of Food Adulteration Act, 1954
- The Fruit Products Order, 1955
- The Meat Food Products Order, 1973
- The Vegetable Oil Products (Control) Order, 1947
- The Edible Oils Packaging (Regulation) Order, 1998
- The Solvent Extracted Oil, De oiled Meal, and Edible Flour (Control) Order, 1967
- The Milk and Milk Products Order, 1992
- Essential Commodities Act, 1955 (in relation to food)

The Food Safety and Standards Authority of India is a statutory body under Food Safety and Standards Act, 2006. The FSSAI appoints food safety authorities on the state level.

The FSSAI functions under the administrative control of the Ministry of Health and Family Welfare. The main aim of FSSAI is to:

1. Lay down science-based standards for articles of food
2. To regulate manufacture, storage, distribution, sale and import of food
3. To facilitate food safety

DISABILITY AND LAW

- *The Rights of Persons with Disabilities Act, 2016:* This Act along with the Rights of Persons with Disabilities Rules, 2017 (together, the "*Disability Law*") has replaced the erstwhile *Persons with Disabilities (Equal Opportunities,*

Protection of Rights and Full Participation) Act, 1995.

It gives effect to the principles of the *United Nations Convention on the Rights of Persons with Disabilities*. The Disability Law *inter alia* seeks to protect disabled persons from various forms of discrimination, increases measures for effective participation and inclusion in the society, and ensures equality of opportunity and adequate accessibility.

The Act contains following main focussed features:

1. Disabled persons' have been categorized as: (i) persons with disability; (ii) persons with benchmark disability and (iii) persons with disability having high support needs.
2. The definition of '*person with disability*' under the Disabilities Act, 2016 is an inclusive definition and includes 21 types of disabilities as 'specified disabilities'.
3. While majority of the obligations under the Disability Law are cast upon the appropriate government and/or local authorities; certain obligations/duties are also cast upon establishments (including in the private sector).
4. All establishments (including in the private sector) are required to frame and publish an Equal Opportunity Policy.
5. It prohibits discrimination of persons with disabilities, unless it can be shown that the act of discrimination was a proportionate means of achieving a legitimate aim.
6. Onus has been placed on the government to facilitate the rights of disabled persons. The government is required to *inter alia*, ensure/protect a disabled person's *right to equality, dignity and respect for his/her integrity equally with others; right to personal liberty, right not to be discriminated against; right to live in a community; right to equal protection and safety in situations of risk, armed conflicts, humanitarian emergencies, natural disasters etc.; accessibility to polling stations and material relating to electoral processes; right to access any court, tribunal, authority, commission or body having judicial or quasi-judicial or investigative powers without discrimination; right to own or inherit property (movable or immovable); right to manage one's own financial affairs and access to bank loans, mortgages and other forms of financial credit; right to barrier-free access to healthcare institutions and centres; right to have cultural life and to participate in recreational activities and sporting activities etc.*
7. Additional benefits such as right to free education (between the age group of 6 and 18 years), reservation in education, government jobs, allocation of land, poverty alleviation schemes etc. have been provided for persons with benchmark disabilities.
8. Reservation in vacancies in government establishments has been increased from 3% to 4% for certain persons or classes of persons having benchmark disability.
9. For ensuring speedy trial, special courts are to be constituted in each district to handle cases concerning violation of rights of persons with disabilities.
10. Enhanced penalties with a monetary penalty extending up to Rupees 500,000 and imprisonment extending up to 5 years.

- *The National Trust (For welfare of persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities) Act, 1999:* This Act provide for the constitution of a body at the National level for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities and for matters connected therewith.

This Act has established The National Trust which is a statutory body of the Ministry of Social Justice and Empowerment, Government of India. The National Trust's mission, or fundamental purpose, is to create an enabling environment, i.e. providing opportunities for Persons with Disabilities through comprehensive support systems which can also be done by collaborating with other Ministries, etc., which will lead towards development of an inclusive society.

- *The Rehabilitation Council Act of India (RCI, 1992):* The Rehabilitation Council of India (RCI) was set up as a registered society in 1986. In September, 1992 the RCI Act was enacted by Parliament and it became a Statutory Body on 22 June 1993.

The Act was amended by Parliament in 2000 to make it more broad- based. The mandate given to RCI is to regulate and monitor services given to persons with disability, to standardise syllabi and to maintain a Central Rehabilitation Register of all qualified professionals and personnel working in the field of Rehabilitation and Special Education. The Act also prescribes punitive action against unqualified persons delivering services to persons with disability.

CONCLUSION

Health legislation could be most powerful tool for promoting and protecting public health in securing right to health, the fundamental right of country people if framed more comprehensively. The health legislations are few in comparison to size and problems related to public health in the country. There is a need for having a comprehensive legislation, framed in order to gear the entire country to the objectives laid down in different health related policy of India and its religious implication as well. More comprehensive Legislations are needed to be enforced as one of several tools for the attainment of public health goals.

REFERENCES

1. WHO India. Health Legislation in India: A Compilation. http://202.54.104.237/intranet/eip/legislation/index.php
2. Legislations. National Institute of Health & Family Welfare. http://nihfw.nic.in/ndc-nihfw/html/Legislations.htm
3. Government of India. Annual report 2016-2017. Ministry of Health & Family Welfare. Nirman Bhawan, New Delhi 110011
4. Kishore J. National Health Programs of India. National Policies and legislations Related to Health. 10th edition. New Delhi
5. Government of India: The Constitution of India Act, 2016
6. The Constitution of India, 14th Edition by P M Bakshi
7. https: www.manupatra.com
8. Government of India: Indian Penal Code, 1860
9. Government of India:
10. Government of India: The National Green Tribunal Act, 2010
11. Government of India: The Environment Protection Act, 1986
12. Government of India: The Transplantation of Human Organs Act, 1994
13. The Mental Healthcare Act, 2017: https://mohfw.gov.in/sites/default/files/Final%20Draft%20Rules%20MHC%20Act%2C%202017%20%281%29.pdf
14. Government of India. The infant milk substitutes, feeding bottles and infant food (Regulation of Production, Supply & Distribution) Act 1992 (No. 41 of 1992)
15. Government of India: The narcotic drugs and psychotropic substances act, 1985. (61 of 1985)
16. Ministry of Law and Justice. Food safety and standards act, 2006 (34 of 2006)
17. The pre-natal diagnostic techniques (Regulation and prevention of misuse) act, 1994 (57 OF 1994) Amendment act, 2002 (No.14 of 2003)
18. Ministry of Law and Justice. The mental health act, 1987, New Delhi, 1987

Cite this Article

Niddhi. Health Legislations in India: Legal Tools for Promotion and Protection of Right to Health in the Country. *Indian Journal of Health and Medical Law. July* 2018; 1(1): 19–36p.