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# Health As A Legal Right in India

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## 1. Introduction

In 1948, the World Health Organisation (WHO) defined health with a phrase “Health is a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity.”<sup>1</sup>In 1986, the WHO made further clarifications: “A resource for everyday life, not the objective of living. Health is a positive concept emphasizing social and personal resources, as well as physical capacities.”<sup>2</sup>

This means that health is a resource that helps one to support in better functioning of society, rather than an end to itself. A good healthy lifestyle is central to handling stress in this fast-pacing world and provides the means to lead a meaningful and purposeful life.

The word health refers to a state of complete emotional and physical well-being. Healthcare exists to help people maintain this optimal state of health.

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<sup>1</sup> "Constitution of WHO" available at

<https://www.who.int/about/governance/constitution#:~:text=Health%20is%20a%20state%20of,belief%2C%20economic%20or%20social%20condition>. last visited on 5th March, 2022.

<sup>2</sup> "Ottawa Charter for Health Promotion, 1986 available at :

[https://www.euro.who.int/\\_\\_data/assets/pdf\\_file/0004/129532/Ottawa\\_Charter.pdf](https://www.euro.who.int/__data/assets/pdf_file/0004/129532/Ottawa_Charter.pdf) last visted on 6th March, 2022.

## 2. Definitions Of Health

There have been many definitions of health depending upon the transitions in time and development.

- a) “The condition of being sound in body, mind or spirit, especially freedom from physical disease or pain.”
- b) “soundness of body or mind; that condition in which its functions are duly and efficiently discharged”
- c) “A condition or quality of the human organism expressing the adequate functioning of the organism in given conditions, genetic or environmental.”<sup>3</sup>
- d) “A modus vivendi enabling imperfect men to achieve a rewarding and not too painful existence which they cope with an imperfect world.”<sup>4</sup>
- e) “A state of relative equilibrium of body forms and function which results from its successful dynamic adjustment to forces tending to disturb it. It is not passive interplay between body substance and forces impinging upon it but an active response of body forces working toward readjustment.”<sup>5</sup>

WHO definition The World Health Organization, 1948 has in its Constitution defined health as follows: “Health is a state of complete physical, mental and social wellbeing and not merely an absence of disease or infirmity.”<sup>6</sup>This statement has been given a broader perspective to include the ability to lead a “socially and economically productive life.” The definition of health has been criticized as being too. Some argue that health cannot be defined as a “state” at all, but must be seen as a process of ceaseless resilience to the changing life situations and its meanings. It is a dynamic concept. It helps in elevating the quality of life. The WHO definition of health is therefore considered by many as more of an idealistic aim than a realistic proposition. It implies to a situation that may come in effect for some individuals but not for everyone all the time. Some consider it immaterial to day-to-day requirements, as no one qualifies as healthy in the perfect

<sup>3</sup> "Definitions of Health" available at <http://ecoursesonline.iasri.res.in/mod/page/view.php?id=20127> last visited on 15th March, 2022.

<sup>4</sup> " Viewpoint: Dr. René Dubos and the Mirage of Health" available at <https://www.tandfonline.com/doi/pdf/10.1080/08998280.1994.11929887> last visited on 16th March, 2022.

<sup>5</sup> Concept of Health and Wellness available at : <https://rajnursing.blogspot.com/2018/01/concept-of-health-and-wellness-health.html> last visited on 17th March, 2022.

<sup>6</sup> "Constitution of WHO" available at <https://www.who.int/about/governance/constitution#:~:text=Health%20is%20a%20state%20of,belief%2C%20economic%20or%20social%20condition.> last visited on 5th March, 2022.

biological, psychological and social functioning. Hence the definition has been criticized for various reasons.

### **3. The Historical Evolution Of Idea Of “Health”**

Most of the primitive people of the world practiced personal hygiene for religious reasons and in order to appear pious and virtuous in the eyes of their gods. The view that, disease is caused due to natural causes, developed, much later, and only eventually. This major advance seems to have taken place in Greece in the 5th and 4th B.C. It represented a substantial step and symbolized the first attempt at a rational and scientific theory for the cause of disease.

For example, the association between malaria and swamps, was established in Greece very early, in 503 BC.

Hippocrates, in his books “Aris Waters and Places,” made the first systematic attempt to set forth the relationship between disease and environment. Until the 19th century, this book provided a theoretical basis for comprehending most endemic and epidemic diseases.

The middle ages, during which the Black death (Bubonic plague) and other epidemics spread, attested the practice of isolation of patients. Considerable efforts to improve sanitation through these years included the development of water supplies, sewage disposal and food inspection. During the Renaissance, that the spread of disease by contagion was systematically studied, broadly, by Fracastoro of Verona.

Incidentally, it was also in the 16th and 17th centuries that great scientists laid down the foundations of anatomy and physiology. The idea that microscopic organism might cause communicable diseases, began to evolve in course of time.

### **4. Different Phases Of Health**

The history of public health has passed through four distinct phases.

**Disease control phase (1880-1920):** Public health during the 19th century was majorly a matter of sanitary legislation and sanitary reforms aimed at the control of physical environment like water supply, sewage disposal, etc. These measures were not aimed at the control of any specific disease but for the want of the required technical knowledge. However, these, measures significantly improved the health and hygiene of the people due to disease and death control.

**Health promotional phase (1920-1960):** At the commence of the 20th century, a new concept, the concept of “health promotion” began to surface. It was realized that public health had

neglected the citizen as an individual, and the State had a direct responsibility of the health of the individual.

**Social engineering phase (1960-1980):**The pattern of diseases varied with the advancement of medicine and public health. Though the old problems were solved, new problems in the form of chronic diseases started to change in the developed world. Those were chronic diseases like cancer, diabetes, cardiovascular etc which could not be tackled by the traditional approaches like isolation, immunization and disinfection. A new concept, the concept of “risk factors” as determinants of these diseases came into existence. The consequences of these diseases, unlike the swift death brought by the acute infectious diseases, were to place a chronic burden on the society that created them. These problems brought unprecedented challenges to public health which needed reorientation and restructure towards social objectives. Public health entered a new phase in 1960s described as the “social engineering” phase.

**Health for all phase (1981-2000) :** As the centuries have unfolded, the glaring contrasts in the picture of health in the developed and developing countries came into a sharper focus, despite advances in medicine. Most people in the developed countries, and in the elite of the developing countries, enjoy all the determinants of good health-adequate income, nutrition, education, sanitation, safe drinking water and comprehensive health care. John Bryant in the introduction to his book: “Health and the Developing World” presented a gloomy picture and a challenge of inequalities in health by saying: “large numbers of the world’s people, perhaps more than half, have no access to health care at all, and for many of the rest the care they receive does not answer the problems they have.” The global conscience was stirred to a new awakening that the health gap between rich and poor within countries and between countries should be narrowed and ultimately eliminated. It is conceded that the neglected 80 percent of the world’s population too have an equal claim to health care, to protection from the killer diseases of childhood, to primary health care for mothers and children, to treat for those ills that making has long ago learnt to control, if not to cure. Against this background, in 1981, the members of the WHO pledged themselves to an ambitious target to provide Health for all by the year 2000 that lead a socially and economically productive life.”The goal of Health for All had two perspectives. Viewed in the long-term context, it simply means the realization of the WHO’s objective of “attainment by all peoples of the highest possible level of health”. But what is of immediate relevance is the meaning that, as minimum, all people in all countries should have at least such a level of health that they are capable of working productively and of participating actively in the social life of the community in which they live.

## **5. Legal framework of healthcare in India**

It consists of the constitutional provisions, various laws passed on health issues in pursuance of this power of legislative authority of the Central and state government. Constitutional provisions. Fundamental Rights under article 14, 15 and 21 have been interpreted by courts as protecting health of the people. Directive principles of state policies in **Part IV** in Indian constitution provide for this multidimensional right in Articles 39,41,42,43 and 47. A comparative study of similar provisions in some foreign countries will be worthwhile to highlight the importance of this right. Fundamental Duties under article 51 A also is relevant in context of health.

Article 242-W of the Constitution provides that the legislature of a State may be 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 includes 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 prescribed 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 practices, providing a supply of water proper and sufficient for preventing dangerto the health ofthe inhabitants from the insufficiency or unwholesomeness ofthe existing supply, public vaccination, cleaning public places and removing noxious substances, disposal of right 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. Art.253. Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any other body.

### **The Indian Medicine Central Council Act 1970**

For the regulation of practitioners of Indian Medicine- defined as those practicing Ayurveda, Siddha or Unani systems of medicine- this particular enactment became necessary. The representative Central Council takes into consideration the requirements of all the three systems and the educational standards that need to be laid down for the same. The Central Council shall also be housing the formation of three sub-committees on each of the system of medicine. The

enrolment procedure, the recognition of the qualifications in this regard, the supervisory powers towards the maintenance of the efficiency in the educational schemes through the laying down of minimum standards for the same and the power to advise the Central Government to withdraw the recognition granted if there is a breach of the standards, form the functions of the Central Council on Indian Medicine. In addition, there is also a Register maintained of all the persons practicing any of the three systems of medicine.

### **The Dentists Act, 1948**

It regulates the profession of dentistry and makes provisions for the regulation of the progression of dentistry and for that purpose to constitute Dental Councils. The Medical Council of India and the Dental Council of India were set up under ACTs of Parliament with a view to regulate medical and dental education in the country. Under the provisions of Regulations of the two statutory bodies, no medical or dental college can be established or increase their capacity without prior approval of the Central Government.<sup>7</sup>

### **The Homoeopathy Central Council Act, 1973**

This Act provides for the constitution of a Central Council of Homoeopathy and maintenance of a Central Register of Homoeopathy. It explains “Homoeopathy”, as, the Homoeopathic system of medicine and includes the use of Biochemical remedies Government constituted the Central Council of Homoeopathy in the year 1974 to maintain a Central Register of Homoeopathy and matters connected therewith. This Act takes care of Homoeopathy practice and education in the country. .<sup>8</sup>

### **Indian Nursing Council Act, 1947**

In order to establish a uniform standard of training for nurses, midwives and health visitors the Indian Nursing Council was sought to be formed.<sup>9</sup> The main functions of the Council are similar to that of the other Councils mentioned hitherto. Beginning with the supervisory powers over the educational standards and the recognition of the qualifications, it goes on to the regulations of the profession itself through the maintenance of the Indian Nurses Register and the power to make rules regarding the professional conduct of the nurses. The advisory capacity to the Central Government too is provided for by the Act. To recognize the qualifications under section 10(2)(4)

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<sup>7</sup> THE DENTISTS ACT, 1948 Available at : [https://dciindia.gov.in/Rule\\_Regulation/Dentists\\_Act\\_1948.pdf](https://dciindia.gov.in/Rule_Regulation/Dentists_Act_1948.pdf). Last seen on 8<sup>th</sup> May, 2022.

<sup>8</sup> THE HOMOEOPATHY CENTRAL COUNCIL ACT, 1973 Available at : <https://legislative.gov.in/sites/default/files/A1973-59.pdf> Last seen on 13<sup>th</sup> May, 2022.

<sup>9</sup>THE INDIAN NURSING COUNCIL ACT, 1947 Available at : <https://www.indiannursingcouncil.org/uploads/files/16141575032256.pdf> Last seen on 15<sup>th</sup> May,2022.

of the Indian Nursing Council Act, 1947 for the purpose of registration and employment in India and abroad. To give approval for registration of Indian and Foreign Nurses possessing foreign qualification under section 11(2)(a) of the Indian Nursing Council Act, 1947.

### **The Pharmacy Act, 1948.**

It regulates the profession of Pharmacy. It contains provision for the regulation of the profession and practice of practice of pharmacy and or that purpose constitutes Pharmacy Councils.

**Drugs and Cosmetics Act, 1940-** The main purpose of the Act is to prevent sub-standards in drugs, presumably for maintaining high standards of medical treatment. The Drugs and Cosmetics Act, 1940 is also intended to regulate the import, manufacture, distribution and sale of drugs and cosmetics The Drugs and Constitutional Act includes broad definitions of the term “drugs” and “medicines” to include not only medicines properly so called but also other substance used to treat human beings or animals, it also includes substances which are necessary aids for treating surgical or other cases-thereby includes cotton gauze etc. uses for treatment.

Section 8C of the Act insists on licensing not only for drugs and cosmetics ‘but for storage in order to prevent drugs deteriorating into substance harmful to society. Section 27(a)(i) Makes a sentence of imprisonment for not less than one year compulsory for offences under the Act in addition to a fine. In case a company is sought to be prosecuted, the people in the company who are responsible for the violation would be convicted.

## **The Indian Penal Code 1860**

Section 268- 278 and section 284-288 of the Indian Penal Code also contain provisions which are employed by the courts to protect public health.

### **The Water (Prevention and Control of Pollution) Act,1974**

The water (Prevention and Control of Pollution) Act,1974 is one of the major laws relevant to the environment. The main objects are the following

- (1) to provide for the prevention and control of water pollution.
- (2) to provide for the maintaining or restoring of wholesomeness of water;<sup>10</sup>
- (3) to provide for the maintaining of Boards for the control of water pollution;

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<sup>10</sup> THE WATER (PREVENTION AND CONTROL OF POLLUTION) CESS ACT, 1977 Available at : <https://cpcb.nic.in/upload/home/water-pollution/A1977-36.pdf> Last seen on 29<sup>th</sup> May, 2022.

- (4) to provide for conferring powers on such Boards and assigning functions to such Board;
- (5) to provide for matters connected with above.

## **Air Pollution Act**

Sections 19-31A of the Air Pollution Act contain provisions which deal with the major regulatory mechanism contemplated by the Act. The pivotal section is section 19, relating to declaration of certain areas as “Air pollution control areas” and providing for connected regulatory measures. Section 20 of the Act deals with automobile pollution- a matter now dealt with the detail by rules made under the Motor Vehicles Act, 1988. Section 21 provides for restrictions of the establishment of industrial plants in air pollution control areas without the consent of the State Board. Emission of Pollutants excess of the notified standards is dealt with in Section 22. Section 22A creates on additions procedure, where under a Pollution Control Board can apply to the competent court, to pass orders restraining a person from causing air pollution.

### **Epidemic Diseases Act, 1925**

This Act (being a Central Act enacted in 1925) gives to the Government, powers to take certain measures to check the spread of epidemic diseases.

### **The Insecticides Act, 1968**

This Act regulates the import, manufacture, sale, transport and distribution of insecticides with a view to preventing risk to human beings or animals. There are provisions for registration of insecticides and for obtaining licenses, for manufacture, sale or stocking of insecticides.

### **Mental Health Act, 1987**

This Act was passed 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 incidental matters. It is the current major Indian legislation relating to the detention, and treatment of mentally ill persons and the regulation of institutions concerned with such patients. - For example, insanity as a defence to a charge of crime is governed by *sections 84* of the *Indian Penal Code*.

Mental abnormality in the context of marital relationship is dealt with in *sections 5 and 13* of *Hindu Marriage Act 1955*. The main provisions can be noted as under.

- (1) Inspection, discharge, leave of absence and removal of mentally ill persons (sections 37 to 49).

- (2) Judicial inquisition regarding detention of mentally persons(sections 50 to 77).
- (3) Maintenance of mentally ill persons detained in psychiatric hospitals etc. sections 78-80).<sup>11</sup>

## **Narcotic Drugs And Psychotropic Substances Act, 1985**

It is intended to achieve the following objects.

- (a) Consolidation and amendment of the law relating to narcotic drugs. The Act repeals the Opium Acts of 1875 and 1878, and the Dangerous Drugs Act, 1930. The problems with the Dangerous Drugs Act and Opium Act which led to the need for a more stringent law were that the old laws were not sufficiently deterrent with maximum punishment of 3-4 years and very low fines and powers of investigation were linked. These factors led to an increase in Drug trafficking.
- (b) The NDPS Act imposes fines on people found in possession of Narcotic drugs and psychotropic substances as defined by the Act. In order to create greater deterrence value, the Act imposes stringent fines on people found in possession of and abetting.<sup>12</sup>

## **Prevention Of Food Adulteration Act, 1954**

This Act is intended to prevent the adulteration of food. Its main provisions can be summarized as under.

1. A Central Committee for Food, Standards has been provided for, as also a Central Food Laboratory (Sections, 3,3A,4).
2. Import, manufacture and sale etc., of certain foods are prohibited, The foods so prohibited include adulterated foods, misbranded foods, foods for whose import or sale a licence is laid down by Government under rules and other articles of food in contravention of specific provisions of the Act or rules made there under Section (5 to 7) “Food includes article used as food or drink for human consumption (other than drugs and water)(Section 2(v)). There is a very elaborate definition of the expressions “adulterated” and “misbranded”.

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<sup>11</sup> The Mental Health Act , 1987. Available at :

[https://www.wbhealth.gov.in/mental\\_health/Acts\\_Rules/MHA\\_1987.pdf](https://www.wbhealth.gov.in/mental_health/Acts_Rules/MHA_1987.pdf) Last seen on 1<sup>st</sup> June, 2022.

<sup>12</sup> The Narcotic Drugs And Psychotropic Substances, Act, 1985 Available at :

<https://legislative.gov.in/sites/default/files/A1985-61.pdf> Last seen on 2<sup>nd</sup> June, 2022.

## **Hazardous Wastes (Management And Handling) Rules, 1989.**

In these Rules, the bio-medical waste was not given any place. This means that all these years, the Central Government hardly realised that the bio-medical waste came under the danger zone of hazardous wastes substances. Finally after duly considering and making necessary amendments in the Draft Rules, the Bio-Medical Waste (Management and handling) Rules, 1998 (BMW Rules) finally came into operation with effect from July 20 1998.

## **The Transplantation Of Human Organs Act, 1994**

This Act was passed 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 and for matters connected therewith or incidental thereto.

A registered medical practitioner is allowed transplantation of human organs in some cases. It is provided that,

1. Any donor may, in such manner and subject to such conditions as may be prescribed, authorise the removal, before his death, of any human organ of his body for therapeutic purposes.
2. If any donor had, in writing and in the presence of two or more witnesses (at least one of whom is a near relative of such person), unequivocally authorised at any time before his death, the removal of any human organ of his body, after his death, for therapeutic purposes, the person lawfully in possession of the dead body of the donor shall, unless he has any reason to believe that the donor had subsequently revoked the authority aforesaid, grant to a registered medical practitioner all reasonable facilities for the removal, for therapeutic purposes, of that human organ from the dead body of the donor.
3. Where any human organ is to be removed from the body of a deceased person, the registered medical practitioner shall satisfy himself, before such removal, by a person examination of the body from which any human organ is to be removed, that life is extinct in such body or, where it appears to be a case of brain-stem death, that such death has been certified under sub-section (6) after strictly following the prescribed procedure. Recently many shocking incidents of kidney transplantations in blatant violation of these rules and regulations has been noticed. The court has held that, "Transplantation and registration certificate. Removal of kidney of a person who is not near relative of patient is a violation of law and comes within the offence.

## **The Explosive Substances Act, 1908**

This act defines the explosives and prescribes punishment for causing or attempting to cause explosion likely to endanger life or property of any person unlawfully or maliciously.

## **The Fatal Accidents, 1855**

This Act provides for compensation to families for loss occasioned by the death of a person caused by actionable wrong. It is stated in section [1 A.] that, “Whenever the death of a person shall be caused by wrongful act, neglect, or default, and the act, neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, the party who would have been liable if death had not ensued, shall be liable to an action or for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony or other crime.”

## **The Arms Act, 1956**

The Indian Arms Act, 1878, was intended to disarm the entire nation. Even after independence, the law declaring “swords, daggers, spears, spear-heads, bow and arrows” as “arms” has been allowed to continue unaltered on the statute book.

The rigours of the Arms Act and rules there under continue to make it difficult for law abiding citizens to possess firearms for self-defence whereas terrorists, dacoit-gangs and other anti-national elements are using not only civilian weapons but also bombs, hand-grenades, Bren-guns, Stenguns.

## **The Narcotic Drugs And Psychotropic Substances Act, 1985**

This Act 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 substances (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 Convention of Narcotic Drugs and Psychotropic substances) and for matters connected therewith. Section 27 of the principal Act, is substituted, by deterrent Punishment for consumption of any narcotic drug or psychotropic substance. Whoever consumes any narcotic drug or psychotropic substance shall be punishable:

- (a) where the narcotic drug or psychotropic substance consumed is cocaine, morphine, diacetyl-morphine or any other narcotic drug or any psychotropic substance as may be specified in this behalf by the Central Government by notification in the Official Gazette, with rigorous imprisonment for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both; and
- (b) where the narcotic drug or psychotropic substance consumed is other than those specified in or under clause (a), with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both.”.

## **Juvenile Justice (Care And Protection Of Children) Act, 2000**

The constitutional mandate, in several provisions, such as clause (3) of article 15, clauses (e) and (f) of article 39, articles 45 and 47, imposes on the State, a primary responsibility of ensuring that all the needs of children are met and that their basic human rights are fully protected; Considering the obligations under the Convention on the Rights of the Child emphasizing social reintegration of child victims, to the extent possible, resorting to judicial proceedings; Indian Government has re-enacted the existing law relating to juveniles bearing in mind the standards prescribed in the Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990), and all other relevant international instruments

### **The Drugs (Control) Act, 1950.**

An Act provides for the control of the sale, supply and distribution of drugs by fixing of maximum prices and maximum quantities which may be held or sold. It creates restrictions on sale, etc. where maximum is fixed under Sec. 4. It also lays down Prohibition or regulation of the disposal of drugs.

### **The Drugs And Cosmetics Act, 1940**

This is an Act to regulate the import, manufacture, distribution and sale of drugs [and cosmetics] The Legislatures of all the provinces have passed resolutions in terms of section “cosmetic” means any article intended to be rubbed, poured, sprinkled or sprayed on, or introduced into, or otherwise applied to, the human body or any part thereof for cleaning, beautifying, promoting attractiveness, or altering the appearance, and includes an article intended for use as a component of cosmetic. All medicines for internal or external use of human beings or animal and

all substances intended or prevention of any disease or disorder in human beings or animals, including preparations applied on human body for the purpose of repelling insects like mosquitoes.

## **The Drugs And Magic Remedies (Objectionable Advertisements) Act, 1954**

This Act aims to control the advertisement of drugs in certain cases, and prohibits the advertisement for certain purposes of remedies alleged to possess magic qualities.<sup>13</sup>

“Advertisement” is defined to include any notice, circular, label, wrapper or other document, and any announcement made orally or by any means of producing or transmitting light, sound or smoke. “magic remedy” includes 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.

## **Maternity Benefits Act, 1961**

The Maternity Benefits Act, 1961, regulates the employment of women in certain establishments for certain periods before and after childbirth and provides for maternity benefit etc. It also covers the situations of miscarriage (section 9) death and tubectomy (section 9A). Employment of a woman in any establishment is prohibited for the period of six weeks preceding delivery (section 4). During the above period, the woman herself is prohibited from working (section 4). For this period, she must be paid usual wages (section 5(1)). Besides this, there is a prohibition against the woman being required to do arduous work or work involving long hours of standing or work likely to interfere with her pregnancy or with normal development of the child (section 4(3)), during the specified period-usually, one month preceding the period of six weeks before the date of expected delivery (sections 5(3) and 5(4)).

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<sup>13</sup> THE DRUGS AND MAGIC REMEDIES (OBJECTIONABLE ADVERTISEMENTS) ACT, 1954 Available at : [https://legislative.gov.in/sites/default/files/A1954-21\\_1.pdf](https://legislative.gov.in/sites/default/files/A1954-21_1.pdf) Last seen on 9<sup>th</sup> June, 2022.

## **Medical Termination Of Pregnancy Act, 1971**

Before 1971, Casing a woman to miscarry was an offence under section 312 of the Indian Penal Code. There was an exception for cases where the act was committed to save the woman's life. After 1971, the Medical Termination of Pregnancy Act prescribes rules in this regard. The Act permits abortion in a number situations, subject to the observance of certain safeguards.<sup>14</sup>

## **The Pre-Conception And Pre-Natal Diagnostic Act 1994**

An Act to provide for the prohibition of sex selection, before or after conception, and for regulation of pre-natal diagnostic techniques for the purposes of detecting genetic abnormalities or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex-linked disorders and for the prevention of their misuse for sex determination leading to female feticides. The rules are framed under this Act to provide for the regulation of the use pre-natal diagnostic techniques for the purpose of detecting genetic abnormalities or certain congenital malformations or sex-linked disorders and for the prevention of the misuse of such techniques for the purpose of pre-natal sex-determination leading to female foeticide, and related matters.<sup>15</sup>

## **The Pre-Natal Diagnostion Techniques (Regulation And Prevention Of Misuse) Rules. 1996**

It contains mandatory Conditions for conducting pre-natal diagnostic procedures. This is an Act to provide for the regulation of production , supply and distribution of infant milk substitutes, feeding bottles and infant foods with a view To the protection and promotion of breast-feeding and ensuring the proper us of infant foods and for matters connected therewith or incidental thereto.

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<sup>14</sup> Medical Termination of Pregnancy Act, 1971. Available at <https://main.mohfw.gov.in/acts-rules-and-standards-health-sector/acts/mtp-act-1971#:~:text=The%20Medical%20Termination%20of%20Pregnancy%20Act%2C%201971&text=An%20Act%20to%20provide%20for,connected%20therewith%20or%20incidental%20thereto>. Last seen on 10<sup>th</sup> June, 2022.

<sup>15</sup> Pre-Conception & Pre-Natal Diagnostic Techniques Act, 1994 Available at : <https://www.indiacode.nic.in/bitstream/123456789/8399/1/pre-conception-pre-natal-diagnostic-techniques-act-1994.pdf>. Last seen on 11<sup>th</sup> June, 2022.

## Workmen's Compensation Act, 1923

This Act provides for the payment by certain classes of employers to their workmen of compensation for injury by accident under section 3.<sup>16</sup>

## The Indian Fisheries Act, 1897

This Act makes a few provisions for preventing water pollution causing danger to sea life under section 4<sup>17</sup>.

## The Protection Of Women From Domestic Violence Act, 2005

- a) The objects and reasons clause states that, "Domestic violence is undoubtedly a human rights issue and serious deterrent to development. The Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995) have acknowledged this. The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in its General Recommendation No. XII (1989) has recommended that State parties should act to protect women against violence of any kind especially that occurring within the family.

<sup>16</sup> Section 3 - Employer's liability for compensation States that,

- 1) If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter: Provided that the employer shall not be so liable - a) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding [three] days; b) in respect of any [injury, not resulting in death [or permanent total disablement] caused by an accident which is directly attributable to -
  1. the workman having been at the time thereof under the influence of drink or drugs, or
  2. the wilful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, or
  3. the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen.

According to Section 3 (2), the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section and, unless the contrary is provided, the accident shall be deemed to have arisen out of, and in the course of, the employment.

<sup>17</sup> Section 4 - Destruction of fish by explosives in inland waters and on coasts

- 1) If any person uses any dynamite or other explosive substance in any water with intent thereby to catch or destroy any of the fish that may be therein, he shall be punishable with imprisonment for a term which may extend to two months, or with fine which may extend to two hundred rupees.
- 2) In sub-section (1), the word "water" includes the sea within a distance of one marine league of the sea-coast; and an offence committed under that sub-section in such sea may be tried, punished and in all respects dealt with as if it had been committed on the land abutting on such coast. Section 5 - Destruction of fish by poisoning waters
  - 1) If any person puts any poison, lime or noxious material into any water with intent thereby to catch or destroy any fish, he shall be punishable with imprisonment for a term which may extend to two months, or with fine which may extend to two hundred rupees.

- b) The phenomenon of domestic violence is widely prevalent but has remained largely invisible in the public domain. Presently, where a woman is subjected to cruelty by her husband or his relatives, it is an offence under section 498A of the Indian Penal Code. The civil law does not however address this phenomenon in its entirety.
- c) It is, therefore, proposed to enact a law keeping in view the rights guaranteed under articles 14, 15 and 21 of the Constitution to provide for a remedy under the civil law which is intended to protect the woman from being victims of domestic violence and to prevent the occurrence of domestic violence in the society. This Act is passed to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto.<sup>18</sup>

It defines the terms like, “domestic relationship”, “shared household” and Domestic Violence. It defines the expression “domestic violence” to include actual abuse or threat or abuse that is physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition. It provides for the rights of women to secure housing. It also provides for the right of a woman to reside in her matrimonial home or shared household, whether or not she has any title or rights in such home or household. This right is secured by a residence order, which is passed by the Magistrate. The Act empowers the Magistrate to pass protection orders in favour of the aggrieved person to prevent the respondent from aiding or committing an act of domestic violence or any other specified act, entering a workplace or any other place frequented by the aggrieved person, attempting to communicate with her, isolating any assets used by both the parties and causing violence to the aggrieved person, her relatives or others who provide her assistance from the domestic violence. It also provides for appointment of Protection Officers and registration of nongovernmental organisations as service providers for providing assistance to the aggrieved person with respect to her medical examination, obtaining legal aid, safe shelter, etc.

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<sup>18</sup> The Protection Of Women From Domestic Violence Act, 2005 Available at [https://www.indiacode.nic.in/bitstream/123456789/15436/1/protection\\_of\\_women\\_from\\_domestic\\_violence\\_act%2C\\_2005.pdf](https://www.indiacode.nic.in/bitstream/123456789/15436/1/protection_of_women_from_domestic_violence_act%2C_2005.pdf) Last seen on 26<sup>th</sup> June, 2022.

## **Conclusion:**

If we consider 'health' importing the notion of well-being, the gamut would naturally be much more expansive and realistic. In this approach, the focus would not only be on the individual but also essential facets like environment will be taken into consideration. The factors that are essential and facilitating, will form part of such understanding. To include the living, food, environment, housing and host of others. In view of these parameters, the approach must take within its fold not only curative but also preventive and protective aspects of healthcare as well. The framers of Indian constitution have made direct and provisions in constitution for the protection of health. The various governments have also framed health related legislations keeping in the needs of changing society.

