LEGAL ASPECTS OF HOSPITAL MANAGEMENT

Dr. B.G. MANIAR
LL.M., Ph.D.,
Professor
Department of Law,
Saurashtra University,
Rajkot-360 001
Gujarat
ACKNOWLEDGEMENT

Hospital management is generally concerned with the non-medical responsibilities of general management, coordination and smooth running of all services provided by the entire staff of the hospital or health care centre, which includes clerks, consultants, cleaners, nurses, doctors, and all other professionals. It does not confine only to doctors, nurses and patients. It has to carry responsibility in addition to medical staff management, research in health care, epidemiology and community health and strategic health management in health care systems.

The present book deals with the legal aspects of Hospital Management in India. The book attempts to refer to provisions of various statutes and case laws related to different aspects of hospital management. Major aspects touched upon are: labour laws, consumer protection, transplantation of human organs, health insurance, medical termination of pregnancy, pre-conception and prenatal diagnostic.

I express my sincere gratitude to the Hon’ble Vice Chancellor Dr. M. K. Padaliya, Dr. Kamlesh Joshipura, Professor & Head Dr. N.K.Indrayan, Professor & Head for their valuable guidance and encouragement. I am also thankful to Dr. R.M. Dave, Prof(Dr.) D. K. Ghos and Mr. Niraj for their kind cooperation.

Legal Aspects of Hospital Management – Dr. B.G. Maniar
Table of Contents

1  INTRODUCTION TO HOSPITAL MANAGEMENT  13

1.1  BASIC LEGAL REQUIREMENTS TO START A HOSPITAL  14
1.2  STATUTORY OBLIGATIONS  15
1.3  MEDICAL AND PHARMACY LAWS  15
1.4  TAXATION LAWS  16
1.5  INCIDENTAL LAWS  16
1.6  LABOUR LAWS  17
1.7  BUSINESS LAWS  17
1.8  ENVIRONMENTAL LAWS  18

2  INDIAN JUDICIAL SYSTEM  18

2.1  THE SUPREME COURT (ART. 124)  19
2.2  HIGH COURTS  20
2.2.1  JURISDICTIONS:  20
2.3  CIVIL COURTS  21
2.3.1  DISTRICT COURTS  21
2.3.2  CIVIL COURTS  21
2.4  CRIMINAL COURTS  22
2.5  CONSUMER COURTS  23
2.5.1  DISTRICT FORUM  23
2.5.2  STATE COMMISSION  23
2.5.3  NATIONAL FORUM  23
2.5.4  SUPREME COURT  23
2.5.4  INITIATION OF LEGAL PROCEEDINGS:  23

3  LABOUR LAWS  24
3.1 **THE INDUSTRIAL DISPUTES ACT, 1947**

3.1.1 **INDUSTRY**

3.1.2 **INDUSTRIAL DISPUTE**

3.1.3 **WORKMAN**

3.1.4 **NOTICE OF CHANGE**

3.1.5 **SETTLEMENT OF DISPUTES**

3.1.6 **CONCILIATION PROCEEDINGS**

3.1.7 **SIGNIFICANCE OF THE SCHEDULES**

3.1.8 **ADJUDICATION**

3.1.9 **STRIKES AND LOCKOUTS**

3.1.10 **LAY OFF**

3.1.11 **RETRENCHMENT**

3.1.12 **CLOSURE**

3.1.13 **PENALTIES, COGNIZANCE OF OFFENCE AND RECOVERY OF MONEY DUE FROM THE EMPLOYER**

3.1.14 **REPRESENTATION OF THE PARTIES**

3.2 **THE TRADE UNIONS ACT, 1926**

3.2.1 **OBJECT OF THE ACT**

3.2.2 **REGISTRATION AND CANCELLATION**

3.2.3 **REGISTRATION**

3.2.4 **LEGAL STATUS OF REGISTERED T.U.**

3.2.5 **IMMUNITY FROM CIVIL SUIT IN CERTAIN CASES**

3.2.6 **OFFENCES AND PENALTIES**

3.3 **THE INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946**

3.3.1 **APPLICABILITY OF THE ACT**

3.3.2 **OBJECT**

3.3.3 **CONDITIONS FOR CERTIFICATION OF STANDING ORDERS**

3.3.4 **SUBMISSION OF DRAFT STANDING ORDERS**

3.3.5 **PROCEDURE FOR CERTIFICATION, DATE OF OPERATION AND POSTING OF STANDING ORDERS**

3.3.6 **PAYMENT OF SUBSISTENCE ALLOWANCE TO THE SUSPENDED WORKERS**

3.3.7 **TEMPORARY APPLICATION OF MODEL STANDING ORDERS, OFFENCES AND PENALTIES**
<table>
<thead>
<tr>
<th>Section</th>
<th>Act and Regulation</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.4</td>
<td>THE FACTORIES ACT, 1948</td>
<td>46</td>
</tr>
<tr>
<td>3.4.1</td>
<td>OBJECTIVES</td>
<td>46</td>
</tr>
<tr>
<td>3.4.2</td>
<td>APPLICATION</td>
<td>46</td>
</tr>
<tr>
<td>3.4.3</td>
<td>HEALTH, SAFETY AND WELFARE</td>
<td>47</td>
</tr>
<tr>
<td>3.4.4</td>
<td>WORKING HOURS, SPREAD OVER, OVERTIME, ANNUAL LEAVE WITH WAGES</td>
<td>48</td>
</tr>
<tr>
<td>3.5</td>
<td>THE SHOPS AND ESTABLISHMENTS ACT, 1948</td>
<td>49</td>
</tr>
<tr>
<td>3.6</td>
<td>THE CHILD LABOUR (PROHIBITION AND REGULATION) ACT, 1986</td>
<td>50</td>
</tr>
<tr>
<td>3.6.1</td>
<td>OBJECT –</td>
<td>50</td>
</tr>
<tr>
<td>3.6.2</td>
<td>APPLICATION</td>
<td>51</td>
</tr>
<tr>
<td>3.6.3</td>
<td>WORKING CONDITIONS</td>
<td>51</td>
</tr>
<tr>
<td>3.6.4</td>
<td>HOURS AND PERIOD OF WORK</td>
<td>51</td>
</tr>
<tr>
<td>3.6.5</td>
<td>HEALTH AND SAFETY</td>
<td>52</td>
</tr>
<tr>
<td></td>
<td>SCHEDULE</td>
<td>53</td>
</tr>
<tr>
<td>3.6.6</td>
<td>OFFENCES AND PENALTIES</td>
<td>55</td>
</tr>
<tr>
<td>3.7</td>
<td>THE MINIMUM WAGES ACT, 1948</td>
<td>56</td>
</tr>
<tr>
<td>3.7.1</td>
<td>OBJECT</td>
<td>56</td>
</tr>
<tr>
<td>3.7.2</td>
<td>SCOPE AND COVERAGE</td>
<td>56</td>
</tr>
<tr>
<td>3.7.3</td>
<td>WAGES</td>
<td>56</td>
</tr>
<tr>
<td>3.7.4</td>
<td>PAYMENT</td>
<td>57</td>
</tr>
<tr>
<td>3.7.5</td>
<td>FIXATION OF WAGES, WORKING HOURS</td>
<td>57</td>
</tr>
<tr>
<td>3.7.6</td>
<td>METHODS OF FIXING, REVISING THE RATES OF MINIMUM WAGES BY -</td>
<td>57</td>
</tr>
<tr>
<td>3.7.7</td>
<td>CLAIMS, OFFENCES AND PENALTIES</td>
<td>58</td>
</tr>
<tr>
<td>3.8</td>
<td>THE PAYMENT OF WAGES ACT, 1936</td>
<td>62</td>
</tr>
<tr>
<td>3.8.1</td>
<td>OBJECT</td>
<td>62</td>
</tr>
<tr>
<td>3.8.2</td>
<td>APPLICATION</td>
<td>62</td>
</tr>
<tr>
<td>3.8.3</td>
<td>COVERAGE</td>
<td>62</td>
</tr>
<tr>
<td>3.8.4</td>
<td>WAGES</td>
<td>63</td>
</tr>
<tr>
<td>3.8.5</td>
<td>DEDUCTION FROM WAGES</td>
<td>64</td>
</tr>
<tr>
<td>3.8.6</td>
<td>OFFENCES AND PENALTIES</td>
<td>65</td>
</tr>
<tr>
<td>3.9</td>
<td>THE PAYMENT OF BONUS ACT, 1965</td>
<td>66</td>
</tr>
<tr>
<td>3.9.1</td>
<td>OBJECT</td>
<td>66</td>
</tr>
<tr>
<td>3.9.2</td>
<td>SCOPE</td>
<td>66</td>
</tr>
<tr>
<td>3.9.3</td>
<td>CALCULATION OF BONUS</td>
<td>68</td>
</tr>
</tbody>
</table>

*Legal Aspects of Hospital Management – Dr. B.G. Maniar*
3.9.4  CALCULATE ALLOCABLE SURPLUS. 68
3.9.5  MAINTENANCE OF REGISTERS AND RECORDS, OFFENCES AND PENALTIES 69
3.9.6  OFFENCES 69
3.9.7  CONTRACTING OUT IS VOID (SEC. 31A) 69
3.9.8  DEDUCTION 69
3.9.9  FORFEITURE 70
3.10  THE EQUAL REMUNERATION ACT, 1976 70
  3.10.1  OBJECT 70
  3.10.2  APPLICATION 70
  3.10.3  OFFENCE AND PENALTIES 71
3.11  THE EMPLOYEES’ COMPENSATION ACT, 1923 72
  3.11.1  OBJECT 72
  3.11.2  COVERAGE 72
  3.11.3  CONTRACTING OUT 73
  3.11.4  WAGES 73
  3.11.5  COMPENSATION 73
  3.11.6  COMPENSATION – WHEN PAYABLE 74
  3.11.7  EMPLOYMENT INJURY 75
  3.11.8  NOTICE OF ACCIDENT 76
  3.11.9  COMPENSATION WHEN NOT PAYABLE 77
  3.11.10  OFFENCES AND PENALTIES 78
3.12  THE EMPLOYEES’ STATE INSURANCE ACT, 1948 78
  3.12.1  OBJECT OF THE ACT 78
  3.12.2  APPLICABILITY AND COVERAGE 79
  3.12.3  CONTRIBUTION AND RATE 79
  3.12.4  WAGES FOR ESI 80
  3.12.5  BENEFITS, RATES, FORM, CONDITIONS 81
  3.12.6  ESI SCHEME TODAY 84
  3.12.7  EMPLOYEES’ INSURANCE COURT 84
  3.12.8  OFFENCES 85
  3.12.9  PENALTIES 85
3.13  THE MATERNITY BENEFIT ACT, 1961 86
  3.13.1  OBJECT 86
3.13.2 APPLICATION 86
3.13.3 COVERAGE 86
3.13.4 BENEFITS 87
3.13.5 CONDITIONS FOR CLAIMING BENEFITS 88
3.13.6 OFFENCES AND PENALTIES 89
3.14 THE EMPLOYER’S LIABILITY ACT, 1938 89
3.14.1 OBJECT OF THE ACT 89
3.14.2 DEFENSES OF THE EMPLOYERS 90
3.14.3 PROHIBITED DEFENSES 90
3.14.4 BAR ON CONTRACTING OUT 92
3.15 THE EMPLOYEES’ PROVIDENT FUNDS & MISCELLANEOUS PROVISIONS ACT, 1952 & THE SCHEMES 93
3.15.1 APPLICATION 93
3.15.2 ELIGIBILITY 93
3.15.3 PAYMENT OF CONTRIBUTION 93
3.15.4 RATES OF CONTRIBUTION 94
3.15.5 BENEFITS 95
3.16 THE PAYMENT OF GRATUITY ACT, 1972 95
3.16.1 APPLICABILITY 96
3.16.2 WAGES FOR CALCULATION 96
3.16.3 RECOVERY, PROTECTION, FORFEITURE, NOMINATION 96
3.16.4 PENALTIES 97

4 THE CONSUMER PROTECTION ACT, 1986 97
4.1 OBJECT 98
4.2 BACKGROUND 98
4.3 CONSUMER 98
4.3.1 RIGHTS OF THE CONSUMER 99
4.4 RIGHTS OF PATIENTS 99
4.5 CONFIDENTIALITY AND PRIVILEGED COMMUNICATION 100
4.6 INFORMED CONSENT 102
4.7 RIGHTS OF THE DOCTOR 103
4.8 DUTIES OF DOCTORS 104

Legal Aspects of Hospital Management – Dr. B.G. Maniar
4.9 SELF REGULATIONS 105
4.10 CONSUMER COMPLAINTS 106
4.11 DUTIES OF CONSUMER REGARDING PURCHASE OF GOODS / SERVICES – 107
4.12 COMPLAINT WHO CAN FILE A COMPLAINT? 107
4.13 NEGLIGENCE 108
4.14 REMEDIES FOR MEDICAL NEGLIGENCE 110
4.15 MEDICAL SERVICES COVERED UNDER CPA 111
4.16 DUTY OF CARE 112

5 THE TRANSPLANTATION OF HUMAN ORGANS ACT, 1994 117

5.1 NECESSITY 117
5.2 OBJECT OF THE ACT 118
5.3 INTERPRETATION OF CERTAIN WORDS 118
5.4 AUTHORITY FOR THE REMOVAL OF HUMAN ORGANS (SEC. 3) 119
5.4.1 WHO MAY AUTHORIZE? 119
5.4.2 WHEN MAY BE AUTHORIZED? (SEC. 3) 120
5.5 AUTHORITY FOR REMOVAL OF HUMAN ORGANS FROM BODIES SENT FOR POSTMORTEM EXAMINATION FOR MEDICO-LEGAL OR PATHOLOGICAL PURPOSE. 121 (SEC. 6) 121
5.6 PRESERVATION OF HUMAN ORGANS AND SAVINGS (SEC. 7 & 8) 122
5.7 RESTRICTIONS ON REMOVAL AND TRANSPLANTATION OF HUMAN ORGANS (SEC. 9) 122
5.7.1 AFTER DEATH 122
5.7.2 BEFORE DEATH 122
5.7.3 PROCEDURAL RESTRICTIONS ON REMOVAL AND TRANSPLANTATION OF HUMAN ORGANS 123
5.8 PROHIBITION OF REMOVAL OR TRANSPLANTATION OF HUMAN ORGANS FOR ANY
PURPOSE: - OTHER THAN THERAPEUTIC PURPOSES
[Sec.11] 124
5.9 EXPLAINING EFFECTS, ETC., TO DONOR AND
RECIPIENT - 124
5.10 REGULATION OF HOSPITALS CONDUCTING THE
REMOVAL, STORAGE OR TRANSPLANTATION OF
HUMAN ORGANS (Sec. 10) 125
5.11 REGISTRATION OF HOSPITALS ENGAGED IN
REMOVAL, STORAGE OR TRANSPORTATION OF HUMAN
ORGANS (Sec. 14) 126
5.12 CERTIFICATE OF REGISTRATION (Sec. 15) 127
5.13 SUSPENSION OR CANCELLATION OF
REGISTRATION (Sec. 16) 128
5.14 APPEALS (Sec. 17) 128
5.15 PUNISHMENT FOR REMOVAL OF HUMAN ORGAN
WITHOUT AUTHORITY (Sec. 18) 129
5.16 PUNISHMENT FOR COMMERCIAL DEALINGS IN
HUMAN ORGANS (Sec. 19) 130
5.17 PUNISHMENT FOR CONTRAVENTION OF ANY
OTHER PROVISION OF THIS ACT (Sec. 20) 131
5.18 OFFENCES BY COMPANIES (Sec. 21) 132
5.19 COGNIZANCE OF OFFENCE (Sec. 22) 132

6 HEALTH INSURANCE (MEDI-CLAIM
POLICY) 133

6.1 GENERAL PRINCIPLES OF INSURANCE 133
6.2 HEALTH INSURANCE 135
6.2.1 CONDITIONS APPLICABLE 136
6.2.2 HEALTH INSURANCE COVER 137
6.2.3 HOSPITALIZATION 137
6.2.4 EXCLUDED CLAIMS 138
6.3 SETTLEMENT OF CLAIMS AND TPAS (THIRD
PARTY ADMINISTRATORS) 140
6.4 LEGAL ISSUES 142

Legal Aspects of Hospital Management – Dr. B.G. Maniar
7 THE MEDICAL TERMINATION OF PREGNANCY ACT, 1971

7.1 Object 144
7.2 When pregnancies may be terminated by registered medical practitioners (Sec. 3) 144
7.3 Place where pregnancy may be terminated (S.4) 146
7.4 Conditions precedents as to the length of pregnancy and place for MTP mentioned under Ss 3 and 4 respectively shall not apply. - 146
7.5 No place shall be approved under clause (b) of Section 4,- 148

*TERMINATION OF PREGNANCY UNDER INDIAN PENAL CODE, 1860 149

8 PRE-CONCEPTION AND PRE-NATAL DIAGNOSTIC TECHNIQUES (PROHIBITION OF SEX SELECTION) ACT, 1994 151

8.1 Object 151
8.2 Interpretation of certain words 152
8.3 Regulation of genetic counseling centres, genetic laboratories and genetic clinics (Sec.3) 155
8.4 Restriction to use or conduct pre-natal diagnostic techniques (Sec. 4) 156
8.5 Written consent of pregnant woman and prohibition of communicating the sex of foetus [Sec.5] 158
8.6 Determination of sex prohibited (Sec.6) 159
8.7 Registration of Genetic Counselling Centres, Genetic Laboratories or Genetic Clinics (Sec.18) 160
8.8 Granting of registration certificate (Sec.19) 161
8.9 Cancellation or suspension of registration (Sec. 20) and appeal (Sec.21) 162
8.10 Prohibition of advertisement relating to pre-conception and pre-natal determination of sex and punishment for contravention (Sec.22) 163
8.11 Offences and Penalties (Sec. 23) 165

9 Essential Services Maintenance Act, 1981[ESMA] 167

9.1 Power to prohibit strikes in certain employments 168
9.2 Dismissal of employees participating in illegal strikes – 169
9.3 Penalty for illegal strikes 170
9.4 Penalty for instigation, etc 170
9.5 Power to prohibit lock-outs in certain establishments 170
9.6 Power to prohibit lay-off in certain establishments 172
9.7 Power to arrest with warrant 173
9.8 Offences to be tried summarily 173
9.9 Act to override other laws 174

10 Bio-Medical Waste (Management and Handling) Rules, 1998 174

10.1 Duty of Occupier 175
10.2 Treatment and Disposal 175
1 Introduction to Hospital Management

- It is not only about the doctors, nurses, other staffs and patients.
- It is also about the persons who manage the hospital behind the doctors, nurses, etc.
- If you have visited a private hospital, you will notice that it is very much similar to a hotel as far as the kinds of services they render.
- Generally speaking, hospital management is concerned with the non-medical responsibilities of general management, coordination and smooth running of all services provided by the entire staff of the hospital or health care centre. This includes clerks, consultants, cleaners, nurses, doctors, and all other professionals.
- Hospital administrator is responsible for many other aspects of health administration.
and organization in a hospital including planning and control, medical staff management, demography and management and research in health care, epidemiology and community health and strategic health management in health care systems.

- He has to plan for future requirements like maintenance of the building, purchase of equipments, support services such as catering, laundry, domestic work and transport, etc.

1.1 **Basic legal requirements to start a hospital**

- Trust Deed
- Resolution by trustees to start a hospital
- Application to Corporation/Nagar Palika/Gram Panchayat in the prescribed form along with necessary fees for registration under The Bombay Nursing Act
- Completion certificate
- Information regarding staffs
- Registration under The PNDT Act,
- Registration for MTP Centre
- Management of bio-medical waste and a contract with agency
- Registration with Tata Atomic Research and contract
- Income-tax TAN, TDS at source etc.
- Registration under The Shops and Establishment Act for running a day and night medical store and Pharmacist (B. Pharm. / D. Pharm. / C. Pharm.)
1.2 Statutory Obligations

(PERMITS –N.O.C. - LICENCE –APPROVAL- REGISTRATION-CERTIFICATE, etc)

- Building Permit from Municipality.
- N.O.C. from the Chief Fire Officer.
- N.O.C. under Pollution Control Act.
- Radiation Protection Certificate in respect of all x-ray and CT Scanners from BARC.
- Excise permit to store Spirit.
- Permit to operate lift under the Lift and Escalators Act.
- Vehicle Registration Certificate.
- Retail Drug License.
- Wireless Operation Certificate from Indian Post and Telegraph.
- Atomic Energy Regulatory Body Approvals.
- License for the Blood Bank.
- Registration under The PNDT Act, MTP Act for MTP Centre, The Bombay Shops and Establishment Act for running a day and night medical store and Pharmacist (B.Pharm./ D. Pharm./ C. Pharm. )

1.3 Medical and Pharmacy Laws

- Pharmacy Act, 1948.
- Indian Medical Council Act and Code of Medical Ethics, 1956.
• Medical Termination of Pregnancy Act, 1971.
• Transplantation of Human Organs Act, 1994.
• Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1996
• Drug and Cosmetics Act, 1940.
• Dentist Regulations, 1976
• Narcotic and Psychotropic Substances Act, 1988

1.4 Taxation Laws
• Income Tax PAN.
• Central Excise Act, 1944.
• Central Sales Tax Act, 1956.
• Customs Act, 1962.
• GVAT

1.5 Incidental Laws
• Constitutional Law of India.
• Arms Act, 1950.
• Boilers Act, 1923.
• Cable Television Networks Act, 1995.
• Charitable and Religious Trust Act, 1920.
• Citizenship Act, 1955.
• Electricity Act, 1998.
• Electricity Rules, 1956.
• Explosives Act, 1884.
• Guardians and Wards Act, 1890.
• Indian Penal code, 1860.
• Prevention of Food Adulteration Act, 1954.
- BARC Act,
- Registration of Birth and Death Act, 1969.
- Sc and ST Act, 1989.
- Society Registration Act,

1.6 Labour Laws
- Industrial Disputes Act, 1947.
- Indian Trade Union Act, 1926.
- Industrial Employment (Standing Orders) Act, 1946.
- Payment of Wages Act, 1936.
- Payment of Bonus Act, 1965.
- Fatal Accidents Act, 1855.
- Workmen’s Compensation Act, 1923.
- Employees’ Provident Funds and Miscellaneous Provisions Act, 1952.
- Payment of Gratuity Act, 1972.
- National Holidays under Shops Act.
- Child Labour (Prohibition and Regulation) Act, 1986.
- Employment Exchange Act, 1969

1.7 Business Laws
- Indian Contract Act, 1872.
- Negotiable Instruments Act, 1881.
- Indian Lunacy Act, 1912.
- Partnership Act, 1932.
Legal Aspects of Hospital Management – Dr. B.G. Maniar

- Insurance Act, 1938.
- Companies Act, 1956.
- Copyright Act, 1982.

1.8 Environmental Laws
- Insecticides Act, 1968.
- Air (Prevention and Control of Pollution) Act, 1981.

2 Indian Judicial System
- There is a judicial hierarchy in India
- At the top there is a Supreme Court, established under Art. 124 of the Constitution of India. It is the apex court of India, only one in the country, situated in New Delhi
- High Courts, one in each and every State(Art. 214)
There may be one High Court for more than one States.

The High Courts are the subordinate courts of the Supreme Court.

There are District, Session and Chief Judicial Magistrates’ courts in every district of the States and Metropolitan Courts in Metro city; all those are subordinate to the High Court of respective States.

Civil and Judicial Magistrates’ courts are at Taluka and village level, which are subordinate to District and Session courts respectively.

There are other Labour Courts, Tribunals, Nominees’ courts, Family courts, Consumer Forums, etc., subordinate to the H.C. of the State

2.1 The Supreme Court (Art. 124)

- The apex court of India
- Chief Justice -1 and other -25 Judges;
  Situated in New Delhi
- Jurisdictions:
  1. Original (Art. 131);
  2. Appellate (Art. 132, as to the interpretation of the Constitution);
  3. Appellate (Art. 133, with regard to civil matters);
  4. Appellate (Art. 134, with regard to Criminal matters);
  5. Special Leave to Appeal (Art. 136);
  6. Review (Art. 137);
7. Issue certain Writs (Art. 139);
8. Transfer of Cases (139A);
9. Law declared by Supreme Court to be binding on all courts (Art. 141);
10. Pass a decree or order for doing complete justice (Art. 142);
11. Advisory (Art. 143)
12. Court of Record and having power to punish for contempt of court

2.2 High Courts

- One in each State, established under Art. 214 of the Constitutional Law of India, number of judges varies from State to State.
- There may be one High Court for more than one States.

2.2.1 Jurisdictions:

1. Original;
2. Appellate; (civil and criminal)
3. Revisional; (civil and criminal)
4. Review;
5. Reference;
6. Writs;
7. Supervisory.
8. Transfer of cases
9. Court of Record and having power to punish for contempt of court

i) First appeal under the special Acts like The Motor Vehicle Act, Workmen’s Compensation Act, 1923, Land Acquisition Act, etc. (Sec.96 of CPC);

ii) Second Appeal against the appellate judgments and decrees (Sec. 100 of CPC);

iii) Appeal from the Orders. Appeals are filed on the basis of valuation of the original suit or proceedings(Sec. 104 of CPC);


2.3 Civil Courts

2.3.1 District Courts

Jurisdictions:
1. Appellate (Sec. 96);
2. Original

2.3.2 Civil Courts

Jurisdictions:
Only Original (civil matters)
Pecuniary limit of jurisdiction of civil courts:
1. Principal Civil Courts (more than Rs.2 lakh);
2. Civil Courts (up to Rs.2 lakh)
3. Small Cause Courts (Rent matters);

- **Family Courts** (Family matters);
- **Nominee’s Courts** (Co-operative societies, Banks);
- **Tribunals** (Special Matters);
- **Lok-Adalats** – Established under The Legal Service Authorities Act, 1987. Civil Courts are authorized to send certain matters to settle;
- **Fast Track Courts** – Established according to the instruction of the Supreme Court and after the approval of the Central Government for disposal of the pending criminal cases. District Judge may hand over civil appeal too.

### 2.4 Criminal Courts

- **Session Court (District Level)**
  - Jurisdiction: Death Sentence or Life Imprisonment
- **Additional Session Court (District Level)**
  - Jurisdiction: 10 years to Life Imprisonment
- **Assistant Session Court (District Level)**
  - Jurisdiction: 7 – 10 years Imprisonment
- **Chief Judicial Magistrate (District Level)**
  - Jurisdiction: 3 – 7 years Imprisonment
- **Judicial Magistrate First Class (Village & Taluka Level)**
Legal Aspects of Hospital Management
– Dr. B.G. Maniar

- Jurisdiction: Up to 3 years Imprisonment

2.5 Consumer Courts

2.5.1 District Forum
  o Jurisdiction:
    - Original
    - Up to Rs. 20 lakhs

2.5.2 State Commission
  o Jurisdiction:
    - Appellate, i.e. appeal against the decision of District Forum
    - Original – 20 lakhs to 1 crore

2.5.3 National forum
  o Jurisdiction:
    - Appellate, i.e. appeal against the decision of State Comm.
    - Original – More than 1 crore

2.5.4 Supreme Court – final appeal

2.5.4 Initiation of legal proceedings:

  i) There must be a Cause of Action; and Locus Standie, i.e. right to file a complaint or an application or a suit
ii) It should before an Appropriate Authority and Within the prescribed time limit under the Act and

iii) Against Necessary Party

3 Labour Laws

- It is not one legislation, but a cluster of legislations enacted and amended from time to time by the Legislatures
- They cover gamut of issues relating to employers, employees, industries, employment, unemployment, etc.
- Satisfaction and job security to the labour and to check exploitation and oppression by the employers are the essence of all these laws
- A developed and dedicated workforce is pre-requisite for the success of any organization.
- Unfair labour practices at both the sides are prohibited

3.1 The Industrial Disputes Act, 1947

Aims and Objectives of the Act

- Provisions for investigation and settlement of industrial disputes
- Promotion of harmonious relation between employer and employees
- To provide compensation in the form of lay-off, retrenchment and closure.
o To regulate strikes and lock-outs.
o Recovery of money due to the workmen from the employer

3.1.1 Industry

- Industry means any business, trade, undertaking, manufacture or calling (occupation or profession) of employers and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen. (S.2(j)
- In a case of Bangalore water supply v/s A. Rajappa, [AIR 1978 S.C. 548] the Supreme Court of India enlarged the scope of the definition of industry. According to the Supreme Court, this term would cover professionals like those of lawyers, chartered accounts, etc., clubs, educational institutions like universities, co-operatives, research institutes, charitable hospitals, projects, etc., if they satisfy the tests mentioned below:
  - Systematic activities;
  - Co-operation between employer and employees for the production and /or distribution of goods and services calculated to satisfy human wants and wishes, not being spiritual and religious.
• Motive is immaterial

• It has covered almost all the activities from barber’s shops to big steel companies except domestic employment.

3.1.2 Industrial Dispute

Any dispute or difference between employers and employers, or employers and employees, or employees and employees, connected with the employment or non employment or the terms and conditions of the employment of any person. (S.2(k)).

It can be raised collectively or supported by a trade union or a substantial number of fellow workers only, except in the cases of dismissal, discharge, retrenchment or termination of services of a workman. (S. 2A)

3.1.3 Workman

• Every person employed in an establishment for hire or reward, to do any manual, clerical, skilled, unskilled, technical, operational or supervisory work, is covered under the Act. However, the Act does not apply to –
o Persons employed mainly in a managerial or administrative capacity,

o persons employed in a supervisory capacity and drawing wages exceeding Rs. 1600/- p.m. (Rs. 10,000/- is proposed) or exercising function mainly of managerial nature, and

o Persons subject to Army Act, Air Force Act, Navy Act or those employed in the police service or as an officer or employee of a prison. (Sec. 2 (s)

- Prima Facie test is master-servant relationship.
- There must be supervisory control on employee, not only in the matter of directing what work to be done but also the manner in which to be done. (Dhrangadhra Chemical Works Ltd. v. State of Saurashtra, AIR 1957 SC 264)
- A teacher is not a workman u/s 2(s) of the Act.
- The designation of an employee is not the criterion to determine the status of an employee as to whether he is a workman or not.
- The test is the nature of the duties of an employee.
- The doctor is a workman.
3.1.4 Notice of Change

- No change in the conditions of services specified in the IV Schedule of the Act without giving at least 21 days notice in form E to the concerned workman. (S. 9A)
- Schedule IV covers wages, allowances, contribution to P.F., pension fund, hours of work, rest intervals, leaves, holidays, timings of shifts, classification of grades, etc.
- No notice is necessary, if the change is due to any settlement or award or Government rules.

3.1.5 Settlement of Disputes

- Works Committee – Where in 100 or more workmen are employed or were employed on any day of the preceding twelve months (for resolving collective disputes through negotiations.) –S.3.
- Grievance Settlement Authority (G.S.A.) – wherein 50 or more workmen are employed or were employed on any day of the preceding twelve months for settlement of individual dispute of workman.
- No dispute shall be referred for adjudication unless it is referred to G.S.A. previously and not settled there.
The task is basically advisory in nature and inside the industrial premises.

### 3.1.6 Conciliation Proceedings

- When the employer and employee fail to arrive at a settlement, the Conciliation Officer (C.O.) may intervene as a mediator to reconcile the differences and help them to settle amicably.

- In public utility services [Sch.1of the Act] C.O. shall intervene, no sooner he comes to know that the dispute is raised or came into existence. (Sch. I – Banking, Cement, Coal, Cotton Textile, Defense establishment, Fire brigade service, service in oil field, service in any hospitals and dispensaries, Foodstuff)

- The C.O. shall send a report to the Govt. within 14 days, whether settled or not.

- If it is settled, a memorandum is worked out and it is binding to all concerned, whether they are party to it or not.

- If not settled, taking into consideration the report of the C.O., the appropriate Govt. may refer it to the conciliation Board/Court of Inquiry/Labour Court (Sch. II)*/Tribunal (Sch. III)**/National Tribunal as the case may be.

- The Board shall mediate in and promote the settlement of industrial dispute.
• The Court of Inquiry is to inquire into any matter appearing to be connected with or relevant to an industrial dispute.
• The Labour Court, Industrial Tribunal, National Tribunal are to adjudicate the matter.
• If no such reference is made, the appropriate Govt. shall record the reasons thereof and communicate the same to the parties to the dispute.

*Schedule II

• Sch. II – Matters within the jurisdiction of the Labour Court:
  1. The propriety or legality of the order passed by an employer under the Standing Orders (S.O.);
  2. The application and interpretation of S.O.;
  3. Discharge or dismissal of workmen including reinstatement of, or grant of relief to, workmen wrongfully dismissed;
  4. Withdrawal of any customary concession or privilege;
  5. Illegality or otherwise of a strike or lock-out; and
  6. All matters other than those specified in the III Sch.;

**Sch. III - Matters within the jurisdiction of the Industrial Tribunal:
1. Wages, including the period and mode of payment;
2. Compensatory holidays and allowances;
3. Hours of work and rest intervals;
4. Leave with wages and holidays;
5. Bonus, profit sharing, provident fund and gratuity;
6. Shift working otherwise than in accordance with S.O.;
7. Classification by grades;
8. Rules of discipline;
9. Rationalization;
10. Retrenchment of workmen and closure of establishment;
11. Any other matter that may be prescribed.

3.1.7 Significance of the Schedules

- They form an important part of the Act
- All conceivable matters (industrial) have been included in these schedules.
- Division into three schedules is done broadly on the following basis.
- The first schedule contains items relating to day-to-day discipline of the employees.
- The second schedule contains items which form subject matter of individual disputes.
- The third schedule contains items which form the subject matter of collective disputes.
- The employer is free to change service conditions of the employees in respect of
matters contained in Schedules II and III without consulting the employees.
- This freedom of the employer to unilaterally effect any change in service conditions of employees is, however, kept in check enabling the employees to challenge such change in the Labour Court.
- The employer cannot change the service conditions of the employees in respect of the matters contained in the fourth schedule without consulting the employees through the representatives of the employees.
- Strikes relating to the matters related Schedules are prohibited only under certain circumstances.
- The Govt. is empowered to make any addition to or alterations in various matters mentioned in the schedules, it can delete any matter there from. It can also restrict the freedom of the employer to make any change in service condition of the employees.

3.1.8 Adjudication

- Labour Court, Industrial Tribunal or National Tribunal to hear and decide the disputes only to the points specified in the order of reference and matters incidental thereto and follow the procedure as it may think fit. (Sec. 10)
• An order of reference shall specify the period within which the award is to be submitted to the Govt.
• The award then shall be published by the Govt. in the Official Gazette and shall come in to force generally after 30 days and shall remain in operation up to 1 year from the date on which it becomes enforceable.
• No appeal is allowed, however, a writ petition can be filed before the High Court and thereafter an appeal before the Supreme Court. (Articles 226, 227, 136 of the Constitution of India)
• Errors of jurisdiction or law are liable to be quashed in H.C. /S.C.

3.1.9 Strikes and Lockouts

• **Strike** is suspension/cessation of work by a group of employees employed in any industry, acting in combination. (S. 2(q)
• **Lockout** is temporary shutting down a place of business by the employer.(S.2(l)
• Both these are coercive measures for compelling each other to accept their respective demands.
• Ss. 22 to 25 restricts their respective rights to strike or lockout.
• No work no pay principle applies if the strike is illegal and unjustified, on the contrary the workman are liable to the disciplinary action.
• Employer is liable to pay wages to the workmen for illegal and unjustified lockout.
• Strike or Lockout during the pendency of proceedings before the Conciliation Officer/Conciliation Board/ Court of inquiry/Labour Court/Industrial Tribunal/National Tribunal is illegal and therefore prohibited.

3.1.10 Lay off

• Failure, refusal, or inability of an employer to provide work within two hours of presenting himself (employee) to work, due to:
  - shortage of coal, power or raw material;
  - accumulation of stocks;
  - breakdown of machinery;
  - natural calamity or for any such reasonable reason (Sec.2(kk))
• Employer is required to pay compensation at the rate of 50% of basic wages and D.A. for all days of lay-off except weekly holidays, wherein 50 or more but less than 100 workmen are employed.
• No lay off wherein more than 100 workmen are employed without prior permission of appropriate authority, within 60 days of proposed lay off.
• A workman is, however, not entitled to any compensation:
  - whose name is not on muster roll;
- who has not actually worked for 240/190 days in previous year;
- refused to accept an alternative employment within 5 miles;
- failed to present himself for work at the appointed time and place;
- if such lay-off is due to strike or go-slow on the part of the workman
- more than 45 days during any period of 12 months, if there is an agreement to that effect between the workmen and the employer.

3.1.11 **Retrenchment**

- Termination of service by the employer for any reason whatsoever, but excludes:
  - dismissal due to disciplinary action;
  - voluntary retirement of workman;
  - non-renewal of contract of employment;
  - due to continued ill-health.
  (Sec. 2(oo)

- Conditions precedent for retrenchment of the workman who has worked for 240 days in preceding 12 months:
  - one month notice or wages in lieu thereof;
  - retrenchment compensation @ 15 days’ wages for every completed year of service;
  - reasons for retrenchment;
  - complying with the principle of “last come first go”;
- sending Form P to labour authority.
(Ss.25F & G)

3.1.12 Closure

- Closing down the place of employment or part thereof in a permanent nature.
  (Sec. 2 (cc)
- Intimation to the authority at least 60 days before in Form Q wherein 50 or more workmen are employed. (S.25FFA)
- Prior approval at least 90 days before of the Govt. in Form QA when there are 100 or more workmen are employed.
- Condition precedent:
  - notice or notice pay;
  - closure compensation as per the retrenchment provisions under Sec. 25(f);
  - in case of the undertaking is closed due to unavoidable circumstances, i.e. beyond the control of the employer, the amount of the compensation shall not exceed the average pay for 3 months. For this purpose, financial difficulties/losses, accumulation of indisposed stock, expiry of period of lease or license, or the exhaustion of minerals in case of mines shall not constitute the unavoidable circumstances beyond the control of employer.
Undertaking engaged in the construction of buildings, bridges, roads, canals, dams, etc. are not required to serve the notice or approval of the Government. But if the construction work is not completed within 2 years, the workmen shall be entitled to notice as well as compensation for every completed year of continuous service.

3.1.13 **Penalties, Cognizance of offence and recovery of money due from the employer**

- For illegal strike, lock-out, breach of settlement/award, disclosing confidential information, closure without notice, etc.
- Metropolitan magistrate or J.M.F.C. only can take the cognizance of the offences.

3.1.14 **Representation of the parties**

- Advocate with the consent of the other party and with the leave of the Labour Court/Tribunal/National tribunal as the case may be, can represent his client.

**Recovery of money due from an employer**
- An application before the Labour Court can be filed.(S.33(c)

3.2 **The Trade unions Act, 1926**
3.2.1 Object of the Act

- To provide for the registration of Trade Union (including association of employers) and in certain respects to define the law relating to registered Trade Unions.
- With a view to render lawful organization of labour to enable collective bargaining.
- It confers on a registered T.U. certain protection and privileges.
- It extends to the whole of India.
- It applies to all kinds of unions of workmen and association of employers.

T.U. is a combination of persons, whether temporary or permanent, formed for regulating the conditions between the workmen and employer or workmen and workmen or employers and employers.

Any federation of two or more trade unions shall also be a trade union.

Any person, who has attained the age of 15 years, is eligible to be a member of T.U., subject to the Rules of T.U.

3.2.2 Registration and cancellation

- Registration of a trade union is not compulsory but is desirable, because the registered T.U. only enjoys certain rights and privileges.
3.2.3 Registration

- Any 7 or more persons can apply.
- There should be at least 10% or 100 whichever is less, employed in the establishment/industry with which it is connected. (Sec. 4)

- Minimum 7 members are the basic necessity.
- Application in the prescribed form, along with the fee and copy of Rules; names, address and occupation of the subscribers and its office bearers; address of its head office. (Sec. 5)
- At least 50% of the office-bearers of a union should be actually engaged in the industry with which the T.U. is connected, and the remaining 50% or less can be outsiders such as lawyers, politicians, social workers, etc.
- Cancellation- if the certificate is obtained by fraud/mistake or willfully contravened any provisions of the Act, or it ceases to have the requisite number of members or the T.U. has ceased to exist. (Sec. 10)

3.2.4 Legal status of registered T.U.

- It is a body corporate with perpetual succession and a common seal.
- It can acquire, hold, sell or transfer any movable or immovable property.
- It can sue or can be sued. (Sec. 5)
- No civil suit or criminal proceedings in respect of any act done in furtherance of a trade dispute. (Ss. 18 & 19)
- No office bearer/member of a registered T.U. shall be liable to punishment u/s 120 B (2) of Indian Penal Code, 1860, in respect of any act for furthering the object of T.U. (Sec. 17)
- Change of name – with the consent of at least 2/3rd majority of the total number of its members.
- Dissolution – in accordance with rules – a notice signed by any 7 members and the secretary to the Registrar of the TU within 14 days of the dissolution – on being satisfied the Registrar shall register the notice and the union shall stand dissolved from that date.
- Amalgamation – with the consent of 50% of the members of both the TU. And 60% vote in favour thereof. A notice signed by at least 7 members and secretary of each amalgamating union, should be sent to the Registrar and the amalgamation shall be in operation after the registration by Registrar.

3.2.5 Immunity from civil suit in certain cases
(1) No suit or other legal proceeding shall be maintainable in any Civil Court against any registered Trade Union or any office bearer or member thereof in respect of any act done in contemplation or in furtherance of a trade dispute to which a member of the Trade Union is a party on the ground only that such act induces some other person to break a contract of employment, or that it is in interference with the trade, business or employment of some other person or with the right of some other person to dispose of his capital or of his labour as he wishes.

(2) A registered Trade Union shall not be liable in any suit or other legal proceeding in any Civil Court in respect to any tortious act done in contemplation or in furtherance of a trade dispute by an agent of the Trade Union, if it is proved that such person acted without the knowledge of, or contrary to express instructions given by, the executive of the Trade Unions.

### 3.2.6 Offences and Penalties

- Annual statement, audited in the prescribe manner to be filed to the Registrar for the year ending on 31\textsuperscript{st} December.
- Making any false entry in the Form or in general statement-fine up to Rs.500/-. 
- On continuing default additional Rs.5/- for each week. (not exceeding Rs.50/-)
- Supplying false information regarding T.U.- fine up to Rs.200/-

3.3 The Industrial Employment (Standing Orders) Act, 1946

3.3.1 Applicability of the Act

- Every establishment wherein 100 or more in many states 50, in Gujarat 10 or more employees are employed.

3.3.2 Object

- is to establish harmonious relationship between employer and employees by providing uniform and stable conditions of service. The Act requires employers to clearly define with sufficient precision the conditions of employment i.e. standing orders/service rules.
3.3.3 **Conditions for certification of Standing Orders**

- Every matter to be set out as per the Schedule and Rules (S. 2A)
- Standing Orders to be in conformity with the provisions of the Act.

**Matters to be provided in Standing Orders**

- Classification of workman, e.g., permanent, temporary, apprentice, probationer or badli, etc.
- Period and hours of work, holidays, wage rates, shift working, attendance and late coming, requirement to enter premises by certain gates and liability to search.
- Conditions of, procedure for, and the authority which may grant leave and holidays.
- Suspension, termination, dismissal for misconduct, and act or omission which may constitute misconduct, suspension allowance, etc.
- Means of redressal for workman against unfair treatment by the employer or his agent or servants. Etc [S. 2(g), 3(2)]
3.3.4 Submission of draft Standing Orders

- Within six months from the date when the Act becomes applicable to an industrial establishment.
- Five copies of the draft Standing Orders are to be submitted to the Certifying Officer under the Act. (Sec. 3)

3.3.5 Procedure for certification, date of operation and posting of Standing Orders

- Certifying Officer to forward a copy of draft Standing Orders to the trade union or in the absence of union, to the workmen of the industry.
- Trade union or the other representatives, as the case may be, are to be heard. (S.5)
- On the date of expiry of 30 days from authentication of Standing Orders, they come into operation. (S. 7.)
- Text of the Standing Orders as the finally certified shall be prominently posted in English or in local language on special board at, or near the entrance from where the majority of workers enter into. (Sec. 9.)
3.3.6 Payment of subsistence allowance to the suspended workers

- At the rate of 50%, of the wages which the workman was entitled to immediately preceding the date of such suspension, for the first 90 days of suspension.
- At the rate of 75% of such wages for the remaining period of suspension if the delay in the completion of disciplinary proceedings against such workman is not directly attributable to the conduct of such workman. (Sec. 10-A)

3.3.7 Temporary application of Model Standing Orders, Offences and penalties

- Till the Standing Orders submitted are certified, the Model Standing Orders specified in the schedule -1 of the Act shall be deemed to be adopted. (S. 12-A)
- **Penalties** – (a) Failure of employer to submit draft Standing Orders and (b) modifying the Standing Orders without prior approval of the Certifying Officer, fine up to Rs. 5000 and Rs. 200 for every day on continuation of offence.
- Contravention of the certified Standing Orders of the establishment – fine up to
Rs. 100 and in case of continuing offence, a further fine up to Rs. 25 per day. (Sec. 13)

- If any question arises as to the interpretation of Standing Orders it may be referred to the Labour Court. (Sec. 13A)

3.4 The Factories Act, 1948

3.4.1 Objectives

- Objectives are to regulate working condition and hours, leave holidays, overtime, employment of children, women, young persons;
- Ensures basic minimum requirements for the safety, health, and welfare of the workers,

3.4.2 Application

- It applies to the factory, means:
  - Any premises or the precincts thereof in which manufacturing process is being carried on and wherein 10 or more persons with the aid of power or 20 or more persons are/were without the aid of power working on any day of the preceding 12 months. (Sec.2(ii)
- Compulsory approval from the Government for cites construction and extension.
• Registration and renewal of factories to be granted by Chief Inspector of Factories on submission of prescribed form, fee and plan. (Sec. 6)
• Notice of change of manager by occupier to be properly communicated to the Chief Inspector of factories.

3.4.3 Health, safety and welfare

• Employer to ensure health of workers pertaining to:
  o Cleanliness, Disposal of waste and effluents, Dust and Fume, Ventilation, Artificial humidification, Lighting, Overcrowding, Drinking water, and Spittoons. (Ss. 11 to 20)

• Safety Measures:
  o Fencing of machinery, Work on or near the machinery in motion, Prohibition of young persons on dangerous machines, Striking gear and devices for cutting off power, Self acting machines, Casing of new machineries, Prohibition of employment of women and children near cotton openers, Hoists and lifts. (Ss. 21 to 28)

• Welfare Measures:

Legal Aspects of Hospital Management – Dr. B.G. Maniar
- Washing, Storing, Drying and Sitting facilities,
- First aid box one for every 150 workers; Canteen when there are more than 250 or more, Shelters and Rest rooms when 150 or more, Crèches when 30 or more female workers and Welfare officer when there are 500 or more workers are employed. (Ss.42 to 49)

3.4.4 Working hours, Spread Over, Overtime, Annual leave with wages

- Weekly hours not more than 48;
- Daily hours not more than 9 hours;
- Intervals for rest at least ½ hour on continuous working for 5 hours;
- Rest day one for every six continuous working day.
- Spread over not more than 10 ½ hours;
- Overlapping of shifts prohibited;
- Extra wages for overtime - double than normal rate of wages;
- Restrictions on employment of women and adolescent between 7 p.m. to 6 a.m.;
- Prohibition of children below 14 years;
- Working hours for children not more than 4 ½ hours and rest interval of ½ hour after 2
½ hours of continuous working, spread over not more than 5 hours;

- Weekly Overtime not more than 12 hours and in quarter not to exceed 50 hours; (Ss. 51 to 54, 56, 59 & 60, 67, 68 & 71)
- A worker having worked for 240 days, he shall be entitled for annual leave with wages @ 1 day for every 20 days and child 1 day for every 15 days.
- Accumulation of this leaves 30 for adult and 40 for child employees, if not allowed to avail this leave by the employer - no limit for accumulation.

3.5 The Shops and Establishments Act, 1948

- This is a State Act and almost every State has enacted its Shops and Establishment Act. The Gujarat has adopted The Bombay Shops and Establishments Act.
- Objectives are to regulate the working and employment conditions of workers in the so called unorganized sectors.
- The Act regulates rights and obligations of employers and employees
- The Act generally provides for Registration, Health, Safety, Working hours, Rest intervals, Overtime, termination of service, Inspection, Registers and Records, Casual-Sickness-Earned-Leave, holidays etc.
- Employment of children below 12 years prohibited.
- No dual employment.
- No employment of women and young persons during night.
- It applies to shop, hotel, restaurant, club, canteen, theatre, cinema, bank, insurance organization, stock exchange, store-room, godown, warehouses, office of lawyers, chartered accountant, dispensary, hospital, educational institution run for private gain, journalist and printing establishments, etc.
- The commercial establishments which are not covered by the Factories Act or any other Acts, they are covered under this Act.

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

3.6.1 Object –
- to regulate the working conditions of the children in certain employment and to prohibit employment in occupations set forth in part A of the Schedule or in workshop wherein any of the processes set forth in part B is carried on (Sec. 3)
- **Child** means a person who has not completed his 14 years of age. In the absence of certificate of age, can be referred to the prescribed medical authority for decision.
3.6.2 Application

- It applies to every establishment irrespective of the number of employees employed
- Notice to Inspector - details to be furnished:
  - name and situation of an establishment;
  - name of the persons in actual management
  - address for communication;
  - nature of occupation (Sec. 9).
- Display of notice – containing abstract of the Act, pertaining to prohibition of employment of children. (Sec. 12)

3.6.3 Working Conditions

3.6.4 Hours and period of work

- not to exceed 3 hours (continuous);
- interval for rest – 1 hour;
- spread hour not more than 6 hours inclusive of interval and the time spent for waiting;
- not permitted to work between 7 p.m. to 8 a.m., no over-time, no employment in more than one establishment. (Sec. 7)
- Weekly holiday – one whole day, not to be altered more than once in three months. (Sec. 8)
- Health and Safety – to be notified by appropriate government in accordance with guidelines given in Section 13 of the Act.
- Occupier has to maintain all such records in register in the prescribed manner. (Sec. 11)
3.6.5 Health and safety

(1) The appropriate Government may, by notification in the Official Gazette, make rules for the health and safety of the children employed or permitted to work in any establishment or class of establishments.

(2) Without prejudice to the generality of the foregoing provisions, the said rules may provide for all or any of the following matters, namely:

- (a) Cleanliness in the place of work and its freedom from nuisance;
- (b) Disposal of wastes and effluents;
- (c) Ventilation and temperature;
- (d) Dust and fume;
- (e) Artificial humidification;
- (f) Lighting;
- (g) Drinking water;
- (h) Latrine and urinals;
- (i) Spittoons;
- (j) Fencing of machinery;
- (k) Work at or near machinery in motion;
- (l) Employment of children on dangerous machines;
- (m) Instructions, training and supervision in relation to employment of children on dangerous machines;
- (n) Device for cutting off power;
- (o) Self acting machines;
- (p) Easing of new machinery;
(q) Floor, stairs and means of access  
(r) Pits, sumps, openings in floors, etc.  
(s) Excessive weights;  
(t) Protection of eyes;  
(u) Explosive or inflammable dust, gas, etc.;  
(v) Precautions in case of fire;  
(w) Maintenance of buildings; and  
(x) Safety of buildings and machinery.

**SCHEDULE**  
(See Section 3)

- **PART A**  
- **Occupations**  
- Any occupation-connected with:
  1. Transport of passengers, goods or mails by railway  
  2. Cinder picking, clearing of an ash pit or building operation in the railway premises;  
  3. Work in a catering establishment at a railway station, involving the movement of a vendor or any other employee of the establishment from one platform to another or into or out of a moving train;  
  4. Work relating to the construction of a railway station or with any other work where such work is done in close proximity to or between the railway lines;  
  5. A port authority within the limits of any port.  
  6. Work relating to selling of crackers and fireworks in shops with temporary licenses.  
  7. Abattoirs/slaughter houses.  
  8. Automobile workshop and garages.  
(10) Handling of toxic and inflammable substances or explosives.
(11) Handloom and power loom industries.
(12) Mines (underground and underwater) and collieries.
(13) Plastic units and fiber glass workshop.
(14) Employment of children as domestic workers or servants.
(15) Employment of children in dhabas (road-side eateries), restaurants, hotels, motels, tea-shops, resorts, spas, or other recreational centres.

PART-B
Processes

(1) Bidi-making.
(2) Carpet-weaving.
(3) Cement manufacture, including bagging of cement.
(4) Cloth printing, dyeing and weaving.
(5) Manufacture of matches, explosives and fire-works.
(6) Mica-cutting and splitting.
(7) Shellac manufacture.
(8) Soap manufacture.
(9) Tanning.
(10) Wool-cleaning.
(11) Building and construction industry.
(12) Manufacture of slate pencils (including packing)
(13) Manufacture of products from agates
(14) Manufacturing process using toxic metals and substances such as lead, mercury, manganese,
chromium, cadmium, benzene, pesticides and asbestos.
(15) “Hazardous processes” as defined in Sec. 2(cb) and “dangerous operations” as notified in rules made u/s 87 of the Factories Act, 1948.
(16) Printing as defined in Sec. 2(k)(iv) of the Factories Act, 1948.
(17) Cashew and cashew-nut descaling and processing.
(18) Soldering process in electronic industries.

### 3.6.6 Offences and Penalties

- Employing or permitting any child to work in violation of Sec. 3
  - Imprisonment for not less than 3 months which may extend to 1 year or fine not less than Rs. 10,000/- which may extend to Rs. 20,000/- or both.
- repetition of violation of Sec.3
  - Imprisonment for not less than 6 months which may extend to 2 years
- Failure to give notice under sec.9, or failure to maintain register as prescribed under sec.11, or failure to display a notice as required u/s 12, or failure to comply with or contravention of any other provision.
  (Sec.14 (3))
  - Simple imprisonment which may extend to 1 month, or fine up to Rs.10, 000/- or both.
3.7 The Minimum Wages Act, 1948

3.7.1 Object

- to provide minimum rates of wages, statutorily fixed, with a view to avoid the chances of exploitation of poor labourers, it also fixes the daily hours of work, overtime, weekly rest, etc. having over riding effect on agreement or award.

3.7.2 Scope and Coverage

- it applies to the scheduled employment (Part I&II) irrespective of the number of employees employed therein.

3.7.3 Wages

- means all remuneration capable of being expressed in terms of money, be payable to a person, on fulfillment of the contract of employment in respect of the work done in such employment, which includes basic wages, dearness allowance, house rent allowance and value of other concession etc. but it does not include T.A., contribution paid by the employer to the P.F., Pension Fund, Gratuity payable on discharge, value of any house accommodation, supply of light, water, medical attendance, or any other amenity.
3.7.4 Payment

- wages payable under the Act should be paid in cash. The Appropriate Government may allow the payment partly in cash and partly in kind according to the prevailing custom, but the rate cannot be less than the prescribed, and no deduction other than the prescribed by the law.
- Govt. may fix rate of time work, piece work, and different classes of work.

3.7.5 Fixation of wages, working hours

- The State Government is empowered to fix wages for different classes of workmen – skilled, semi skilled, unskilled, clerical, supervisory, etc. employed in Scheduled employment and can review or revise the same from time to time, the interval between the two revision shall not exceed five years, considering the change in price index and dearness allowance.

3.7.6 Methods of fixing, revising the rates of Minimum Wages by -

1. Appointment of Committee – it holds inquiry and advice in respect of such fixation or revision as the case may be;
2. **Issue of Notification** – in Official Gazette, publish its proposals for the information of persons likely to affect thereby and specify a date, not less than two months from the date of the notification, on which the proposals will be taken in to consideration

- After considering the advice of the committee and representation received by it before the date specified in the notification as the case may be, the appropriate Govt. shall by notification in Official Gazette fix or revise the rate of Minimum Wages.
- Central as well as State Govt. have appointed the Advisory Boards to co-ordinate the work of the committees and advising generally in the matter of fixing and revision of the rates of minimum wages. These Boards, Committees shall consist of persons, nominated by the Govt., equally representing the employers and employees in the Scheduled Employment and 1/3 of its total members shall be independent and one of them shall be appointed as the Chairman.
- The Govt. may fix the number of working hours, over-time, and wages for the over time, rest interval, weekly holiday with wages, etc.

### 3.7.7 Claims, offences and penalties

- Employee may file a claim for minimum rates of wages, overtime, and wages for rest
day etc. before the Appropriate Authority under the Act, within 6 months.

- Compensation up to ten times on under or non-payment of minimum wages.
- For paying less than the minimum rates of wages or contravention of any provision - Imprisonment up to 6 months or fine up to Rs. 500/-
- Maintenance of Registers and Records –
  - register of wages-Form X; wage slip-Form XI; muster roll- Form V(Rule 26); over-time - Form IV (Rule 25)
  - register of fines-Form I Rule 21(4)
  - Annual Returns – Form III Rule 21(4-A)
  - Representation of Register – for 3 years Rule26-A.
- Contracting out is void – any agreement or contract whereby an employee relinquishes or reduces his right to minimum wages or concession accruing under the Act, shall be void.

THE SCHEDULE
[See Ss. 2 (g) and 27]

- **PART I**
  1. Employment in any woolen carpet-making or shawl-weaving establishment.
  2. Employment in any rice mill, flour mill or dal mill.
  3. Employment in any tobacco (including bidi making) manufactory.
4. Employment in any plantation, that is to say, any estate which is maintained for the purpose of growing cinchona, rubber, tea or coffee.
5. Employment in any oil mill.
6. Employment under any local authority.
7. Employment on the construction or maintenance of roads or in building operations
8. Employment in stone breaking or stone crushing
9. Employment in any lac manufactory
10. Employment in any mica works
11. Employment in public motor transport
12. Employment in tanneries and leather manufactory.
15. Employment in marble and calcite mines
16. Employment in manganese mines
17. Employment in the maintenance of buildings and employment in the construction and maintenance of runways
18. Employment in magnesite mines
19. Employment in copper mines
22. Employment in white clay mines
23. Employment in stone mines
25. Employment in ochre mines
26. Employment in asbestos mines
27. Employment in chromite mines
28. Employment in graphite mines
29. Employment in laterite mines
30. Employment in dolomite mines
31. Employment in iron ore mines
32. Employment in granite mines
33. Employment in hematite mines
34. Employment in loading and unloading in Railways, goods sheds, docks and ports
35. Employment in ashpit cleaning on Railways
36. Employments in Rock Phosphate Mines

PART II

- 1. Employment in agriculture, that is to say, in any form of farming, including cultivation and tillage of the soil, dairy, farming, the production, cultivation, growing and harvesting of any agricultural or horticultural commodity, the raising of livestock, bees or poultry, and any practice, performed by a farmer or on a farm as incidental to or in conjunction with farm
operations (including any forestry or timbering operations and the preparation for market and delivery to storage or to market or to carriage for transportation to market of farm produce.

3.8 The Payment of Wages Act, 1936

3.8.1 Object

- To regulate payment of wages, time and mode of payment, imposition of fine and deduction etc.

3.8.2 Application

- all factories, shops, mines, establishments, etc., irrespective of the number of employees employed.

3.8.3 Coverage

- Employees drawing wages up to Rs. 6500/-.
- Every employer/manager/occupier should make timely payment without any unauthorized deduction from wages.
- If number of employees is less than 1000, then wages must be paid within 7 days of the expiry of wage period and in other cases within 10 days. (Section 5)
- The employer may fix the wage period which may be per day, per week or per...
month. But in no case it should exceed one month. (wage period means a time period, expiry of which wages becomes payable)

- All wages shall be paid in current coins or currency notes or in both.
  After obtaining the authorization, may be paid either by cheque or by crediting the wages in employees’ bank account. (Section 6)
- Contracting out is void. (Section 23)

3.8.4 Wages

It means all remunerations (expressed in terms of money) payable if the terms of employment express or implied were fulfilled in respect of the work done, which includes –
- any sum payable according the terms of award, settlement, order of the court, over-time work, holidays, leave period, bonus (which form a part of remuneration), compensation payable at the time of termination;
But does not include –
- any bonus (under a scheme of profit sharing or otherwise), the value of any house accommodation or supply of light, water, medical attendance or other amenities, any contribution paid by the employer to any pension or P.F., or E.S.I.C., T.A., gratuity, etc. [Sec. 2(vi)]
3.8.5 Deduction from wages

- Authorized: PF - ESI contribution, LIC premium, advances, over payment paid by the employer, loan granted for housing or for any other purposes, amenities, services provided, income tax, fine, absence from duty (unauthorized absence), damages or loss of goods, order of the court, etc.
- Imposition of fine on employees below 15 years is prohibited.
- The amount of fine should not exceed 3% of the wages payable in respect of that wage period.
- Limit – the total amount of permissible deduction in any wage period should not exceed:
  - in case where deductions are wholly or partly made for payment to cooperative societies, 75% of the wages; and
  - in any other cases, 50% of the wages.
- Excess amount, however, can be deducted in the manner prescribed in the Rules.
- Principles of Natural Justice are to be observed where it is necessary.
- In case 10 or more employees acting in concert absent without reasonable cause, deduction of wages up to 8 days, is permissible.
• Registers and Records are to be maintained according to the provisions of the Act and Rules under the Act.

3.8.6 Offences and penalties

• Delay in, or non-payment of wages within the prescribed time, making any unauthorised deduction or imposition of fines in contravention of the Act;
• Failure to maintain Registers and Records; or to furnish required information or sending false information; or obstructing the inspector or refusal to produce before him the Records/Documents for inspection
  o Fine up to Rs. 7500/- (minimum fine Rs. 1500)
• On repetition of the same offence – imprisonment up to 6 months and fine up to Rs. 22500/- (minimum 1 month and fine Rs. 3750/- respectively)
• Any claim for unpaid or delayed wages, unauthorised deduction from wages should be made within 12 months before the appropriate authority.
• Appeal against the decision of appropriate authority - before the District Court within 30 days.
• Bar of suits – no court other than the authority prescribed under the Act shall entertain the claim under this Act.
• No court shall take the cognizance of a complaint against any person unless it is presented before and permitted by the authority under this Act.
• No court shall take the cognizance of any offence punishable, except on a complaint made by or sanctioned by the inspector under this Act.

3.9 The Payment of Bonus Act, 1965

3.9.1 Object
• to provide for the payment of Bonus on the basis of profit or production or productivity, define principles, formula, and machinery liability for the payment of Bonus.

3.9.2 Scope
• it applies to every factory wherein 10 or more persons are employed running with the aid of power and in other cases including establishments 20 or more employees are employed. But it does not apply to LIC, Central or State Govt. establishments, Indian Red Cross Society, Universities and Educational Institutions. Hospitals, Chamber of Commerce, R.B.I., I.F.C.I., U.T.I., Social Welfare Institutions, Local Bodies. What they are paying as bonus is ex gratia payment.
For the purpose of counting the number of employees department or branches are to be clubbed, unless considered separate and preparing a separate balance sheet.

Coverage – an employee who has worked for 30 working days in an accounting year and drawing wages up to Rs. 10,000/- p.m. (for calculation purpose Rs.3500/- p.m. maximum will be considered – Sec.12). Part-time time employee, daily wage earner, sweeper, probationer are entitled but apprentices are not eligible.

Minimum bonus – 8.33 % or Rs.100/- on completion of 5 years after 1st Accounting year even if there is no profit whichever is higher. It should not exceed 20 % of wages in any case.

Components of bonus – salary or wages includes dearness allowance, free food allowance or the value of such food when it is being paid in lieu of wages, but it does not include - over-time wages, house rent or other allowance, bonus, (including incentive, production and attendance bonus) or commission, T.A.,P.F- ESI contribution paid by the employer etc.

Time limit – it should be paid in cash and within 8 months from the closing of the accounting year. Bonus is payable only on annual and not on half yearly basis.
3.9.3 Calculation of Bonus

1. Calculate the gross profit in the manner prescribed in –
   (a) First Schedule, in case of banking company; or
   (b) Second Schedule, in any other case.

2. Calculate the Available Surplus. (Sec. 5, 6 and 7)

   Available Surplus = A + B, where
   
   A = Gross Profit – Depreciation admissible under 32 of the Income Tax Act – Development rebate or investment allowance or development allowance – Direct Taxes payable for the accounting year (calculated as per Sec. 7) – Sums specified in the Third Schedule.

   B = Direct Taxes (calculated as per Sec. 7) in respect of gross profit for the immediately preceding accounting year – Direct Taxes in respect of such gross profit as reduced by the amount of bonus, for the immediately preceding accounting year.

3.9.4 Calculate Allocable Surplus.

Allocable Surplus = 60 % of Available Surplus. (67 % - foreign co.)

- Make adjustment for ‘Set-on and Set-off” as per Fourth Schedule.

- The Allocable Surplus so computed is distributed among the employees in proportion to salary or wages received by them during the relevant accounting year. (Sec 2 (4) )
3.9.5 Maintenance of Registers and Records, offences and Penalties

- A register showing the –
  - Computation of the Allocable Surplus referred to in Sec. 2(4) in Form A.
  - Set-on and Set-off of the Allocable Surplus, u/s 15, in Form B.
  - Details of the amount of bonus due to each of the employees, the deductions u/s 17 and 18 and the amount actually disbursed, in Form C. (Sec.26, Rule 4)

3.9.6 Offences

- Contraventions of the provisions of the Act or Rules, and failure to comply with the directions or requisitions made –
  Imprisonment up to 6 months or fine up to Rs. 1,000/- or both.

3.9.7 Contracting out is void (Sec. 31A)

3.9.8 Deduction

It is permissible for any financial loss caused by misconduct.
3.9.9 **Forfeiture**
- if he is dismissed from service for fraud, riotous / violent behaviour / theft / misappropriation / sabotage of any property of the establishment, not only for the year in which he is so dismissed but also for the past years remaining unpaid to him.

3.10 **The Equal Remuneration Act, 1976**

3.10.1 **Object**
– To provide equal remuneration to both male and female workers for the work of similar nature and to prevent discrimination on ground of sex against women in the matter of employment

3.10.2 **Application**
- To almost all establishments
  - Act shall have overriding effect on other law, agreement, award or contract of service notwithstanding anything inconsistent therein.
  - It is the duty of the employer to pay equal remuneration to both men and women for equal work, and shall not reduce the rate of remuneration only on the ground of sex.
  - No discrimination in the matter of promotion, training or transfer except where employment of women is restricted.
These provisions do not apply to SC/ST/Ex-servicemen/retrenched employees where law provides specific priority to them. (Sec. 5)

Employer is required to maintain Registers and Records as prescribed under the Act and Rules. (Sec. 8, Rule 6)

3.10.3 Offence and Penalties

- Offences – failure to maintain the prescribed registers and records or to produce them on demand.
- Penalties – imprisonment up to 1 month or fine up to Rs. 10,000/- or both.

- If an employer makes
  - any recruitment in contravention of the Act
  - payment at unequal rates for the same work of a similar nature; or
  - fails to carry out the direction given by the appropriate government u/s 5(6)

- Fine not less than Rs. 10,000/- which may extend to Rs. 20,000/- or imprisonment not less than 3 months which may extend up to 1 year for first offence and up to 2 years for second and subsequent offences.
3.11 The Employees’ compensation Act, 1923

- The word employees’ substituted for “workmen” by The Workmen’s Compensation(Amendment)Act, 2009 (45 of 2009), dated 22nd December, 2009 (w.e.f. 18-01-2010)

3.11.1 Object

- is to provide workmen and / or their dependents some relief in the form of compensation, in case of accidents arising out of and in the course of employment and causing either death or disablement of the workmen.
- Occupational disease is also covered.
- Funeral expenses Rs. 5000/-
- Employer is liable to pay the compensation. (Sec. 3)

Applicability – all over India (Sec. 1)

3.11.2 Coverage

- All workers irrespective of their nature of employment or salaries drawn, employed either directly by the employer or through the contractor or by Indian companies abroad. Establishment covered by the ESI Act, 1948 is outside the purview of this Act.
3.11.3 Contracting out
– Any contract or an agreement which compels the workman either to give up or to reduce his right to compensation from the employer is null and void insofar it aims at reducing or removing the liability of the employer to pay the compensation. (Sec. 1).

3.11.4 Wages
– If it is more than Rs. 4000/- p.m., it will be deemed to be Rs 4000/- (Sec.4).

3.11.5 Compensation

● Amount – in the case of death of the workman, results from the injury, an amount equal to 50 % of the monthly salary of the deceased workman multiplied by the relevant factor or an amount of Rs.1,20,000/-, whichever is more.
  - in the case of permanent total disablement, results from the injury, an amount equal to 60 % of the monthly wages of the workman multiplied by the relevant factor or an amount of Rs 1,40,000/-, whichever is more.
● Procedure – relevant factor specified in the second column of the Schedule IV, giving slabs depending upon the age of the concerned workman. Higher the age – lower the compensation.
• Example – in case of death:
  wages Rs. 3000/-p.m.,
  age – 23 years ; factor – Rs. 219.95
  (Schedule - IV);
  amount of compensation Rs. 329935.
  in case of total disablement Rs. 395910
  (permanent)

• In case of temporary disablement ( whether
total or partial ) – A half-monthly
installment equal to 25 % of the monthly
wages, for the period of disablement or 5
years, whichever is shorter.

• In case of partial permanent disablement –
such percentage of the compensation
payable in cash according to the loss of
earning capacity as prescribed under the
schedule of the Act or as assessed by a
qualified medical practitioner.

3.11.6 Compensation – when payable

• When there is an Accident –[ unpredictable
  and not designed, an untoward incident]

• Arising out of employment –[ which implies
  a casual connection between the accidental
  injury and the work done, ( denotes place ) ]

• In the course of employment – means –
during the job or on duty. ( denotes time )
• Notional Extension – connotes not only actual work but also any other engagement natural or necessary thereto, reasonably extends both work-hours and work-place.
• Then, it is the employment injury.
• Compensation becomes payable.
• Compensation should be paid as soon as it falls due (date of accident). If the amount is not paid within one month, commissioner may direct the employer to pay 12% interest, besides there is no justification for delay, he may direct the employer to pay 50% of the compensation as penalty in addition to interest.
• Compensation to be deposited with the commissioner.
• Employer may get the concerned workman examined by a qualified medical practitioner, within 3 days from receiving the notice of accident. The employee must present himself for examination otherwise he shall lose his right to compensation. Failure of employer to have the workman medically examined debars him from challenging the medical certificate produced by the workman. (Sec. 11)

3.11.7 Employment Injury

• Disablement – technically known as loss of earning capacity. It may be total or partial.
Again it may be classified as permanent and temporary.

- **Total Disablement** - whether permanent or temporary is said to be total when it incapacitates a worker for all work he was capable of doing at the time of accident. The permanent total disablement also refers to the injuries specified in the Part I or combination of injuries in Part II of Schedule 1, when it’s total is 100 % or more.

- **Partial** – it reduces the earning capacity.
  - **Permanent** – for all times, in every employment. (Schedule I, Part II)
  - **Temporary** – for a temporary period, in the employment in which he was engaged at the time of accident.

- **Occupational Disease** – certain types of employment, which are exposed to certain risk of contracting certain disease which are peculiar and inherent to those occupations. A worker contracting it, is considered as an accident arising out of and in the course of employment. These are categorized in Parts A, B and C of Schedule III.

### 3.11.8 Notice of Accident

- As soon as practicable
  (Sec. 10) to the Commissioner

**Report of Accident** (fatal and serious injury) within 7 days to the Commissioner
3.11.9 Compensation when not payable

- In respect of an injury results in total or partial disablement for a period, which does not exceed 3 days
- In respect of an injury not resulting in death or permanent total disablement, caused by an accident which was directly attributable to the workman having been at the time of accident under the influence of intoxicating drink or drug or
- There was a willful disobedience of the workman to an order expressly given or to the Rule expressly framed; or a willful removal or disregard of any safety guard or other devices which he knew to be provided for the purpose of securing the safety for them. Burden of proof lies with the employer.
- When the employee has contracted a disease which is not directly attributable to a specific injury caused by that occupation in which he is engaged. (Sec. 3)
- When the employee has filed a suit for damages against the employer or any other person in Civil Court. (Sec. 3 (5))
3.11.10 Offences and Penalties

- Unjustified delay in payment of compensation, beyond one month – Up to 50% of the amount of compensation besides interest @ 12% p.a.
- Fine up to Rs. 5000/- for failure:
  - to maintain a notice book u/s 10 (3);
  - to submit a statement of fatal accident u/s 10-A;
  - to submit an accident report u/s 10-B;
  - to file annual return of compensation u/s 16.
- Appeal against the order of the Commissioner to the High Court, within 60 days of the order.
- The employer is required to deposit the compensation before filling an appeal.

3.12 The Employees’ State Insurance Act, 1948

3.12.1 Object of the ACT

is to provide to the employees medical relief, sickness cash benefit, maternity benefit to the women employees, pension to the dependent of deceased workers and compensation for fatal and other employment injury including occupational diseases, besides funeral expenses, rehabilitation.
allowance in an integrated form through a contributory fund.

- Employee, who is covered under this Act cannot claim compensation through any other Act for employment injury sustained by him/her.

### 3.12.2 Applicability and Coverage

- It extends in area-wise to factories using power and employing 10 or more persons and to non-power using manufacturing units employing 20 or more persons, who are drawing wages up to Rs.15,000/- p.m. (w.e.f. 1-05-10 ), employed directly or through contractor.
- It has also been extended to shops, hotels, restaurants, motor transport undertaking, equipment maintenance staff in the hospitals in which 20 or more persons are employed, who are drawing wages up to Rs. 15,000/ p.m.

### 3.12.3 Contribution and Rate

Employers’= 4.75%; and
Employees’= 1.75%, of wages of the employee

- Manner and time limit for making payment:-
  - The total amount of contribution (employers’ and employees’ share) is to be deposited with the authorized bank through a challan in the prescribed
form in quadruplet on or before 21\textsuperscript{st} of month following the calendar month in which the wages fall due.

**Period**

- **Contribution**
  - 1\textsuperscript{st} April to 30\textsuperscript{th} September.
  - 1\textsuperscript{st} October to 31\textsuperscript{st} March.

- **Benefit**
  - 1\textsuperscript{st} Jan. to 30\textsuperscript{th} June.
  - 1\textsuperscript{st} July to 31\textsuperscript{st} Dec.

### 3.12.4 Wages for ESI

- It includes – basic pay, dearness allowance, house rent allowance, city compensatory allowance, over time (but not to be taken into account for determining the coverage of an employee), payment for day of rest, production incentive, bonus (other than statutory bonus), night shift allowance, heat-gas-dust allowance, payment of unsubstituted holidays, meat/food allowance, suspension allowance, lay off compensation, children education allowance (not being reimbursement for actual tuition fee).

- But it does not include – contribution paid by the employer to any pension, provident fund or under ESI Act, sum paid to defray special expenses entailed by the nature of employment-daily allowance paid for the period spent on tour, gratuity payable on discharge, pay in lieu of notice of retrenchment compensation, benefits paid under the ESI Scheme, encashment of leave,
payment of Inam which does not form part of the terms of employment, washing allowance for livery, conveyance amount towards reimbursement for duty related journey.

3.12.5 Benefits, Rates, Form, Conditions

- No benefit shall be combined, e.g. maternity + disablement benefit.
- **Medical Benefit** - in the form of medical treatment, available to his family too, at ESI Hospital or dispensary, during any period for which contribution is payable. It also extends even after superannuation, for the person having been in the insurable employment for at least 5 years, on payment of Rs. 10/- p.m. in lump sum for one year at a time in advance.

- **Funeral Expenses** - if an insured employee dies, Rs. 3000/- to the person who incurs the expenditure. It should be claimed within 3 months of death in Form 22 along with prescribed documents.

- **Dependent’s Benefit** – if an employee dies during the course of and out of employment, dependents are entitled in the form of pension, at 70% of the wages to the...
dependents (shareable among them). Claim to be submitted in Form 15.

- **Disablement benefit** is payable in cash in installments to an employee who is injured in the course of and out of employment. (1) For Temporary Disablement of not less than 3 days and Permanent Total Disablement – at the 50% more than the standard benefit rate.[( suppose average daily wages is between Rs 28 to 32, the standard benefit rate will be Rs 16/- ] - it is, however, not payable for any day on which he works, remains on leave, holiday or strike, in respect of which he receives wages. (2) For Permanent Partial Disablement – proportionate to the loss of his earning capacity.

- **Sickness benefit** is payable in cash during the period of sickness occurring during the benefit period and certified by a duly appointed medical practitioner, if the contribution was paid for not less than 78 days in the immediately preceding contribution period. - Maximum 91 days in two consecutive benefit periods. It may be extended up to 124/309 days in long term diseases like T.B. or mental diseases - the benefit is payable at the standard benefit rate ( generally half ). It is increased by 20% w.e.f. 1-5-2010
-however, it is not payable on any day on which the employee works, remains on leave, holiday or strike, in respect of which he receives wages.
- no sickness benefit shall be payable for first two days and more than 91 days in any two consecutive benefit periods.

- **Maternity Benefit** – a periodical cash benefit is payable, in cases of confinement, miscarriage, medical termination of pregnancy, premature birth of a child, sickness arising from pregnancy, etc.
  - provided the same is occurring or expected to occur in a benefit period and contribution is paid for at least 70 days in the two immediately preceding contribution period.

- Benefit is payable at twice the standard benefit rate provided she does not work during the said period and furnishes prescribed medical certificate along with other necessary information.

- Remuneration payable is prescribed as under
  - confinement or death of the women during/after delivery = 12 weeks, not more than 6 weeks preceding the date of confinement;
  - death of the woman and the child = up to the death of child;
  - miscarriage or MTP = 6 weeks following the date of miscarriage etc.
- post confinement sickness = additional period of one month following the aforesaid period.

3.12.6  ESI Scheme today

- No. of implemented Centres -677.
- No. of Employers covered -2.38 lacs.
- No. of insured Persons -85 lacs.
- No. of Beneficiaries -330 lacs.
- No. of Regional Offices -26.
- No. of ESI Hospitals -183.
- No. of ESI Dispensaries -1453.
- No. of Panel Clinics -2950.

3.12.7  Employees’ Insurance Court

- Disputes arising under the act shall be decided by the ESI Court and not by any Civil Court.
- It shall be constituted by the State Government for such local areas as may be specified and consisting of such number of judges as the Govt. may thinks fit.( Sec. 74 )
- It shall adjudicate upon the following disputes:
  - application of the Act, coverage of employee ;
  - rate of wages, contribution, principal liability to pay contribution ;
-right to any benefit, amount and duration thereof;
-recovery of contribution, short payment, non-payment, amount due, benefits admissible under the Act;
-any other matter incidental thereto.

- No matter shall be admitted unless 50% amount is deposited, claimed by the Corporation. The Court may waive it while recording reasons thereof.
- An appeal shall lie before the High Court against an order of ESI Court, if it involves a substantial question of law.
- This appeal should be preferred within 60 days. (Sec. 82)

Offences and Penalties

3.12.8 Offences
- making any false statement, failure to pay contribution, deduction from wages of the contribution payable by the employer / reduction of wages dismissal/discharge in contravention of Sec.73 of the Act, failure to submit return, obstruction of any inspector in discharging his duties, contravention of any other provision of the Act, Rules or Regulations.

3.12.9 Penalties
- imprisonment 6 months to 5 years,
- fine up to Rs.25000/- depends upon the offences committed, which are self explanatory.

- Action also can be taken under IPC in cases an employer deducts contribution from wages and does not pay the same to ESIC, amounts to criminal breach of trust.

### 3.13 The Maternity Benefit Act, 1961

#### 3.13.1 Object

- is to regulate the conditions of service and to provide certain benefits to the women employees in the form of leave with wages, maternity bonus, rest intervals, crèches, etc.

#### 3.13.2 Application

- every factory, mine, plantation and to every shop or establishment in which 10 or more employees are employed or were employed on any day of preceding twelve months. However, it does not apply to the establishments which are covered under the ESI Act, 1948.

#### 3.13.3 Coverage

- women including unmarried are eligible when she is expecting a child and has worked for 80 days in the 12 months immediately preceding the date of her expected delivery.
female workers engaged on casual, daily wages, etc. basis without any category or any wage ceiling, they are covered.

- A woman employee is entitled to these benefits irrespective of the number of children she has, although it is contrary to the family planning norms of the Government.

### 3.13.4 Benefits

1. **Cash** – leave with average pay for six weeks before and after the delivery; incase of miscarriage- six weeks after the date of incident; additional one month leave for illness due to the pregnancy and two weeks after the Tubectomy Operation on proof. If she could not avail of six weeks’ leave preceding the date of her delivery, she can avail this one following her delivery.

- (1) Medical Bonus of Rs. 1000/-, if no pre-natal confinement and post-natal care is provided for by the employer free of charge.

- (2) The Central Government may before every three years, by notification in the Official Gazette, increase the amount of medical bonus subject to the maximum of twenty thousand rupees.

- No deduction from wages of the employee.

2. **Non-cash** – light work for ten weeks before the date of her expected delivery, if she asks for it.
- Two nursing breaks of 15 minutes each in the course of her daily work until the child attains the age of 15 months.
- no discharge or dismissal while she is on maternity leave.
- no change in her service conditions to her disadvantage during the period, she is on maternity leave.

3.13.5   Conditions for claiming Benefits

- Written Notice to her employer in prescribed form stating as follows, along with necessary proof:
  - that her maternity benefit may be paid to her or nominee;
  - that she will not work in any establishment during the period during which she receives benefits;
  - that she will be absent from work from so and so date;
  - failure to give notice, however, does not disentitle her to the benefits available under the Act.

- Payment - employer is liable to pay the benefits, before delivery - in advance, and after delivery within 48 hours to her or nominee or legal representative thereof, as the case may be.

- Forfeiture – if any woman works in any other establishment during maternity leave.
or dismissed for gross misconduct disqualify her right to get the benefits under the Act.

3.13.6 Offences and Penalties

- Failure to display the Extract of the Act; or to produce any register or document before the Inspector or obstructing him; or contravention of any provision of this Act – Imprisonment up to one year or fine up to Rs. 5000/- or both.
- Failure to pay maternity benefit as provided under the Act; or dismissal or discharge of a woman employee during the benefit period in contravention of the provisions of the Act – Imprisonment up to one year or fine up to Rs. 5000/- (minimum 3 months and Rs. 2000/- respectively)

3.14 The Employer’s Liability Act, 1938

- The Act extends the whole of India.

3.14.1 Object of the Act

- is to prohibit certain defenses as pleaded in suits for damages in respect of injuries sustained by the workmen under the common law.
- The Act is closely related to chapters IV, V and VA of the Employees’ State Insurance

Legal Aspects of Hospital Management – Dr. B.G. Maniar
Act, 1948 and to Section 3 of the Workmen’s Compensation Act, 1923.

3.14.2 Defenses of the Employers

- The Doctrine of Common Employment - by this doctrine an employer is not normally liable to pay damages to a workman for an injury resulting from the default of another workman.

- The Doctrine of Assumed Risk. - by this doctrine an employee is presumed to have accepted a risk if it is such that he ought to have known it to be part of the risks of his employment.

- Contracting out – the agreement which have the effect of excluding or limiting any liability of the employer in respect of personal injuries caused to the person employed by the negligence of persons in common employment.

- Contributory Negligence – consists of the absence of that ordinary care which a sentient being ought reasonably to have taken for his own safety to avoid the injury to which he complaints.

3.14.3 Prohibited Defenses
Section 3: Defense of common employment barred in certain cases. Where personal injury is caused to a workman,
(a) By reason of the omission of the employer to maintain in good and safe condition any way, works, machinery or plant connected with or used in his trade or business, or by reason of any like omission on the part of any person in the service of the employer who has been entrusted by the employer with the duty of seeing that such way, works, machinery or plant are in good and safe condition; or
(b) By reason of the negligence of any person in the service of the employer who has any superintendence entrusted to him, whilst in the exercise of such superintendence; or
(c) By reason of the negligence of any person in the service of the employer to whose order or directions the workman at the time of the injury was bound to conform, and did conform, where the injury resulted from his having so conformed or
(d) By reason of the act or omission of any person in the service of the employer done or made-
  (i) In the normal performance of the duties of that person; or
  (ii) In obedience to any rule or bye-law of the employer (not being a rule or bye-law which is required by or under any law for the time being in force to be approved by
any authority and which has been so approved); or

- (iii) In obedience to particular instructions given by any other person to whom the employer has delegated authority in that behalf;

- A suit for damages in respect of the injury instituted by the workman or by any person entitled in case of his death shall not fail by reason only of the fact that the workman was at the time of the injury a workman of, or in the service of, or engaged in the work of, the employer.

3.14.4 Bar on contracting out

- in a suit for damages, the strong presumption shall be that the workman has undertaken any risk attaching to the employment without full knowledge.  
- But this presumption may be rebutted only when the employer proves that the risk was fully explained to and understood by the workman and the workman voluntarily undertook the same with full knowledge.

- The doctrine of contracting out has been inserted in the Act so as to exclude the provisions of the Contract Act, 1872.  
  (Sec.3A)

- This Act shall not affect the validity of any decree or order of a civil court passed before
the commencement of this Act in any such suit for damages.

3.15 **The Employees’ Provident Funds & Misc. Provisions Act, 1952 & the Schemes**

3.15.1 **Application**
- every establishment, employing 20 or more persons or any one can be covered voluntarily employing less than 20 u/s 1(4) of the Act

3.15.2 **Eligibility**
- Any person who is employed for work either by an employer or through contractor in or in connection with an establishment can become a member of the scheme under the Act.
- Schemes- P.F., Pension and Deposit Linked Insurance.
- Object –compulsory contribution to the fund for the future of employees or their family.

3.15.3 **Payment of Contribution**
- Employer shall pay the contribution payable to the EPF, DLI and EPension in respect of the members (workmen) employed by him directly or through a contractor.
- It shall be the primary responsibility of the employer to pay the contribution, whether; the workman is employed by him or through the contractor.
- In default, the employer is liable to be arrested without warrant being a cognizable offence.
- For any retrospective application, all dues have to be paid with damages up to 100% of arrears.
- Default in payment of contribution/administrative charges attract imprisonment up to 3 years and fine up to Rs.10,000/-. 
- Damages :
  - Less than 2 months .... @ 17 % p. a.
  - 2 to 4 months .... @ 22 % p. a.
  - 4 to 6 months .... @ 27 % p.a.
  - 6 months and above .... @ 37 % p. a.

### 3.15.4 Rates of contribution

- Scheme   | Employee’s  | Employer’s- Govt. (central )
- PF       | 12 %        | 3.57 %    | nil (12-8.33) 
- DLI      | nil         | 0.65 %    | nil 
- Pension  | nil         | 8.33 %    | nil (Diverted out of PF) 

- After revision in wage ceiling from Rs. 5000 to 6500 w.e.f. 1-6-2001 p.m., The employer’ share in the pension scheme will be
Rs. 541.( max.)

- Under EDLI the contribution @ 0.65% is required to be paid up to a maximum limit of Rs. 6500/-.  
- The employer will also pay administrative charges @ 1.10% on maximum limit of Rs. 6500/-( basic + d.a.).  
- Excluded employee i.e. drawing wages more than Rs. 6500/- can also become a member with joint request, contribution of employee will be 12% of wages but employer’s contribution will be up to max. limit Rs.6500/-.

### 3.15.5 Benefits

- Employees covered enjoy a benefit of social security in the form of an unattachable and unwithdrawable (except in severely restricted circumstances like buying house, marriage, education, etc.) Contributed sum paid throughout the employment by employer and employee is payable normally on retirement, or death.  
- Other benefits include Pension and EDLI.  
- Maximum amount of EDLI – Rs. 1 lakh after death to the dependants of diseased member.

### 3.16 The Payment of Gratuity Act, 1972
3.16.1 Applicability
- Every factory, mine, oil field, plantation, port, railways, company, shop, establishment or educational institutions. (Sec.1)
- employing 10 or more employees
-all employees irrespective of status or salary on rendering of 5 years’ service, at the instance of termination, resignation or retirement (except in case of death or disablement) [Sec. 2 (e)]

3.16.2 Wages for calculation

- @ 15 days’ wages for every completed year as if the month comprises of 26 days at the last drawn wages. (Sec. 2 (s))
- For piece rated employees @ 15 days’ wages for every completed year on an average of 3 months’ wages. (Sec. 4)
- For seasonal employees @ 7 days’ wages for every completed year of service. (S.4)
- Maximum ceiling Rs.10,00,000/- (Sec.4(3))
- Mode of payment-cash or if so desired, by Bank Draft or Cheque. (Rule 9)
- Payment is to be made within 30 days from the date it becomes payable and thereafter along with 10% interest.

3.16.3 Recovery, Protection, Forfeiture, Nomination
To apply within 30 days in Form 1 when not paid within 30 days. (S.8, R. 8)

Gratuity can’t be attached in execution of any decree of the Court. (Sec. 13)

Gratuity may be forfeited on termination of an employee for moral turpitude or riotous or disorderly behavior.
- Wholly or partially for willfully causing loss, destruction of property, etc. [S.4 (6)]
  – Deduction is permissible.

Nomination to be obtained by employer after expiry of one year’s service, in Form ‘F’. (Sec. 6, R. 6)

3.16.4 Penalties

- Imprisonment for 6 months or fine up to Rs. 10,000/- for avoiding making payment by making false statement or representation.
- Imprisonment not less than 3 months and up to one year with fine on default in complying with the provisions of Act and Rules. (Sec. 9)

4 The Consumer Protection Act, 1986
4.1 Object
– To provide better protection to the interests of the consumers, the Act is designed to make available easy, cheap and speedy remedy to small consumers.

4.2 Background
– In the present era of developed market, manufacturers as well as sellers are more organized and on better footing than the buyers, the buyers could be easily misled and duped. they need better support and protection from unscrupulous sellers. A common consumer is not in a position to approach the civil court or MRTP Commission to get relief from whom they are being cheated.
  • United Nations adopted the concept of protection of consumers on 9-4-1985 and all countries were expected to take suitable legislative measures thereof. This Act was accordingly brought in force.

4.3 Consumer
  • Consumer is a person:
    - who buys any goods for consideration for personal use ; or
    - who uses such goods with the permission of the buyer of goods ; or
    - who obtains goods on hire purchase or lease ; or
    - who hires or avails of any services for a consideration ; or
- who uses the services with permission of person who has hired the services; or
- who obtains the services on deferred payment basis i.e., hire purchase or lease;
- who buys goods exclusively for purpose of earning his livelihood as self-employment.

- **Who is not consumer?**
  - who buys goods or services for commercial purpose;
  - who has not bought the goods or services

### 4.3.1 Rights of the consumer

- right to be informed about the quality, quantity, purity, standard and price of the goods so she may be protected from the unfair trade practices;
- to have protection from marketing of the products which are hazardous to life and property;
- right to consumer education;
- to have access to the authority of the goods;
- to stop exploitation;
- to be heard and assured that his interest will be respected;
- right to speedy, simple redresses to the consumer disputes.

### 4.4 Rights of Patients

**Fundamental Right:**
- Equal treatment and not to be discriminated on the grounds of religion, caste or creed, etc.
- right to life and personal liberty, it includes right to health; Doctors’ assistance; Pollution free Environment. (hospital waste)
- right to move to the Supreme Court / High Court for the enforcement of these rights.
- Writ Petition / Public Interest Litigation can be filed.

**International Human Rights**
- Article 12 of the International Covenant on Economic, Social, and Cultural Rights
- it requires the State parties to strive the highest attainable standards of physical and mental health.
- this can be enforced through different laws, such as Law of Torts, Law of Contract, Consumer Protection Act and Law of Crime, etc.

### 4.5 Confidentiality and Privileged Communication
- doctor must not disclose the secret information of his patient which he learns during the course of examination/investigation/treatment.

**Privileged communications are of two kinds**
(1) **Absolute; and (2) Relative**

- **Absolute** Communications under the Indian Evidence Act relate to communication between husband and wife (Sec. 122); the official secret of the State (Ss. 123, 124); and between the lawyer and client (Ss. 126, 127). The disclosure of these communications cannot be enforced even in the due process of law.

- **Relative** Communications are between the doctor and patient, chartered accountant and his client. It is though confidential can be revealed in the interest of the society or by the process of law.

- **Right to consent** – all kinds of medical and / or surgical treatment involves interference with human body, only the patient can determine what should be done to his body.

- **Every adult patient** has a right to refuse full or part of method of investigation or treatment, even if, the decision may entail risks, as serious as death and may appear mistaken in the eye of medical profession, the doctor cannot disregard the patient’s instructions.

- **Consent should be free from coercion, undue influence, fraud or misrepresentation or mistake.**

- **Minor, mentally ill or insane** has no right of self determination.

---

*Legal Aspects of Hospital Management – Dr. B.G. Maniar*
Circumstances in which the doctrine of self determination can be overruled:
- in emergency cases, the doctrine of necessity, can protect the Doctor for giving the treatment or performing the operation;
- the interest of the State in protecting and preserving the lives and health of its citizens in order to eliminate threat to community, etc.

4.6 Informed consent

- Informed consent means informed about the treatment, its pros and cons, possible complications, etc. so as to enable him to take decision and that is his exclusive right, except in emergency.
- The consent form should be in a language understandable by the patient. Mere thumb impression on a consent latter which the patient cannot read due to illiteracy or lack of knowledge of the language is invalid.
- A doctor who violates the law of informed consent is liable to be removed from the rolls of the Medical/Dental Council of India. It is an offence under the IPC, punishable with a fine or imprisonment.

Informed consent where is to be obtained? And where not required
In any diagnostic procedure, particularly invasive procedure. Risk from large dose of radiation, Laboratory Investigation, e.g. HIV test, prescription or administration of drugs with potential side effects, surgical procedure that can cause irreversible changes, sterility or impotence etc. require may also need to be told,

It is not necessary where it can upset the patient or gives negative effect, e.g. patient is in need of life saving procedure, where there is a high risk of morbidity or mortality.

Similarly, consent cannot be obtained from a minor, lunatic, a person in coma, in emergency, a person with contagious disease, immigration and quarantine requirements, examinations ordered by the court of criminal accused.

### 4.7 Rights of the Doctor

Registration confers certain rights and imposes duties upon the doctors.

- To use the title and description of the qualification.
- Appointment in public or private institution.
- To use Red Cross only in few circumstances viz.,
  - serving in medical service of an army in country or Red Cross societies during war or
during humanitarian services in peace as per Geneva Convention.

- To choose the patient, but no discrimination.
- To prescribe and/or dispense medicine to his patients.
- To issue medical certificate or report.
- To realize fees and other expenses.
- To give evidence in court as an expert.
- To remove organs from dead body while doing post mortem, subject to provisions of law in force.

4.8 Duties of Doctors

- Always be ready to respond the call from sick, especially in emergency.
- Patient not to be neglected.
- Provide standard care.
- Maintain patience, secrecy.
- Disclose information where it is necessary.
- Provide information to the patient, his relatives or family members, guardians or attendants regarding necessity of treatment, modality, risk, duration, expenses, etc.
- Correct prognosis i.e. – no exaggeration – no minimizes.
- Get consent for treatment.
- Attend properly once you have accepted to treat the patient.
- Pay special attention to children, disabled, old age people, etc.
Acquaint with the recent knowledge.
Investigation - no hurry no hesitation.
No experiment with the patient.
No black mailing.
Act according to law.
Maintain up to date record.
Compulsory notify the birth, death communicable disease, food poisoning, etc.

4.9 Self Regulations

Self regulation means regulating one’s own behaviour through the code of conduct established by the recognized association or peer group of doctors of the same branch or surgical as prescribed from time to time.

Observe the Code of Medical Ethics of MCI.
- a physician shall uphold the dignity and honour of his profession.
- the prime object of the medical profession is to serve, reward or financial gain is subordinate consideration.
- he should be pure in character, modest, sober, prompt in discharging his duties, etc.

Organize seminars, symposia, lectures, refresher courses to update the knowledge of the doctors and for the benefits of the profession.

Annual conferences, midterm seminars provide an opportunity to discuss and remove the doubts if any in the fields of...
medical practice, medical ethics and etiquettes.

4.10 Consumer Complaints

- **Complaint** means any allegation made in writing that:
  - the goods/services she purchased/hired are defective/deficient;
  - the price charged is exaggerated;
  - Unfair/restricted trade practices has been adopted by the seller;
  - goods is hazardous to life and property;

- **Defect** means any fault, imperfection, or shortcoming in the quality, quantity, potency, purity, or standard that is required to be maintained by or under the law for the time being in force or under any contract, express or implied, or is claimed by the trader in any manner whatsoever in relation to any goods. (Sec. 2(1)(f))

- **Deficiency** means any fault, imperfection, or shortcoming in the quality, quantity, potency, purity, or standard that is required to be maintained by or under the law for the time being in force or has been undertaken to be performed by a person in pursuance of any contract, express or implied, in relation to any services. (Sec. 2(1)(g))

- **Unfair Trade Practices** means a trade practices which,
- for the purpose of promoting the sale, use or supply of any goods or of any service,
- adopts any unfair method or unfair or deceptive practice including any false / misleading statements regarding standard, quality, quantity, grade, composition, etc.

- **Restrictive Trade Practices** which requires a consumer to buy, hire, or avail of any goods or, as the case may be, services as a condition precedent for buying, hiring or availing of other goods or services.

- Spurious goods and services means such goods/services which are claimed to be genuine but they are actually not so.

**4.11 Duties of consumer regarding purchase of goods / services –**

- Invariably receive the cash memo;
- read carefully the details inscribed on the packet ;
- give priority to ISI/Agmark items;
  - File complaint invariably, in cases of defect in goods or deficiency in service is found.

**4.12 Complaint**

**Who can file a complaint?**

- a consumer ; or
- consumer association registered under the Act, for the time being in force ; or
- Central or State Government
Where to file a complaint?
- if the value of the goods / services or compensation is:
  - less than Rs. 20 lac – District Forum;
  - more than Rs.20 lac but less than Rs.1 crore – State commission;
  - more than 1 crore – National Commission.
- before the appropriate authority where cause of action arose, or where the defendants resides
- Time limit – within 2 years from the cause of action arises.

Appeal – within 30 days,
- before the State Commission against an order of the District Forum;
- before the National Commission against the order of the State Commission;
- before the Supreme Court against the order of the National Commission.
- Appellant has to deposit 50 % of the amount decided by the appropriate Forum or Rs. 25000/35000/50000, whichever is less, before he prefers an appeal before the State Commission/National Commission/Supreme Court respectively.

4.13 Negligence

- Negligence – means the omission to do something which a reasonable man, guided
by those ordinary considerations which ordinarily regulate human affairs, would do or the doing of something which a reasonable and prudent man would do.

- Negligence does not always mean absolute carelessness, but want of such a degree of care as is required in particular circumstances.
- Negligence is failure to observe duty to take reasonable care, precaution which the circumstance demands, negligence and duty are correlated.
- When there is a legal duty to take care, and if committing a breach, consequential damages, amounts to tort – an actionable wrong.
- The “rule of law” requires that the wrong should not remain unredressed. The victim should be compensated.
- Compensation is a return for the loss or damages sustained. Justice requires that it should be equal in value, although not alike in kind.
- Perfect compensation is hardly possible and money cannot renew a physique or frame that has been battered and shattered.
- A patient is entitled to recover compensation/damages in a case of medical negligence under the law of tort or contract.
- Under the law of tort it is not necessary that the consideration should have been paid for the treatment.
Where the consideration is paid for the treatment, action is maintainable under the tort as well as contract.

4.14 Remedies for Medical Negligence

Following remedies are available for claiming compensation for medical negligence:

1. Under the law of torts and contract in a Civil Court;
2. Under the Consumer Protection Act in a Consumer Forum/Commission;
3. Under the Constitution of India by filing a writ petition in the appropriate High Court or in Supreme Court;
4. Under the Medical Council of India Regulations and the State Medical Council Acts;
5. Under the Fatal Accidents Act, 1855;
6. Under the Criminal Law, apart from punishment, compensation also can be awarded against the doctor.

The people would rarely prefer to prosecute a lawyer or a doctor, because the relationship of a doctor with his patient, and a lawyer with his client, is of uberrimae fidei, i.e. of utmost good faith and abundant confidence. A diehard criminal would frankly confess before his lawyer and the most sophisticated lady would expose her
organs to her physician. Both are looked as saver or demigod for them.

- Except in situations of extreme negligence, gross misconduct, or unaccountable cheating or absorbing exploitation, they are being prosecuted.
- Therefore, any provision exposing these professions to any criminal liability has to be very strictly interpreted and very liberally explained.

4.15 Medical Services Covered under CPA

- The Supreme Court in Indian Medical Association v. V.P Sharma (1995)6 SCC 651, has held that:
  - services rendered to a patient by a medical practitioner are covered unless it was a contract of service (i.e. he is employee of patient) or free of charge;
  - in case of hospitals/nursing homes/health centres (except Government), all patients who pay the fee, including those who do not have to pay, are covered;
  - where individual doctor employed in hospitals/nursing homes/health centers which recover charges from patient, the responsibility of the doctor and the management of hospital will be joint and several;
-Not covered - the hospital/nursing home where service is free to all – whether rich or poor – neither the management nor the doctor is liable under the Act

4.16 Duty of Care

- It was further held that the doctor has duty of care in:
  - deciding whether to undertake the case, what treatment to give, administration of the treatment etc.;
  - he must bring to his task a reasonable degree of skill and knowledge;
  - he need not possess the highest expert skill;
  - it is sufficient if he exercises ordinary skill of an ordinary competent man.
- In A.S. Mittal v. State of A.P., AIR 1989 SC 1570, it was held that:
- law recognizes the dangers which are inherent in surgical operations and that mistake will occur, on occasions, despite the exercise of reasonable care and skill;
- A mistake by a medical practitioner which no reasonably competent and a careful practitioner would have committed is a negligent one.
- In Laxman Joshi v. Dr. Trimbak Bapu Godbole, AIR 1969 SC 128, it was observed that the practitioner must bring to his task a reasonable degree of skill and knowledge.
and must exercise a reasonable degree of care, neither very high nor very low and should take suitable judgment in the light of the particular circumstances of each case is what the law requires.

- Skill of medical practitioner differs from doctor to doctor.
- The very nature of profession is such that there may be more than one course of treatment which may be advisable for treating a patient.
- Courts would indeed be slow in attributing negligence on part of a doctor if he has performed his duties to the best of his ability and with due care and caution.
- Medical opinion may differ with regard to the course of action to be taken by a doctor treating the patient, but as long as a doctor acts in a manner which is acceptable to medical profession and the court finds that he has attended the patient with due care, skill and diligence, and if the patient still does not survive or suffers a permanent ailment, it would be difficult to hold the doctor to be guilty of negligence.
- In cases where the doctors act carelessly and in a manner which is not expected of a medical practitioner, than in such case an action in torts is maintainable. In this case, a mop (towel) was left inside the body after a sterilization operation. It is a clear case of negligence.
• **Emergency Care** – Discontinuance of treatment to injured in accident due to failure to deposit an amount – amounted to death – Held, gross negligence and deficiency in service of the hospital – Recovery of fee can wait, but not death nor treatment for trying to save life – Deceased, a young B.Tech. Engineering 2nd year student – Rs. 10 lakh awarded as compensation. (Pravat Kumar Mukherjee v. Ruby General Hospital, 2005 (2) CPJ 35)

• **Anaesthesia** - Surgery – Operation for hernia under general anesthesia – Anaesthetist leaving operation theatre immediately after extubation, at least with implied consent of surgeon – Patient not gaining consciousness and death occurring within 10 minutes – what was condition of the patient at the time of extubation, what happened after surgery and extubation, why patient was not shifted to ward, why anaesthetist left before shifting patient to ward, who monitored him during this period and what steps were taken for prevention, all these questions are remained unanswered – Maxim *res ipsa loquitur* applied – both surgeon and anaesthetist equally liable for negligence and deficiency in service – Rs. 4 lakh awarded as compensation. (Dr. Yogesh Pandya v. Harshaben C. Patel, 2004 (1) CPR 308)
• Compensation – quantum – Death of patient caused by medical negligence proved on record – Deceased aged 31 earning Rs. 4061/- p.m. at the time of death leaving behind widow, minor child and parents – Compensation of Rs. 50,000/- as awarded by State Commission enhanced to Rs. 5 lakh having regard to the provisions of the Motor Vehicles Act and other relevant provisions of general law in considering how much harassment and loss would have been caused to complainants on account of negligence of Opposite Party.( H.H.Kotak v. Dr. Ashok Nathvani, 2004 (2) CPJ 11.

• Ayurvedic Doctor – practice of modern allopathic system of medicine – since integrated course of ayurvedic medical education comprises various topics under modern medicine and when such person put in considerable years of practice, they are entitled to to prescribe allopathic drugs also. ( Manpreet Kaur v. Dr. Mrs. Veena Ghumber, 2005 (1) CPJ 63 )

• Homeopathy Doctor – indulging in Allopathy – Amounts to deficiency in service. Dr. A.M. Mulla v. Mashakab Ismailsab, 1999(2) CPR 353.

- A Homoeopath Doctor is under a statutory duty not to enter the field of other system of medicine – he is guilty of negligence.

• Charging of excessive fee does not constitute consumer dispute (BS Hegde v. Dr.Battacharya,(1993)3 CPJ388.)
• The patient was charged for bed when the hospital has no beds, charging for telephone calls which were not made, cotton gauze which was not used, the hospital was held liable to return the money.

• False or incorrect certificates can not only invite cases of negligence but also constitute serious misconduct and criminal liabilities.
5 The Transplantation of Human Organs Act, 1994

5.1 Necessity

- There was no law which specifically prevents the illegal removal and donation of the human organs.
- The National Human Rights Commission was deeply concerned about the illegal trade in human organs and in particular, trade in kidneys, which often involves exploitations of poor people and violation of their human rights.
- Estimated amount involved in that trade is Rs. 40 crores, a year.
- Doctors, Nurses, and Ward boys of hospitals are deputed to detect the prospective customers in need of the organs as well as prospective youths who are ready to donate their organs for want of money. They act as agents.
- They get in touch with the relatives of the patients and offer the kidney at a negotiable price.
- Many illegal means are practiced to get the organs.
Most of the time, it is the poor and not the rich that resort to the sale or donation of their organs for consideration.

The patients in need of kidneys also prefer to have a live donor as they can judge the expected efficiency of the kidneys by the various blood tests.

5.2 Object of the Act

- Is 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.

5.3 Interpretation of certain words

- “Therapeutic purposes” means systematic treatment of any disease or the measures to improve health according to any particular method/modality;
- “Transplantation” means the grafting of any human organ from any living person or deceased person to some other living person for therapeutic purposes.
- “Payment” means payment in money or money's worth but does not include any payment for defraying or reimbursing-
  - (i) The cost of removing, transporting or preserving the human organ to be supplied; or
- (ii) Any expenses or loss of earnings incurred by a person so far as reasonably and directly attributable to his supplying any human organ from his body;
- “Human organ” means any part of a human body consisting of a structured arrangement of tissues, which, if wholly removed, cannot be replicated, by the body;
- “Near relative” means spouse, son, daughter, father, mother, brother or sister.

5.4 Authority for the removal of human organs (Sec. 3)

5.4.1 Who may authorize?

- Removal for therapeutic purpose only. (Sec. 11)
  1. Donor him/her self;
     - at any time before his death, in writing and in the presence of two or more witnesses (at least one of whom is a near relative i.e. spouse, son, daughter, father, mother or sister of such person),
  2. The person lawfully in possession of the dead body (Authorized by the diseased),
     - grant to a registered medical practitioner all reasonable facilities for the removal,
     - provided the donor had not subsequently revoked the authority
3. **The person lawfully in possession of the dead body** (not-authorized but not objected either by the diseased or by near relative)

4. **The Parents in case of minor person**

Wherein brain-stem death has occurred and is so certified by the appropriate authority

### 5.4.2 When may be authorized? (Sec. 3)

1. **In a case of brain-stem death** and life is extinct in such body, subject to satisfaction of the registered medical practitioner, before such removal, by a personal examination of the body from which any human organ is to be removed, (*a stage at which all functions of the brain-stem have permanently and irreversibly ceased*)

   and on satisfaction of such conditions and requirements as may be prescribed, by a Board of medical experts consisting of

   (i) The registered medical practitioner, in charge of the hospital in which brain-stem death has occurred;

   (ii) An independent registered medical practitioner, being a specialist;

   (iii) A neurologist or a neurosurgeon to be nominated by the registered medical practitioner specified, from the panel of names approved by the Appropriate Authority; and
(iv) The registered medical practitioner treating the person whose brain-stem death has occurred.

5.5 **Authority for removal of human organs from bodies sent for postmortem examination for medico-legal or pathological purpose.**

(Sec. 6)

- the person competent under this Act, if he has reason to believe that such human organ will not be required for the purpose for which such body has been sent for postmortem examination,
- authorise the removal, for therapeutic purposes, of that human organ of the deceased person
- provided that he is satisfied that the deceased person had not expressed, before his death, any objection to any of his human organs being used, for therapeutic purposes after his death or,
- where he had granted an authority for the use of any of his human organs for therapeutic purposes after his death, such authority had not been revoked by him before his death.
5.6 Preservation of human organs and savings (Sec. 7 & 8)

- After the removal of any human organ from the body of any person, the registered medical practitioner shall take such steps for the preservation of the human organ so removed as may be prescribed. (Sec. 7)

5.7 Restrictions on Removal and Transplantation of human organs (Sec. 9)

5.7.1 After death

(1) Where the authority, has reason to believe that an inquest may be required to be held in relation to such body in pursuance of the provisions of any law for the time being in force.

(2) The person to whom such body has been entrusted solely for the purpose of interment, cremation or other disposal.

5.7.2 Before death

(1) No human organ removed from the body of
a donor before his death shall be transplanted into a recipient unless the donor is a near relative of the recipient; or
(2) who may be in need of such human organ; or
(3) as specified by the donor by reason of affection or attachment towards the recipient.

For any other special reasons, such human organ shall not be removed and transplanted without the prior approval of the Authorization Committee.

The Central Government and the State Government shall constitute, by notification, one or more Authorization Committees

5.7.3 Procedural restrictions on removal and transplantation of human organs

- On an application jointly made, in such form and in such manner as may be prescribed, by the donor and the recipient, the Authorization Committee shall, after holding an inquiry and after satisfying itself that the applicants have complied with all the requirements of this Act and the rules made thereunder, grant to the applicants approval for the removal and transplantation of the human organ,
If, after the inquiry and after giving an opportunity to the applicants of being heard, the Authorisation Committee is satisfied that the applicants have not complied with the requirements of this Act and the rules made thereunder, it shall, for reasons to be recorded in writing, reject the application for approval.

5.8 Prohibition of removal or transplantation of human organs for any purpose: - other than therapeutic purposes [Sec.11]

-No donor and no person empowered to give authority for the removal of any human organ shall authorise the removal of any human organ for any purpose other than therapeutic purposes.

5.9 Explaining effects, etc., to donor and recipient -

-No registered medical practitioner shall undertake the removal or transplantation of any human organ unless he has explained, in such manner as may be prescribed, all possible effects, complications and hazards connected with the removal and transplantation to the donor and the recipient respectively. (Sec. 12)
5.10 Regulation of hospitals conducting the removal, storage or transplantation of human organs (Sec. 10)

- (1) On and from the commencement of this Act, -

- (a) No hospital, unless registered under this Act, shall conduct, or associate with, or help in, the removal, storage or transplantation of any human organ;

- (b) No medical practitioner or any other person shall conduct, or cause to be conducted, or aid in conducting by himself or through any other person, an activity relating to the removal, storage or transplantation of any human organ at a place other than a place registered under this Act; and

- (c) No place including a hospital registered under sub-section (1) of Section 15 shall be used or cause to be used by any person for the removal, storage or transplantation of any human organ except for therapeutic purposes.

- (2) Notwithstanding anything contained in sub-section (1), the eyes or the ears may be removed at any place from the dead body of any donor, for therapeutic purpose, by a registered medical practitioner.
Explanation. -For the purposes of this subsection, “ears” include ear drums and ear bones.

5.11 Registration of hospitals engaged in removal, storage or transportation of human organs (Sec. 14)

- (1) No hospital shall commence any activity relating to the removal, storage or transplantation of any human organs for therapeutic purposes after the commencement of this Act unless such hospital is duly registered under this Act:

- Provided that every such hospital, immediately before the commencement of this Act, shall apply for registration within sixty days from the date of such commencement:

- Provided further that every such hospital shall cease to engage in any such activity on the expiry of three months from the date of commencement of this Act unless such hospital has applied for registration and is so registered or till such application is disposed of, whichever is earlier.

- (2) Every application for registration under sub-section (1) shall be made to the Appropriate Authority in such form and in
such manner and shall be accompanied by such fees as may be prescribed.

- (3) No hospital shall be registered under this Act unless the Appropriate Authority is satisfied that such hospital is in a position to provide such specified services and facilities, possess such skilled manpower and equipments and maintain such standards as may be prescribed.

5.12 Certificate of registration (Sec. 15)

- (1) The Appropriate Authority shall, after holding an inquiry and after satisfying itself that the applicant has complied with all the requirements of this Act and the rules made thereunder, grant to the hospital a certificate of registration in such form, for such period and subject to such conditions as may be prescribed.

- (2) If, after the inquiry and after giving an opportunity to the applicant of being heard, the Appropriate Authority is satisfied that the applicant has not complied with the requirements of this Act and the rules made thereunder, it shall, for reasons to be recorded in writing, reject the application for registration.
(3) Every certificate of registration shall be renewed in such manner and on payment of such fees as may be prescribed.

5.13 Suspension or cancellation of registration (Sec. 16)

(1) The Appropriate Authority may, suo moto or on complaint, issues a notice to any hospital to show cause why its registration under this Act should not be suspended or cancelled for the reasons mentioned in the notice.

(2) If, after giving a reasonable opportunity of being heard to the hospital, the Appropriate Authority is satisfied that there has been a breach of any of the provisions of this Act or the rules made thereunder, it may, without prejudice to any criminal action that it may take against such hospital, suspended its registration for such period as it may think fit or cancel its registration:

Provided that where the Appropriate Authority is of the opinion that it is necessary or expedient so to do in the public interest, it may, for reasons to be recorded in writing, suspend the registration of any hospital without issuing any notice.

5.14 Appeals (Sec. 17)
Any person aggrieved by an order of the Authorization Committee, rejecting an application for approval (removal and transplantation of human organs) under sub-section (6) of Section 9, or any hospital aggrieved by an order of the Appropriate Authority rejecting an application for registration under sub-section (2) of Section 15 or an order of suspension; or

Cancellation of registration under sub-section (2) of Section 16, may, within thirty days from the date of the receipt of the order, prefer an appeal, in such manner as may be prescribed, against such order to—
The Central, Government or the State Government as the case may be.

5.15 Punishment for removal of human organ without authority (Sec. 18)

(1) Any person who renders his services to or any hospital and who, for purposes of transplantation, conducts, associates with, or help in any manner in, the removal of any human organ without authority, shall be punishable with imprisonment for a term which may extend to five years and with fine which may extend to ten thousand rupees.

(2) Where any person convicted under sub-section (1) is a registered medical practitioner, his name shall be reported by the Appropriate Authority to the respective State Medical Council for taking necessary action including the removal of his name
from the register of the Council for a period of two years for the first offence and permanently for the subsequent offence.

5.16 Punishment for commercial dealings in human organs (Sec. 19)

- Whoever
  (a) makes or receives any payment for the supply of, or for an offer to supply, any human organ;
  (b) seeks to find a person willing to supply for payment any human organ;
  (c) offers to supply any human organ for payment;
  (d) initiates or negotiates any arrangement involving the making of any payment for the supply of, or for an offer to supply, any human organ;
  (e) takes part in the management or control of a body of persons, whether a society, firm or company, whose activities consist of or include the initiation or negotiation of any arrangement referred to in clause (d); or
  (f) Publishes or distributes or causes to be published or distributed any advertisement,
  (a) inviting persons to supply for payment of any human organ;
  (b) offering to supply any human organ for payment; or
  (c) indicating that the advertiser is willing to initiate or negotiate any arrangement referred to in clause (d),
Shall be punishable with imprisonment for a term, which shall not be less than two years but which may extend to seven years and shall be liable to fine, which shall not be less than ten thousand rupees but may extend to twenty thousand rupees;

Provided that the court may, for any adequate and special reason to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than two years and a fine less than ten thousand rupees.

5.17 Punishment for contravention of any other provision of this Act (Sec. 20)

(1) Any person who renders his services to or any hospital and who, for purposes of transplantation, conducts, associates with, or help in any manner in, the removal of any human organ without authority, shall be punishable with imprisonment for a term which may extend to five years and with fine which may extend to ten thousand rupees.

(2) Where any person convicted under sub-section (1) is a registered medical practitioner, his name shall be reported by the Appropriate Authority to the respective State Medical Council for taking necessary action including the removal of his name from the register of the Council for a period of two years for the first offence and permanently for the subsequent offence.
5.18 Offences by companies (Sec. 21)

(1) Where any offence punishable under this Act has been committed by a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding any thing contained in sub-section (1), where any offence punishable under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or in attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

5.19 Cognizance of offence (Sec. 22)
(1) No court shall take cognizance of an offence under this Act except on a complaint made by-
   - (a) The Appropriate Authority concerned, or any officer authorized in this behalf by the Central Government or the State Government or, as the case may be, the Appropriate Authority; or
   - (b) A person who has given notice of not less than sixty days, in such manner as may be prescribed, to the Appropriate Authority concerned, of the alleged offence and of his intention to make a complaint to the court.

(2) No court other than that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

(3) Where a complaint has been made under clause (b) of sub-section (1), the court may, on demand by such person, direct the Appropriate Authority to make available copies of the relevant records in its possession to such person.

6 Health Insurance (Medi-Claim Policy)

6.1 General Principles of Insurance
Insurance is contract in which one party
known as insured or assured (in case of life
insurance)
- insures with another person known as the
insurer, assurer or underwriter (generally
used in the cases of marine insurance),
- his property or life or the life of another
person
- in whom he has a pecuniary interest, or
property in which he is interested or against
some risk of liability,
- by paying a sum of money as the premium.
- The instrument containing the contract to
insure is called a policy of insurance.
- Contract of insurance is a contract of
indemnity (except life and persona accident
insurance).
- In such a case the insurer promises to
indemnify the insured on happening of an
event, which was uncertain, due to which he
has suffered a monetary loss.
- All contracts of insurance are _uberrimea
fidei_ i.e. contract of utmost good faith, and
there non-disclosure of material fact entitles
the other party to avoid the contract.
- _Causa Proxima_ – in the event of the loss, is
the proximate and not the remote cause that
is to be looked into. Proximate does not
mean nearest in time but proximate in
efficiency or a direct cause.
- Mitigation of loss – Risk factor –
Subrogation – Contribution.
6.2 Health Insurance

- Medi-claim is the HEALTH INSURANCE cover - Mediclaim Policy has become synonymous with health insurance.
- When the health care costs have become more and more expensive, it is felt necessary to have a health insurance.
- Health Insurance is a contract of Indemnity in which the insurer promises to indemnify the loss occurred incurred to the insure, through treatment of diseases, against the premium paid and acceptance of the proposal form.
- It creates the fiduciary relations i.e. the insurer can not conceal any fact relevant to the subject matter of the contract.

- Features of the Proposal Form consists mainly:
  - it gives details of cove, inclusion and exclusion of benefits;
  - the insured consents and authorizes the insurer to seek any medical information about himself from hospital or medical practitioner;
  - the insured confirms his consent to the terms and conditions of the contract/policy;
  - the insured confirms that the questions that he has answered about his state of health are true and can form the basis of the contract;
- in case of adverse medical history the insured has to complete a detailed questionnaire related to diabetes, hypertension, chest pain or coronary insufficiency or myocardial infraction;
- any detailed medical answers have to be completed by a consulting physician etc.

6.2.1 Conditions Applicable

- Mediclaim is available to persons between 5-80 years of age;
- Children below 5 years can be covered only if one of the parents is covered concurrently;
- A 10% discount is available if the entire family avails the cover at the same time. Family includes spouse, dependent children and dependent parent;
- The sum assured is increased by 5% for each year of claim free insurance, subject to a maximum accumulation of 10 years;
- The insured is permitted on health check for every four of coverage, the cost of which should not exceed 1% of sum assured;
- The cover could be extended to Nepal and Bhutan as well;
- In claim proceeding, the first intimation of claim must be given to the company with the relevant details within 7 days of the date of hospitalization;
Final claim should be filed within 30 days of completion of treatment;
The premium qualifies for a tax benefit under the Income Tax Act

6.2.2 Health insurance Cover

In health insurance the underlying contractual relationship takes within its fold the explicitly contemplated risk in the form of envisaged illness.
The policy covers the hospitalization and domiciliary hospitalization expenses for diseases suffered during the policy period. It also covers hospitalization for injuries caused during an accident.

6.2.3 Hospitalization

The policy usually covers the following expenses:
- Boarding expenses in a hospital or in nursing home as per the description provided in the policy;
- surgical, anesthetist’s, medical practitioner’s, specialist’s, consultant's etc. fees;
- Nursing expenses;
  - anesthesia, blood, oxygen, operation theatre charges, surgical appliances, medicine and drugs, diagnostic reports, dialysis, chemotherapy, prosthetic limbs etc.
The total liability covered does not exceed the total sum assured under such policy.

It includes expenses incurred for a period up to 30 days prior and 60 days after hospitalization.

24 hours of hospitalization is a condition precedent in such claim.

This could be waived if insured is discharged before the prescribed hours by the doctor for certain treatment like eye surgery, dental surgery, chemotherapy, kidney-stone removal, dialysis etc.

Domiciliary Hospitalization is a medical treatment carried out by professional doctors at home when the patient cannot be moved to a hospital due to the condition or lack of facility/accommodation.

- it covers all the normal hospitalization expenses except pre and post hospitalization treatment expenses;

- it does not cover the expenses incurred for the treatment of Asthma, Chronic Nephritis, Diarrhea, Bronchitis, Diabetes, Epilepsy, Hypertension, Influenza, Psychiatric disorders, Pyrexia, Tonsillitis, Laryngitis and Pharyngitis, Arthritis, Gout and Rheumatism;

- it does not cover the period of treatment for first three days and relapses within 45 days.

### 6.2.4 Excluded Claims
No claim/expenses is payable under this policy for the treatment of following diseases:
- Pre-existing diseases at the time of policy;
- Any disease contracted by the insured within 30 days of taking out the policy,
- but this condition will not apply to a case where the medical practitioner is of opinion that it could not have been traced by the insured;
- This condition will also not apply, if the policy is continued from the previous year without any break i.e. renewed without break;
- During the first year of operation of the policy, the expenses incurred for the treatment of disease like cataract, Hysterectomy, Hernia, Fistula, Piles, Hydrocele, Sinusitis etc;
- Vaccination or inoculation of any kind;
- Circumcision, unless necessary for the treatment of a disease not excluded in the policy;
- Cosmetic surgery or aesthetic treatment other than that which is necessitated due to accident or part of any illness;
- Convalescence, general debility, run-down condition or rest-cure, congenital disease or defects, sterility, venereal disease, self injury or use of intoxicating drugs;
- Various conditions commonly referred to as AIDS;

Legal Aspects of Hospital Management – Dr. B.G. Maniar
Expenses on vitamins and Tonics unless forming part of a treatment;
Treatment arising from childbirth;
Voluntary medical termination of pregnancy;
Naturopathy treatment;
Cost of spectacles, contact lenses, hearing aids;
Dental treatment or dental surgery of any kind unless requiring hospitalization.

6.3 Settlement of claims and TPAs (Third Party Administrators)

Settlement of claims
- Depending upon the cover, the insured may get a facility of cashless services, or the insured is entitled to reimbursement, subject to terms and conditions of the policy.

TPAs (Third Party Administrators)

Earlier, the responsibility as to claims processing was handled by the insurance company itself.
Now because of the introduction of TPAs (Third Party Administrators), this task is outsourced to the concerned TPA.
TPAs shoulder the responsibility of liasoning between the insurance company and the consumer i.e. insured. Speaking in our context it is a significant relief to the consumers.
Who can be a TPA?

- The necessary regulations introduced in the IRDA may be called the Insurance Regulatory and Development Authority (Third Party Administrators – Health Service) Regulations, 2001.
- Only a company with share capital, registered under the Companies Act, 1956 can function as TPA.
- The main object of the co. is to carry on business in India as a TPA in the health service.
- On being licensed by the IRDA, the co. can not engage itself in any other business.
- The minimum paid up capital of the co. shall be in equity shares amounting to Rs. 1 crore. At no time less than the same.
- At least one of the directors of the TPA shall be a qualified medical doctor registered with the Medical Council of India.
- A licence granted can be revoked after due notice for sufficient reasons.
- Every policy holder will be allotted to a particular TPA. Such TPA must shoulder the responsibility of rendering services to the policy holder.
- Hospitals and TPA will be the contractual partner for this specific purpose.
- As a result, subject to overall terms and conditions of the policy, every person is
entitled to claim either cashless facility or claim reimbursement.

6.4 Legal issues

- Insurance Cos. are State within the meaning of Article 12 of the Constitution of India, notwithstanding the entry of private companies in the field of general insurance, ending their monopoly by virtue of insertion of Sec.24A in the Act of 1972, are enjoined with the obligations to act with fairness. Arbitrariness should not appear in their actions or decisions.
- Any tendency to undertake risk selection so as to insure low-risk individuals and exclude the high-risk ones from insurance via exclusion conditions would impose a heavy financial burden on the people who are prone to get sick and most in need of risk protection, obviously works against the constitutional perspective.
- Public Health Insurance Scheme have, therefore, to be safeguarded against such tendencies that may be disguised under a refined argument of business or commercial prudence.
- A bare reading of the exclusionary provisions in the policy shows that only in respect of the disease/injuries which are pre-existing “when cover incepts for the first time”, the liability of the company will be
excluded. This would mean that the liability in respect of the disease/injury occurring during the continuance of the cover without break will remain.

- A party cannot be absolved from liability to perform a contract merely because the performance becomes more onerous. (M/s Alopi Prasad and Sons Ltd. V. U.O.I., AIR 1960 SC 588)

- Refusal, however, be justified on the grounds such as fraud, misrepresentation, non-fulfillment of the obligations by the insured.

- It is settled legal position that where after every effort to reconcile more than two clauses of contract of insurance appear plainly in conflict, it is necessary to consider the comparative weight to be given to each of them. In such case, one of the rules applicable to determine which clause shall prevail is that the policy should be construed strongly against the insurers.

- In case of ambiguities in a policy, the rule is that the policy being drafted in a language chosen by the insurers, must be taken most strongly against them. (Verba chartarum fotius accipiuntur contra profrentem i.e. words are to be interpreted most strongly against him who uses them)
7 THE MEDICAL TERMINATION OF PREGNANCY ACT, 1971

7.1 Object

An Act to provide for the termination of certain pregnancies by registered medical practitioners and for matters connected therewith or incidental thereto

7.2 When pregnancies may be terminated by registered medical practitioners (Sec. 3)

(1) Notwithstanding anything contained in the Indian Penal Code (45 of 1860)*, a registered medical practitioner shall not be guilty of any offence under that Code or under any other law for the time being in force, if he terminates any pregnancy in accordance with the provisions of this Act.

(2) Subject to the provisions of sub-section (4), a pregnancy may be terminated by a registered medical practitioner, -
(a) Where the length of the pregnancy does not exceed twelve weeks, if such medical practitioner is, or

*Note: Code number may need to be verified.
(b) Where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioners are, of opinion, formed in good faith, that-

(i) The continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health; or

(ii) There is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.

Explanation I-Where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

Explanation II - Where any pregnancy occurs; as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

(3) In determining whether the continuance of a pregnancy would involve such risk of injury to the health as is mentioned in sub-section (2), account may be taken of the pregnant woman's actual or reasonably foreseeable environment.

(4) (a) No pregnancy of a woman, who has not attained the age of eighteen years, or, who, having attained the age of eighteen years, is a mentally ill
person, shall be terminated except with the consent in writing of her guardian.
(b) Save as otherwise provided in clause (a), no pregnancy shall be terminated except with the consent of the pregnant woman.

7.3 Place where pregnancy may be terminated (S.4)

- No termination of pregnancy shall be made in accordance with this Act at any place other than-
(a) A hospital established or maintained by Government, or
(b) A place for the time being approved for the purpose of this Act by Government or a District Level Committee constituted by that Government with the Chief Medical Officer or District Health Officer as the Chairperson of the said Committee. Provided that the District Level Committee shall consist of not less than three and not more than five members including the Chairperson as the Government may specify from time to time.

7.4 Conditions precedents as to the length of pregnancy and place for MTP mentioned under Ss 3 and 4 respectively shall not apply. -

(1) Where a registered medical practitioner* is of opinion, formed in good faith, that the termination
of such pregnancy is immediately necessary to save the life of the pregnant woman.

(2) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), the termination of a pregnancy by a person who is not a registered medical practitioner shall, be an offence punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years under that Code, and that Code shall, to this extent, stand modified.

(3) whoever terminates any pregnancy in a place other than that mentioned in Sec. 4, shall be punishable with rigorous imprisonment for a term which shall not be less than 2 years but which may extend to 7 years.

(4) Any person being owner of a place which is not approved under cl. (b) of Sec. 4 shall be punishable with rigorous imprisonment for a term which shall not be less than 2 years but which may extend to 7 years. [Sec. 5]

Explanation 1 – For the purpose of this section the expression “owner” in relation to a place means any person who is the administrative head or otherwise responsible for the working or maintenance of a hospital or place, by whatever name called, where the pregnancy may be terminated under this Act.

Explanation 2 - For the purposes of this section so much of the provisions of clause (d) of Section 2 as relate to the possession, by a registered medical practitioner, of experience or training in gynecology and obstetrics shall not apply.
[* Who shall have one or more of the following experience or training in gynaecology and obstetrics, namely-
(a) experience in the practice of gynaecology and obstetrics for a period of not less than three years;
(b) (i) has completed six months of house surgery in gynaecology and obstetrics; or
(ii) Where he has not done any such house surgery, if he had experience at any hospital for a period of not less than one year in the practice of obstetrics and gynaecology; or
(iii) If he has assisted a registered medical practitioner in the performance of twenty five cases of medical termination of pregnancy in a hospital established or maintained, or a training institute approved for this purpose, by the Government.
(c) who holds a post-graduate degree or diploma in gynaecology and obstetrics, the experience or training gained during the course of such degree or diploma.

7.5 No place shall be approved under clause (b) of Section 4,-

(i) Unless the Government is satisfied that termination of pregnancies may be done therein under safe and hygienic conditions; and
(ii) Unless the following facilities are provided therein, namely:
- In case of first trimester, that is, up to 12 weeks of pregnancy –
- a gynaecological examination/labour table, resuscitation and sterilization equipment, drugs and parental fluid, back up facilities for treatment of shock and facilities for transportation; and

- In case of second trimester, that is up to 20 weeks of pregnancy -
  (a) An operation table and instruments for performing abdominal or gynaecological surgery;
  (b) Anaesthetic equipment, resuscitation equipment and sterilisation equipment;
  (c) Drugs and parental fluids for emergency use, notified by Government of India from time to time. [Rule 5]

*Termination of Pregnancy under Indian Penal Code, 1860

**Causing miscarriage:** - Whoever voluntarily causes a woman with child to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both, and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation:- A woman who causes herself to miscarry, is within the meaning of this section. [Sec.312]
Causing miscarriage without woman’s consent shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.[Sec. 312]

Death caused by act done with intent to cause miscarriage…
of such woman, shall be punished with imprisonment of either description for a term may extend to ten years, and shall also be liable to fine.

And if the act is done without the consent of he woman, shall be punished either with imprisonment for life or with the punishment above mentioned. Explanation: - It is not essential to this offence that the offender should know that the act is likely to cause death.[Sec.314]

Act done with intent to prevent child being born alive or to cause it to die after birth and if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both. [Sec.315]

Causing death of quick unborn child by act amounting to culpable homicide ..shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.[Sec.316]
Exposure and abandonment of child under twelve years, by parent or person having care of it shall be punished with imprisonment of either description for a term which may extend to seven years; or with fine, or with both.

Explanation.- this section is not intended to prevent the trial of the offender for murder or culpable homicide, as the case may be, if the child die in consequence of exposure.[Sec.317]

Concealment of birth by secret disposal of dead body …shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. [Sec. 318]

8 Pre-conception and Pre-natal Diagnostic Techniques
(Prohibition of Sex Selection) Act, 1994

8.1 Object

- prohibition of sex selection, before or after conception
- for regulation of pre-natal diagnostic techniques for the purposes of detecting genetic abnormalities or metabolic disorders or chromosomal abnormalities or cert in
congenital malformations or sex-linked disorders and

- for the prevention of their misuse for sex determination leading to female foeticide
- and for matters connected therewith or incidental thereto.

8.2 Interpretation of Certain Words

- "pre-natal diagnostic test" means ultrasonography or any test or analysis of amniotic fluid, chorionic villi, blood or any tissue of a pregnant woman conducted to detect genetic or metabolic disorders or chromosomal abnormalities or congenital anomalies or naemoglobinopathies or sex-linked diseases
- "conceptus" means any product of conception at any stage of development from fertilisation until birth including extra embryonic membranes as well as the embryo or foetus;
- (bb) "embryo" means a developing human organism after fertilisation till the end of eight weeks (fifty-six days);
- (bc) "foetus" means a human organism during the period of its development beginning on the fifty-seventh day following fertilisation or creation (excluding any time in which its development has been suspended) and ending at the birth;
(d) "Genetic Clinic" means a clinic, institute, hospital, nursing home or any place, by whatever name called, which is used for conducting pre-natal diagnostic procedures;

'Explanation.-For the purposes of this clause, "Genetic Clinic" includes a vehicle, where ultrasound machine or imaging machine or scanner or other equipment capable of determining sex of the foetus or a portable equipment which has the potential for detection of sex during pregnancy or selection of sex before conception, is used;

(e) "Genetic Laboratory" means a laboratory and includes a place where facilities are provided for conducting analysis or tests of samples received from Genetic Clinic for pre-natal diagnostic test; and includes a place where ultrasound machine or imaging machine or scanner or other equipment capable of determining sex of the foetus or a portable equipment which has the potential for detection of sex during pregnancy or selection of sex before conception, is used;

(g) "medical geneticist" means a person who possesses a degree or diploma or certificate in medical genetics in the field of pre-natal diagnostic techniques or has experience of not less than two years in such field after obtaining—

(i) any one of the medical qualifications recognised under the Indian Medical Council Act, 1956 (102 of 1956); or
• (ii) a post-graduate degree in biological sciences;
• it includes a person who possesses a degree or diploma in genetic science in the fields of sex selection and pre-natal diagnostic techniques or has experience of not less than two years in any of these fields after obtaining- (i) any one of the medical qualifications recognised under the Indian Medical Council Act, 1956 (102 of 1956); or (ii) a post-graduate degree in biological sciences;

• (i) "pre-natal diagnostic procedures" means all gynaecological or obstetrical or medical procedures such as ultrasonography, foetoscopy, taking or removing samples of amniotic fluid, chorionic villi, embryo, blood or any other tissue or fluid of a man, or of a woman before or after conception, for being sent to a Genetic Laboratory or Genetic Clinic for conducting any type of analysis or pre-natal diagnostic tests for selection of sex before or after conception;

• (j) "pre-natal diagnostic techniques" includes all pre-natal diagnostic procedures and pre-natal diagnostic tests;

• (k) "pre-natal diagnostic test" means ultrasonography or any test or analysis of amniotic fluid, chorionic villi, blood or any tissue or fluid of a pregnant woman or conceptus conducted to detect genetic or metabolic disorders or chromosomal
abnormalities or congenital anomalies or haemoglobinopathies or sex-linked diseases;

- (o) "sex selection" includes any procedure, technique, test or administration or prescription or provision of anything for the purpose of ensuring or increasing the probability that an embryo will be of a particular sex;

- (p) "sonologist or imaging specialist" means a person who possesses any one of the medical qualifications recognised under the Indian Medical Council Act, 1956 (102 of 1956) or who possesses a post-graduate qualification in ultrasonography or imaging techniques or radiology;

8.3 Regulation of Genetic Counseling Centres, Genetic Laboratories and Genetic Clinics (Sec.3)

- (1) no Genetic Counseling Centre, Genetic Laboratory or Genetic Clinic unless registered under this Act, shall conduct or associate with, or help in, conducting activities relating to pre-natal diagnostic techniques;

- (2) no Centre or Laboratory or Clinic shall employ or cause to be employed or take services of any person, whether on honorary basis or on payment who does not possess the qualifications as may be prescribed.

Legal Aspects of Hospital Management – Dr. B.G. Maniar
• (3) no medical geneticist, gynecologist, pediatrician registered medical practitioner or any other person shall conduct or cause to be conducted or aid in conducting by himself or through any other person, any pre-natal diagnostic techniques at a place other than a place registered under this Act.

• 3A. Prohibition of sex selection.-No person, including a specialist or a team of specialists in the field of infertility, shall conduct or cause to be conducted or aid in conducting by himself or by any other person, sex selection on a woman or a man or on both or on any tissue, embryo, conceptus, fluid or gametes derived from either or both of them.

• 3B. Prohibition of ultrasound machine, etc., to persons, laboratories, clinics, etc., not registered under the Act.-No person shall sell any ultrasound machine or imaging machine or scanner or any other equipment capable of detecting sex of the foetus to any Genetic Counseling Centre, Genetic Laboratory, Genetic Clinic or any other person not registered under the Act.

8.4 Restriction to use or conduct pre-natal diagnostic techniques (Sec. 4)

• (1) no place including a registered Genetic Counselling Centre or Genetic Laboratory or Genetic Clinic shall be used or caused to be
used by any person for conducting pre-natal diagnostic techniques except for the purposes specified in clause (2) and after satisfying any of the conditions specified in clause (3);

- (2) no pre-natal diagnostic techniques shall be conducted except for the purposes of detection of any of the following abnormalities, namely:
  - (i) chromosomal abnormalities;
  - (ii) genetic metabolic diseases;
  - (iii) haemoglobinopathies;
  - (iv) sex-linked genetic diseases;
  - (v) congenital anomalies;
  - (vi) any other abnormalities or diseases as may be specified by the Central Supervisory Board;

- (3) no pre-natal diagnostic techniques shall be used or conducted unless the person qualified to do so is satisfied for reasons to be recorded in writing that any of the following conditions are fulfilled, namely:
  - (i) age of the pregnant woman is above thirty-five years;
  - (ii) the pregnant woman has undergone two or more spontaneous abortions or foetal loss;
  - (iii) the pregnant woman had been exposed to potentially teratogenic agents such as drugs, radiation, infection or chemicals;
  - (iv) the pregnant woman or her spouse has a family history of mental retardation or physical deformities such as, spasticity or any other genetic disease;
(v) any other condition as may be specified by the Board: Provided that the person conducting ultrasonography on a pregnant woman shall keep complete record thereof in the clinic in such manner, as may be prescribed, and any deficiency or inaccuracy found therein shall amount to contravention of the provisions of section 5 or section 6 unless contrary is proved by the person conducting such ultrasonography;

(4) no person including a relative or husband of the pregnant woman shall seek or encourage the conduct of any pre-natal diagnostic techniques on her except for the purposes specified in clause (2);

(5) no person including a relative or husband of a woman shall seek or encourage the conduct of any sex selection technique on her or him or both."

8.5 **Written consent of pregnant woman and prohibition of communicating the sex of foetus[Sec.5]**

(1) No person referred to in clause(2) of section 3 shall conduct the pre-natal diagnostic procedures unless—

(a) he has explained all known side and after effects of such procedures to the pregnant woman concerned;
● (b) he has obtained in the prescribed form her written consent to undergo such procedures in the language which she understands; and (c) a copy of her written consent obtained under clause (b) is given to the pregnant woman.

● (2) No person including the person conducting pre-natal diagnostic procedures shall communicate to the pregnant woman concerned or her relatives or any other person the sex of the foetus by words, signs, or in any other manner Determination of sex prohibited.

8.6 Determination of sex prohibited (Sec.6)

● (a) no Genetic Counselling Centre or Genetic Laboratory or Genetic Clinic shall conduct or cause to be conducted in its Centre, Laboratory or Clinic, pre-natal diagnostic techniques including ultrasonography, for the purpose of determining the sex of a foetus;

● (b) no person shall conduct or cause to be conducted any pre-natal diagnostic techniques including ultrasonography for the purpose of determining the sex of a foetus.

● (c) no person shall, by whatever means, cause or allow to be caused selection of sex before or after conception.
8.7 Registration of Genetic Counselling Centres, Genetic Laboratories or Genetic Clinics (Sec. 18)

- (1) No person shall open any Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic after the commencement of this Act unless such Centre, Laboratory or Clinic is duly registered separately or jointly under this Act.
- (2) Every application for registration shall be made to appropriate authority, accompanied by such fees as may be prescribed.
- (3) Every existing Centre, Laboratory or Clinic engaged, either partly or exclusively, in counselling or conducting pre-natal diagnostic techniques, shall apply for registration within sixty days from the date of such commencement of the Act.
- (4) Subject to the provisions of section 6, every Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic engaged in counselling or conducting pre-natal diagnostic techniques shall cease to conduct any such counselling or technique on the expiry of six months from the date of
commencement of this Act unless such Centre, Laboratory or Clinic has applied for registration and is so registered separately or jointly or till such application is disposed of, whichever is earlier.

5. (5) No Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic shall be registered under this Act unless the Appropriate Authority is satisfied that such Centre, Laboratory or Clinic is in a position to provide such facilities, maintain such equipment and standards as may be prescribed.

8.8 Granting of registration certificate
(Sec.19)

The Appropriate Authority shall, after holding an inquiry and after satisfying itself and having regard to the advice of the Advisory Committee in this behalf, grant a certificate of registration in the prescribed form jointly or separately to the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, as the case may be.

(2) If, the Appropriate Authority is satisfied that the applicant has not complied with the requirements of this Act or the rules, it shall, for reasons to be recorded in writing, reject the application for registration.
• (3) Every certificate of registration shall be renewed in such manner and after such period and on payment of such fees as may be prescribed.

• (4) The certificate of registration shall be displayed by the registered Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic in a conspicuous place at its place of business.

8.9 Cancellation or suspension of registration (Sec. 20) and Appeal (Sec.21)

• Cancellation or suspension of registration-

• (1) The Appropriate Authority may suo moto, or on complaint, issue a notice to Centre, Laboratory or Clinic to show cause why its registration should not be suspended or cancelled for the reasons mentioned in the notice.

• (2) If, after giving a reasonable opportunity of being heard to the Centre, Laboratory or Clinic and having regard to the advice of the Advisory Committee, the Appropriate Authority is satisfied that there has been a breach of the provisions of this Act or the rules, it may, without prejudice to any criminal action that it may take against such Centre, Laboratory or Clinic, suspend its registration for such period as it may think
fit or cancel its registration, as the case may be.

- (3) Notwithstanding anything contained in sub-sections (1) and
- (2), if the Appropriate Authority is, of the opinion that it is necessary or expedient so to do in the public interest, it may, for reasons to be recorded in writing, suspend the registration of any Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic
- without issuing any such notice referred to in sub-section (1).

Appeal - The Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic may, within thirty days from the date of receipt of the order of suspension or cancellation of registration passed by the Appropriate Authority under section 20, prefer an appeal against such order to-- (i) the Central Government, where the appeal is against the order of the Central Appropriate Authority; and (ii) the State Government, where the appeal is against the order of the State Appropriate Authority, in the prescribed manner.

8.10 Prohibition of advertisement relating to pre-conception and pre-natal determination of sex and punishment for contravention (Sec.22)
No person, organisation, Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic including clinic, laboratory or centre having

1. ultrasound machine or imaging machine or scanner or any other technology
2. by any means whatsoever, scientific or otherwise

- capable of undertaking determination of sex of the foetus or sex selection

- shall issue, publish, distribute, communicate or cause to be issued, published, distributed or communicated any advertisement, in any form, including internet, regarding facilities of pre-natal determination of sex or sex selection before conception available at such Centre, Laboratory, Clinic or at any other place.

- Any person who contravenes the provisions of sub-section (1) or sub-section (2) shall be punishable with imprisonment for a term which extend to three years and with fine which may extend to ten thousand rupees.

Explanation.-For the purposes of this section, "advertisement" includes any notice, circular, label, wrapper or any other document including advertisement through internet or any other media in electronic or print form and also includes any visible representation made by means of any hoarding, wall-painting, signal, light, sound, smoke or gas.
8.11 Offences and Penalties (Sec. 23)

- (1) Any registered medical practitioner or any person who owns such a Centre, a Laboratory or a Clinic or is employed in and renders his professional or technical services therein, whether on an honorary basis or otherwise,

- and who contravenes any of the provisions of this Act or rules made thereunder shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees and on any subsequent conviction, with imprisonment which may extend to five years and with fine which may extend to fifty thousand rupees.

- (2) The name of the registered medical practitioner who has been convicted by the court under sub-section (1), shall be reported by the Appropriate Authority to the respective State Medical Council for taking necessary action including the removal of his name from the register of the Council for a period of two years for the first offence and permanently for the subsequent offence.

- (3) Any person who seeks the aid of such Centre, Laboratory or Clinic or of a medical geneticist, gynaecologist or registered medical practitioner for conducting pre-natal diagnostic techniques on any pregnant woman (including such woman unless she
was compelled to undergo such diagnostic techniques)

- for purposes other than those specified in clause (2) of section 4, shall, be punishable with imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees and on any subsequent conviction with imprisonment which may extend to five years and with fine which may extend to fifty thousand rupees.

- Presumption in the case of conduct of pre-natal diagnostic techniques. Notwithstanding anything in the Indian Evidence Act, 1872 (1 of 1872), the court shall presume unless the contrary is proved that the pregnant woman has been compelled by her husband or the relative to undergo pre-natal diagnostic technique and such person shall be liable for abetment of offence under sub-section (3) of section 23 and shall be punishable for the offence specified under that section. (Sec.24)

- Penalty for contravention of the provisions of the Act or rules for which no specific punishment is provided elsewhere in this Act, shall be punishable with imprisonment for a term which may extend to three months or with fine, which may extend to one thousand rupees or with both and in the case of continuing contravention with an additional fine which may extend to five hundred rupees for every day during which such contravention continues after
conviction for the first such contravention.  
(Sec.25)

9 Essential Services Maintenance Act, 1981[ESMA] 

Object of the Act is to provide for the maintenance of certain essential services and the normal life of the community and to regulate and control the situations arising due to resorting to the strikes, lock-out or lay-off by the persons engaged in services considered to be essential one under the Act.

In this Act, definition of the Essential Service is not given but unless the context otherwise requires, “Essential service” includes among others…Any service connected with the maintenance of public health and sanitation including hospitals and dispensaries, etc and

Any other service connected with matters with respect to which Parliament has power to make laws and which the Central Government being of opinion that strikes therein would prejudicially affect the maintenance of any public utility- service, the public safety or the maintenance of supplies and services necessary for the life of the community or would result in the infliction of grave hardship of the community, may, by notification in the Official Gazette, declare to be an essential service for the purposes of this Act;
“Strike” means the cessation of work by a body of persons while employed in any essential service acting in combination or a concerted refusal or a refusal under a common understanding of any number of persons who are or have been so employed to continue to work or to accept work assigned, and includes-

(i) Refusal to work overtime where such work is necessary for the maintenance of any essential service;

(ii) Any other conduct which is likely to result in, or results in, cessation or substantial retardation of work in any essential service;

(c) Words and expressions used in Sections 8 and 9 and not defined, but defined in the Industrial Disputes Act, 1947 (14 of 1947) shall have the meanings respectively assigned to them in that Act.

9.1 Power to prohibit strikes in certain employments

(1) If the Central Government is satisfied that in the, public interest it is necessary or expedient so to do, it may, by general or special Order, prohibit strikes in any essential service specified in the Order.

(2) An Order made under sub-section (1) shall be published in such manner as the Central
Government considers best calculated to bring it to the notice of the persons affected by the Order.

(3) An Order made under sub-section (1) shall be in force for six months only, but the Central Government may, by a like Order, extend it for any period not exceeding six months if it is satisfied that in the public interest it is necessary or expedient so to do.

(4) Upon the issue of an Order under sub-section (1), -

(a) No person employed in any essential service to which the Order relates shall go or remain or strike;

(b) Any strike declared or commenced whether before or after the issue of the order by persons employed in any such service shall be illegal.[See Sec.3]

9.2 Dismissal of employees participating in illegal strikes –

Any person,

(a) Who commences a strike which is illegal under this Act or goes or remains on, or otherwise take part in, any such strike; or

(b) Who instigates or incites other persons to commence, or go or remain on, or otherwise take part in, any such strike,
Shall be liable to disciplinary action (including dismissal) in accordance with the same provisions as are applicable for the purpose of taking such disciplinary action (including dismissal) on any other ground under the terms and conditions of service applicable to him in relation to his employment [See Sec. 4]

9.3 Penalty for illegal strikes

Any person who commences a strike which is illegal under this Act or goes or remains on, or otherwise take part in, any such strike shall punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.[Sec.5]

9.4 Penalty for instigation, etc

Any person who instigates or incites other persons to take part in, or otherwise acts in furtherance of, a strike which is illegal under this Act shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both.[S.6]

9.5 Power to prohibit lock-outs in certain establishments
(1) If the Central Government is satisfied that in the public interest it is necessary or expedient so to do, it may, by general or special Order, prohibit lock-outs in any establishment pertaining to any essential service specified in the Order.

(2) An Order made under subsection (1) shall be published in such manner as the Central Government considers best calculated to bring it to the notice of the persons affected by the Order.

(3) An Order made under sub-section (1) shall be in force for six months only, but the Central may, by a like Order, extend it for any period not exceeding six months if it is satisfied that in the public interest it is necessary so to do.

(4) Upon the issue of an Order under subsection (1),

(a) No employer in relation to an establishment to which the Order applies shall commence any lock-out;

(b) Any lock-out declared or commended whether before or after the issue of Order by any employer in relation to an establishment to which the Order applies shall be illegal.

(5) Any employer in relation to an establishment who commences, continues or otherwise acts in furtherance of a lock-out which is illegal under this section, shall be punishable with imprisonment for a term which may extend to six months, or with fine
which may extend to one thousand rupees, or with both.[See Sec.8]

9.6 Power to prohibit lay-off in certain establishments

(1) If the Central Government is satisfied that in the public interest it is necessary or expedient so to do, it may by general or special Order, prohibit lay-off, on any ground other than shortage of power or natural calamity, of any workman (other than a badli workman or a casual workman) whose name is borne on the muster rolls of any establishment pertaining to any essential service specified in the Order.

(2) An Order made under subsection (1) shall be published in such manner as the Central Government considers best calculated to bring it to the notice of the persons affected by the Order.

(3) An Order made under sub-section (1) shall be in force for six months only, but the Central Government may, by a like Order, extend it for any period not exceeding six months, if it is satisfied that in the public interest it is necessary or expedient so to do.

(4) Upon the issue of an Order under sub-section (1), -

(a) No employer in relation to an establishment to which the Order applies shall lay-off or continue
the lay-off of any workman (other than a badli workman or a casual workman) whose name is borne on the muster rolls of such establishment unless such lay-off is due to shortage of power or to natural calamity and any laying-off or continuation of laying-off shall, unless such laying-off or continuation of laying-off is due to shortage of power or to natural calamity, be illegal;

(b) A workman whose laying-off is illegal under clause (a) shall be entitled to all the benefits under any law for the time being in force as if he had not been laid-off.

(5) Any employer in relation to an establishment who lays-off or continues the laying-off of any workman shall, if such laying-off or continuation of laying-off is illegal under this section, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.[See Sec.9]

9.7 **Power to arrest with warrant**
Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any police officer may arrest without warrant any person who is reasonably suspected of having committed any offence under this Act.[See Sec.10]

9.8 **Offences to be tried summarily**
Criminal Procedure, 1973 (2 of 1974) all offences under this Act shall be tried in a summary way by any Metropolitan Magistrate, or any Judicial Magistrate of the First Class specially empowered in this behalf by the State Government and the provisions of Sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply 438 to such trial.[See Sec. 11]

9.9 Act to override other laws
The provisions of this Act and of any Order issued thereunder “I have effect notwithstanding anything in consistent therewith contained in the Industrial Disputes Act 1947 (14 of 1947) or in any other law for the time being in force.[See Sec.12]

10 Bio-Medical Waste (Management and Handling) Rules, 1998
In exercise of the powers conferred by Ss. 6, 8 and 25 of the Environment (Protection) Act, 1986 the Central Government notified the rules for the management and handling of biomedical waste.

These rules apply to all persons who generate, collect, receive, store, transport, treat, dispose, or handle biomedical waste in any form.

“Bio-medical waste” means any waste, which is generated during the diagnosis, treatment or immunisation of human beings or animals or in
research activities pertaining thereto or in the production or testing of biologicals, and including categories mentioned in Schedule I

'Bio-medical waste treatment facility” means any facility wherein treatment disposal of biomedical waste or processes incidental to such treatment or disposal is carried out;

10.1 Duty of Occupier

It shall be the duty of every occupier of an institution generating biomedical waste which includes a hospital, nursing home, clinic, dispensary, veterinary institution, animal house, pathological laboratory, blood bank by whatever name called to take all steps to ensure that such waste is handled without any adverse effect to human health and the environment.[Sec.4]

“Occupier” in relation to any institution generating biomedical waste, which includes a hospital, nursing home, clinic dispensary, veterinary institution, animal house, pathological laboratory, blood bank by whatever name called, means a person who has control over that institution and/or its premises;

10.2 Treatment and Disposal
(1) Bio-medical waste shall be treated and disposed of in accordance with Schedule I, and in compliant with the standards prescribed in Schedule V.

(2) Every occupier, where required, shall set up in accordance with the time schedule in Schedule VI, requisite biomedical waste treatment facilities like incinerator, autoclave, microwave system for the treatment waste, or, ensure requisite treatment waste at a common waste treatment facility or any other waste treatment facility. [Sec.5]

10.3 Segregation, Packaging, Transportation and Storage

(1) Bio-medical waste shall not be mixed with other wastes.

(2) Bio-medical waste shall be segregated into containers/bags at the point of generation in accordance with Schedule II prior to its storage, transportation, treatment and disposal. The containers shall be labelled in accordance to Schedule III.

(3) If a container is transported from the premises where biomedical waste is generated to any waste treatment facility outside the premises, the container shall, apart from the label prescribed in Schedule III, also carry information prescribed in Schedule IV.
(4) Notwithstanding anything contained in the Motor Vehicles Act, 1988, or rules thereunder, untreated biomedical waste shall be transported only in such vehicle as may be authorised for the purpose by the competent authority as specified by the government.

(5) No untreated biomedical waste shall be kept stored beyond a period of 48 hours:

Provided that if for any reason it becomes necessary to store the waste beyond such period, the authorised person must take permission of the prescribed authority and take measures to ensure that the waste does not adversely affect human health and the environment. [Sec. 6]

10.4 Authorisation

(1) Every occupier of an institution generating, collecting, receiving, storing, transporting, treating, disposing and/or handling biomedical waste in any other manner, except such occupier of clinics, dispensaries, pathological laboratories, blood banks providing treatment service to less than 1000 (one thousand) patients per month, shall make an application in Form I to the prescribed authority for grant of authorisation.
(2) Every operator of a biomedical waste facility shall make an application in Form I to the prescribed authority for grant of authorisation.

(3) Every application in Form I for grant, of authorisation shall be accompanied by a fee as may be prescribed by the Government of the State or Union Territory. [Sec. 8]

“Authorisation” means permission granted by the prescribed authority for the generation, collection reception, storage, transportation, treatment, disposal and or any other form of handling of biomedical waste in accordance with these rules and any guidelines issued by the Central Government.

10.5 Annual Report

Every occupier operator shall submit an annual report to the prescribed authority in Form II by 31 January every year, to include information about the categories and quantities of biomedical waste handled during the preceding year. The prescribed authority shall send this information in a compiled form to the Central Pollution Control Board by 31 March every year. [Sec. 10]

10.6 Maintenance of Records
(1) Every authorised person shall maintain records related to the generation, collection, reception, storage, transportation, treatment, disposal and/or any form of handling of biomedical waste in accordance with these rules and any guidelines issued.

(2) All records shall be subject to inspection and verification by the prescribed authority at any time. [Sec. 11]

10.7 Accident Reporting

When any accident occurs at any institution or facility or any other site where biomedical waste is handled or during transportation of such waste, the authorised person shall report the accident in Form III to the prescribed authority forthwith.[Sec.12]

10.8 Appeal

Any person aggrieved by an order made by the prescribed authority under these rules may, within thirty days from the date on which the order is communicated to him, prefer an appeal to such authority as the Government of State/Union Territory may think fit to constitute:

Provided that the authority may entertain the appeal after the expiry of the said period of thirty days if it
is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time [S.13]

................................

Legal Aspects of Hospital Management – Dr. B.G. Maniar
### SCHEDULE I
(See rule 5)
Categories of Bio-Medical Waste

<table>
<thead>
<tr>
<th>Option</th>
<th>Waste Category</th>
<th>Treatment and Disposal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Category No. 1</td>
<td>Human Anatomical Waste (Human tissues, organs, body parts)</td>
<td>Incineration¹/deep burial²</td>
</tr>
<tr>
<td>Category No. 2</td>
<td>Animal Waste (Animal tissue, organs, body parts carcasses, bleeding parts, fluid, blood and experimental animals used in research, waste generated by Veterinary hospitals colleges, discharge from hospitals, animal houses)</td>
<td>Incineration¹/deep burial²</td>
</tr>
<tr>
<td>No.3</td>
<td>Category</td>
<td>Microbiology and Biotechnology Waste</td>
</tr>
<tr>
<td>------</td>
<td>----------</td>
<td>-------------------------------------</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(Wastes from laboratory cultures, stocks or specimens of micro-organisms live or attenuated vaccines, human and animal cell culture used in research and infectious agents from research and industrial laboratories, wastes from production of biologicals, toxins, Dishes and devices used for transfer of cultures)</td>
</tr>
<tr>
<td>No.</td>
<td>Category</td>
<td>Wastes (Includes both used and unused sharps)</td>
</tr>
<tr>
<td>------</td>
<td>---------------------------</td>
<td>---------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>4</td>
<td>Waste Sharps</td>
<td>Disinfections / chemical Treatment / auto craving / Micro-waving and Mutilation/shredding</td>
</tr>
<tr>
<td></td>
<td></td>
<td>![Waste Sharps Description](Waste Sharps Description)</td>
</tr>
<tr>
<td>5</td>
<td>Discarded Medicines and Cytotoxic drugs (wastes comprising of outdated, contaminated and discarded medicines)</td>
<td>Incineration / destruction and drugs disposal in secured landfills</td>
</tr>
<tr>
<td></td>
<td></td>
<td>![Discarded Medicines and Cytotoxic drugs Description](Discarded Medicines and Cytotoxic drugs Description)</td>
</tr>
<tr>
<td>No.</td>
<td>Category</td>
<td>Description</td>
</tr>
<tr>
<td>-------</td>
<td>------------</td>
<td>-----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>6</td>
<td>Solid Waste</td>
<td>Items contaminated with blood, and body fluids including cotton, dressing, soiled plaster casts, lines, beddings, other material contaminated with blood</td>
</tr>
<tr>
<td>7</td>
<td>Solid Waste</td>
<td>Wastes generated from disposable items other than the waste sharps such as tubings, catheters, intravenous sets etc.</td>
</tr>
<tr>
<td>No.</td>
<td>Category</td>
<td>Description</td>
</tr>
<tr>
<td>------</td>
<td>----------------</td>
<td>-----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>8</td>
<td>Liquid Waste</td>
<td>(Waste generated from laboratory and washing, cleaning, housekeeping and disinfecting activities)</td>
</tr>
<tr>
<td>9</td>
<td>Incineration Ash</td>
<td>(Ash from incineration of any biomedical waste)</td>
</tr>
<tr>
<td>10</td>
<td>Chemical Waste</td>
<td>(Chemicals used in production of biologicals, chemicals used in disinfection, as insecticides, etc.)</td>
</tr>
</tbody>
</table>

1. There will be no chemical pretreatment before incineration. Chlorinated plastics shall not be incinerated.
2. Deep burial shall be an option available only in towns with population less than five lakhs and in rural areas.

3. Chemicals treatment using at least 1% hypochlorite solution or any other equivalent chemical reagent. It must be ensured that chemical treatment ensures disinfection.

4. Multilation/shredding must be such so as to prevent unauthorised reuse.

5. There will be no chemical pretreatment before incineration. Chlorinated plastics shall not be incinerated.
SCHEDULE II

(See rule 6)

Colour Coding and Type of Container for Disposal of Bio-Medical Wastes

<table>
<thead>
<tr>
<th>Colour Coding</th>
<th>Type of Container</th>
<th>Waste Category</th>
<th>Treatment options as per Schedule I</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yellow</td>
<td>Plastic Bag</td>
<td>Cat.1, Cat.2,</td>
<td>Incineration/deep burial</td>
</tr>
<tr>
<td></td>
<td></td>
<td>and Cat.3</td>
<td></td>
</tr>
<tr>
<td>Red</td>
<td>Disinfected</td>
<td>Cat.3, Cat.6,</td>
<td>Autoclaving/Microwaving/Chemical</td>
</tr>
<tr>
<td></td>
<td>container/plastic</td>
<td>Cat.7</td>
<td>Treatment</td>
</tr>
<tr>
<td></td>
<td>bag</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Blue/White</td>
<td>Plastic bag/punct</td>
<td>Cat.4</td>
<td>Autoclaving/Microwaving/Chemical</td>
</tr>
<tr>
<td></td>
<td>ure proof</td>
<td>Cat.7</td>
<td>Treatment and destruction/shredding</td>
</tr>
<tr>
<td>Translucent</td>
<td>container</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Notes:

1. Colour coding of waste categories with multiple treatment options as defined in Schedule I, shall be selected depending on treatment option chosen, which shall be as specified in Schedule I.

2. Waste collection bags for waste types needing incineration shall not be made of chlorinated plastics.

3. Categories 8 and 10 (liquid) do not require containers/bags.

4. Category 3 if disinfected locally need not be put in containers/bags.
SCHEDULE III
(see rule 6)
Label for Bio-Medical Waste Containers/Bags

BIOHAZARD SYMBOL
CYTOTOXIC HAZARD SYMBOL

Note:
Label shall be non-washable and prominently visible.
SCHEDULE IV
(see rule 6)
Label for Transport of Bio-Medical Waste
Containers/Bags
Day Month

Day...Month....
Year......
Date of Generation.....

Waste category No.............

Waste class
Waste description
Sender's Name and Address
Phone No.............
Telex No.............
Fax No
Contact Person
In case of emergency please contact
Name and Address:-
Phone No.

Note:

Label shall be non-washable and
prominently visible.

Legal Aspects of Hospital Management – Dr. B.G. Maniar
SCHEDULE V

(See rule 5 and Schedule I)
Standards for Treatment and Disposal of Bio-
Medical Wastes

STANDARDS FOR INCINERATORS:

All incinerators shall meet the following
operating and emission standards

A. Operating Standards

1. Combustion efficiency (CE)
   shall be at least 99.00%.

2. The Combustion efficiency is
   computed as follows

   \[ \text{C.E.} = \frac{\% \text{CO}_2}{100} \times \frac{\% \text{CO}_2}{\% \text{CO}} \]

3. The temperature of the
   primary chamber shall be 800
   ± 50 deg. C°.

4. The secondary chamber gas
   residence time shall be at
   least 1 (one) second at 1050
   50 C°, with minimum 3%
   Oxygen in the stack gas.
B. Emission Standards

Parameters

Concentration

mg/Nm3 at (12% CO₂ correction)

(1) Particulate matter 150
(2) Nitrogen Oxides 450
(3) HCL 50
(4) Minimum stack height shall be 30 metres above ground
(5) Volatile organic compounds in ash shall not be more than 0.01%

Note:

* Suitably designed pollution control devices should be installed/retrofitted with the incinerator to achieve the above emission limit, if necessary.

* Wastes to be incinerated shall not be chemically treated with any chlorinated disinfectants.

* Chlorinated plastics shall not be incinerated.

* Toxic metals in incineration ash shall be limited within the regulatory quantities as defined under the Hazardous Waste (Management and Handling Rules,) 1989.
* Only low sulphur fuel like L.D.O./L.S.H.S./Diesel shall be used as fuel in the incinerator

STANDARDS FOR WASTE AUTOCLAVING:

The autoclave should be dedicated for the purposes of disinfecting and treating biomedical waste.

(1) When operating a gravity flow autoclave, medical waste shall be subjected to

(i) A temperature of not less than 121 °C and pressure of 15 pounds per square inch (psi) for an autoclave residence time of not less than 60 minutes; or

(ii) A temperature of not less than 135 °C and a pressure of 31 psi for an autoclave residence time of not less than 45 minutes; or

(iii) A temperature of not less than 149 °C and a pressure of 52 psi for an autoclave residence time of not less than 30 minutes
When operating a vacuum autoclave, medical waste shall be subjected to a minimum of one pre-vacuum pulse to purge the autoclave of all air. The waste shall be subjected to the following:

(i) A temperature of not less than 121 C\(^0\) and pressure of 15 psi per an autoclave residence time of not less than 45 minutes; or

(ii) A temperature of not less than 135 C\(^0\) and a pressure of 31 psi for an autoclave residence time of not less than 30 minutes;

Medical waste shall not be considered properly treated unless the time, temperature and pressure indicators indicate that the required time, temperature and pressure were reached during the autoclave process. If for any reasons, time temperature or pressure indicator indicates that the required temperature, pressure or residence time was not reached, the entire load of medical waste must be autoclaved again until the proper temperature, pressure and residence time were achieved.
(IV) **Recording of operational parameters**

Each autoclave shall have graphic or computer recording devices, which will automatically, and continuously monitor and record dates, time of day, load identification number and operating parameters throughout the entire length of the autoclave cycle.

(V) **Validation test**

**Spore testing:**

The autoclave should completely and consistently kill the approved biological indicator at the maximum design capacity of each autoclave unit. Biological indicator for autoclave shall be a Bacillus stearothermophilus spore using vials or spore strips, with at least $1 \times 10^4$ spores per millilitre. Under no circumstances will an autoclave have minimum operating parameters less than a residence time of 30 minutes, regardless of temperature and pressure, a temperature less than 121 $^\circ$C or a pressure less than 15 psi.
(VI) **Routine Test**

A chemical indicator strip/tape that changes colour when a certain temperature is reached can be used to verify that a specific temperature has been achieved. It may be necessary to use more than one strip over the waste package at different locations to ensure that the inner content of the package has been adequately autoclaved.

**STANDARDS FOR LIQUID WASTE:**

The effluent generated from the hospital should conform to the following limits:

<table>
<thead>
<tr>
<th>PARAMETERS</th>
<th>PERMISSIBLE LIMITS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ph</td>
<td>6.5-9.0</td>
</tr>
<tr>
<td>Suspended solids</td>
<td>100 mg/l</td>
</tr>
<tr>
<td>Oil and grease</td>
<td>10 mg/l</td>
</tr>
<tr>
<td>BOD</td>
<td>30 mg/l</td>
</tr>
<tr>
<td>COD</td>
<td>250 mg/l</td>
</tr>
<tr>
<td>Bio-assay test</td>
<td>90% survival of fish after 96 hours in 100% effluent.</td>
</tr>
</tbody>
</table>

These limits are applicable to those hospitals, which are either connected with sewers without terminal sewage
treatment plant or not connected to public sewers. For discharge not to public sewers with terminal facilities, the general standards as notified under the Environment (Protection) Act, 1986 shall be applicable.

**STANDARDS OF MICROWAVING:**

1. Microwave treatment shall not be used for cytotoxic, hazardous or radioactive wastes, contaminated animal carcasses, body parts and large metal items.

2. The microwave system shall comply with the efficacy test/routine tests and a performance guarantee may be provided by the supplier before operation of the unit.

3. The microwave should completely and consistently kill the bacteria and other pathogenic organisms that is ensured by approved biological indicator at the maximum design capacity of each microwave unit. Biological indicators for microwave shall be Bacillus Subtilis spores using vials or spore strips with at least $1 \times 10^4$ spores per millilitre.
STANDARDS FOR DEEP BURIAL:

1. A pit or trench should be dug about 2 metres deep. It should be half filled with waste, then covered with lime with 50 cm of the surface, before filling the rest the pit with soil.

2. It must ensured that animals do not have any access to burial sites. Covers of galvanised iron/wire meshes may be used.

3. On each occasion, when wastes are added to the pit, a layer of 10 cm of soil shall be added to cover the wastes.

4. Burial must be performed under close and dedicated supervision.

5. The deep burial site should be relatively impermeable and no shallow well should be close to the site.

6. The pits should be distant from habitation, and sited so as to ensure that no contamination occurs of any surface water or ground water. The area should not be prone to flooding or erosion.
7. The location of the deep burial site will be authorised by the prescribed authority.

8. The institution shall maintain a record of all pits for deep burial.
### SCHEDULE VI

(See rule 5)

**Schedule for Waste Treatment Facilities Like Incinerator/Autoclave/Microwave System**

<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
<th>Deadline</th>
</tr>
</thead>
<tbody>
<tr>
<td>A.</td>
<td>Hospitals and nursing homes in towns with by 31st December, 1999 or earlier population of 30 lakhs and above</td>
<td>By 31st December, 1999 or earlier</td>
</tr>
<tr>
<td>B.</td>
<td>Hospital and nursing homes in towns with population of below 30 lakhs</td>
<td>By 31st December, 1999 or earlier</td>
</tr>
<tr>
<td></td>
<td>(a) With 500 beds and above</td>
<td>By 31st December, 2000 or earlier</td>
</tr>
<tr>
<td></td>
<td>(b) With 200 beds and above but less than 500 beds</td>
<td>By 31st December, 2001 or earlier</td>
</tr>
<tr>
<td></td>
<td>(c) With 50 beds and above but less than 200 beds</td>
<td>By 31st December, 2002 or earlier</td>
</tr>
<tr>
<td></td>
<td>(d) With less than 50 beds</td>
<td>By 31st December, 2002 or earlier</td>
</tr>
<tr>
<td>C.</td>
<td>All other institutions generating biomedical waste not included in A and B above</td>
<td>By 31st December, 2002 or earlier</td>
</tr>
</tbody>
</table>
Form I
(See rule 8)
Application for Authorisation
(To be submitted in duplicate)

To

The Prescribed Authority
(Name of the State Govt./UT Administration)
Address.

1. Particulars of Applicant

   (i) Name of the Applicant (In block letters and in full)

   (ii) Name of the Institution

Address:

Tele. No., Fax No. Telex No.

2. Activity for which authorisation is sought

   (i) Generation
   (ii) Collection
   (iii) Reception
   (iv) Storage
   (v) Transportation
   (vi) Treatment
   (vii) Disposal
(viii) Any other form of handling

3. Please state whether applying for resh authorisation or for renewal (In case of renewal previous authorisation-number and date)

4. (i) Address of the institution handling biomedical wastes

(ii) Address of the place of the treatment facility

(iii) Address of the place of disposal of the waste

5. (i) Mode of transportation (in any) of biomedical waste

(ii) Mode(s) of treatment

6. Brief description of method of treatment and disposal (attach details):

7. (i) Category (see Schedule I) of waste to be handled

(ii) Quantity of waste (category-wise) to be handled per month
8. Declaration

I do hereby declare that the statement made and information given above are true to the best of my knowledge and belief and that I have not concealed any information.

I do also hereby undertake to provide any further information sought by the prescribed authority in relation to these rules and to fulfill any conditions stipulated by the prescribed authority.

Date:

Signature of the applicant

Place:

Designation of the applicant

Form II
Legal Aspects of Hospital Management

(See rule 10)

Annual Report

(To be submitted to the prescribed authority by 31 January every year)

1. Particulars of the applicant:
   
   (i) Name of the authorised person (occupier/operator)
   
   (ii) Name of the institution
        Address
        Tel. No
        Telex No.
        Fax No.

2. Categories of waste generated and quantity on a monthly average basis

3. Brief details of the treatment facility

   In case of off-site facility
   (i) Name of the operator
   
   (ii) Name and address of the facility
        Tel. No., Telex No., Fax No.

4. Category-wise quantity of waste treated
5. Mode of treatment with details

6. Any other information:

7. Certified that the above report is for the period from ....................... ...........

Date

Signature ............

Place ......

Designation ............
Form III
(See rule 12)
Accident Reporting

1. Date and time of accident:

2. Sequence of events leading to accident

3. The waste involved in accident:

4. Assessment of the effects of the accidents on human health and the environment

5. Emergency measures taken:

6. Steps taken to alleviate the effects of accidents

7. Steps taken to alleviate the effects of accidents

Date ................
Signature: ............
Place ...............
Designation: ............