
Preface

The right to health care is an age-old phenomenon. It is said that 'health is wealth' and a healthy body is the very foundation of all human activities. 'Health services' is not a mere charity or the privilege of a few but a right to be enjoyed by all. Article 25 of the Universal Declaration of Human Rights states that, 'everyone has the right to a standard of living, adequate for the health and well being of himself and his family'. The Constitution of the World Organisation also affirms that, 'the enjoyment of the highest attainable standards of health is one of the fundamental rights of every human being'. Quite apart from these, provisions relating to right to health care are contained in the International Covenant on Economic and Cultural Rights and other international human rights instruments.

Law plays a very important role in regulating the health care. One may trace its origin from the common law principles under the 'Law of Torts' which provide for compensation to the victim for the negligent acts of a doctor. Likewise, the Indian Penal Code 1860, prescribes punishment for the rash and negligent acts of a doctor causing the death of a patient. The Consumer Protection Act 1986, covers health services to a very large extent.

The Constitution of India, under Article 39 mandates the State, among others, to secure the health and strength of workers, men and women. Article 47 imposes an obligation upon the State to raise the level of nutrition and the standard of living and to improve public health. The Supreme Court, while interpreting Article 21 of the Constitution ruled that the expression 'life' does not connote mere animal existence or continued drudgery through life but includes, *inter alia*, the opportunities to eliminate sickness and physical disability. Indeed, the health of the worker is an integral facet of right to life. Moreover, denial of medical facilities even to accident victims requiring immediate medical aid is violative of the Right

to Life under Article 21 of the Constitution. The Supreme Court has further extended the domain of Article 21 of the Constitution by providing that doctor (whether at a Government hospital or otherwise) has the professional obligation to extend his services with due expertise for protecting life. No law or state action can intervene to avoid/delay the discharge of the paramount obligation cast upon members of the medical profession.¹ Further, the State cannot avoid its constitutional obligation to provide adequate medical services to the people to preserve human life even on account of financial constraints. In the matter of allocation of funds for medical services, the said constitutional obligation of the State has to be kept in view.²

The Supreme Court in the *Indian Medical Association* case³ has brought services rendered by medical practitioners within the domain of the Consumer Protection Act by holding that, 'service rendered to a patient by a medical practitioner, except where the doctor renders service free of charge to every patient or under a contract of personal service, by way of consultation, diagnosis and treatment, both medicinal and surgical, would fall within the ambit of 'service' as defined in section 2(1)(o) of the Act'. But service rendered at a Government hospital/health centre/dispensary where no charge whatsoever is taken from any person availing the services and all patients (rich and poor) are given free service, are outside the purview of the Consumer Protection Act. The Court, being aware of the possible chances of harassment of members of the medical profession, cautioned that the police, lawyers and law courts should not unnecessarily harass a man in the medical profession for purposes of interrogation or for any other formalities and should not drag him to the police station. However, the Consumer Protection Act has not yet succeeded in meeting the objectives for which it was enacted mainly on account of delay caused in disposal of the cases. Instances are not lacking where consumer forums have taken six years in disposal of the complaints. If this situation is allowed to continue, it would frustrate the very purpose for which this Act was enacted.⁴ There is still a need to bring a greater responsibility at all levels in order to see that the poor and down-trodden receive healthcare facilities.

The present study on 'Legal Framework for Health Care in India' gives a detailed account of the liability of health professionals under the law of

1 *Pt Parmanand Katara v Union of India & Ors* AIR 1989 SC 2039.

2 *Paschim Banga Khet Mazdoor Samity and Others v State of WB & Anor* (1996) 4 SCC 37.

3 *Indian Medical Association v VP Santha* (1995) 6 SCC 651.

4 *Charan Singh v Healing Touch Hospital* (2000) 7 SCC 668.

PREFACE

torts, criminal law, law of contract and consumer law besides giving a detailed picture of the role of medical councils. It takes a special account of right to health under the constitutional scheme. The study is divided into eight chapters. Chapter 1 is an introduction, which deals with the scope and need of the study. Chapter 2 covers the constitutional protection for health care; Chapter 3 details the liability of health professionals under the law of torts; Chapter 4 gives a description of the criminal liability of the health providers; Chapter 5 discusses the role of the various Medical Councils at the national and state levels in ensuring the right to health; Chapter 6 amplifies in detail the liability of health providers under the Consumer Protection Act; Chapter 7 explores the contractual liability of health providers; and lastly, Chapter 8 consolidates the recommendations from each chapter and sets an agenda for action in the health care services. Besides, in the appendix, the relevant text of the various legislations having a bearing on health care, including the Code of Ethics to be followed by the medical professionals, is given as a ready reference.

The book has resulted out of the project undertaken by the ILL, on behest of the World Bank, entitled 'Legal Framework for Health Care in India: Experience & Future Directions'. We wish to thank the World Bank for the financial support and to David H Peters, Sr Public Health Specialist, World Bank and Dr GNV Ramanna, Public Health Specialist, World Bank for their valuable suggestions rendered from time to time relating to the study. We gratefully acknowledge the generous support and help received from other quarters in conducting the study. We wish to place on record our thanks to the library staff of the Indian Law Institute and to Butterworths (India) Ltd, the publisher, for their efforts in bringing out this volume.

It is hoped that this book will be useful to all those concerned with the issue to health, particularly to hospital administration, consumer fora, members of the legal fraternity, researchers and academicians.

