
UNIT -5 OTHER SOCIAL LEGISLATIONS

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5.0 OBJECTIVES

A thorough study of this unit will make a reader to know :-

- What other laws (Social legislations) have been passed to protect the interest of the common man both in urban and rural areas, either as a consumer, or a women who intends to undertake sex-determination test, or group of persons who want to enforce their fundamental rights and have little means to do so, or a person who intends to sue a doctor because his/her near one has lost his/her life or suffered some permanent impairment due to his/her negligence.
- Types of offences, which have been specified and penalties prescribed.
- Methods to get these rights enforced and the machinery provided.
- Bodies appointed to create awareness among masses about these legislations and
- Methods of Regulation, Control and Monitoring of institutions and persons who provide such services.

5.1 INTRODUCTION

After having gone through the social legislations, either prohibitive or protective in nature, in the above four units, let us now have an idea of those legislations in brief, which, over the years, have been passed to create awareness

among all sections of society about their rights and methods of enforcing them. In a runup for these legislations in this unit, a few have been discussed, which are significant. To name a few of them like Consumer Protection Act, 1986; pre-natal Diagnostic Techniques (Regulation and Prevention of misuse) Amendment Act, 2002. In addition to these, many new techniques to enforce one's rights have been recognized by courts as part of its Writ Jurisdiction as Public interest litigation and holding doctors liable for their negligence (Medical negligence) by extending the jurisdiction of consumer courts to them. It will be in the fitness of things to discuss them one by one in brief, so that their importance and procedure of enforcing is understood as part of the awareness process, which is the basic purpose of this unit.

5.2 CONSUMER PROTECTION ACT, 1986

The industrial revolution and development in international trade and commerce, supplemented by the free market economy has led to the growth of consumerism globally. A wide variety of consumer goods have appeared in the market, which cater to the needs of the consumer along with this, a host of services have been made available to the consumer like insurance, transport, electricity, housing, entertainment, finance, banking and health. Because of this fast development, competition among manufacturers, traders and service providers has grown fast. In this competitive environment, possibility of adulteration of goods, sub-standard products, cheating and defective services too have proportionately increased. Hence, the consumer has to remain careful about the items he purchases and the services he asks for. Earlier, a host of legislations like Civil Procedure Code, 1872, Sales of Goods Act, 1930, Indian Penal Code, 1860, etc. were in existence, but they provided little relief to consumers in this growing age of consumerism. Hence, to protect consumers from exploitation and to save them from adulterated and sub-standard goods and services and to safeguard the interests of consumer, the Consumer Protection Act was passed in 1986, which has been amended in 2002.

Salient features of the Act

In the fitness of things, let us first understand certain concepts used in the course of this discussion.

a) Consumer and Consumer Dispute

Consumer means any person who buys any goods or who avails or hires any services for consideration, which have been paid or promised or partly paid and partly promised under any system of deferred payment and includes any user of such goods... but does not include a person who obtains such goods for resale or goods and services for any commercial purpose. However, commercial purpose does

not include use by person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment.

Consumer dispute means a dispute where the person against whom a complaint has been made denies or disputes the allegations contained in the complaint.

b) Defect and Deficiency

Defect means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard, which is required to be maintained by, or under any law for the time being in force or under any contract express or implied or as is claimed by the trader in any manner whatsoever in relation to any goods.

Deficiency means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance, which 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 a contract, or otherwise, in relation to any service.

c) Service

It means service of any description, which is made available to potential users and includes, but is not limited to the provisions of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, boarding or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service.

"Contract of personal service" has to be distinguished from a *"Contract for personal service"*. In the former case, a relationship of master and servant exists and in the latter it is not so. Thus in the former one, it is the servant who, under the contract of employment, renders service to his master and the contract between the two is called as contract of personal services, while under the latter services sought by a patient from a medical practitioner for consideration are services under a contract for personal services. It is imperative to remember that under the Consumer Protection Act, it is the latter type of services, which are covered and not the former ones. Thus, services rendered includes; consultations, diagnosis and treatment, both medical and surgical. However, a person who receives medical treatment in a Government hospital is not a consumer under the Act.

The remedy provided under Consumer Protection Act is in addition to the provisions of any other law. Thus, it gives to the consumer an additional remedy

besides those that may be available under other existing laws. The Act provides for the establishment of Protection Councils and Dispute Redressal Agencies.

Consumer Protection Councils

Under the Act, councils to be constituted have a three tier system, i.e., Central, State and district level. Before we take up that, let us understand the objectives underlying the councils. The main objective of all such councils (as per jurisdiction) is to promote and protect the rights of consumers :

- i) against marketing of goods and services, which are hazardous to life and property.
- ii) to be informed about the quality, quantity, potency, purity standard and price of goods or services, as the case may be. This is with a view to protect the consumer against unfair trade practices.
- iii) to be assured, wherever possible, access to a variety of goods and services at competitive prices.
- iv) to be heard and be assured that consumer's interests will receive due consideration in appropriate form.
- v) to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers, and
- vi) promote consumer education.

As already stated, for promoting the above objectives, the Act envisages three councils, Central Council, State Council and District Council. Each council has to meet atleast twice in a year and assess the steps taken or to be taken for the promotion of consumer rights' awareness and redressal of grievances; within their jurisdiction.

Dispute Redressal Agencies

As is evident by the terms used, these agencies are meant to provide redressal to the grievances of consumer with respect to goods or services, as the case may be. These have been placed in three tiers; district level, state level and national level and are known as District Forum, State Commission and the National Commission. District forum is the lowest in the rank, based on its jurisdiction, to entertain complaints whose value does not exceed twenty lakhs, followed by State Commission having jurisdiction to entertain complaints, which exceed twenty lakhs, but do not exceed one crore and the National Commission, which can entertain complaints the value of which exceeds rupees one crore. Further, any

party, which feels aggrieved by the decision of district forum, can appeal to the State Commissions and from the State Commission to the National Commission. Thus State and National Commissions are appellate tribunals too. However, any body aggrieved through the decision of the National Commission can appeal to the Supreme Court within a period of thirty days from the date of the order. The law of limitation applies to the filing of complaints. Under Section 24-A of the Act, it is clear that the district forum, State Commission or the National Commission shall not admit a complaint unless it is filed within two years from the date on which the cause of action has arisen.

Constitution of Redressal Agencies

The district forum, State Commission and the National Commission shall have a President who is or has been a district judge, a judge of the high court or a judge of the Supreme Court, respectively. In addition to this, each such agency shall have two other members (in case of district forum) and not less than two and not more than such members as may be prescribed (for State Commission) and not less than four and not more than such members as may be prescribed (for National Commission), of whom at least one shall be a woman, who shall not be less than 35 years of age, possess a Bachelor's Degree from a recognised university, be a person of ability, integrity and standing and have adequate knowledge and experience of at least 10 years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration.

A person, who has been convicted and sentenced for imprisonment for an offence of moral turpitude or is unsound of mind or has been discharged as insolvent or has been removed or dismissed from service of the government or a body corporate owned or controlled by the Government or has any other disqualifications by any other law in force, is disqualified from being a member.

The members of the district forum and state commission are selected by a selection committee consisting of (a) President of State Commission (Chairman) (b) Secretary of law department of the State (member) (c) Secretary incharge of the department dealing with consumer affairs in the State (member). However, in case of National Commission, the Chairman is the judge of the Supreme Court. The term of the office of each member of district forum, State Commission and National Commission is for five years or 65 yrs, 67 yrs or 70 yrs of age, respectively, as the case may be.

Procedure and Penalties

The procedure to be followed at all three levels is a judicial proceeding within the meaning of existing law of the land. In each proceeding, the rules of

natural justice are followed, meaning thereby that the party against whom a complaint, either with respect to defective goods or services is lodged, is given full opportunity to present his case and defend himself. When the forum comes to the conclusion that the goods supplied are defective, it has to use one of the options against the supplier: direct him to remove the defect of the goods in question, replace the goods, return the price of the goods to the complainant, to pay such amount as may be awarded by it as compensation to the consumer for loss or injury suffered due to negligence of the opposite party, to discontinue the unfair trade practice or restrictive trade practice or not to offer hazardous goods for sale.

Any one aggrieved can appeal to the State or the National Commission, as the case may be. The appeal is to be heard expeditiously, so as to finally dispose it off within 90 days from the date of admission.

Any person, against whom an order has been passed either by the district forum or State Commission or National Commission, fails to comply with it shall be punished with imprisonment of not less than one month and not more than three years or fine of not less than 2000 and not more than 10,000 rupees or with both.

Check Your Progress- I

1. Briefly state the reasons for enacting the Consumer Protection Act.

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2. Explain the meaning and scope of services.

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3. What types of dispute redressal institutions exist under the Act?

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5.3 THE PRE-NATAL DIAGNOSTIC TECHNIQUES (REGULATION AND PREVENTION OF MISUSE) AMENDMENT ACT, 2002

Advancement of science and technology has led to the determination of certain genetical defects even at the foetus stage, or embryonic stage of a baby. This development, through the use of Ultra Sonographic technique, could result in the improvement of defected embryo even within the womb. However, due to certain societal pressure, particularly because patriarchal domination, coupled with the menace of dowry, this technique, which helps in determining the sex of the foetus, has been misused to eliminate the female foetus. The latest Census Report exhibiting a steep fall in the population of females in Haryana and Punjab can be attributed to the use of this technique. Mushroom growth of such diagnostic centres with little control over their functions is another indication about their misuse. Though the bill was presented in Parliament in 1991 and passed in the form of Act in 1994 as pre-conception and pre-natal diagnostic techniques (Prohibition of Sex Selection) Act, 1994. However, the misuse was unabated and resulted into amendment in 2002, which changed the nomenclature of the Act to Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amended Act, 2002 and came into force on 14th of February, 2003. The amended Act seems to have evolved machinery to check and regulate the growth of such unauthorised centres, which misuse the scientific technique of detecting diseases for the determination of sex of the foetus.

Salient features of the Act

Before embarking on the broad features of the Act, it is necessary to acquaint ourselves with some concepts/terms used in this discussion.

- a) **Foetus** means a human organism during the period of its development beginning on the 57th day following fertilisation or creation (excluding any time in which its development has been suspended) and ending at the birth.
- b) **Genetic Clinic Counselling Centre** means an institute, hospital, nursing home for genetic counselling to the patients, while a genetic clinic means a place (clinic, hospital, institute, nursing home), which is used for conducting pre-natal diagnostic procedures. To explain it further, it includes a vehicle, where ultrasound machine or scanner or other equipments, capable of determining sex of the foetus or a portable equipment, which has the potential of detecting the sex of the foetus during pregnancy or selection of sex before conception, is used. Similarly a laboratory means and includes a place where facilities are provided for conducting analysis or tests of samples received from genetic clinic for pre-natal diagnostic test.

- c) **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.

The procedure includes the pre-natal diagnostic test, which is meant to be conducted to detect genetic or metabolic disorders or chromosomal abnormalities or congenital anomalies or haemoglobinopathies or sex linked diseases.

Regulations by the Act

Regulations in the form of Prohibitions are placed in the Act. The law categorically states that no genetic counselling centres, laboratories, clinics unless registered, can conduct or associate with or help in conducting activities relating to pre-natal diagnostic technique. Further, they cannot employ or cause to be employed or take services of any person, either on honorary basis or on payment, who does not possess the prescribed qualifications. Similarly, no medical geneticist, gynaecologist, paediatrician, registered medical practitioner or any other person can conduct or cause to be conducted or help in conducting by himself or through any other person, any pre-natal diagnostic techniques at a place other than a registered place.

Similarly, sex selection on a man or woman or on both or on any tissue, embryo, foetus, fluid or gametes derived from either or both of them is prohibited. Prohibition is also placed on the sale of any ultrasound machine or imaging machine or scanner or any other equipment capable of detecting sex of foetus to any genetic counselling center, laboratory, clinic or any other person not registered under the Act.

The Act, in a similar fashion, prescribes prohibition on pre-natal diagnostic procedures, unless all side and after effects of such procedures have been explained to the concerned pregnant woman (b) her written consent to undergo such procedures has been obtained in the language, which she understands and (c) a copy of her written consent is given to the concerned pregnant woman (for records). Communication of sex of foetus by words, signs or in any other manner to the concerned pregnant woman or her relations or any other person is prohibited.

From the date of commencement of this Act, no genetic center, laboratory or clinic or any other person can conduct or cause to be conducted pre-natal diagnostic techniques, including ultrasonography for the purpose of determining the sex of the

foetus. Nor can anybody be allowed to cause selection of sex before or after conception.

Constitution and Functions of Central Supervisory Boards

A central Board, which has to advise, monitor and supervise, shall consist of following members.

- a) Chairman, ex officio - Minister of Family Welfare.
- b) Vice-Chairman; ex-officio - Secretary to Govt. of India, Deptt. of Family Welfare.

Three members from Ministries of Women and Child Development, deptt. of legal affairs or legislative deptt. of Ministry of Law and Justice and Indian System of Medicine and Homoeopathy ex-officio.

Director-General Health Services of Central Government--ex-officio. Ten Members — to be appointed by Central Government, two each from eminent medical geneticist; gynaecologist, pediatricians, Social Scientists and representatives of Women Welfare Organisations.

Three women members of Parliament, of whom two shall be elected by the House of People and one by Council of States. Four members to be appointed by Central Govt. by rotation to represent the State and Union Territories.

Member-Secretary; officer not below the rank of Joint Secretary or equivalent of Central Govt. incharge of family welfare.

The Board has the following functions :

1. to advise the Central Govt. on policy matters relating to use of pre-natal diagnostic and sex selection techniques and against their misuse.
2. to review and monitor implementation of the Act and rules made thereunder and recommend to the Central Govt. changes in the said Act and rules.
3. to create public awareness against the practice of pre-conception sex selection and pre-natal determination of sex of foetus leading to female foeticide.
4. to lay down code of conduct to be observed by persons working at Genetic Counselling Centres, Laboratories and Clinics; and
5. To oversee the performance of various bodies constituted under the Act and take appropriate steps to ensure its proper and effective implementation.

Appropriate Authority and Advisory Committee

In addition to the advisory Board whose function is to advise, monitor and create awareness among people as regards the practice of pre and post conception sex selection test as per the existing law, there exists appropriate authority both for State and Union Territories.

The appropriate authority shall have three members namely, (1) officer above the rank of the joint Director of health and family welfare as Chairperson, (2) an eminent woman representing women's organisation and (3) an officer of law Department of the State or Union Territory concerned.

Functions of Appropriate Authority

The functions of such authority, either of the state or of union territory, are vital, and have been detailed before for easy understanding. They include function:-

- a) to grant, suspend or cancel registration of a Genetic Counselling Centre, Laboratory or Clinic;
- b) to enforce standards;
- c) to investigate complaints of breach of the provisions of this Act and the rules made thereunder and to take immediate action;
- d) to seek and consider the advice of advisory committee on application for registration and on complaints for suspension or cancellation of registration;
- e) to create awareness and supervise implementation of the Act.

After the amendment in 2003, an additional function/power provided to the Authority is that it can take any appropriate legal action against the use of any sex selection technique by any person at any place, suo-motu (of its own) or brought to its notice. It has the power also to initiate independent investigation in such matter.

Offence and Penalties

The provisions of the law prohibit the establishing of any Genetic Counselling Center, Laboratory, Clinic without registration or carrying sex determination test, even though registered, which has the effect of female foeticide, or any such center publishing, distributing or communicating through advertisement, in any form including internet, regarding facilities of pre-natal determination of sex or related matters.

Any one found to have violated the above laid down prohibition shall be punished 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 connection with imprisonment extendable to five years and fine to the extent of Rs. 50,000/-.

Any person who seeks the aid of any Genetic Center, Lab, Clinic or Ultrasound imaging clinic or medical practitioner, geneticist, gynaecologist or any such specialist for sex selection or for conducting pre-natal diagnostic test on any pregnant woman for any such purpose, which has been prohibited by law, he shall be punished with imprisonment, which can be extended to three years and with fine extendable to fifty thousand rupees for first offence and for subsequent offences, it can be imprisonment of five years and fine of on lakh (both are maximum).

The Amendment of 2003 has added a new dimension in Penalty. By virtue of this provision, the name of such registered medical practitioner shall be reported by the Appropriate Authority to the state Medical Council for taking necessary action, which includes the suspension of registration immediately only when charges are framed by the court (non proved) till the case is disposed of and on conviction for removal of his name from, the register of the council for a period of five years for first offence and permanently for the subsequent offence.

In patriarchal society, supplemented by ignorance and illiteracy of rural women, the law, which was amended in 2003, has attempted to protect such women against the oppression made either by husband/in laws/relations to undergo pre-natal diagnostic test. Section 24 of the Act makes it clear that it will be presumed by the court (unless the contrary is proved) that a pregnant woman was coupled by her husband or any other relative, as the case may be, to undergo such test. In case the party against whom such presumption has been imposed by law, fails to disprove it, he will be held liable for abetment of offence as stated above and shall be punished similarly.

The offences under the Act are cognizable, non-bailable and non-compoundable.

Check Your Progress -II

1. Pre-natal diagnostic technique (Regulation and Prevention of misuse) Amendment Act, 2002 is a step in the direction of protecting the interest of the unborn child. How far do you agree?

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2. State the role of Supervisory Board and appropriate Authority.

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3. What changes have been brought by Amendment in 2003, which are a step towards protecting the interests of women.

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5.4 PUBLIC INTEREST LITIGATION

Mere declaration of Fundamental Rights in the Constitution is meaningless, unless there is an effective machinery for its implementation. As has been well said that it is the remedy, which makes the right real. The Indian Constitution makers took note of this and have provided for an effective remedy of Fundamental Rights under Article 32, and Article 226 through the intervention of Supreme Court and High Court. Both these Articles 32 and 226 are in themselves fundamental rights.

The remedies provided under Article 32 and 226 are through writs (writ jurisdiction) in the nature of habeas corpus mandamus, prohibition, quo-warranto and certiorari is involved, a party should be free to approach either of the two courts. This, in fact, has been the judicial approach too [for detail one can see the decision in *M.K. Gopalan v. State of Madhya Pradesh* (1955) ISCR 168, 174]. Notwithstanding this position, the Supreme Court has stated in its latter decisions that where relief through high court is available under Art. 226, the party should first approach the high court [See *P.N. Kumar v. Municipal Corporation of Delhi* (1987) 4. See. 609]. Though this new decision goes against the intendment of Constitution and is contrary to earlier case law.

It is clear that under Art. 32(1) the Supreme Court's power to enforce fundamental right is widest except that the proceedings must be appropriate. What is appropriate must be judged in the light of the purpose for which the proceeding is to

be taken namely the enforcement of fundamental rights. No particular proceeding for enforcement of fundamental right have been stipulated by the Constitution makers be deliberately as it seems keeping in view that in a country like India where there is so much of poverty, ignorance, illitracy, deprivation and exploitation, any insistence on a specific pattern of proceedings for enforcement of fundamental rights may become self-detailing. Thus, any person whose fundamental right is violated, can move to the court for appropriate remedy.

Who can apply: (locus standi) shift from Conservative Approach to liberal one

The traditional rule is that the right to move to the Supreme Court is only available to those whose fundamental rights are infringed. Because power vested with the Supreme Court can only be exercised for the enforcement of fundamental rights. Therefore, the writ, which is asked under Article 32 must co-relate to one of the fundamental rights sought to be enforced. Courts have shown considerable strictness in applying this principle in the field of private law. However, in the arena of public law, with ever increasing amount of the powers of public authorities, the rigid adherence to above principle has not found much favour at the hands of present day judiciary. Public authorities wield vast powers, which affect the public generally. In many cases, a public interest is violated, though wrong is caused to a particular individual. If the rights-remedies co-relation rule is applied with rigidity, no one will have the standing to challenge the action of the public authority and it would disregard the law with impunity. Therefore, to contain the propensity of the Government to indulge in an arbitrary exercise of powers, to safeguard public interest and to uphold the rule of law the courts have abandoned the trend of giving restrictive meaning to "Locus-Standi" and have adopted liberal approach. This approach of the Supreme Court permits public interest litigation or social interest litigation at the instance of 'public spirited citizens' for the enforcement of Constitutional and legal rights of any person, group of persons who, because of their poverty or socially or economically disadvantaged position, are unable to approach the court for relief.

A few cases out of a large number are discussed in detail to understand the liberal approach of court, brushing aside the conservative concept of Locus Standi and accepting the public interest/social interest litigation as availed, approved and meaningful method of remedy where fundamental right violation takes place.

In A.B.S.K. Sangh (Rly.) v. Union of India, AIR 1981 See. 298, it was held that the Akhil Bhartiya Soshit Karmachari Sangh (Railway), though an unregistered association, could maintain a writ petition under Article 32 for the redressal of a common grievance. Access to justice through 'class actions', public interest litigation and 'representative proceedings' is the present Constitutional jurisprudence, Krishna Iyer, J., declared.

In the Judges Transfer case, 1982, S.C. 149, a seven member Bench of the Supreme Court has firmly established the rule regarding the public interest litigation. The Court held that any member of the public having "sufficient interest" can approach the court for enforcing Constitutional or legal rights of other persons and redressal of a common grievance. Speaking for the majority, Bhagwati, J., (as he then was) stated the rule as follows :

"Where a legal wrong or legal injury is caused to a person or to a determinate class of persons by reason of violation of any Constitutional or legal right and such person or determinate class of persons is, by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court for relief, any member of the public can maintain an application for an appropriate direction or order or writ in the High Court under Article 226 or in case of breach of any Fundamental Right to this Court under Article 32. Where the weaker sections of the community are concerned, such as under-trial prisoners languishing in jails without a trial, inmates of the Protective Home in Agra, or Harijan workers engaged in road construction in the District of Ajmer, who are living in poverty and desolation, who are barely eking out a miserable existence with their sweat and toil, who are helpless victims of an exploitative society and who do not have easy access to justice, the Supreme Court will not insist on a regular writ petition to be filed by the public spirited individual espousing their cause and seeking relief for them. The Supreme Court will readily respond to a letter addressed by such individual acting pro bono publico. It is true that there are rules made by the Supreme Court prescribing the procedure for moving it for relief under Article 32 and they require various formalities to be followed by a person seeking to approach it. But it must not be forgotten that the procedure is but a hand made of justice and the cause of justice may never be allowed to be wasted by any procedural technicalities. The Court will, therefore, unhesitatingly cast aside the technical rules of procedure in the exercise of its dispensing power and treat the letter of the public-minded individual as a writ petition and act upon it."

However, the Court said that it would have to be decided from case to case as to whether the person approaching the court for relief has "sufficient interest" and has not acted with malafide or political motives. In the instant case, the court upheld the right of the practising lawyers to maintain a writ petition under Article 32 on matters affecting the independence of judiciary, Bhagwati, J., (as he then was) held:-

"We would, therefore, hold that any member of the public having sufficient interest can maintain an action for judicial redressal for public injury arising from breach of public duty or from violation of some provisions of the Constitution or the law and seek enforcement of such public duty and observance of such Constitutional or legal provision. This is absolutely necessary for maintaining the rule of law,

furthering the cause of justice and accelerating the pace of realisation of the Constitutional objectives.”

His Lordship also rejected the argument of fear that such a liberal view would lead the Court being flooded with writ litigations and, therefore, they should not be encouraged, Quoting the words of the Australian Law Reforms Commission, his Lordship observed that "the liberalised standing rules have caused no significant increase in the number of actions brought, arguing that the parties will not litigate at considerable personal cost, unless they have a real interest in the matters.”

Abuse of PIL: Guidelines: While expanding the scope of the "Locus Standi" rules, his Lordship Bhagwati, J. (as he then was) expressed a note of caution also. He observed :

"But we must be careful to see that the member of the public, who approaches the court in case of this kind, is acting bona fide and not for personal gain or private profit or political motivation or other oblique considerations. The court must not allow its process to be abused by politicians and others....."

This observation makes it clear that his lordship was aware that this liberal rule of Locus Standi might be misused by vested interests. He, therefore, made it clear that in that case, the court will not allow the remedy to be abused.

As a result of this broad view of locus standi permitting public interest litigations or social action litigations, the Supreme Court has considerably widened the scope of Article 32 of the Constitution. The Supreme Court will now be ready to interfere under Article 32 wherever and whenever any injustice is caused or being caused by the State action to the poor and helpless persons who cannot approach the Court. The Court has jurisdiction to give appropriate remedy to the aggrieved persons in various situations. Bihar blind case, *Flesh Trade in Protective Home of Agra*, *Injustice done to children in jails*, *Protection of Pavement and Slum-dwellers of Bombay*, *Payment of minimum wages and other benefits to workers in various State Projects*, *Abolition of Bonded Labours*, *Protection of environment and ecology*, are the instances where the Court has issued appropriate writs, orders and directions on the basis of public interest litigations or social action litigations.'

The new trend on locus standi is to be welcomed. This would go a long way in creating a sense of responsibility in public authorities exercising enormous power under the Constitution and the law. This jurisdiction would certainly be able to minimise, if not completely stop, the abuse of power by public authorities. Henceforth, they would be much more vigilant in exercising their powers and performing their Constitutional and statutory duties and obligations towards the people, particularly poor and helpless persons. If public property is dissipated, it

would require a strong argument to convince the Court that representative segments of the public or, at least, a section of public would have no right to complain of the infraction of public duties and obligations. Public enterprises are owned by the people and those who run them are accountable to the people. The accountability of the public sector to the Parliament is ineffective. In such cases, the Court would be under duty to interfere.

Public interest litigation is a strategic arm of the legal aid movement, intending to bring justice within the reach of the poor masses. It is different than the traditional litigation, which is essentially of an adversary character involving a dispute between two litigation parties, i.e., one making a claim or seeking relief against the other and the other opposing such claim or resisting such relief. It is brought before the court not for the purpose of enforcing the right of one individual against another as happens in the case of ordinary litigation, but is intended to promote and vindicate public interest, which demands that violations of Constitutional or legal rights of a large number of people, who are poor, ignorant or in a socially or economically disadvantaged position, should not go unnoticed or unredressed.

Public interest litigation, thus, secures distributive justice to the poor, illiterate and the weaker segments of the society. Those who cannot move to the courts on their own, an action is initiated on their behalf by a public spirited individual or group of individuals. The strict rule of locus standi, i.e., a person aggrieved only can initiate the action is relaxed in the case of public interest litigation. It has become, though only recently, an important instrument of distributive justice to the majority of Indian population who are poor and ignorant of their rights, and thus unable to have recourse to the courts of law for the redressal of the wrongs perpetrated upon them.

These days, the developing jurisprudence of social and economic rights encapsulates freedom from indigency, ignorance and discrimination as well as the right to healthy environment, to social security and to protection from financial, commercial, corporate or even governmental oppressions and frauds. The conferment of these rights on individuals and groups and imposition of public duties on the State and other public authorities for taking positive action often generates situations of conflict where a single human action can be beneficial or prejudicial to a large group of people. This makes the traditional scheme of litigation, which is merely a two party affair, entirely inadequate to modern needs. Thus emerges the jurisprudence of public interest litigation whose aim is to remedy the wrongs committed towards the public at large or a determinate section of the public by the State or any of its surrogate or agencies. The public wrongs can be of numerous kinds, like the discharge of affluent in a lake or river, the omission of noxious fumes, unhealthy packing of goods and illegal raising of railway or bus fare or

cinema taxes, etc. In such cases, there is a public injury, i.e., an injury to the indeterminate section of the public and it is caused because of a breach of duty owed by the State or a public authority not to any specific or determinate class or group of persons, but to the public at large.

Check Your Progress - III

1. Describe the Constitutional Mechanism for enforcing Fundamental Rights.

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2. Why has the scope of locus-standi been enlarged?

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3. Do you agree with the "public interest litigation" as a means of enforcing rights of poor, illiterates deprived or is it interference of Court in the arena of legislature.

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4. What are the defects of Public Interest Litigation (PIL)?

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5.5. MEDICAL NEGLIGENCE

A paramount duty is imposed on medical professionals to serve the public with utmost degree of care and skill, so that the mental and physical health of the patients should not be jeopardized.

Medical negligence arises out of non-application of reasonable degree of care and skill, i.e., duty is exercised carelessly, recklessly and rashly. The principle types of medical negligence usually met within practice are as follow :

- a) Negligent Diagnosis
- b) Negligence in Operation
- c) Failure to listen to a patient's complaints.
- d) Negligent in advice about the risk of an operation.
- e) Negligence in post operative care.
- f) Negligence in administering anaesthesia.

However, the accountability of medical professional is dependent upon the standard or degree of skill and relative awareness of the patient regarding error in medical treatment and diagnosis. This awareness, further relatively, depends upon educational, social and economic background of the people.

Therefore, it is very difficult to establish medical negligence, since patients are unaware of the gamut of science of human body. Also the medical fraternity being closely knit will always favour their brethren. But, where the error is patent and prima-facie appears rash and negligent, the conclusion of Negligence can be drawn against the doctor by applying the doctrine of Res-Ipsa-Loquitar. (things speak for themselves)

A doctor may be held criminally liable under Section 304-A of Indian Penal Code if death occurs for rash and negligent homicide. In civil law, until the coming into operation of Consumer Protection Act, the liability was under Law of Tort for damages. Now C.P. Act Under Section 2 includes it as "services" and, therefore, makes doctors liable for compensation. This is evident from the following decisions.

Treatment in a nursing-home for payment is a service within the meaning of the Act. This fact has been recognised by the Supreme Court in its decision in *Indian Medical Assn v. V.P. Shanta*. The court said that medical service is neither a contract of employment nor of personal services. It is the rendering of professional services on payment. For the loss of a child for which police report was also three and no other basis for assessment of the loss being available, an agreed figure of one lakh rupees was allowed between the parties.

A mop (towel) left inside the abdomen during sterilisation operation for the removal of which a second operation had to be conducted and that resulted in death, was a circumstance of which the court said that it spoke by itself (*res ipsa loquitur*) of medical negligence. The guilty surgeons were held liable to the patient. A doctor

can be held guilty of medical negligence only when he falls short of the standard of reasonable medical care. A doctor cannot be held to be negligent merely because in the matter of operation he made an error of judgement.

5.6 LET US SUM UP

In this unit, you read that social legislations and emergence of new concept like PIL are mainly based on the notion that a person against whom a wrong has been done need to be compensated, paid damages, provide redressal through protecting his rights. These legislations and new forms of actions boost the morale of poor, ignorant, illiterate rural masses by making them aware about their legitimate rights, which have emerged due to developments globally and about the method of their enforcement at a minimum investment, with quick results. These are the laws, which are important in modern society for the protection and preservation of rights of indigenous Indians.

5.7 SUGGESTED READINGS

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