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**Journal of
Indian Medico Legal And Ethics
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JIMLEA is now Indexed with IP Indexing

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We are pleased to inform you that the Journal of Indian Medico- Legal & Ethics Association (JIMLEA) is now indexed with IP Indexing. The highlights of the journal include:

- i) Open Access, Peer-reviewed quarterly journal in print form.
- ii) The journal is available on the website (www.imlea-india.org) of the association.
- iii) Topics related to medico-legal and ethical issues can be submitted for publications. This is one of the few journals which publish topics on ethical issues in medical practice.
- iv) The ISSN registration number is: 2347- 7458 Print version.
- v) This is official publication of Indian Medico- Legal & Ethics Association; a national academic organization working for issues related to Doctor- Patient Relationship, Communication skills, Professionalism, medical negligence, Consumer Protection Act, ethical issues in practice of medicine, quality care and other related issues.
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Editorial :

Controversy : Revival of Surgery in Ayurveda

Dr Yash Paul

Received for publication : 15th June 2021 Peer review : 25th June 2021 Accepted for publication : 1st July 2021

Keywords : IMA, Charak Samhita, Sushruta Samhita

Recently the Indian Medical Association (IMA) had raised voice against the intended revival of surgery in Ayurveda. It is an acknowledged fact that in the past surgery was performed in India long before the birth of Allopathy which is also called as Modern Medicine and Western Medicine.

Who is a Doctor or Therapist, designated as Chikitsak in Hindi? Wikipedia defines this person to be a professional who practices medicine for promoting, maintaining or restoring health through the study, diagnosis, prognosis and treatment of disease, injury and other physical and mental impairment'. Collins English Dictionary defines the doctor 'as someone who is qualified in medicine and treats people who are ill'. Medicine is a substance or drug used to treat illness. It can be herbal or synthetic in origin.

The time of origin of Ayurveda is difficult to pinpoint. Earlier, the knowledge was passed orally to the disciples. Charaka, over 2000 years ago during the time of King Kanishka put this knowledge in writing called 'Charak Samhita'. Sushruta, an Ayurvedic surgeon is acknowledged as a great surgeon besides other surgeries he is credited to repair cut noses and ears which is sophisticated to be called as 'plastic surgery' now, He wrote 'Sushruta Samhita', a text book of surgery.

It is not known whether our ancestors had knowledge about molecular biology or

biotechnology or used computers. But, some of their observations and information had been proved on scientific basis. I cite three examples proved to be correct by the modern science.

1. There are 84 lakh (8.4 million) species on our planet (the Earth).
2. A pregnant woman should not expose herself to the sun during Solar eclipse as it may harm the fetus.
3. Neem, salt and charcoal are good for oral hygiene. These ingredients are being added to tooth pastes by many manufacturers.

The three important inventions made by our ancestors are as follows : [1]

1. Sewage system where toilets were connected to sewers established 4500 years ago are seen in the Indus Valley civilization.
2. Standard measures for weight & quantity were introduced 4500 years ago during the Indus Valley civilization.
3. Spinning wheel (Charkha) was invented 1300 years ago.

A Look at Allopathy

Hippocrates is considered the father of Western medicine, Modern medicine or Allopathy. Till a century ago, Allopathy had Digitalis, Colchicine, Quinine, salicylates and Opium only for medication of different ailments- all herbal in origin.

Since the later half of the 20th century, there has been progress in inventions of newer drugs, investigations and surgery. Were these new drugs, innovations and surgical techniques introduced after

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passing the rigorous scientific tests viz ' double blind randomized trials' and 'evidence- based' medicine? Not many, so many drugs, surgical techniques have been modified or abandoned.

During the 5th and 6th decades of the 20th century we the pediatricians used to prescribe 'Mejoral' tablets- a dispersible Aspirin to children. Presently Aspirin is not recommended as an antipyretic or analgesic for children but is recommended for certain conditions only. During the same period 'Coramine' injection was considered a miracle drug for saving life when all other interventions had failed. Actually, Coramine did not provide any benefit to the dying patients except that the attendants of the deceased felt satisfaction that everything possible to save their patient had been done. It was a ritual to administer Coramine injection to a dying person like

performing the last rites. This shows that modern medical science is still in an evolving stage.

It is very essential that new experiments and studies be continued for improvement. How can anyone object to 'efforts to revive' the forgotten science of Ayurveda? It should be left to the policy makers whether they would start experiments or seek help from Allopathic Surgeons and Anaesthesiologists. It would be a great philanthropic act if Surgeons and Anesthesiologists extend their help in revival of surgery in Ayurveda in case help is sought.

Funding : None

Conflicting Interest:

The Author prescribes Allopathic drugs only

Reference:

1. Challoner J. 1001 Inventions that Changed the World. Quintessence Book. 2009, pages 74, 76, 136.



Contribution in JIMLEA

All the readers of this issue and the members of IMLEA are invited for contributing articles, original research work / paper, recent court judgements or case laws in the forthcoming issues of JIMLEA. This is a peer-reviewed journal with ISSN registration. Please send your articles to Dr. V. P. Singh, email : singhvp@gmail.com

Review Article:

Adoption in India (Part III) - Inter- country adoption

* Dr. Vijay Kamale, ** Mrs. Dr. Betty Mathai ***Dr. Akshai B

Received for publication : 3rd Oct. 2020 Peer review : 10th April 2021 Accepted for publication : 18th June 2021

Keywords: Child welfare, domestic adoption, inter- country adoption, Indian adoption, CARA

Introduction: Till now, we have discussed about legal implications related to adoption and the commonest mode of adoption in India that is intracountry adoption of OAS children .But the relatively uncommon or probably less known methods of rehabilitation of children through adoption are [1]:

- 1) In-country
 - a) Relative Adoption
 - b) Adoption by Step Parents
- 2) Inter-country Adoption
 - a) Adoption of OAS Children
 - b) Relative Adoption

In-country Relative adoption

1. Registration by the PAPs on CARINGS & uploading of documents
2. Verification by DCPU and approval by SARA
3. Filing of application and obtaining Court order by the PAPs

Inter-Country Relative Adoption

1. HSR and Registration of PAPs by the Social worker of AFAA (Authorized Foreign Adoption Agency) or CA (Central Authority) or Indian Diplomatic Mission (IDM)
2. Uploading of Documents of PAPs in CARINGS by AFAA/CA/IDM
3. Initial scrutiny by CARA
4. Verification by DCPU & Recommendation by SARA
5. Pre-Approval by CARA (as per Article 16)
6. Filing of application and obtaining of Court order by the PAPs
7. Issue of NOC & Conformity Certificate by CARA
8. Passport and Exit Visa for the child
9. Child Arrival, Citizenship and Post-Adoption Follow-up till 2 years

Adoption by Step-Parent:

1. Permission from the CWC shall be obtained for Adoption of Child/Children by Biological Parent and Step Parent as per Schedule XX of AR 2017
2. Uploading of Documents of PAPs in CARINGS by AFAA/CA/IDM
3. Initial approval by CARA
4. Filing of application and obtaining of Court order by the PAPs

Hague Convention on Inter-country Adoption[2].

- 1) The Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Adoption Convention) protects children and their families against the risks of illegal, irregular, premature or ill-prepared adoptions abroad.
- 2) This Convention, which operates through a system of national Central Authorities, reinforces the UN Convention on the Rights of the Child (Art. 21) and seeks to ensure that intercountry adoptions are made in the best interests of the child and with respect for his or her fundamental rights.
- 3) It also seeks to prevent the abduction, the sale of, or trafficking in children.

The Hague convention is a multinational treaty that seeks to protect children wrongfully removed by one of the parents from the custody of the other parent. India became signatory to this convention in the year 2003. However, India may not sign new Hague convention on international child abduction. The government is unlikely to sign in near future an international treaty that makes inter-country abduction of children by parents a punishable offence, two Union Women and Child Development (WCD) ministry officials have said. [3]. According to the Ministry of WCD, there are money cases of Indian women who return to the safety of their homes in India after escaping a bad marriage. Cases of women who are foreign citizens, married to Indian

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men, going away with their children are far fewer. Hence signing the Hague Convention would be to the disadvantage of Indian women. Considering these reasons, India has not joined the Hague Abduction Convention yet [4].

Inter-country Adoption of OAS Children

Adoption procedure for non-resident Indian, overseas citizen of India and foreign prospective adoptive parents

Non-Resident Indian (NRI) to be treated at par with resident Indian. NRI prospective adoptive parents shall be treated at par with Indians living in India in terms of priority for adoption of orphaned, abandoned or surrendered children from India.

Registration and Home Study Report for prospective adoptive parents for inter-country adoption. -

- (1) Any Non-Resident Indian, Overseas Citizen of India or foreign prospective adoptive parents, living in a country which is a signatory to the Hague Adoption Convention and wishing to adopt an Indian child, can approach the Authorized Foreign Adoption Agency or the Central Authority concerned, as the case may be, for preparation of their Home Study Report and for their registration in Child Adoption Resource Information and Guidance System.
- (2) In case, there is no Authorized Foreign Adoption Agency or Central Authority in their country of habitual residence, then the prospective adoptive parents shall approach the Government department or Indian diplomatic mission concerned in that country for the purpose.
- (3) The Authorized Foreign Adoption Agency or Central Authority or the Government department or the Indian diplomatic mission concerned, as the case may be, will ascertain the eligibility of the prospective adoptive parents for adopting a child and then shall get their Home Study Report completed and register their application in Child Adoption Resource Information and Guidance System in the format along with the required documents as specified in Schedule VI.
- (4) The seniority of the prospective adoptive parents shall be counted from the date of their registration and uploading of requisite documents in the Child Adoption Resource

Information and Guidance System.

- (5) The Home Study Report and other documents of the prospective adoptive parents, referred to in this Chapter, shall be scrutinized at the Authority to determine their eligibility and suitability and be forwarded to the Specialized Adoption Agency where children for adoption legally are available.
- (6) The profiles of two children, in one or two referral(s), shall be forwarded by Child Adoption Resource Information and Guidance System to the Authorised Foreign Adoption Agency or Central Authority or Government department or Indian diplomatic mission, as the case may be, which may further forward such profiles to the prospective adoptive parents concerned as per local rules and in case of a foreigner or Overseas Citizen of India, the profiles of children shall be referred to the prospective adoptive parents.
- (7) The prospective adoptive parents may reserve one of the referred children within ninety-six hours and the profile of the other child shall stand automatically withdrawn.
- (8) In case the prospective adoptive parents fail to reserve any of the children within ninety-six hours, then the profiles of both the children shall stand automatically withdrawn.
- (9) Preference of the prospective adoptive parents shall be taken into consideration when sending referrals to them.
- (10) If the prospective adoptive parents reserve one of the children shown, they shall accept the child by signing the Child Study Report and Medical Examination Report of the child within thirty days from the date of reservation.
- (11) The Child Study Report, Medical Examination Report and photograph of the child, in original, shall be sent by the Specialized Adoption Agency to the Authorized Foreign Adoption Agency or Central Authority or the Indian diplomatic mission concerned.
- (12) In case the prospective adoptive parents fail to accept the reserved child within thirty days, then the profile of the child shall stand withdrawn by the Child Adoption Resource Information and Guidance System and the seniority of the prospective adoptive parents shall be relegated to the bottom of the list; and shall be given

another opportunity to reserve and accept a child when their turn becomes due, provided that their Home Study Report remains valid.

- (13) If the prospective adoptive parents desire to visit the Specialized Adoption Agency to see the child in person, before accepting him for adoption, such visit may be made after their adoption application is approved by the Authority and the prospective adoptive parents may also get the Medical Examination Report of the child reviewed by a medical practitioner of their choice.
- (14) The Authorized Foreign Adoption Agency shall forward the original documents of the prospective adoptive parents, as specified in Schedule IX, to the Specialized Adoption Agency concerned for their scrutiny.
- (15) All documents forming part of the Home Study Report shall be notarized and the signature of the notary is to be apostilled by competent authority of the receiving country in cases of Hague Adoption Convention ratified countries, however the documents originating from India shall be self-attested.
- (16) If the documents are in any language other than English, then the originals must be accompanied by translations in English, duly attested by the agency or authority in the country of residence of the prospective adoptive parents designated for the purpose of attestation or apostille.

No Objection Certificate of Authority and pre-adoption foster care.-

- (1) The Authority shall issue No Objection Certificate in favour of the proposed adoption in the format at Schedule X, within ten days from the date of receipt of the acceptance of the child by the prospective adoptive parents and letter of approval or permission of the receiving country as per Article 5 and Article 17 of the Hague Adoption Convention, wherever applicable; and a copy of the No Objection Certificate shall also be endorsed to all concerned and posted in Child Adoption Resource Information and Guidance System forthwith.
- (2) The prospective adoptive parents may take the child in pre-adoption foster care for a temporary period within India after issuance of

No Objection Certificate by the Authority while the court order is pending, by furnishing an undertaking to the Specialized Adoption Agency in the format at Schedule VIII.

- (3) The prospective adoptive parents shall receive final custody of the child from the Specialized Adoption Agency as soon as the passport and visa are issued to the child after issue of adoption order from the competent court.

Legal Procedure :[1]

- (1) The legal procedure as provided in regulation 12 shall, mutatis mutandis be followed in cases of inter-country adoption under this Chapter.
- (2) In cases of the prospective adoptive parents habitually residing abroad and wanting the Specialized Adoption Agency to represent on their behalf as well, the application shall also be accompanied by a Power of Attorney in favor of the social worker or adoption in-charge of the Specialized Adoption Agency which is processing the case and such Power of Attorney shall authorize a social worker to handle the case on behalf of the prospective adoptive parents.

Passport and visa, intimation to immigration authorities, Conformity Certificate, Birth Certificate etc.-

- (1) The Authority shall issue a Conformity Certificate under Article 23 of the Hague Adoption Convention in the format provided in Schedule XI within three working days from the date of availability of the adoption order in the Child Adoption Resource Information and Guidance System, in case the receiving country of the adopted child is a signatory to the Hague Adoption Convention.
- (2) The Authority shall inform the immigration authorities and the foreign regional registration office or the foreign registration office concerned, as the case may be, about confirmation of the adoption.
- (3) To obtain Indian passport for the adopted child, the Specialized Adoption Agency shall submit the application to the regional passport officer within three working days from the date of receipt of the adoption order.
- (4) The regional passport office shall issue passport for the adopted child within ten days from the

date of receipt of application, in accordance with the circulars regarding issuance of passport to inter-country adopted children, issued by the Ministry of External Affairs of the Central Government from time to time.

- (5) The Specialized Adoption Agency shall approach the birth certificate issuing authority for obtaining birth certificate of the adopted child, with the name of adoptive parents, as parents, and date of birth as recorded in the adoption order within a period of three days of obtaining of the certified copy of the adoption order.
- (6) The adopted child shall be entitled to receive Overseas Citizen of India card, if found eligible.
- (7) The adoptive parent(s) shall come to India for taking the adopted child to their country within a period of two months from the date of adoption order.

Follow-up of progress of adopted child by Non-Resident Indian, Overseas Citizens of India and foreign prospective adoptive parents.- [1]

- (1) The Authorized Foreign Adoption Agency or the Central Authority or Indian diplomatic mission or Government department concerned, as the case may be, shall report the progress of the adopted child for two years from the date of arrival of the adopted child in the receiving country, on a quarterly basis during the first year and on six monthly basis in the second year, by uploading online in the Child Adoption Resource Information and Guidance System in the format provided in Schedule XII along with photographs of the child.
- (2) On the basis of the progress report or in course of post-adoption home visits, if an adjustment problem of an adoptee with the adoptive parents comes to the notice of the Authorized Foreign Adoption Agency or Central Authority or the Government department concerned in the receiving country, necessary counseling shall be arranged for the adoptive parents and for the adoptee, wherever applicable.
- (3) If it is found that the adoptee is unable to adjust in the adoptive family or that the continuance of the child in the adoptive family is not in the

interest of the child, the Authorized Foreign Adoption Agency or Central Authority or the Government department in the receiving country or Indian diplomatic mission concerned, as the case may be, shall withdraw the child and provide necessary counseling and shall arrange for suitable alternate adoption or foster placement of the child in that country, in consultation with the Indian diplomatic mission and the Authority.

- (4) In case of disruption or dissolution of adoption, the child shall be entitled to receive care, protection and rehabilitation through the child protection services of that country and as per Hague Adoption Convention for the Hague Adoption Convention ratified countries.
- (5) The Authorized Foreign Adoption Agency or Central Authority or Government department concerned shall contact Indian diplomatic mission to render necessary help and facilitate the repatriation of the child, if required.
- (6) The Authorized Foreign Adoption Agency or Central Authority or Government department concerned, may organize annual get-together of Indian adoptees and their adoptive parents and forward a report of the event to the Authority and the Indian diplomatic missions shall facilitate such get-togethers.
- (7) The prospective adoptive parents shall furnish an undertaking to the effect that they would allow personal visits of the representative of Authorized Foreign Adoption Agency, the foreign Central Authority or Government department concerned, as the case may be, to ascertain the progress of the child with the adoptive parents or family at least for a period of two years from the date of arrival of the child in the receiving country.

Adoption by Overseas Citizen of India or foreign national of Hague Adoption Convention ratified countries living in India.-[1]

- (1) An Overseas Citizen of India or foreign national, who is a citizen of a country that has ratified the Hague Convention and is a habitual resident, shall apply for adoption online in prescribed format as specified in Schedule VI along with the required documents specified therein by uploading in the Child Adoption Resource Information and Guidance System.

- (2) On receipt of the application, along with the required documents duly notarized, except those documents originating from India which may be self-attested, the Authority shall refer the case to a Specialized Adoption Agency for preparing the Home Study Report in the format given at Schedule VII and the Specialized Adoption Agency shall upload the Home Study Report in the Child Adoption Resource Information and Guidance System.
 - (3) The prospective adoptive parents may reserve one of the referred children within 48 hrs and the procedures shall be followed as per the provisions of sub-regulations(9), (10), (12)and (13) of regulation 15 and regulations 16 to 19.
 - (4) The role of preparing Home Study Report and uploading progress report as required under these Regulations shall be done by the Specialized Adoption Agency concerned.
 - (5) The Specialized Adoption Agency shall report the progress of the child on six monthly basis for a period of two years from the date of pre-adoption foster care by uploading the details in the Child Adoption Resource Information and Guidance System as per the format provided at Schedule XII along with photographs of the child.
 - (6) If any adjustment problem of the adoptee with the adoptive parents comes to the notice of the Specialized Adoption Agency through the progress report or in the course of post-adoption home visits, counselling shall be arranged for the adoptive parents and the adoptee, wherever applicable.
 - (7) During the follow-up, if the Specialized Adoption Agency finds that the adoptee is unable to adjust in the adoptive family or the continuance of the adoptee in the adoptive family is not in the best interests of the child, the procedure as provided in sub-regulations (5), (6) and (7) of regulation 13 shall be followed.
 - (8) The diplomatic mission concerned shall also ensure that the adopted child acquires citizenship of the country of his parents immediately after adoption decree and a copy of the passport of the child from the country of the nationality of the prospective adoptive parents shall be forwarded to the Authority and the Specialized Adoption Agency concerned.
 - (9) An Overseas Citizen of India or foreign prospective adoptive parents living in India, are required to give an affidavit to the effect that they would allow personal visits of the representative by the Specialized Adoption Agency or District Child Protection Unit or State Adoption Resource Agency, as the case may be, for a period of at least two years from the date of adoption.
 - (10) An Overseas Citizen of India or foreign prospective adoptive parents living in India, as the case may be, shall give an undertaking to the effect that if they move out of India before completion of two years after adoption, they shall inform to the Authority about their movement, furnish their new address, and continue to send their post-adoption progress report to the Authority for the remaining period.
- Adoption procedure in case of Overseas Citizen of India or foreign national of Hague Adoption Convention ratified countries living in India.-[2]**
- (1) If one of the prospective adoptive parents is foreigner and other is an Indian, such case shall be treated at par with Indians living in India.
 - (2) If both the prospective adoptive parents are foreigner, such case shall be treated in accordance with the provisions of regulation 20.
- Court Procedure:[1]**
- 1) Adoption gets concluded legally after obtaining an adoption order from the court concerned
 - 2) Court means Civil Court, which has jurisdiction in matters of adoption and guardianship and may include the District Court, Family Court or City Civil Court (Section 2 (23) of the JJ Act)
 - 3) Court Procedure is defined in Sec 61 of JJ Act & Regulations 12,17,55of the Adoption Regulations
 - 4) Procedure before the Court shall not be bound by the procedure laid down in the CPC, 1908 (Rule 45 of the JJ Rule).
 - 5) The application for Adoption Order is non adversarial in nature, the SAA and the PAPs are co-applicants and there shall not be any opposite party or respondent(Reg 12(5)of AR 2017)
 - 6) Five different model applications for different types of Adoptions are provided in Schedules XXVIII to XXXII of AR 2017.
- List of documents to be attached for different types of Adoptions applications have been enumerated at Schedules VI & IX of AR 2017**

- 1) In case the PAPs are habitually residing abroad, they may permit the Social worker of the SAA to represent them through a Power of Attorney (Reg 17(2) of AR 2017). SAA shall file the application in the Court within 10 working days after matching/NOC (Reg 12(1), 17 (a) of AR 2017).
- 2) In case Child is from a CCI linked to the SAA, the CCI also becomes co-applicant along with the PAPs (Reg 12(3) of AR 2017)
- 3) A single petition is filed for twins or siblings (Reg 12(4) of AR 2017)
- 4) All court proceedings to be held in camera and disposed within 2 months of date of filing (Sec 61 (2) of the JJ Act & Reg 12 (6) of AR 2017)
- 5) Adoption Order should not stipulate execution of bond or making investment by the PAPs in the name of the child (Reg 12(7) of AR 2017)
- 6) Registration of Adoption deed shall not be mandatory as per the Act (Reg 12(9) of AR 2017)
- 7) Petition filed by PAPs to adopt a child of a relative, should carry the consent letter of biological parents or permission of CWC as per Schedule XIX or Schedule XXII of AR 2017 respectively (Reg 51(2) & 55(1) of AR 2017)
- 8) In case of Inter-country Relative Adoption, the PAPs shall file an application in the District where the child resides (Reg 55(3) of AR 2017)
- 9) Before issuing the court order the court shall satisfy itself as mandated under Section 61(1) of the JJ Act

Before issuing an adoption order, the court shall satisfy itself that: -

- 1) The adoption is for the welfare of the child.
- 2) Due consideration has been given to the wishes of the child having regard to the age and understanding of the child.
- 3) Neither the PAPs have given or agreed to give nor the agency or the parent or guardian of the child in case of relative adoption has received or agreed to receive any payment or reward in consideration of the adoption, except as permitted under the adoption regulations framed by the Authority (CARA) towards the adoption fees or service charges or child care corpus.

- 4) The adoption proceedings shall be held in camera and the case shall be disposed of by the court within a period of two months from the date of filing.

Order Sought For By the Adoptive Parents

- 1) Adoption of the Child granted to the adoptive parents and they be declared parent of the child for all purpose of the law.
- 2) The new name as given by the adoptive parents must be recorded along with the date of birth of the child.
- 3) Direction must be given to the Birth Certificate issuing authority (name & place) to issue Birth Certificate within five working days from the date of receipt of application, with the child's name (as requested by the adoptive parents in the application), the date of birth, adoptive parents (names) as parents and the place of the SAA as place of birth (only the place).
- 4) Attested photograph of the child affixed in the Court order.

Fervent Request

- Delay in adoption order delays the right to family which every child has.
- The adoption cases must be looked with sensitivity and accorded due priority.
- Rules and Regulations must be followed in letter & spirit
- Timelines as stipulated must be strictly adhered to in the interests of the children who can't represent for themselves.

References :

1. CARA website :<http://cara.nic.in/> accessed on 2nd February 2020
2. Website: www.hcch.net ,Hague Conference On Private International Law, Accessed on 2nd February 2020
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Review Article:

Need of modern diagnostic tools in Homoeopathy and Legal Aspects

Dr. Rajneesh Sharma

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Key words : Ayush, Diagnosis, Homoeopathy, Individualization, Materia Medica, Miasm, Nosodes, Organon, Pharmacology, Prognosis, Simillimum, Susceptibility

The life is a complex buildup of fine chemicals and energy. Both are fashioned in such a way that a perfect and unique state of balance and hormone is maintained. Slightest disturbance may lead to illness and even death. Let us review life in a few words-

An ovum gets pierced with a sperm and fertilization takes place resulting in the formation of a zygote. The zygote or fertilized egg undergoes a sequence of revolutionary changes and develops a fetus. The fetus, on maturation is delivered and develops into a child. The child grows to the youth, performs his lively activities and enters the old age. Now degenerative phase starts and so called senile decay starts rendering deterioration of the body and consequently to the death. This whole fundamental process is normally seen in all the living creatures. However the type, growth, span, activities, appearance, displays and pattern of every creature is different from another one.

Further, a living creature leads his own individual life, absolutely specific to itself in healthy condition as well as in diseased condition. To understand this whole phenomenon, vast knowledge of science is necessary. Homoeopathy, had a holistic approach. It deals with sick individual as a whole and not the disease or the diseased organs.

Very often, we happen to meet the myth, as there is no role of diagnosis in Homoeopathy and there is only the need of symptoms to treat the patients. Without proper diagnosis, the nature, causes, type, depth and prognosis of the disease

cannot be ascertained. Hence the plan of treatment, mode of treatment or referral may not be made. To discuss this point in details, one must be acquainted with the basics of Homoeopathic system of medicine.

What is Homoeopathy

The word Homoeopathy is derived from combination of two Greek words, 'Homoios' means 'like' and 'Pathos' means 'disease'. This unique system of treating diseases was founded by German Dr. Christian Frederick Samuel Hahnemann. It deals with the concept of treating diseases with minute doses of remedies, that are capable of producing symptoms similar to the disease when taken by healthy people i.e. 'Similia Similibus Curantur' or 'like cures like'. It has a holistic approach to diagnose and treat the sick person and deals with theory of individualization.

Individualization

The general characteristics of every individual cannot be exactly similar. The two may differ in several ways, viz. difference of mental and physical makeup, difference of their cardinal features of living being or their reactions to the environment. One may be morbidly irritable or other rarely irritable or another may be too mild even towards very agitating conditions.

A person may be fat and flabby while another lean and thin. One may be too insensible or indifferent to very intense pains and may even sacrifice his limb or body part to please his God or Goddess while another one may faint seeing the syringe in the hands of a doctor!

No two persons are alike. This makes the theory of individualization, which plays not only a prominent but sole part in the art of healing through Homoeopathy.

The individuality of a person is the characteristic feature or group of characteristic features, making him identifiable from the rest of other persons.

“Sufferings are not always felt alike by all men, everyone suffers according to his own peculiar nature. Illness may appear sometimes in acute form, at other times it may take on a chronic course according to the duration and virulence of the causing agent. The diversity of chronic diseases is sufficiently evident from the external symptoms and the disease is reflected in the totality of the symptoms. The phenomena of the diseases (the symptoms) are perceptible to the patient himself through his senses and by sensations of the changes in the physical and mental state (subjective symptoms). They are also observed by those who surround him and by the physicians, partly obvious and partly to the determined by investigations (objective symptoms)”

Now, it becomes the first duty of the healing artist to identify the individual and his characteristics and thence the degree of curability of a disease in the affected individual. This degree of curability will depend upon Diagnosis, Prognosis, and Susceptibility of the Individual towards disease and the medicine. Hahnemann says-

“If the physician clearly perceives what is to be cured in diseases, that is to say, in every individual case of disease (knowledge of disease, indication), if he clearly perceives what is curative in medicines, that is to say, in each individual medicine (knowledge of medicinal powers), and if he knows how to adapt, according to clearly defined principles, what is curative in medicines to what he has discovered to be undoubtedly morbid in the patient, so that the recovery must ensue - to adapt it, as well in respect to the suitability of the medicine most appropriate according to its mode of action to the case before him (choice of the remedy, the medicine indicated), as also in respect to the exact mode of preparation and quantity of it required (proper dose), and the proper period for

repeating the dose:- if, finally, he knows the obstacles to recovery in each case and is aware how to remove them, so that the restoration may be permanent : then he understands how to treat judiciously and rationally, and he is a true practitioner of the healing art.

He is likewise a preserver of health if he knows the things that derange health and cause disease, and how to remove them from persons in health”.

J. H. Clarke, in his book, 'The Prescriber', says- “In most cases there are more remedies than one that will benefit; and if the exact similitum is not found, the next or the next to that will give a measure of help; so the beginner need not abandon the ideal as too difficult of attainment. Then there are many different kinds of similarities, as well as of degrees, and every kind is available for the prescriber's use.”

“There is similarity between drug and disease in organ-affinity; in tissue-affinity; there is similarity of diathesis; similarity of sensations and conditions-all these and other kinds of like-ness are available for the prescriber to find his correspondence in”.

In his 9th edition of 'Pocket Manual of Homoeopathic Materia Medica', William Boericke says- “Elimination of the useless may gradually take place with the growth of accurate physiological and pathological knowledge.”

The vast and extremely elaborated text in the available books of Homoeopathy often causes difficulty for the beginners as well as to practitioners running short of time for reading, revising and applying. Now we should eliminate insignificant background and ornaments from remedy portraits.

Intention must be essentially to reduce the bulky and difficult text of Materia medica into very simple and easy to understand universal medical terminology i.e. 'diagnosis'. Diagnosis is the identification of the nature of an illness or other problem by examination of the symptoms.

- Diagnosis means the art and act of identifying the disease from its signs and

symptoms. The role of diagnosis in Homoeopathy is not a new idea.

To confirm a diagnosis, the proper study of the case is needed. This will include

- Inspection— examination by looking closely into the matter of illness, its manifestations and course of sickness.
- Palpation— examination by touch.
- Percussion— examination by striking of a solid instrument against body parts.
- Auscultation— examination by listening to the sounds of the affected organs of the patient.
- Laboratory methods— when the sickness advances, temporary or permanent changes start occurring in the physique. These changes can be observed by one or more methods as described above. To confirm the diagnosis, laboratory, radiological or surgical tests etc. are performed. These tests assist in diagnosis of the disease and to ascertain the prognosis.
- In contemporary era, the diagnosis of the illness is often asked by patients for their satisfaction also. On the other hand, the disease diagnosis is also important in determining the depth, nature and outcome of the disease. This will help in deciding the nature of remedy to be used as well as posology for complete cure.

Need of Diagnosis

The diagnosis is necessary for-

For selecting the case-

- Proper diagnosis is a must to decide the type of treatment
- Selection of cases
- Elimination of cases requiring surgical or mechanical management

Plan of treatment-

- To adopt different modes in different cases, according to need.
- Many of the cases are presented in secondary manifestations, the primary manifestation being obscure. Diagnosis gives a clue towards primary manifestation.

- Diagnosis of the disease in case with vague or obscure symptoms may give hint towards the seat and nature of the disease.
- Diagnosis of the case with multi system involvement give hint towards the area of severity and help in the institution of treatment.
- In cases with acute and chronic manifestation, separation of symptomatology of the two is possible through the knowledge of diagnosis.
- Diagnosis gives the idea about the pathological and constitutional tendencies that help us to decide whether a constitutional, miasmatic or palliative medicine is required.
- It is an indirect help in the process of cure.
- Laboratory investigation reports or diagnosis definitely help us to access the effect of medicine, progress etc.
- For deciding the correct diet and regimen with general management of the case.
- In accessing the depth of disease and hence the prognosis.

Selection of medicine-

- In the evaluation of symptom, from the knowledge of diagnosis we can separate symptoms of the disease from the symptoms of the patient.
- Sieving out the peculiar, uncommon, characteristic individualizing symptoms from the various symptoms.
- Helping us in the assessment of the real significance of the new symptom in the course of treatment after first prescription. Whether the new symptom belongs to the remedy or is due to the further progress of the disease.
- Cautions us in the use of deep acting violent remedies in too low or too high potencies when there is advanced pathological condition.
- In accessing the depth of disease. E.g. leucorrhoea may be an indication to be prone to be a case of advanced carcinoma cervix.
- From the pathologically diagnosed condition, certain nosodes may be prepared.
- Help in the selection of potency.

General management-

Diagnosis provides the proper knowledge of general management including provision and exclusion of diet and regimen, exercise or rest, and any other accessory management.

Prophylaxis-

To prevent contagious disease arising from an acute miasm, a physician must have a nosological diagnostic experience. Diagnosis alone guide us in notifying and instituting proper preventive measures.

Statistical data-

The effectiveness of Homoeopathic system can demonstrate to the society only through diagnostic basis. Though, Homoeopathy emphasizes on symptoms and signs to prescribe a remedy, though, the diagnosis of the disease is must. Famous Pathologist William Boyd says- *Finally the student must keep in mind the fact that what is usually called morbid anatomy constitutes only one part of the general subject of pathology, although it is the parthology, although it is the part with which this book is primarily concerned. The modern term psychosomatic medicine is an indication of the tardy realization of this truth, a truth of which the greatest physicians have always been aware. For it is the whole patient wire comes to the doctor's office, not just a disordered liver, a cardiac lesion, or a septic throat.* As Paracelsus remarked in the 16th century, he who wants to know man must look upon him as a whole, not as a patched-up piece of work. Man is more-than a sum of his parts. In the words of an old French proverb: "There are no diseases, but only sick people." It has been estimated that at least 50 percent of all patients consulting a physician have no real organic trouble. The young recruit waiting to make his first parachute jump often has albumen and red blood cells in the urine and no eosinophils in the blood, but the real disturbance is in his mind rather than in his kidney or bone marrow. Plato's profound remark in the Phacdrus is as true today as when it was first uttered. "For

this is the great error of our day in the treatment of the human body, that physicians separate the soul from the body."

Obstacles in the path of Homoeopathy

Now, there are some rumble strips in the way of Homoeopathy to be modernized. We have restricted rights.

- We cannot do pathological tests.
- We cannot do radiological investigations.
- We cannot do all cardiac examinations like Echo.
- We cannot do histological examinations.
- We cannot do surgical procedures, even FNAC and Biopsies.
- We cannot do autopsy.

But why, we don't know. Perhaps lack of knowledge? Lack of confidence? Even we don't want to know. And don't like to have these rights.

Rights of the Homoeopaths

In spite of all these drawbacks, we have some rights too. I have asked Government under RTI act for several points.

We can give any evidence in court required by law-

State;

(c) shall be entitled to sign or authenticate a medical or fitness certificate or any other certificate required by any law to be signed or authenticated by a duly qualified medical practitioner;

(d) shall be entitled to give any evidence at any inquest or any court of law as an expert under section 45 of the Indian Evidence Act, 1872 on any matter relating to Homoeopathy.

1 of 1872.

063-17

We can issue any certificate required by law-

सेवा में,
 सचिव,
 सभी राज्य/केन्द्र शासित प्रदेश शासन
 स्वास्थ्य एवं परिवार कल्याण विभाग/
 आयुर्विज्ञान शिक्षा/आयुष/भा.चि.प.हो./ होम्योपैथी

निदेशक
 सभी राज्य/केन्द्र शासित प्रदेश शासन
 स्वास्थ्य एवं परिवार कल्याण विभाग/
 आयुर्विज्ञान शिक्षा/आयुष/भा.चि.प.हो./ होम्योपैथी

महोदया/महोदय,

मुझे यह कहने का निदेश हुआ है कि केन्द्रीय परिषद् की कार्यकारिणी समिति की दिनांक 10.02.2016 की बैठक में निर्णय लिया कि सभी राज्य/स.शा.प्र. शासनों को एक परिपत्र जारी किया जाए कि होम्योपैथिक चिकित्सक जो होम्योपैथी में एक मान्य आयुर्विज्ञान अर्हता रखते हैं और राज्य/केन्द्रीय परिषद् से पंजीकृत हैं, को होम्योपैथी केन्द्रीय परिषद् अधिनियम, 1973 की धारा 15(2) एवं होम्योपैथिक चिकित्सा व्यवसायी (वृत्तिक आचरण, शिष्टाचार और नैतिकता संहिता) विनियम, 1982 (2014 तक संशोधित) में प्रावधित वे सभी प्रमाण पत्र चिकित्सोप व योग्य सहित जारी कर सकते हैं।

आपसे यह आग्रह किया जाता है कि कृपया उक्त जानकारी राज्य/स.शा. क्षेत्र के संबंधित लोगों के ध्यान में ला दें।

भवदीय
 (डॉ० आशिष दत्ता)
 सहायक सचिव (तकनीकी)

4.3.16

We can use supplementation and routine diagnostic methods-

With reference to your letter dated 19 & 20.07.2012, I am directed to say that the Education Committee of Central Council in its meeting held on 20.11.96 had clarified as follows:-

“होमियोपैथी केन्द्रीय परिषद् अधिनियम, 1973 के धाराओं के अन्तर्गत पंजीकृत होम्योपैथिक चिकित्सकों को होम्योपैथी के द्वारा ही चिकित्सा करनी चाहिए एवं आवश्यकता अनुसार रोगियों के खान पान व अन्य तरीके जैसे कि Glucose/Saline/Oxygen/- चमक का देना, श्री उनके द्वारा उपजाए जा सकते हैं अगर सम्बन्धित चिकित्सक ने उपरोक्त की अपनी शिक्षा के दौरान ट्रेनिंग ली हो।”

Please note that Clinical Establishment Act is applicable on all Clinics & Hospitals including Homoeopathy.

भवदीय,

(डॉ० आशिष दत्ता)
 सहायक सचिव (तकनीकी)
 21/8/12

We can conduct normal deliveries-

Extract of Regulation 24 of Homoeopathic Practitioners (Professional Conduct, Etiquette & Code of Ethics) Regulation, 1982 (as amended as per Notification Published in the Official Gazette dated 12-7-2014)

24. Engagement for an Obstetrics Case

(1) If a practitioner of Homoeopathy is engaged to attend to a woman during her confinement, he shall do so. Refusal to do so on an excuse of any other engagement shall not be considered ethical except when he is already engaged on a similar or other serious case.

(2) When a practitioner of Homoeopathy who has been engaged to attend on an obstetrics case is absent and another is sent for and delivery is accomplished, the acting practitioner of Homoeopathy shall be entitled to his professional fees; provided he shall secure the patient's consent to withdraw on the arrival of the practitioner of Homoeopathy already engaged.

— X — X —

सुश्री
 06-3-17

(डॉ० आशिष दत्ता)
 सहायक सचिव (तकनीकी)
 P.I.O., C.C.H.

We can do MTP in our hospital as per the provision of MTP Act only by a certified MBBS doctor or a qualified Gynecologist

- 4/ No termination of pregnancy shall be made in accordance with the Act at any place other than -
- a hospital established or maintained by Government, or
 - a place for the time being approved for the purpose of this Act by Government.
5. (1) The provisions of Section 4, and so much of the provisions of sub-section (2) of Section 3 as relate to the length of the pregnancy and the opinion of not less than two registered medical practitioners, shall not apply to the termination of a pregnancy by a registered medical practitioner in a case where he 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, the termination of pregnancy by a person who is not a registered medical practitioner shall be an offence punishable under that Code, and that Code shall, to this extent, stand modified.

Explanation :

For the purposes of this section, so much of provisions of clause (d) of Section 2 as relate to the possession, by a registered medical practitioner, of experience or training in gynaecology and obstetrics shall not apply.

3/1/21
06-3-17

No bond for BMW registration-



मुख्यालय
उत्तराखण्ड प्रदूषण नियंत्रण बोर्ड
"गौरा देवी पर्यावरण भवन"

46बी, आई.टी. पार्क, सहस्त्रधारा रोड़, देहरादून-248001

पत्रांक-यूकेपीसीबी/एच.ओ./बी0एम0डब्लू0-142/1354

दिनांक 18.01.2021

कार्यालय आदेश

एतद्वारा अध्यक्ष, राज्य बोर्ड से प्राप्त अनुमोदन के क्रम में हॉम्योपैथिक (नॉन-बेडड) निजी एवं सरकारी डिस्पेंसरीज/चिकित्सालयों को राज्य बोर्ड से Bio-medical Waste management Rules, 2016 के अन्तर्गत one time authoriazation प्राप्त करना आवश्यक है, जिस हेतु सहमति/प्राधिकार के लिये आवेदन करने की दशा में दिनांक 31.03.21 तक के सहमति/प्राधिकार शुल्क में शत-प्रतिशत शिथिलता प्रदान की गयी है। इसके अन्तर्गत हॉम्योपैथिक, डिस्पेंसरीज/चिकित्सालयों (नॉन-बेडड) को Common Bio Medical Waste Treatment Facility के साथ अनुबन्ध की आवश्यकता नहीं होगी।

(एस0पी0 सुबुद्धि) आई0एफ0एस0
सदस्य सचिव

प्रतिलिपि:- निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित:-

1. अध्यक्ष, उत्तराखण्ड प्रदूषण नियंत्रण बोर्ड, देहरादून को सूचनार्थ प्रेषित।
2. महानिदेशक, चिकित्सा स्वास्थ्य एवं परिवार कल्याण निदेशालय, डांडा लौखण्ड, सहस्त्रधारा रोड़, देहरादून।
3. नियंत्रक, होम्योपैथिक मैडिसिन बोर्ड, देहरादून को उनके पत्र दिनांक 11.01.2021 के क्रम में सूचनार्थ एवं आशय के साथ प्रेषित कि राज्य के समस्त हॉम्योपैथिक (नॉन-बेडड), डिस्पेंसरीज/चिकित्सालयों के प्रारूप-1 अनुरूप duly filled आवेदन पत्र सामूहिक रूप से बोर्ड मुख्यालय में दिनांक 31.01.2021 तक उपलब्ध कराने का कष्ट करें।
4. मुख्य पर्यावरण अधिकारी, (गढ़वाल/कुमाऊ), उत्तराखण्ड प्रदूषण नियंत्रण बोर्ड, देहरादून।
5. समस्त पर्यावरण अभियन्ता/सहा0 पर्यावरण अभियन्ता, उत्तराखण्ड प्रदूषण नियंत्रण बोर्ड, बोर्ड मुख्यालय, देहरादून।
6. क्षेत्रीय अधिकारी(प्र0), उत्तराखण्ड प्रदूषण नियंत्रण बोर्ड, बोर्ड मुख्यालय, देहरादून/काशीपुर/हल्द्वानी/रूड़की।
7. गार्ड फाईल।


सदस्य सचिव

Insurance coverage by various TPAs-

80

THE GAZETTE OF INDIA : EXTRAORDINARY

[PART III—SEC. 4]

ii. Insurers shall maintain a list of, and the fees chargeable by, institutions where such pre-insurance medical examination may be conducted, the reports from which will be accepted by them. Such list shall be furnished to the prospective policyholder at the time of pre-insurance medical examination.

i. Cumulative bonus

- i. Insurers may offer cumulative bonuses on indemnity based health insurance policies, which shall be stated explicitly in the prospectus and the policy document.
- ii. If a claim is made in any particular year, the cumulative bonus accrued may be reduced at the same rate at which it is accrued;
- iii. Cumulative bonus shall not be allowed on benefit based policies.

j. Option to migrate to suitable health insurance policy

- i. Insurers offering health covers specific to age groups such as maternity covers, children under family floater policies, students etc, shall offer an option to migrate to a suitable health insurance policy at the end of the specified exit age or at the renewal of the policy by providing suitable credits for all the previous policy years, provided the policy has been maintained without a break.

k. All health insurance policies shall allow the portability of any policy in accordance with Schedule: I

l. AYUSH Coverage:

- i. Insurers may provide coverage to non-allopathic treatments provided the treatment has been undergone in a government hospital or in any institute recognized by government and/or accredited by Quality Council of India/National Accreditation Board on Health or any other suitable institutions.
- ii. For benefit based products, (i) shall not be applicable.

m. Disclosures/Declarations:

- i. Subject to the provisions of these regulations, prospectus of health insurance policy shall mandatorily contain all the information regarding:
 - 1. disclosures about the terms of its renewal.
 - 2. coverage and premium applicable as per the age progression
 - 3. disclosure of the maximum age up to when the renewal would be available, if product is offered to specified age groups and the option available to migrate to other policies in all such cases.
 - 4. any changes in the scope of the cover after certain duration of the policy or after a certain age- such as including but not limited to coverage for pre-existing diseases;
 - 5. whether renewal premium would be guaranteed or subject to revision;
 - 6. details of specific circumstances, if any, where premium could be loaded (or discount withdrawn) by the insurer and also to the extent to which it could be done;
 - 7. procedure and terms for enhancing the sum insured or scope of cover , if any;
 - 8. all the exclusions, cancellation conditions and
 - 9. other aspects in accordance with the extant regulations, guidelines, circulars etc on advertisements and disclosure requirements.

Limitations of Homoeopaths
 We cannot do Radiological or pathological investigations-

T-170 received from Sh. Rajneesh Kumar Sharma.

Information	Reply
Can a BHMS doctor perform ultrasound scanning and pathology test, along with reporting, like an MBBS.	No record found available in this Council, hence transferred to Medical Council of India.

[Handwritten Signature]
 23.6.17

[Handwritten Signature]
 23/6/17

“DB”

अनिल रानी मलिक
 Anil Rani Malik
 कार्यालय अधीक्षक
 Office Supdt.
 केन्द्रीय होम्योपैथी परिषद्
 Central Council of Homoeopathy
 जनकपुरी, नई दिल्ली-58
 Janakpuri, New Delhi-58

Some Bonds for Homoeopaths

[* 12A. Physician to obey law and regulation:-

A physician, -

- (a) shall not act contrary to the laws regulating the practice of Homoeopathy;
- (b) shall not assist others to disobey the law regulating the practice of Homoeopathy;
- (c) shall act in aid of the enforcement of sanitary laws and regulations in the interest of public health;
- (d) shall comply with the provisions of the Drugs and Cosmetics Act, 1940 (23 of 1940), Drugs and Cosmetics Rules, 1945; the Pharmacy Act, 1948 (8 of 1948); the Narcotic Drugs and Psychotropic Substances Act 1985 (61 of 1985); the Medical Termination of Pregnancy Act, 1971 (34 of 1971), the Transplantation of Human Organ Act, 1994 (42 of 1994); the Persons with Disabilities (Equal Opportunity and Full Participation) Act, 1995 (1 of 1996) and Biomedical Waste (Management and Handling) Rules, 1998 and such other related Acts, Rules, of the Central Government or the State Government or the Local Administrative bodies relating to protection and promotion of public health.]

X — X — X

Doney
01-02-18

Some common and safer diagnostic tools

for Homoeopaths

- Audiometer
- Autorefractometer
- BMI
- Colposcope
- Dermo-scope
- Electrocardiograph (ECG)
- Electroencephalograph (EEG)
- Electromyograph (EMG)
- Fetal Doppler
- Glucometer
- Goniometer
- Knee Hammer
- Laryngoscope
- Nerve conduction velocity test (NCV)
- Non-invasive blood pressure (NIBP)
- Ophthalmoscope
- Otoscope
- Phonocardiograph
- Pulse-oximeter
- Rhino-scope
- Sphygmomanometer (BP)

- Spirometer (PFT)
- Stethoscope
- Thermometer
- Tuning Fork
- Uroflow-meter

Conclusion

The duration of study and syllabi by various Government councils are the same for all the bachelor level medical courses recognized by the government of India, except only one subject, i.e. the pharmacology. In each system of medicine, the concerned pharmacology is taught. In allopathy, it is called-Pharmacology, in Homoeopathy-Homoeopathic Pharmacy and Materia medica, in Ayurveda- Dravyaguna Vigyan and Nighantu, in Unani- Moalijat and so on.

There is no difference in study regarding basic subjects like anatomy, physiology, biochemistry, pathology, forensic medicine and jurisprudence, social and preventive medicine, surgery, gynecology and obstetrics, practice of medicine, etc. except their own pharmacology as per respective streams.

In reading MRI, CT Scan, PET Scan, Roentgenography, Ultrasonography, Echocardiography, TMT, pathology or many other diagnosing modalities, there is no role of different types of pharmacologies. I wonder why are so much restrictions to Ayush system of medicine in utilizing many of them. Why do PCPNDT, AERB etc. have different moods with Ayush wing. Why is registered medical practitioner's definition always been restricted to the schedules of MCI Act only? Other medical councils register their candidates in their respected schedules certifying that he is now a registered medical practitioner. Then why does there is such a non-uniformity.

While there is uniformity in all the syllabi and duration of study in all the medical streams, the rules for them should be uniform.

Each medical fraternity has its advantages and limitations. There must be an integrated approach to cure a sick individual, with the most suitable stream of treatment for that particular case at that time. Inter-stream referrals and time to time consultations may be done to cure the suffering humanity at lowest possible cost, in shortest possible time, the most harmless and most reliable way so that the diminished or almost lost image of a so called doctor may be resumed to the ever accepted appraisal- the 'Doctor is the God'.

The recent curriculum of MBBS is appreciable. It has also added a foundation course which includes the study of basics Ayush system of medicine for an integrated approach. It is scheduled as below-

Study of Alternate systems of Medicine with use of LCD projector, Flip charts, Marker pens-lecture/ interactive discussion to address the following questions-

- What is Alternative Medicine?
- What is Complementary Medicine?
- What is Evidence Based Medicine?
- What is the difference between Modern Medicine and Complementary and Alternative Medicine (CAM)?
- What is the practice impact?

Hope the legal aspects will be distributed upon various systems of medicine homogeneously and the only goal of every so called doctor will be to cure the patient in most rapid, gentle, permanent and in easiest way at lowest cost possible.



Medicolegal News

Compiled by : Dr. Santosh Pande

Dentist Fractures Jaw Bone During Wisdom Tooth Surgery, Slapped Rs 40,000 For Medical Negligence

Jalandhar: Holding him guilty of gross medical negligence, the District Consumer Disputes Redressal Commission has directed a local dental clinic and a dentist to pay an amount of Rs 40,000 as compensation to a patient, whose jaw bone reportedly got fractured during surgery for treatment of wisdom tooth pain.

The case relates to patient who lodged a complaint against Clove Dental Clinic in Jalandhar owned by a maxillofacial surgeon.

In her complaint, she alleged that she developed severe pain in her wisdom tooth and hence took medical advice from the doctor, who asked her to get an X-ray from the hospital on August 30, 2018. The doctor suggested surgery for which she deposited Rs 3,000 in the hospital.

On August 31, 2018, the surgeon conducted surgery, extracting the wisdom tooth of the complainant. She was told that swelling and healing will take 72 hours and stitches of the wound be removed after 15 days and the same was accordingly done from the hospital.

However, the patient's pain did not subside; instead swelling increased and the mouth of the complainant became stiff. She alleged that it was hard to open and chewing became painful for her. In addition, the lower left side of the face particularly the chin, lips, tongue became very painful and numb and the life of the complainant became tough after the surgery.

The patient said the doctor told her that since all organs were re-modeling, these will automatically get healed after approximately 15 days. The patient said when the pain became unbearable for her, she took opinions from other medical experts and surgeons of repute. She even got her scans done which showed that the lower

bone of the jaw on the left side was broken while doing the surgery by the doctor. She took opinion of more doctors, who told her that not only did the bone get fractured, but the nerve of the jaw also got damaged and injured and the entire skull had developed severe pain. A scan was done again, which confirmed the nerve injury which further developed pain in the left ear. After that, she consulted an ENT specialist who opined that there was no problem in the left ear but due to injury to the nerve, the complainant had got severe pain.

She added that in all she has spent about Rs 1,00,000 in multiple medical opinions and scanning.

As her problem worsened, the patient took the opinion of multiple doctors. A doctor in Chandigarh diagnosed her with paraesthesia due to injury to inferior alveolar nerve and multiple non-vital teeth causing her unbearable pain. She was also advised psychological treatment. Specialists also opined that there is a good chance that the injury and hence the agony may never heal.

To establish her case against the dentist, she also attached the report from an oral radiologist which stated, "*tooth missing, oblique osteolytic area is seen with ill-defined borders w.r.t 38 region, osteolytic area is seen extending till the angle of mandible with break in continuity of both lingual and buccal cortical plates. Bony segment appears to be displaced medially and superiorly.*

Impression:- Findings are suggestive of fracture involving the left angle of mandible with displaced segments."

Referring to her ordeal after the botched up surgery, she said that her life suffered as she lost her job because of her inability to go to office. She also blamed that her family which included her two minor children aged about 14 years and 8 years, also suffered because of her condition after the surgery. She sought compensation of Rs 18 lakh on account of future loss of amenities of life, loss of happiness,

pain, agony, suffering and the expenses which she has to bear throughout life.

The court noted that the clinic and the hospitals did not produce any evidence in support of their case and they were proceeded ex parte by this Commission as they did not appear before this Commission despite service.

The Commission noted the opinion given by various doctors in the case and noted that all the said doctors had given opinion in favour of the complainant that OPs are negligent and deficient in providing services to her.

Keeping in view the facts and circumstances of the case, The Commission held the doctor negligent and deficient in providing services to her. The Commission presided by Kuljit Singh and member Jyotsna observed: "When reasonable care, expected of the medical profession is not rendered, the same amounts to negligence. If the doctor fails to perform his duty during treatment, then he is liable for medical negligence."

The Commission referred to judgement of Apex court in V. Krishnakumar versus State of TN reported in 2016 (2) Apex court Judgements 762(S.C.) wherein it has been held that, "Hospital is vicariously liable for the acts of its doctors".

The hospital and the dentist were then directed to pay Rs 40,000 as compensation for mental harassment and physical harassment faced by the complainant. The complainant is also entitled to Rs5,000 as the cost of litigation. The commission also ordered that Rs5,000 be deposited in the Legal Aid Fund of the office.

Ref.: <https://medicaldialogues.in/news/health/medico-legal/dentist-fractures-jaw-bone-during-wisdom-tooth-surgery-slapped-rs-40000-for-medical-negli...> Accessed on 03/04/2021

Patient Suffers Amputation of Both Legs Leading To Permanent Disability: Consumer Forum Directs Rs 10 Lakh Compensation

New Delhi: Opining that a medical practitioner is expected to take due care and caution while giving treatment as per the established medical jurisprudence avoiding delay, the Delhi State Consumer Disputes Redressal Commission has

recently awarded a patient with Rs 10 lakh compensation in a case of medical negligence.

The president of the Commission Smt. Justice Sangita Dhingra Sehgal and Sh. Anil Srivastava (member), in the judgment, dated 26.02.2021, mentioned, "Awarding of cost may serve the purpose of bringing about a qualitative change in the attitude of the hospitals for providing service to human beings as human beings. Human touch is necessary; that is their code of conduct; that is their duty and that is what is required to be implemented more so when personal liberty is guaranteed under Article 21 of the Constitution."

The case concerns a patient who was a former petty officer, who due to an accident on 16.01.2011 approached the emergency ward of the Base Hospital in Delhi for treatment. He submitted before the court that the hospital denied treating him due to the lack of a specialist doctor. The hospital had allegedly provided the patient with first-aid treatment only after repeated requests by the family of the patient.

Later the patient had been referred to another hospital and the first hospital allegedly refused to even provide the patient with an ambulance. The hospital had pointed out that since the patient was a former serviceman, such facilities couldn't be provided to him, the family alleged.

The second hospital after admitting the patient confirmed the requirement of amputation in both the legs and informed the patient's family about the amputation being maximum by one or one and a half inches for artificial limbs.

However, the complainant patient alleged before the Commission that although the necessary two units of blood had been arranged by the patient's family, the doctors belonging to the second hospital proved negligent by not giving treatment in time. In fact, the treatment only started on the next day i.e. 17.01.2011.

Following surgery on the same day, the family of the patient had come to know that doctor had actually amputated the complainant's left leg with around 8 inches and right leg by 11 inches below the knee joint, which was totally contrary to

what was informed earlier and the same could have been avoided by providing timely treatment to the complainant.

This resulted in the amputation of the legs of the complainant by more length than it was assured by the doctors earlier. Further, the complainant patient had alleged before the Commission that even though he had been suffering from high fever post-operation, the second hospital discharged the patient on 20.01.2011. This led to inconvenience and unnecessary expenditure on the part of the patient. When he visited the second hospital again, he had been asked to get fresh approval from ECHS Polyclinic, for any further treatment.

Alleging that this whole act resulted in the amputation and permanent disability of the patient, the complainant submitted before the commission that during the follow-up check-up with some other doctors, the complainant came to know that the operation hadn't been performed following the required protocol. An x-ray report supported this as the fibula was found longer than the Tibia of the left leg. As a result, the complainant had to undergo another surgery on 19.07.2012, which cost around Rs. 5,59,000/- causing financial hardship apart from mental agony.

Thus, the Complainant patient approached the Commission with a complaint under Section 17 of the Consumer Protection Act 1986 and prayed for a compensation of Rs 9,00,000.

On the other hand, the counsel appearing for the treating hospitals contended that the complaint had been hopelessly time-barred. He also contended that the patient had been referred to the second hospital as there had been no treatment available in the first hospital. The second hospital had delayed the operation by one day as the blood sugar level of the patient had been really high. However, the next day, a successful operation had been conducted on the patient.

The treating hospitals had denied all the allegations labelled against them and mentioned that the length of the amputation, as mentioned by the complainant had been completely false and was

only a tactic to create pressure.

Before arriving at any judgment, the Commission had discussed the definition of negligence and for this purpose, it referred to several judgements of Apex Court including Jacob Mathew's case, Bolam versus Friern Hospital Management Committee among others. Mentioning the principles laid down by the Supreme Court the Commission tried to examine whether the doctors had acted as per the standard principles of normal medical parlance.

After examining the facts and arguments of the case, the Commission opined, "What is expected from the medical practitioner is to take due care and caution while giving treatment as per the established medical jurisprudence avoiding delay. In other words, if he has acted in accordance with the practice accepted as proper by a responsible body of medical men skilled in that particular art, no question of deficiency would arise."

The Commission noted that the treating hospitals had been "insensitive to the complainant" and it had been certified by another hospital where the Complainant had visited for further treatment.

The Commission also addressed the contention raised by the counsel for the treating hospitals. As per the argument, it had been stated that "there exists no cause of action as against them is devoid of merit as they have failed to properly evaluate the ailment despite undertaking many tests and doing investigations."

Addressing this contention, the Commission observed, "Their submission that due and proper care was exercised cannot be accepted for their inability to detect the ailment. Timely detection and the treatment could have helped the patient and to the family."

Finally, taking note of several other judgments by the consumer court and Apex Court, the age of the patient, and other necessary and essential factors, the Commission observed, "that it would be just and reasonable to award compensation of Rs. 10 Lakhs (Rupees Ten Lakhs) with interest at the rate of 3.5% from the date when the cause of action arose and negligence was admittedly done till

the realization of the amount, to the complainants for the suffering, mental pain and agony caused."

Giving direction to the treating hospitals to pay the amount within two months of time, the Commission mentioned in its judgment, "Awarding of cost may serve the purpose of bringing about a qualitative change in the attitude of the hospitals for providing service to the human beings as human beings. Human touch is necessary, that is their code of conduct, that is their duty, and that is what is required to be implemented more so when personal liberty is guaranteed under Article 21 of the Constitution."

Ref. : <https://medicaldialogues.in/news/health/medico-legal/patient-suffers-amputation-of-both-legs-leading-to-permanent-disability-consumer-forum-dir...> Accessed on 03/04/2021

Consumer Court Absolves 2 Doctors Of Negligence In Treating Endometriosis Patient

Jalandhar: Finding no medical negligence regarding the treatment provided by the doctors, the District Consumer Disputes Redressal Commission has recently given relief to an Obstetrician & Gynecologist Fertility & IVF Specialist and a Senior Consultant in Gastroenterology Hepatology & Endoscopy, who had been allegedly charged for wrongly treating a patient suffering from endometriosis.

The judgment dated 09.03.2021 by the President of the Commission Kuljit Singh and member Jyotsna, has further mentioned, "Negligence cannot be attributed to a doctor so long as he performs his duties with reasonable skill and competence. It would not be conducive to the efficiency of the medical profession, if no doctor could administer medicine without a halter round his neck."

The case concerns a couple who were having problems conceiving a baby even after two years of their marriage. To be sure about their physical health the couple had decided on a physical check-up in August 2018. It had been alleged on the behalf of the complainant couple that although the wife had infertility, when she visited the hospital of the treating doctor, the doctor had intentionally not mentioned about the problem.

After examining the whole body of the patient, the treating doctor had informed the couple there had been a cyst in the ovary of the patient and the second doctor had assured the couple that after the operation she would be able to conceive.

In pursuance, the patient had been admitted to the hospital of the second doctor on 13.08.2018 and on the next day the treating doctor had operated on the patient for the cysts in the ovary. For this purpose, the complainants had paid Rs 38,000 for the surgery and Rs 1,25,000 for the medicines, as alleged by the complainants.

It had been also alleged on the behalf of the complainants that the patient had been taken into the operation theatre only for 20 minutes and that she had been discharged on 16.08.2018.

After this, Histopathology test of the patient had been conducted on 27.08.2018 and she continued treatment under the treating doctor for the pain suffered by her and the treating doctor had prescribed medicines for that purpose as well.

Finding no relief from the treatment provided by the treating doctor, the couple had decided to double-check and the patient had undergone scanning for that purpose. The scan conducted on 24.12.2018 clearly mentioned that there had been multiple cysts in both the ovaries of the patient along with some other problems.

Shocked that the cysts had been existing even after the operation, the couple had decided to take a second opinion and had consulted another doctor for that purpose. After examining the medical records of the patient and the history of treatment, the doctor had informed the couple that the tablet "Sysron N 10 Mg" prescribed by the treating doctor had been an anti-conceive tablet and due to regular intake of this medicine, she had suffered so much physical damage to her internal body parts and it lead to many other diseases. Alleging that due to the negligent and erroneous medical treatment given by the treating doctor the patient had suffered a lot physical pain, mental agony, and harassment, the complainants had approached the Consumer Court seeking compensation of Rs.1,65,000/- for medical

expenses and Rs.18 lakh for the suffering on the part of the patient.

The doctors accused of medical negligence denied all these allegations and objected by saying that the complaint had been nothing but a misuse of the process of law.

The treating doctor had contended that the prescription slip of the patient had clearly mentioned that she had been suffering from severe pain in her abdomen on account of endometriosis. After examination, the doctors got to know of the cysts in the ovaries of the patient and even informed the need for an operation to remove the same.

It had been denied on the part of the doctors that the complainants had paid an amount of Rs 1,25,000 on the medicines. Denying the allegation that the patient had been inside the operation theatre only for 20 minutes, the doctors had claimed that it took almost 80 minutes for the whole procedure of operation.

Mentioning that the operation had been performed under standard norms, the doctors had further contended that after draining the chocolate cysts the samples of the cysts had been sent for biopsy. It had also been also contended on the behalf of the doctors that Syron N 10 mg had been prescribed for the pain suffered by the patient and it couldn't be an anti conception drug when given as the specified dose and for the duration as prescribed to the patient.

Citing reference from the Textbook of Clinical Gynaecological Endocrinology and Infertility by Leon Speroff, the doctors had further contended that "Recurrent disease and pain after conservative surgical treatment is the rule rather than the exception, symptoms recur in at least 10-20% of treated women per year."

Finally, claiming that the patient had been operated without any complications and post-operative care had been given to the patient as per the standard norms, the doctors had pleaded before the Commission for the dismissal of the complaints.

The complainants, to support their

statement had submitted several documents including a copy of history & examination, copies of prescription slips, copies of bill receipts among others. On the other hand, the doctors had submitted an affidavit of the treating doctor, copies of prescription slip of the doctor, copies of treatment chart, copy of a consent form for treatment and surgical operation, copy of the form for high risk consent, etc.

Sh. Rajat Nanda, the counsel for the doctors had also placed on record various Supreme Court judgments in support of their case including Jacob Mathew vs. the State of Punjab, Martin F. D Souza Vs Mohd. Ishfaq.

After listening to all the arguments and taking note of all the documentary evidence, the Commission noted that from a perusal of the entire medical literature produced on record by the treating doctors, it had been clear that the doctors had treated the patient as per the standard medical norms. In fact, the complainants couldn't produce any such medical record to prove otherwise. The Commission had further noted that the patient herself had given consent for admission, treatment and surgical operation. The High-Risk Consent form signed by the patient clearly proves that the patient had been a high-risk candidate and could suffer from complications.

Citing the Apex Court judgment in " Kusum Sharma and others versus Batra Hospital & Medical Research Centre and others," the Commission had mentioned: "Negligence is the breach of a duty exercised by omission to do something, which a reasonable man, guided by those considerations, which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do. A medical practitioner would be liable only, where his conduct fell below that of the standards of a reasonably competent practitioner in his field. Negligence cannot be attributed to a doctor so long as he performs his duties with reasonable skill and competence. It would not be conducive to the efficiency of the medical profession, if no doctor could administer medicine without a halter round his neck."

“There is nothing on the record that OPs were not qualified doctors or they have not followed the medical protocol, while prescribing the treatment of tuberculosis to life assured. In the absence of expert doctor's report, we are unable to rely upon the bald submissions of complainant in this regard, who is not an expert person in the medical science, attributing medical negligence to OPs.”

Regarding the medicine Sysron N 10 Mg, the Commission had noted that from the perusal of plethora of medical literature on at this point, it had been clear that this medicine had not been wrongly given by the treating doctor to the patient.

“As per *Hucks v Cole*, Lord Denning speaking for the court that a medical practitioner was not to be held liable simply because things went wrong from mischance or misadventure or through an error of judgment in choosing one reasonable course of treatment in preference of another. A medical practitioner would be liable only where his conduct fell below that of the standards of a reasonable competent practitioner in his field, the bench noted.”

Mentioning that the Commission had been unable to rely upon the bald submissions of the complainant, who had not been a medical expert person in the medical science, the Commission dismissed the complaint in its recent judgment and has given relief to the Doctors.

Ref. : <https://medicaldialogues.in/news/health/medico-legal/consumer-court-absolves-2-doctors-of-negligence-in-treating-endometriosis-patient-76004> Accessed on 03/04/2021

Patient Dies After Doctors Leaves Instrument Inside Abdomen During Surgery; Consumer Court Slaps Rs 3.75 Lakh Compensation

Bulandshahr: In a case of medical negligence, the consumer court in Bulandshahr, UP has directed a doctor couple to pay a compensation of Rs 3.75 Lakh for leaving a scissor-type instrument inside the patient's stomach during surgery.

The court observed that due to the scissor-like instrument being inside the body, the patient developed an infection and eventually died.

The case concerns a patient, the complainant's wife, who approached the doctor couple for treatment in year 2012, with complaints of stomach ache. After observing the patient, the doctors suggested that, patient should undergo uterus surgery, and finally, the doctors operated on the patient at their facility in the Mansarovar colony. She was discharged after 6 days.

However, even after her discharge, her condition did not improve and she kept on complaining about abdominal pain. The complainant again sought consultation from the accused doctors however, they referred the patient to a better facility.

Eventually, the patient was taken to St. Stephen's Hospital in Delhi where the doctors ran some tests on the patient and found a piece of a scissor-type instrument inside her abdomen. The doctors there conducted surgery on the patient and removed the instrument from her stomach. Despite the surgery, there was no significant recovery in the patient as she already developed an infection from the instrument. Eventually, the patient passed away on June 18, 2020.

After this, the patient's husband approached the consumer court in Bulandshahr demanding strict action against the doctors and Rs 5 lakh reimbursement for all the expenses which they had to bear during the treatment and for the mental and physical torture which he had to bear due to the untimely death of his wife. He also alleged that the hospital also took Rs 30000 from the complainant for the operation but he was not given a receipt of 20000 rupees.

The CMO of Rajakiya Hospital, Bulandshahr also confirmed that the doctors left a scissor-like instrument inside the patient. The counsel for the doctors denied all the allegations and stated that the complainant had meticulously hatched a conspiracy to defame the doctors. The doctors stated that they had an argument with the complainant during the patient's stay in the hospital and hence, the complainant wanted to teach the doctor a lesson.

The female doctor also had some personal enmity with the CMO of Rajakiya Hospital and

hence, both entered into a conspiracy to lodge a fake case against the doctors in order to defame them, the counsel for the doctor submitted before the bench.

After considering the submission of both the parties, the court found the doctors to be guilty of medical negligence. The commission observed, "The opposition (doctors) has failed to produce any evidence of the conspiracy or of the enmity between the doctors and the CMO in question. Even if we accept that CMO's judgment was distorted due to personal grudge, St. Stephen's Hospital's report clearly shows the existence of a scissor-like instrument inside the patient's stomach."

The court has ordered the doctor couple to reimburse Rs 1.50 lakh with 6% interest within 45 days and the rest of the Rs 2.20 lakh amount with 6% interest later. The court also instructed the couple to pay Rs 5,000 to the complainant as litigation cost. A copy of the order has also been sent to the National Medical Commission so that they can make a decision regarding the registrations of the doctors accordingly.

Ref.: <https://medicaldialogues.in/news/health/medico-legal/patient-dies-after-doctors-leaves-instrument-inside-abdomen-during-surgery-consumer-cour...> Accessed on 03/04/2021

Hospital Accountable For Failure Of Duties By Doctors, Staff: Consumer Forum Directs Rs 20 Lakh Compensation

New Delhi: Opining that hospitals are accountable for the failure of duties on the behalf of their doctors and staff, the National Consumer Disputes Redressal Commission has directed a Kanpur-based medical centre to pay Rs 20 lakh compensation to the patient for the burn injuries suffered by a newborn baby. Moreover, the Commission has also held the grandmother of the newborn accused of contributory negligence in the case.

Commission members Mr Anup K Thakur (Presiding Member) and Dr S. M. Kantikar, in their judgment dated 04.03.2021 mentioned, "The

hospitals are institutions, people expect better and efficient service if the hospital fails to discharge their duties through their doctors being employed on job basis or employed on contract basis, it is the hospital which has to justify."

The case goes back to 22.12.2005, the same day when the complainant's wife went into labour and after consulting the treating doctor gynaecologist, was admitted to the treating hospital for delivery. After the successful delivery a healthy female baby was born and the baby was kept in the labour room.

The complainants alleged before the Commission that at midnight, first, the treating doctor then a paediatrician rushed to the labour room and the duty doctor informed them that the baby was suffering from fever. When the doctors came out of the labour room with the baby wrapped in their arms, they allegedly informed that the baby was suffering from cold, got infected and needed ICU care.

However, after insistence, they showed the baby to the complainant-husband who found a bandage put on the lower portions of both the legs of the baby. It was after inquiry, the complainant came to know that while the doctors and staff were conducting another delivery, they put the newborn near a rod heater for warmth which resulted in the burn injuries of the child.

The mother and the child were kept under treatment at the hospital for two months and the baby's skin grafting of both legs was done using the mother's skin. They were discharged from the hospital on 20.02.2006.

However, the complainants alleged before the Commission that during the follow-up treatment, they came to know about thermal burn injuries to the baby which lost three toes in the left and two toes in the right side because of dry gangrene. The Complainants further submitted that the baby was under regular treatment for several years at Apollo Hospital, New Delhi and underwent several corrective operations & plastic surgery.

Blaming the doctors and the treating hospital for their careless treatment and deficiency in service,

the complainants filed the Consumer Complaint under Section 21 of the Consumer Protection Act, 1986 and prayed compensation to the sum of Rs.1,02,33,000/- along with interest @ 24% p.a for the irreparable loss and injury suffered by them.

Both the treating doctor and the paediatrician denied all these allegations. The treating doctor submitted that she took care of the successful delivery of the complainant wife and after the baby was born left the hospital after preparing a bed head ticket and giving the instructions to the in-charge staff to keep the child under the care of the Pediatrician. As it was winter, the treating doctor further advised the staff nurse to keep the baby properly wrapped. Thus, there was neither negligence nor deficiency in service on her part. She further submitted that kept on visiting mother and baby during a prolonged hospital stay, did not charge professional fees for delivery or visits.

On the other hand, the paediatrician questioned the maintainability of the complaint itself as she was not in the picture and only reached there after the alleged incident. She further submitted that at the time of the alleged incident the child was being looked after by one of the attendants of the complainants i.e. the grandmother of the child.

The hospital denying all the allegations, submitted before the Commission that the treatment is given to the mother and the newborn was without any delay and the attending doctors were alert and diligent throughout. It was also submitted on behalf of the hospital that at the request of the child's grandmother, a warm air blower was kept in the labour room to keep the room warm. According to the staff on duty, the blower was not facing the child and proper care was given to keep the child warm at a distance, thus no negligence could be attributed.

The counsel for the doctors and hospital also submitted before the Commission that when the staff nurse came back from another delivery around midnight she noticed that the grandmother was not in the room and the blower were turned facing

towards the baby. The staff nurse further noticed the baby developed blisters on the lower part of her body (below the waist) and she immediately informed the doctors.

Supporting their contentions, the counsel for the hospital submitted an affidavit of the managing director of the hospital explaining the plan of the labor room, affidavit of the staff nurse, and one CD containing an audio-video recording of the child in question while she was attending her school in 2016.

The counsel for the hospital also relied upon several judgments including *Bolam vs. Friern Hospital Management Committee*, *Director General, Jacob Mathew vs. State of Punjab & Anr.* Among others.

After listening to all the arguments and noting all the pieces of evidence, the Commission noted that the blanket was intact, not burnt, but the newborn baby suffered burn below waist and to both legs. Thus, the Commission opined that it was thermal burn due to dry heat from the hot air blower.

Taking note of the affidavit filed by the staff nurse, the Commission opined that the hospital staff as well as the patient's attendant-grandmother both were responsible for the unfortunate mishap. Further, from the discharge summary, disability certificate, the Commission noted that the child suffered 60% physical impairment and physical disability of 28% (i.e. child lost her 2 & 3 toes on right foot and 1, 2 & 3 toes on left foot; $10+5+4+5+4=28\%$). "Thus, the child suffered the impairments and disabilities which have been assumed to be contributing factors to a decline in health and function and to the loss of independence," observed the Commission.

Although the Commission acknowledged the importance of granting compensation to the parents of medical negligence due to their acute mental agony and the lifelong care and attention necessary for the child, the Commission further failed to find any negligence on the part of the treating doctor and the pediatrician.

However, the Commission didn't give relief to the hospital for its liability and it mentioned in the

judgment, "It is known that living with a disabled child can have profound effects on the entire family—parents, siblings, and other family members. Far-reaching effects associated with raising a disabled child are time and financial costs, physical and emotional demands, healthcare expense and logistical complexities (transport to and from school). Such child faces various psychological challenges including experience of feeling inferior, frustrated, sad and angry because of rejection by other children, neighbours and/or by other community members. For parents, having a disabled child may increase stress, take a toll on mental and physical health, make it difficult to find appropriate and affordable child care. It may be associated with guilt, blame or reduced self-esteem."

Thus, the Commission opined that the hospital must not only compensate the child "for the physical pain caused by burn which will continue to cause, but also any emotional pain and disfigurement the victim has suffered and will suffer in the future. In addition the child being embarrassed, depressed, or experiencing any of the other emotional reactions likely caused by a disfigurement."

However, the Commission also noted that the child was in the custody of the grandmother, who failed in her duty of care. Opining that it was the grandmother who put the blower facing the baby, the Commission accused her of contributory negligence in the case. "In the instant case, we do not find it was a bonafide mistake which deserves pardon. It was not error of judgment also, but it was the failure of duty of care from the hospital staff as well as the patient's attendant (grandmother)," observed the Commission.

Although the Commission decided on a lump sum compensation of Rs 40 lakh, mentioning the contributory negligence it held the hospital accountable for only 50% of it, i.e. Rs 20 lakh. The Commission directed the hospital to pay the amount within six weeks, failing which the amount would carry interest at the rate of 9% p.a. till its realization. It also directed the parents to keep the

amount in fixed deposit in any nationalized bank till the child attains majority, till then they may draw periodic interest for the welfare of the child. Further, the hospital has been directed to pay Rs 1 lakh towards cost of litigation.

Ref.: <https://medicaldialogues.in/news/health/medico-legal/hospital-accountable-for-failure-of-duties-by-doctors-staff-consumer-forum-directs-rs-20-lakh...> Accessed on 03/04/2021

No Need Of Dialysis: Consumer Court Grants Relief To Hospital, Its Three Doctors

Lucknow: Setting aside the order of District Forum, the State Consumer Disputes Redressal Commission of Uttar Pradesh has given relief to Bareilly-based hospital and its doctors including a physician, radiologist and pathologist while holding no deficiency in service on their part in tending to a patient.

The patient was admitted to the hospital with complaints of constant vomiting due to which she had suffered from dehydration. The father of the patient alleged that the hospital and doctors did not provide adequate treatment and put her on dialysis when needed.

The judgment by the State Commission bench of Sri Rajendra Singh, (Presiding Member) and Sri Sushil Kumar (Member) comes after the Managing Director of the treating Hospital along with treating doctors (Physician, Radiologist, and Pathologist) appealed before the Commission on the ground that the impugned judgment and order dated 01.02.2008 by the District Commission had been passed in an illegal and arbitrary manner, against the provision of law and therefore the judgment should be set aside in the interest of justice.

The Case goes back to the year 2006 when the complainant, around 5 pm in the evening that day, took his 13-year-old daughter to the Bareilly-based Hospital with complaints of vomiting. She was given treatment at the Hospital for two days and when the vomiting hadn't stopped the Hospital authorities advised her father to do an ultrasound and blood test.

Later, the tests were conducted and after examining the report, the doctor of the hospital

allegedly said that the her liver had become 80% infected, the complainant alleged.

The complainant further stated before the commission that following this, the girl was taken to the emergency ward for five hours. He had been allegedly told by the Hospital authorities that as per report grave irregularities were found and the proportion of blood urea and creatinine should not be so much and on such count of blood urea the person should have gone into a coma.

The father of the patient further complained before the Commission that the Hospital authorities had intentionally and in order to recover more money from him had admitted the patient first in the general ward and then in the emergency ward, and again in the general ward. He further alleged that this had shown malafide intention on the part of the Hospital authorities.

Following this, a few days later, the treating doctor discharged the patient saying that the condition of the patient was critical. The complainant then took his daughter to another hospital in Rajendra Nagar, where another doctor treated the patient. The father of the patient alleged that the second doctor was shocked to see the reports of the patient. Claiming that the reports of the first hospital were wrong, he further advised the complainant to perform the blood examination again.

The complainant further mentioned before the Forum that the second doctor examined the patient in the OPD and prescribed some medicines after this. Gradually, the daughter of the complainant recovered. He further complained that when he showed the report of the second hospital to the treating doctor of the first hospital, he reprimanded him and turned him out.

Therefore the Complainant approached the Bareilly District Forum for getting the relief in terms of money regarding the treatment of his daughter in the hospital.

The Hospital authorities along with the doctors denied all such allegations and denied informing the Complainant that his daughter's liver was 80% damaged. The hospital authorities

claimed of informing the father of the patient that she would recover after proper treatment.

Following this, the District Forum had given several dates on which the Hospital authorities and their counsel had failed to be present. After hearing the argument, the District Forum had passed the judgment. Not being informed about the order by the district Forum, the Hospital authorities had approached the Court for perusing the file but the file could not be traced. They got the notice in the execution case and in response, they filed the appeal before the State Commission.

The ground for the appeal by the Hospital and doctors (including managing director, doctor, pathologist, and radiologist) had been that they were not given an opportunity for defence which was against the principle of natural justice and the appeal would be liable to be accepted. The hospital and doctors further claimed in their appeal before the State Commission that the District Forum did not evaluate the evidence properly and the findings of deficiency by the Hospital were wrong.

Contending that the District Forum had erred in holding the correct meaning of the report, the Hospital party stated before the State Commission that as per the report of ultrasound and radiologist, both the kidneys had been normal in size and shape. The report further mentioned that the Pelvicalcycal system appeared compact which meant that there had been deposition of amal which had been causing obstruction in the purification of blood.

The counsel for the Hospital authorities further contended that the patient was vomiting which showed that the kidney hadn't been purifying the blood properly. He further argued that the patient had been treated as per the medical norms after receiving the report of pathology. Due to constant vomiting, the patient had suffered from dehydration and therefore she was shifted to the emergency ward. Just after the vomiting stopped she had again been transferred to the general ward. She became fit within two days and she was discharged on 14.08.2006.

The counsel for the hospital authorities

further contended that as she had been fit there had been no deposition of amal when examined in the second hospital. Further stating that the allegation of extorting money had been baseless, the counsel for the Hospital authorities stated that the complainant had only spent Rs 4000 for the treatment of his daughter.

While directing the allegation of the complainant that on the basis of the pathology report she should have been put on dialysis the counsel for the hospital stated that Dialysis was a costly affair and the complainant was a poor person. Thus, the patient hadn't been put on dialysis and she became fit by gradual treatment.

The Commission had taken note of the fact that in the first hospital the total bill of treatment is was Rs 4000 only. Meanwhile, the counsel for the complainant also mentioned before the Commission that the complainant's daughter was perfectly healthy at present and she had been discharged from the first hospital when she had become fit.

After taking note of all these facts, the Commission had opined "Now it is hypothetical argument that she should have been put on dialysis. If it is so, why***Hospital (second hospital) did not put her on dialysis? The simple reason is that she was perfectly okay and this is the reason that KK Hospital did not put her on dialysis. There is nothing on record to show the bench that she suffered any after treatment effects so it can't be imagined that she was not given proper treatment by *** Hospital (first hospital)."

The Commission had further noted, "No hospital or doctor will do such negligence which will lower down his or his hospital's reputation. Everybody knows that there is rivalry amongst private nursing homes and every nursing home shows that it is the best."

Finding no deficiency on the part of the treating hospital, and no report that could show that the kidneys had been 80% damaged, the Commission observed, "She was given treatment and admitted to the emergency ward for the

treatment of dehydration and it is clear from the respondent's version that she was vomiting which may cause dehydration. There is nothing abnormal in the treatment."

Taking note of all this, the State Commission had set aside the judgment of the District Forum Bareilly and had stated that "there is no deficiency on the part of the hospital."

Ref.: <https://medicaldialogues.in/news/health/medico-legal/no-need-of-dialysis-consumer-court-grants-relief-to-hospital-its-three-doctors-76342>
Accessed on 12/04/2021

Consumer Forum Directs Hospital To Pay Compensation For Charging ICU Patient For Oxygen Against NABH Guidelines

West Bengal: Holding that the hospital charged for equipment for oxygen against the medical guidelines, the District Consumer Dispute Redressal Commission of Bengal has directed the private hospital to pay over Rs 22,000 as compensation to the patient.

The case concerns a patient, whose son, the petitioner claimed that the hospital had charged for inflated medical bills by adopting unfair trade practice. She alleged that the hospital has overcharged them by including the cost of oxygen in the bill which is illegal as according to NABH guidelines, the ICU facility includes the supply of oxygen itself.

In the petition, the complainant submitted that her mother was hospitalized in the Hospital for the period from 25.03.2016 to 06.10.2016 for six times. During this period of her treatment, the Hospital charged for Oxygen and equipment costs amounting to Rs.10,807/- which is illegal. As per NABH guidelines the infrastructure of ICU includes the supply of oxygen and as such question of billing separately for oxygen does not arise.

The counsel for the complainant alleged that the patient was subjected to pay an inflated medical bill by adopting unfair trade practices. A complaint was filed under Section 12 of Consumer Protection Act, 1986 against the Hospital alleging deficiency in service on the part of the OP. The petitioner sought

direction for the hospital to pay compensation of Rs.1,20,000/- towards refund of excess amount of Rs.10,860/- and damages for unfair trade practice.

In response, the counsel for the hospital contended the submission stating that the Pricing' of ICU charges cannot be adjudicated under the provision of the Consumer Protection Act. The hospital said that treats its patient following the guidelines issued under clinical establishment. The oxygen equipment charges etc. shown separately in the bill had obviously total of all items together which amounts to ICCU charges and so the same is not illegal. Thus, the hospital prayed for dismissal of the case. During the course of the trial, the Complainant, by filing a petition, submitted to treat the Complaint as evidence or affidavit-in-chief which was considered and allowed.

After considering the submission of both the parties, the commission, on the question of whether the Complainant is a consumer and the Complaint is maintainable in its present form, stated, "It is evident that the dispute is relating to medical service provided by the OP (hospital) and thereby charging the medical fee illegally during the period of her mother's treatment. So, the dispute is not of 'pricing' only as contended by the OP but of illegally charging for the medical service provided to the mother of the Complainant. Thus Complainant being a 'Consumer' under the Provision of Consumer Protection Act, this point is answered in affirmative."

As far as the question of unfair trade practice on part of the hospital is concerned, the commission took note of the fact that the purpose of NABH was to design and monitor the health care standards for hospitals and health care and its guidelines should be maintained."The Complainant has filed the said guidelines but OP has not filed any document to substantiate that it was well within medical guidelines to charge for equipment for oxygen", stated the commission.

Finally, the Commission observed that there were no documents submitted by the OP suggesting that it charged for equipment for oxygen as per

medical guidelines and ordered that, In the absence of any document by the OP that it charged for equipment for oxygen as per medical guidelines, Complainant is entitled to return of the sum of Rs.10,860/- along with compensation for mental agony and harassment. An amount of Rs.12,000/- as compensation and litigation cost of Rs.5,000/- will be justified. But as the Complainant has been provided the legal aid, OP shall have to deposit Rs.5,000/- with the legal aid bank account of this commission.

Ref.: <https://medicaldialogues.in/news/health/medico-legal/consumer-forum-directs-hospital-to-pay-compensation-for-charging-icu-patient-for-oxygen-a...> Accessed on 12/04/2021

Newborn Delivered With Down Syndrome: Consumer Forum Exonerates Assisted Reproductive Technique Specialist

New Delhi: Opining that the treating doctor tried her best to attempt the diagnosis of Down's syndrome, the National Consumer Disputes Redressal Commission has recently given relief to the medical director attached to a unit of Madras Medical Mission. The doctor was brought before the Commission after a couple charged her for not conducting genetic counselling which led to their baby being born with Down's syndrome.

The President of the Commission Justice R.K. Agrawal and member Dr. S.M. Kantikar opined in the judgment dated 01.04.2021 that from the perusal of the medical records it would be clear that "counselling of the couple was done and advised for the invasive tests for prenatal diagnosis of Down's syndrome."

Giving the doctor relief the Commission noted in the Judgement, "She had a previous missed abortion and after genetic counselling, she did not opt for the invasive investigations to avoid miscarriage or losing the existing pregnancy."

The case concerned a married couple who failed to conceive for about 15 years. Thus, after many failed attempts at treatment, the couple approached the treating doctor, a specialist in Assisted Reproductive Technique, at the Madras Medical Mission, Chennai.

At first, the doctor suggested In-Vitro Fertilization treatment but when the procedure failed twice for the couple, the doctor advised trying for Intra-Uterine Insemination (IUI). In the year 2001, during the 1st cycle of IUI, the patient conceived but unfortunately, it resulted in missed abortion. In April 2002, during the 2nd IUI cycle, the patient conceived again and it was twin gestation pregnancy, confirmed by Ultra-Sonography (USG). However, at the 5th week of pregnancy, one embryo got destroyed internally – known as 'the vanishing twin syndrome'. The surviving embryo was monitored as a singleton pregnancy. However, when the baby was born to the couple, she was diagnosed with Down's syndrome.

Submitting that the child born with Down's syndrome carries various risks and a wide range of medical problems, and the medical cost in bringing up the child with Down syndrome would be huge, the couple approached the Commission and filed a Consumer Complaint praying for compensation of Rs.2.5 Crores from the treating doctor and the hospital.

The couple alleged that although the doctor performed Nuchal Translucency (NT) to rule out the possibility of Down's syndrome, NT scan was not a diagnostic test for Down's syndrome and being super-specialty hospital, the doctors did not follow the standard procedures to manage such high-risk pregnancy.

It was further alleged by the couple that the treating doctor failed to provide genetic counselling to the couple as it was elderly pregnancy with previous history of missed abortion. Certain diagnostic tests like Amniocentesis or Cordocentesis for detection of Down's syndrome were not advised. They further contended that although the USGs were done by the Sonologist, the doctor being the Medical Director would be responsible in her personal capacity for the negligence.

The Counsel for the Complainants further submitted that the doctor didn't inquire about the past family history wherein the first cousin of the

patient had a 15 years daughter with Down syndrome.

On the other hand, denying all these allegations the doctor submitted before the Commission that after the couple conceived she had advised genetic screening/ invasive techniques (CVS, amniocentesis and Cordocentesis) to confirm karyotyping. She further informed the couple that there were 1 in 100 chances of Down's syndrome and in the event of invasive investigation/ procedures, the chance of losing the pregnancy was 1 in 100.

She further informed the Commission that as the final call was of the couple, they were happy with the long-awaited pregnancy after 15 years and they decided to continue the pregnancy without invasive procedures. This had been written on the medical prescription by the doctor as 'decided to leave, things all alone'.

The doctor further submitted that Nuchal Translucency (NT) scan was done at 11 weeks gestation, it was 1.4mm wherein the cut-off level of 2.5 mm for further evaluation. The option for Triple test was there but it was not the correct screening because the patient was conceived after ART which involved use of gonadotropins. During antenatal period the doctor also performed detailed anomaly fetal scan twice and found no obvious anomalies. The counsel for the doctor further submitted that the couple denied undergoing Triple Test.

After listening to all the contentions of both the parties, the Commission further looked at the Medical Record which showed that the patient signed, "Patient protocol for IVF Form" on 13.11.2000 wherein it was clearly mentioned that she was given suitable opportunities to take part in counselling about the implications of the proposed treatment. The invasive techniques and Karyotyping were discussed.

The Medical Record further mentioned that in view of the advanced maternal age NT/Triple Screen was suggested, however the couple 'decided to leave things alone, patient did not agree for invasive procedures'. The Commission also noted

that the couple suppressed the vital information that the daughter of patient's first cousin of about 15 years of age was detected with Down's syndrome.

The Commission also perused expert opinion from the Medical Board, AIIMS, New Delhi. It mentioned-

"1. Triple screening was suggested in view of her advance maternal age (Page 90) but the treatment record does not reveal any documentation of test being performed or laboratory report of the triple screen test.

2. Patient treatment record (Page 86) dated 18 June 2012 reveals that invasive techniques to confirm karyotyping was discussed – CVS/Amniocentesis but no follow-up could be traced in the records.

Thus, it confirms the treating doctor suggested triple screening which the patient did not do." From the perusal of all these Medical Records and Expert Opinion, the Commission opined that "the patient was conceived after 15 years of infertility, it was, thus, precious pregnancy. She had previous missed abortion and after genetic counselling, she did not opt for the invasive investigations to avoid miscarriage or losing the existing pregnancy."

Further mentioning that during the year 2002, the treating doctor tried her best to attempt the diagnosis of Down's syndrome, the Commission further noted, "It was the limitation of the screening test and quality of the then-available USG machines in India, which showed drastic changes and advancement in the last decade. The much higher performance can be achieved when ultrasound is combined with concurrent first-trimester four-marker biochemistry."

The Commission also referred to the Supreme Court judgment in Kusum Sharma and

others v. Batra Hospital and Medical Research Centre and Others. There the Apex Court mentioned, "the medical professionals are entitled to get protection so long as they perform their duties with reasonable skill and competence and in the interest of the patients. The interest and welfare of the patients have to be paramount for the medical professionals."

Again the Commission referred to Achutrao Harbhau Khodwa Vs. State of Maharashtra case where the Supreme Court mentioned, "The skill of medical practitioner differs from doctor to doctor. The nature of the profession is such that there may be more than one course of treatment which maybe advisable for treating a patient. Courts would indeed be slow in attributing negligence on the 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 a patient, but as long as a doctor acts in a manner which is acceptable to the medical profession and a court finds that he has attended on 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 guilty of negligence."

Thus, noting that "the couple is highly qualified and had adequate knowledge of various methods and the pros & cons of Assisted Reproductive Techniques" and the medical record that mentioned that "counselling of couple was done and advised for the invasive tests for prenatal diagnosis of Down's syndrome" the Commission gave relief to the doctor finding no negligence committed by the treating doctor.

Ref.: <https://medicaldialogues.in/news/health/medico-legal/newborn-delivered-with-down-syndrome-consumer-forum-exonerates-assisted-reproductive...> Accessed on 12/04/2021



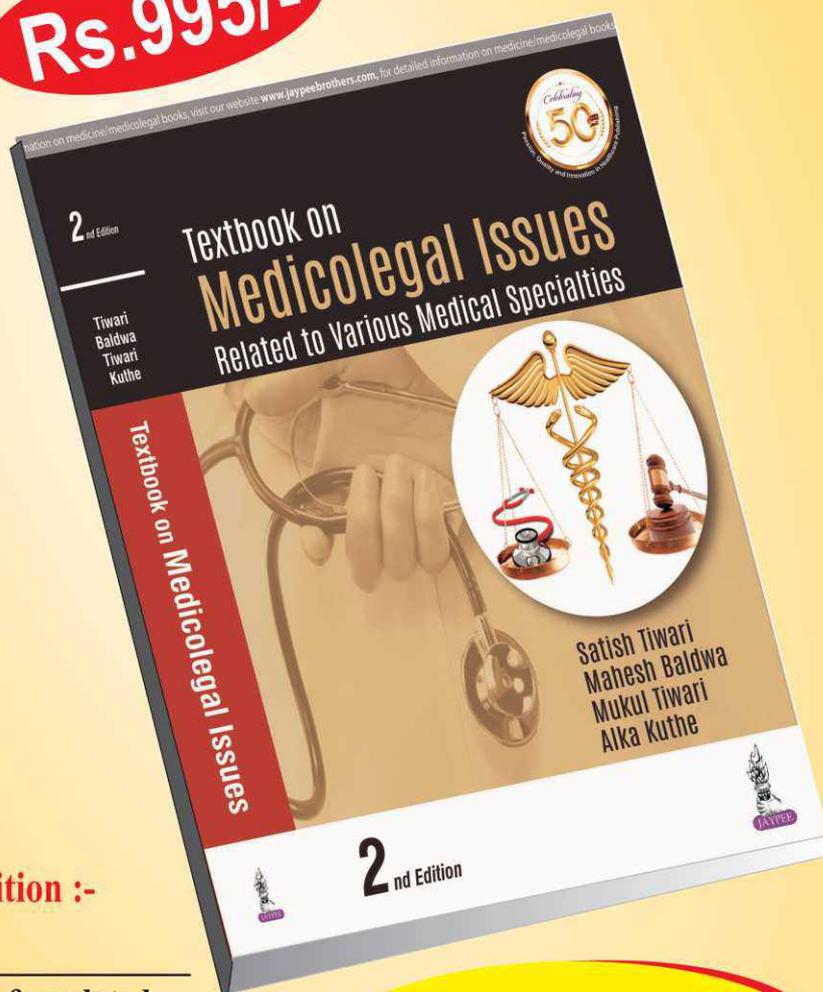
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