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Editorial :

Don't harass innocent doctors !

Dr. VP Singh

Received for publication : 17th April 2022 Peer review : 25th April 2022 Accepted for publication : 5th May 2022

"I love my husband and children a lot. Please do not harass them after my death. I did not commit any mistake, did not kill anyone. PPH is a known complication. Stop harassing doctors so much for this. My death may prove my innocence. Don't harass innocent doctors. Please. Love you. Don't let my kids feel the absence of their mother."

These were the last words written by Dr. Archana Sharma, who committed suicide in Rajasthan's Dausa district on 29th March 2022. Dr. Archana was an Obstetrician and Gynaecologist working with a private hospital in Rajasthan.

Few days before she committed suicide, an FIR was filed against her under Section 302 of IPC, after a pregnant lady delivered at her hospital and died as a result of related complications. After the death of the patient, her family members accused Dr. Archana of negligence. The Lalsot police, allegedly under political pressure, registered an FIR against Dr Archana Sharma. This reportedly forced the innocent Doctor to take the extreme step of committing suicide.

The World Medical Association (WMA) wrote a letter to the Prime Minister, Sh. Narendra Modi on Dr Archana Sharma's suicide and demanded a supportive legal environment for health professionals. The WMA expressed their concern about the increasing number of attacks on health professionals in the country. There must be an unambiguous and effective lawful means to stop the attacks on physicians and other health personnel. The WMA also highlighted the

importance of an "unbiased and scientifically correct process in dealing with unwanted treatment outcomes." They said that countering non-negligent treatment errors with prosecution will lead to "risk-avoiding, defensive medicine and, as such, to reduced treatment options for seriously ill or endangered patients." The letter concluded with a demand to provide "a legal environment and law enforcement that allows health professionals to do the best they can for their patients, without being under the threat of violence or prosecution."

If doctors are threatened in this manner, what will be the fate of the Healthcare System? It is highly a shameful and unpardonable heinous crime against the medical fraternity. This entire matter must be seriously investigated and the accused must not be spared. In addition, we doctors must understand that no one from outside is going to help us. Each and every medical practitioner, irrespective of his/her speciality is at risk of such stressful incidents; in spite of best efforts, many a times, complications are unavoidable.

Providing best possible care to our patients is not at all sufficient. It is high time to also think of our own safety. Medicolegal awareness is must. It is a tool that can safeguard us from such incidents (which took away the life of our hard working and sincere Dr. Archana).

The noble soul of our beloved Dr. Arcana shall find peace, only if we all take a pledge to fight against the atrocities against innocent doctors!



Review Article :

Child Sexual Abuse and Its Legal Perspectives in India

Dr. O. Gambhir Singh

Received for publication : 24th March 2022 Peer review : 10th April 2022 Accepted for publication : 30th April 2022

Key Words

Sexual abuse, POCSO Act, Child pornography, Penetrative sexual act

Abstract :

Child sexual abuse is a global public problem. It affects children of all social and cultural strata. The majority of the children belong to early childhood or early adolescence, more increase with the onset of puberty. It is estimated that every second child is exposed to sexual abuse and violence in India. Parents and elderly family members bear the responsibility to provide a safe and free environment for children. Under the POCSO Act 2012, it is a punishable offense. In India, the law presumes all sexual acts with children under the age of 18 years, are a sexual offense. Therefore, two adolescents who engage in consensual sexual activity will also be punished under this law.

Introduction:

Child sexual abuse may be defined as a form of child abuse where an adult or an older adolescent uses a child for his/her sexual stimulation and gratification. The World Health Organization defines Child Sexual Abuse as “the involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to, or for which the child is not developmentally prepared and cannot give consent, or that violates the laws or social taboos of society”. It may be of two types touching and non-touching. Touching sexual abuse includes fondling of genitalia, putting an object or a body part into genitalia, making a child touch someone's genitalia, playing sexual games, etc. Non-touching includes showing pornographic

materials to a child, exposing genitalia to a child, photographing a child in sexual poses, etc.[1]. In India, it is governed under the POCSO Act, 2012 [2] and a child means any human being male or female whose age is less than 18 yrs of age. However, this definition is a purely biological one and doesn't take into account people who live with intellectual and psycho-social disabilities.

In India, the law presumes all sexual acts with children under the age of 18 years, are a sexual offense. Therefore, two adolescents who engage in consensual sexual activity will also be punished under this law. This is especially a concern where an adolescent is in a relationship with someone from a different caste, or religion. Parents have filed cases under this Act to 'punish' relationships they do not approve of.

Incidence Rate and Problem Magnitude:

Child abuse is a global problem prevalent in all strata of society and culture. It is estimated that every second child is exposed to sexual abuse and violence in India.[3] During 2018 approximately 109 children were sexually exploited every day, according to the data by the National Crime Record Bureau (NCRB), which showed a 22% jump in such cases from the previous year. Out of 21,605 child rape cases, which were recorded in 2018, there were 21,401 rapes on girls and 204 on boys. In 2018 the highest number of child rapes were recorded in Maharashtra at 2,832 followed by Uttar Pradesh in 2023 and Tamil Nadu at 1457. Overall crimes against children have increased steeply over six times in the decade over 2008-2018, from 22,500 cases recorded in 2008 to 1,41,764 cases in 2018, according to the NCRB data from 2008 and 2018.

However, this figure is regarded as an underestimate as many cases are not reported due to some social and cultural factors.[4, 5, 6]

What Constitutes Child Sexual Abuse:

According to the POCSO Act, 2012 followings are included:-

1. Penetrative sexual assault such as insertion of penis/object/another body part in child's vagina/urethra/anus/mouth, or asking the child to do so with them or some other person.
2. Sexual assault in the form of touching the child, or making the child touch them or someone else.
3. Sexual harassment in the form of passing sexually tinted remarks, sexual gesture/noise, repeatedly following, flashing (exposing genitalia to someone), etc.
4. Child Pornography
5. Aggravated penetrative sexual assault/ aggravated sexual assault

The Act is gender-neutral for both children and the accused. Concerning pornography, the Act criminalizes even watching or collecting pornographic content involving children.

Vulnerability and Risk Factors:

1. **Age:-** No age is safe but vulnerability increases with the onset of puberty.
2. **Sex:-** Incidence is high with girls especially after the onset of menarche.
3. **Physical disability:-** Physical debilities like deafness, blindness, and mental retardation are associated with an increased risk of being sexually abused.
4. **Family and Social background:-** Children belonging to the lower socio-economic status are at higher risk. The absence of one or both biological parents, marital conflicts of parents, etc. are well-known risk factors. Lack of education and overpopulation also increase the incidence.
5. **Drug or Substance Abuse:-** Parental

substance abuse increases vulnerability. Children under the influence of alcohol/drugs are more susceptible.

6. **Social and Cultural Practice:-** Customs such as child marriages and dev-dasi system (the religious practice whereby parents marry a daughter to a deity or a temple) make some children more prone to be victims of child sexual abuse. Lesbian, gay, bisexual, transgender are more prone to practise child sexual abuse.

Warning Signals of Child Sexual Abuse:[7,8,9]

A. Behavioral Signs:-

1. Inappropriate sexual behavior for the child's age.
2. Bedwetting or soiling the bed.
3. Hesitant to be left with certain people.
4. Avoid removing clothing to change or bathe.
5. Wearing many layers of clothing regardless of the weather.
6. Exaggerated irritability or temper tantrums.

B. Emotional signs:-

1. Excessive talk about or knowledge of sexual topics.
2. Resuming behaviors that they had grown out of, such as thumb sucking.
3. Nightmares or fear of being alone at night.
4. Excessive worry or fearfulness.
5. Loss of self-esteem and confidence.
6. Feelings of guilt

C. Physical Signs:-

1. Signs of trauma to the genital area, such as unexplained bleeding, bruising, or blood on the sheets.
2. Difficulty in sitting and walking.
3. Pregnancy.
4. The appearance of signs and symptoms of sexually transmitted diseases.

Parent's Response if Child Discloses Abuse:

1. Parents must develop a good rapport with the child. They must be encouraged by showing some supportive gestures. Tell the child you

believe him/her. Show some supporting gestures by saying words like – “I am glad you told me, thank you for trusting me. You are very brave and did the right thing.”

2. Do not interrogate the child directly. It may hurt the child to repeat his/her story. Leave the questioning to the legal and police personnel.
3. Parents must reassure the child that the abuse is not their fault. The child's greatest fear is that he or she is responsible for the abuse. Be sure to make it clear that what happened is not a result of anything he/she did or did not do.
4. Don't be emotionally overwhelmed, remain calm and composed while talking to the child.

Protection and Prevention of Child Abuse:

[2, 10-13]

A. Be involved in the child's life:-

1. Show interest in their day-to-day lives. Ask them what they did during the day and who they did it with. Who did they sit with at lunchtime? What games did they play after school? Did they enjoy themselves?
2. Try to know the people in your child's life, who your child is spending time with, including other children and adults, etc.
3. Choose caregivers carefully. Parents must be careful while choosing a new babysitter, a new school, etc.
4. Talk about the media. Incidents of sexual abuse or violence may be covered by new channels or in other television shows. Parents must ask their children about such coverage to start the conversation.

B. Encourage children to speak up:-

Parents must educate their children that no one has the right to touch them or make them feel uncomfortable. The child must know that their body is their own. What is 'good touch' and what 'bad touch' must be explained. Parents can tell that “good touch” is a way for people to show they care for each other and help each other i.e., hugging, holding hands, changing a baby's diaper, etc. On

the other hand, “Bad touch” is the kind you don't like and want it to stop right away such as hitting, kicking, touching private parts, etc. Tell your child that most touches are okay or acceptable, but that he or she must say “NO” and immediately tell you about any touches that are confusing or that scare him or her. This teaching must be from early age and children must be familiar with their body part names.

C. Control media exposure:-

Parental controls are available through many internet, cable, and satellite providers. Be aware that children may witness adult sexual behaviors in person or they may come across it on screens, and that they may not tell you that this has occurred. Pornography may be shown to a child by peers/elder children in schools or during playdates. Your child should know that he or she must report this to you.

Parents, society, and government policies by and large play a vital role in preventing child abuse. Parents must educate their children about threats or sexual advances and bad touch and good touch. There must be continuous communication with children free and frank. Parents can seek help in the following ways:-

1. Direct report to nearest police.
2. Online report to National Commission for Protection of Child Rights.
3. Reporting to Child line India – 1098.
4. Reporting to local clubs or NGOs, etc.

Legal Provisions: [2, 14,15]

It is prescribed under the provision of the POCSO Act, 2012. It is mandatory to report to an appropriate authority about the incidence of Child Sexual Abuse cases. Failure to do this would result in imprisonment of up to six months, with or without a fine. The following points may be noted:-

1. There is a provision of the establishment of Special Courts for the trial of such offenses.
2. The Investigating Police Officer must wear a

civil dress while taking a statement from the child.

3. Such recording of the statement must be at the residence of the child or the place of his choice.
4. Preferably statement must be recorded by a woman police officer, not below the rank of sub-inspector.
5. The statement of the child is to be recorded as spoken by the child. The assistance of an interpreter or translator or an expert as per the need of the child must be arranged.
6. The medical examination is also to be conducted in the presence of the parent or any other person in whom the child has trust or confidence.
7. If the victim is a girl child, the medical examination shall be done by a woman doctor only.
8. As far as possible repeated testimony must be avoided.
9. There must not be any aggressive questioning or character assassination of the child in-camera trial of cases.
10. Strict confidentiality should be maintained.

Punishment under POCSO Act 2012: [2, 14]

1. For the penetrative type of sexual abuse, punishment should not be less than 7 years which may extend to imprisonment for life, and a fine.
2. For aggravated penetrative sexual abuse punishment must not be less than 10 years which may extend to imprisonment for life, and a fine.
3. For non-penetrating sexual abuse, punishment must be not less than 3 years which may extend to five years, and fine.
4. For aggravated sexual abuse by a person in authority, punishment must not be less than 5 years which may extend to seven years, and fine.
5. For sexual harassment of the child, punishment must be not less than 3 years, and fine.
6. For the use of a child for pornographic purposes, punishment may be for 5 years, and a fine, and in the event of subsequent conviction, seven years and fine.

Conclusion:

Child Sexual Abuse affects the child both physically and mentally which may persist throughout the life of the child. In spite of the magnitude it is a preventable public health problem. Parents and family members need to be patient instead of frightening and stressing and children must be encouraged to report any such experience immediately. It is the responsibility of adults and society to provide a better and safer environment for children.

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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

Perspective:

Ramayana and Mahabharat Epics: Lessons to Learn.

Dr Yash Paul

Received for publication : 25th March 2022 Peer review : 10th April 2022 Accepted for publication : 30th April 2022

Key Words: -

Wrong acts, Unintentional harm, Stand for truth.

Abstract:-

Prince Dashrath of Ayodhya had Killed Shravan Kumar unintentionally. Shravan kumar's father cursed the prince that he would also die because of separation of his son. King Dashrath died when his son Ram had gone on fourteen years vanvas. Bhishma Pitamah, a man of high principles did not raise his voice against wrong acts of Duryodhan because of misplaced loyalty which resulted in Kurukshetra Yudh (war).

Ram Vanvaas

Some people blame Kaikeyi the second wife of King Dashrath and step mother of Ram for fourteen years vanvaas of Ram. Fact is Kaikeyi acted as an instrument only. One act of King Dashrath as Prince Dashrath was the reason for this vanvaas.

Prince Dashrath was very fond of hunting and was a very good marksman with bow and arrow. Once out in jungle for hunting when he was near a water resource he heard gurgling sound. He presumed that a deer was drinking water. He shot the arrow in the direction of the gurgling sound without looking through the bushes. On hearing the groaning sound he proceeded to collect his kill, but found that he had hit a man who was collecting water. The person injured was Shravan Kumar who had come to collect water for his blind parents whom he used to carry in baskets. Prince Dashrath tried to help injured Shravan Kumar, but he was fatally injured. Shravan Kumar requested the

prince to take water to his parents. On hearing a different voice the parents asked Dashrath why their son has not brought the water and sent him. Prince explained that it was an accident which had resulted in death of their son. Shravan Kumar's mother died instantly on hearing the news of their son. But before dying Shravan Kumar's father cursed the prince that he would also meet the same fate, he would also die because of separation of his son as we are dying because of separation of our son. It may be perceived as a very harsh punishment for an act done unknowingly and unintentionally. But, it turned out to be very harsh punishment for the whole family and not for King Dashrath only.

It is stated that King Dashrath died six days after Ram departed for fourteen years exile. Ram, Sita and Lakshman had to suffer fourteen years of hard ship. Kaushalya suffered absence of her son Ram and daughter-in-law Sita, Kaikeyi suffered because her son Bharat had cut off all relations with her and Sumitra had to bear separation of her son Lakshman for fourteen long years, for no fault on their part. Wrong act is wrong, even if done unintentionally.

Torment of Droupadi.

Yudhishtar during a gambling session with Duryodhan put on stake Droupadi and lost the game. Duryodhan asked his brother Dushasan to fetch Droupadi to him as he had won her so now he was her master. When Droupadi refused to accompany Dushasan he caught her by hair and pulled her all the way to the court while she cried and wailed. Bhishma Pitamah, a man of high principles, Drona Acharya a sage and a great teacher and many noblemen present in the court were aghast, but no one raised voice against this

inhuman act. Droupadi vowed that she would dress her hair only after washing them with Dushashan's blood. She fulfilled her promise when Dushasan was killed by Bhim who carried his blood to Droupadi. Droupadi's torment was one of the reasons for Kurukshetra Yudh (war) which resulted in death of many thousands of soldiers from both sides and destroyed many royal families.

'Ignorance is bliss' does not apply to the medical profession. Human being is human being whether belonging to a rich and developed country or a poor and un-developed country should be treated as human being. But the harsh reality is that this is not the case many times. Many studies are done in the Third World that simply could not be done in the countries sponsoring the study. Similarly, sometime the Pharmaceutical Industry ignores safety and well-being of people and focus on earning only. This should be considered a criminal act.

I have been taking up this issue since year 2012. In an article titled 'Drug formulations: Safety of patient remains the main concern' [1], I had stated; "A doctor prescribes or administers drug to a patient and is expected to follow 'cause no harm' principle. Safety and welfare of patients is the main concern of the medical profession, which includes medical, paramedical personnel and even the drug industry. While pharmaceutical companies make legitimate profits from the sale of drugs, these should also take necessary steps to ensure the well-being of the people."

In another article published in 2013 in another pharma journal titled 'Need for safe and doctor friendly drug formulations [2], I had stated: "Primarily the relationship between Medical Profession and Pharma Industry is based on the common goal namely to provide benefits to the people during illness and to keep good health". I had also stated: "It appears that safety of patients has taken a back seat. Question arises: What is the role and necessity of Drug Controller General of

India?.... A doctor prescribes a drug believing that any drug which has been licensed must be safe and approved. Is it a misplaced trust?". In these articles I had pointed out irrational and potentially harmful drug formulations.

I appreciate the magnanimity of the Editorial Boards of both Pharmaceutical journals for publishing my articles. It is a sad observation that no action in right direction has been taken by the Pharmaceutical Industry.

I raised this issue with Medical fraternity by publishing about a dozen articles in different Medical journals. I cite here some of the publications. 1: Dosage Schedule for Antipyretic Combination Formulations [3]; 2: Onus of Patients' safety is on the Doctors [4]; 3: Problems Associated with some Drug Formulations [5]; and 4: Problems associated with irrational and potentially harmful drug formulations. But who cares? [6]. Still no change has been observed regarding safety of people by the Drug Industry and Licensing Authorities.

It is pertinent to mention a case related to Drug industry and one case related to Petroleum industry in India.

Thalidomide Tragedy:

In 1950s a German Pharmaceutical House called Chemie Grunenthal Gmb Hi in West Germany prepared a drug called Thalidomide as sedative, tranquilizer and to control nausea in general and during pregnancy. During late 1950s and early 1960s due to its use in pregnant women about 10,000 children were born with birth defects called phocomelia i.e. with deformed limbs, in addition to thousands of abortions. About 5000 children with phocomelia were born in West Germany. In 1960 Dr. William Griffith McBride an Australian Obstetrician began to associate use of Thalidomide during pregnancy with phocomelia. He published a Letter in the Medical journal 'Lancet' in December 1961, pointing out link between Thalidomide use and birth defects. At the

same time a German doctor Widukind Lenz also raised this issue.

It took five years for the connection between Thalidomide and phocomelia to be established. Credit for this goes to Dr. Frances Oldham Kelsey, Canadian born American Pharmacologist and Physician. In 1960 the Cincinnati manufacturer William S. Merret applied to the Food and Drug Administration (FDA) of the United States to sell Thalidomide by brand name 'Kevadon'. Dr. Kelsey who was working with FDA was assigned the job. Dr. Kelsey sought some details regarding the drug, including its effects and side effects from the company officials, but they refused to answer. On the other hand, they complained to her superiors to pressurize her to approve the drug, but, she refused.

Initially the manufacturer refused to pay any compensation to the children born with birth defects caused by Thalidomide. However in February 1968, following many legal battles in different countries and the uproar in media, the manufacturer relented and gave large sum as compensation and in some cases provided annual pension to Thalidomide survivors.

Which is more important; Human Life or Engines of Vehicles?

We get same standard quality of petrol or diesel from government outlets Bharat Petroleum, Indian Oil and Hindustan Petroleum as well as from private suppliers Reliance, Shell India and Essar Oil. Authorities take care that products are of standard quality so that no damage occurs to the engines of the vehicles. Some mischief may be played at local level. But Pharma industry manufacturing products for human consumption some time show scant

consideration for human safety.

I have already stated that ignorance is not bliss for Medical profession. Medical Associations conduct Continuing Medical Education (CME) from time to time on different issues. We should keep ourselves updated so as to avoid or minimize unintentional mistakes. If all doctors prescribe rational drugs only, the pharmaceutical industry will automatically stop manufacturing irrational drugs despite having valid manufacturing licenses. It seems that Pharma Industry wants to change maxim 'customer is a King' to 'consumer is a prey'. We have to follow 'Hippocrate Oath' or 'Charak Shapath' according to the letter and spirit in true sense.

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Perspective: Have The Hippocratic Oath and Charak Shapath Become Futile Exercise ?

Dr Yash Paul

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Key Words: Hippocratic Oath, Charak Shapath, Patient's Safety, Harmful drugs.

Abstract: In our country after qualifying the doctors take either Hippocratic Oath or Charak Shapath not to cause harm to patients. Some Pharmaceutical houses manufacture and sell potentially harmful drugs which may harm the patients, after obtaining manufacturing licenses from licensing authority and market it despite existence of Central Drug Standard Organization, Doctors presume that every drug must be approved and safe because of existence of Drug Licensing Authority and Central Drug Standard Organization thus may cause unintentional harm to some patients, whereas the Pharma houses, Licensing authority and Quality controlling, authority are also party to this crime.

Headline in The Time of India, Jaipur edition dated April 12, 2022 not only caught my eyes but stirred my conscience, "States use mass transfer to deal with NMC inspections" I quote here some parts from the report by Rema Nagarjun "The transfer of 69 faculty from 10 medical colleges to GMERS (Gujarat Medical Education and Research Society, a government owned society that runs medical colleges in Gujarat) Medical college in Vadnagar, Gujarat in anticipation of an inspection by the National Medical Commission (NMC) hit the headlines last month in Ahmedabad. While the transfer order blatantly stating that the mass transfer was for the purpose of college inspection might be unusual, mass transfers between various government medical colleges have become more common over the last decade... Private medical colleges have been in the news for 'ghost' faculty..... despite such mass transfer being reported in local newspapers and such orders of transfers being available in the public domain, the NMC has done nothing to tackle to the issue The NMC maintains a database of faculty of all medical colleges on its website."

Question arises: Will transfer of faculty from

one medical college to other medical college not affect the patients care and teaching of medical students by such transfers even for a short period? After inspection is over, teaching faculty may be posted back to the original medical college. Will teaching and patient care be of good standard at the inspected medical college when faculty on deputation goes back?

After qualifying, a doctor takes oath to follow professional ethics. There are many versions of this oath like Hippocratic Oath, Charak Shapath, Code of Medical Ethics by American Medical Association, Code of Medical Ethics by British Medical Association and Code of Medical Ethics by the World Medical Association. Salient features of all these codes are similar like 'I will use treatment to help the sick according to my ability and judgment, but I will never use it to injure or wrong them; I will exercise independent professional judgment and maintain the highest standards of professional conduct, I will strive with all my soul for the health of the sick.' It is to be noted that in place of "I shall", "I will" has been used. Will is the determination to do something. This means that a doctor is duty bound to do only good. There may be few black sheep but most doctors follow or try to follow the medical Ethics.

I have specifically stated "try to follow the Medical Ethics; some problems are created by Pharma Industry. Should the phenomenon to cause no harm be confined to medical doctor only or be applied to other commercial activities including pharmaceuticals industry also?

The harsh reality known to all is that there are many reported incidences of adulterated food items and other products also. But, there is a big difference in wrong acts done by Pharmaceutical industry and other business functionaries. No shop-keeper puts a banner with a statement "adulterated food items are sold here" or "not original but duplicate items are sold here". But, some Pharmaceutical houses

blatantly indulge in malpractices.

A 1959 movie Anari starring Raj Kapoor, Nutan, Moti Lal and Lalita Pawar tells the story of a Pharma company. The Chief Chemist had brought to the notice of the company owners that a drug was harmful and its production be stopped. But the greedy owners refused to stop production of that drug. That drug caused death of Lalita Pawar and Raj Kapoor was arrested because he had administered that drug to her. There is a happy ending when Moti Lal accepts the blame by telling truth to the court. I watched the movie as a medical student. Surprisingly even after more than six decades our nation is still haunted by such pharma houses.

There are three government regulatory bodies viz. (1) Licensing Authority Drug Controller General of India (DCGI) and State Drug Controllers; (2) Central Drugs Standard Organization (CDSO) for quality control of drugs; and (3) National Pharmaceutical Pricing Authority (NPDA) for price regulation, which oversee Pharmaceutical Industry. Despite presence of these regulatory bodies the doctor and people face following problems: (i) unapproved drugs, (ii) irrational drug formulations, (iii) potentially harmful drug formulations, (iv) combination of antagonistic ingredients, (v) combination of ingredients having different administration schedules, (vi) spurious drugs (vii) substandard drugs, (viii) different prices for same drug formulations prepared by different drug houses.

I have raised these issue many times since 2012 in Pharma and Medical journals [1-8] but, the Pharma industry has turned blind eye to the science of pharmacy and safety of people. The author cites here a potentially harmful drug formulation. Antibiotics combination of Cefixime and Ofloxacin where quantity of both molecules is 100 mg per 5ml. Recommended dose of Cefixime is 4mg per kg B.D. and 7.5mg per kg B.D. for Ofloxacin. If one calculates the required dose according to Ofloxacin, administered dose of Cefixime would be almost double of the recommend dose, may cause toxicity and if the required dose is calculated according to recommended dose of Cefixime, Ofloxacin would be administered under dose and may result in antibiotic resistance.

Issue of serious concern is that manufacturing licenses for this product and many more similar products are given to many manufactures.

Recently another issue regarding safety of human life has come to light. Aviation regulator DGCA (Director General of Civil Aviation) banned 90 pilots of Spice Jet. Spice Jet knew about faulty gear Boeing 737 MAX simulator facility near Delhi despite knowing that equipment at the said training center was faulty it continued their training During a routine inspection on March 30, 2022 it was found that Boeing 737 Max=X simulator had a malfunctioning 'stick shaker' on the co-pilot seat. DGCA took appropriate action when the related problem came to of its notice. But, the overseeing authorities connected with Pharma industry have not taken any remedial action.

So a question which needs answer is; what is the relevance of Hippocratic Oath or Charak Shapth under such circumstances?

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Review Article:

Medical Errors - Remedial Measures and Legal Perspective

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Keywords:

Medical errors, Medication errors, Electronic prescriptions, Automated medication dispensing systems.

Abstract:

Preventable medical adverse effects due by doctors and health care providers are quite common all over the world. Approximately 5.2 million medical error cases occur in India annually and the incidence might be even higher as many cases are not reported properly or are underreported. Some selective studies conducted in some tertiary hospitals showed a very high incidence of medical errors in India. In the majority of the cases, medical errors occur during transcription followed by prescription and administration errors. A little care on the part of the health care providers and patient education along with the use of modern technologies may definitely reduce the incidence of medical errors.

Introduction:

Though every year “World Patient Safety Day” is celebrated on the 17th of September, the WHO has claimed that about 138 million patients witness some harm due to medical errors. It may be defined as a preventable medical adverse effect of medical care, whether or not it is evident or harmful to the patient [1]. According to the National Coordinating Council for Medication Error Reporting and Prevention, (NCCMERP) it may be defined as “Any preventable event that may cause or lead to inappropriate medication use or patient harm while the medication is in the control of the health care professional, patient, or consumer. These events may be related to professional practice, healthcare products, procedures, and systems, including prescribing, order communication, product labeling, packaging and nomenclature, compounding,

dispensing, distribution, administration, education, monitoring, and use.” [2] In a broader sense, this term may cover all errors made by health care providers, not only by doctors. Commonly encountered examples of medical errors include those errors related to missed or delayed diagnosis, medication errors, hospital-acquired infection, inadequate follow-up treatment, technical medical errors, etc. It is estimated that approximately 50,000 to 100,000 people die from medical errors in the United States of America each year [3].

Common Sources of Medical Errors:

Medical errors may arise due to many problems related to medication, surgery, diagnosis, equipment failures, infections, etc. Broadly it may be classified into two categories:

1. Errors of Omission where actions were not taken in time for example failure to ligate umbilical cord in cases of newborn babies, and
2. Errors of Commissions where errors occurred due to wrong actions such as the development of gangrene due to tight plaster.

Medication errors may occur due to the act of omission or commission and now it is considered the most common cause of medical error in the whole world [4]. Some of the commonly encountered sources of medical errors are due to:-

- A. **Communication problem:** It depends on the education and intelligence status of the patient.
- B. **Organizational transfer of knowledge:-** There may be a lack of standard operating systems and procedures. No proper staffing and workflow may also be contributing factors.
- C. **Patient-related issues:-** It may depend on patient characteristics such as literacy, language barriers, personality, the complexity of the

clinical case, etc.

- D. **Technical failures:-** There may be a failure of equipment, implants, grafts, or other medical devices.
- E. **Illegible handwritten prescriptions:-** Poor quality handwritten prescriptions may pose many problems. Pharmacists and the patient party may not be able to read them correctly. There may be confusion in not only the name of drugs but also in dose and timing.

Medical Errors in India:

One of the studies conducted by Prof Jha reported that approximately 5.2 million medical errors occur in India annually [5]. The incidence could have been much higher than this because many cases are not reported or under-reported. According to Kapil G Zirpe et al, in their study in a critical care unit of a tertiary hospital, the incidence of medical error was very high [6]. In their study, they observed that the highest incidence of medical errors was associated with transcription (44.1% of 6075 charts reviewed), followed by prescription and administration errors with 40% and 14%, respectively.

In a retrospective study conducted by Heenopama Thakur et al [7], it was observed that error in medication prescription was highest in the Surgery Department (44 cases), followed by Medicine Department (32 cases), obstetrics and gynecology (25 cases), etc.

Remedial Measures:

1. **Patient Education** [8,9] :- Every patient must be educated about their illness and treatment. This is very important as per guidelines of the Consumer Protection Act 2019. Patients must know about the name, indications, contraindications, and side effects of their medicines. The possibility of drug interactions and adverse reactions must also be well explained to patients especially when many drugs are prescribed. They should have knowledge of the proper storage of medicines too.
2. **Standard Protocol and Operating System** [10, 11]:- Health care providers must strictly stick to the standard protocol and operating system while delivering healthcare services. This may include the use of a prior authorization program such as the use of the medicine Accutane should not include pregnant women as there are potential risks of birth defects.
3. **Use of Electronic Prescription** [12,13]:- Use of e-prescribing techniques, popularly known as Computerized Physician Order Entry (CPOE), enables sharing of doctors and pharmacists to write and share prescriptions electronically instead of using handwritten prescriptions. It contains all data required to fill, label, dispense, or submit a payment request for a prescription. A good quality e-prescribing system must be able to transmit prescriptions not only electronically but also warns the prescribers about the possible drug adverse reactions. This technology reduces medical errors attributed to bad handwriting or illegible faxes.
4. **Automated Medication Dispensing System** [14]:- It is an automated pharmacy system in which a machine dispenses medicines and fills prescriptions. It not only provides a secured environment for drug storage but also helps in tracking the path of a drug from pharmacy to patient.
5. **Use Of Bar Coded Medication Administration** [15,16]: - It is the use of electronic technology of barcodes to prevent human error in the health care system in drug delivery. This system reduces medication error by verifying – the right patient, right dose, right drug, and right time – at the patient's bedside [17].
6. **Internal Quality Control** [18]:- This will allow monitoring workflow evaluation and error reporting analyses.

Legal Perspective:

When there is a medical error the matter may

be brought to the court of law for demanding compensation or to punish the erring health care provider and by the public, it is commonly known as medical negligence. There is no law especially codified medical negligence as per the Indian legal system. In many cases, the matter is settled base on Judicial Precedence. When there is gross negligence or death of a patient then the matter may be tried under criminal negligence. Medical negligence cases may be dealt with under sections 52, 80, 81, 83, 88, 90, 91, 92 304-A, 337, and 338 of the Indian Penal Code, 1860. For compensation, cases may be tried under the Tort Law as per Consumer Protection Act, 2019. In Indian Medical Association vs. V.P. Santha case, the Honorable Supreme Court has observed that medical service comes under section 2(42) of the Consumer Protection Act, 2019. An aggrieved party can file a case of negligence against a doctor to the concerned State Medical Council. The State Medical Council may take disciplinary actions by issuing a warning notice or removing his name from the Medical Register for a period of time or permanently depending on the severity of the case. However, it doesn't have the power to grant compensation for imprisonment to the doctor. Here let's clear that medical error and medical negligence are not synonymous as in cases of the latter there is a breach of duty of an established doctor-patient relationship or willful negligence on part of the healthcare professional. So, in some cases, the same law may not be applicable.

In cases where there is gross medical negligence, the matter has been dealt with by the Supreme Court in recent years. The Honorable Supreme Court of India has observed in the case of Dr. Laxman Balkrishna Joshi Vs. Dr. Trimbak Bapu Godbole that every doctor must exercise reasonable care and skill while treating a patient. In a landmark case of Dr. Suresh Gupta v. Govt. of NCT Of Delhi and Anr the Honorable Supreme Court has observed that the standard for proving negligence had to prove to hold a doctor for criminal liability and the proof of gross negligence and recklessness is on the onus of the plaintiff.

Conclusion:

In India, one major cause of medical errors is transcription errors, followed by prescription and administration errors. Incomplete prescription is the major reason for prescription and transcription errors. In one study incomplete prescription and illegible handwriting were found to be important factors in transcription errors. Proper patient education, use of electronic prescriptions, and following standard operating systems and protocol may reduce the incidence. Further, the introduction of a proper reporting system will play a very important role to implement preventive actions so as to avoid them in the future happening. It's now time for introspection by health care providers as medical errors are preventable and avoidable.

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Medicolegal News

Compiled by : Dr. Santosh Pande

Scissors Left Inside Body During Surgery, Consumer Court Slaps Urologist, Cancer Hospital with Rs 7.5 Lakh Compensation

Ludhiana: The District Consumer Disputes Redressal Commission has recently directed a treating Urologist and a Ludhiana-based Cancer hospital to pay Rs. 7.5 lakh as compensation to the family of a patient who was diagnosed with urinary bladder cancer and was required to be operated immediately.

Such a direction came from the consumer court after it took note of the fact that the treating doctor had allegedly left one scissor of the size of 7 to 10 inches inside the belly of the complainant during operation.

Directing the doctor and hospital to compensate for this, the Consumer Court noted, "A doctor while carrying out life-saving operation such as surgery to remove cancer from the part of the body, is supposed to exercise extreme care, caution and due diligence and even slightest of error or mistake can play havoc with the life of the patient. Taking into consideration these standards, leaving an object like scissors inside the body of the patient while carrying out surgery is out and out an act of negligence on the part of the OP3 who at that time was working with the OP1 as an employee."

The history of the case goes back to May 2012 when due to some urinary ailments, the complainant had visited the treating hospital, where a doctor upon examining the patient and conducting required tests had concluded that the patient was suffering from urinary bladder cancer and was required to be operated upon immediately.

Consequently, the treating oncologist had conducted the operation and assured that the operation was successful and the complainant was fully cured and was further advised to have a cycle of chemotherapy. Accordingly, after discharge, the complainant kept visiting the treating hospital from

time to time for chemotherapy which was conducted by another doctor on various dates.

Back in the last week of May 2012, the complainant developed acute pain in his belly and the treating doctor assured that there was no reason to panic and he further prescribed medicines. However, in August, 2012, the complainant developed the belly pain again and he was taken to the Civil Hospital where another doctor conducted x ray of the belly of the complainant. All the doctors and the attendants of the complainants were astonished to see that one scissor of the size of 7 to 10 inches was found inside the belly of the complainant. The doctor in that hospital had opined that a foreign body was visible in the deli vice area.

Following this, the complainant was taken to PGI Chandigarh, where the scissor was recovered from the belly of the complainant and he remained under treatment there and a sum of Rs 15 lac was spent for this purpose.

It has been alleged by the complainant that the treating doctor at the treating hospital failed to discharge his duties efficiently, carefully and with due diligence. In fact, the doctor acted in a highly negligent manner causing mental and physical pain and agony to the complainant.

Approaching the district consumer court, the complainant sought a compensation of Rs 5 lac spent for the treatment along with Rs 15 lac as compensation for causing mental and physical tension to the complainant.

On the other hand, the treating doctor and hospital contested the complainant. While the hospital and the doctor who had conducted chemotherapy maintained that they were unaware of any pain developed in the complainant and him approaching the treating doctor, who is a Urological surgeon alleged the complaint to be false and frivolous.

Further, the treating doctor in his defense

claimed that the complainants had been sent by his rivals and the complainant never approached him for showing or removal of any retained surgical instrument and the discharge ticket of PGI had not been produced on record as well.

Meanwhile, during the pendency of the complaint, the complainant died and consequently his legal heirs were impleaded in the complaint.

The consumer court took note of the contention made by the treating hospital and the second doctor that if during the operation any such foreign substance would have been left in the stomach, it would have caused damage to the abdomen. The retention of scissor of size of 7 to 10 inches for such a long time is totally unimaginable.

The accused doctor referred to similar contentions - including the fact that in order to prove that a foreign body was found in the stomach of the complainant, only single view x-ray film is not adequate. No opinion of any qualified radiologist was taken, further contended the doctor.

It was also argued by the counsel for the doctor that in the abdomen x-ray, sometimes a shadow of metallic kripa or belt gives false artifact shadows. That does not mean that there is kripa in the abdomen of the patient. It has further been contended that in the AP view, anything coming between x-ray tube and x-ray camera would surface in the film. No lateral view was taken in this case. Only from the lateral view x-ray, the conditions about depth in the body can be ascertained.

However, while considering the contentions made by the Counsel for the doctor, the consumer court found them devoid of any force or substance. "It is a well settled law that under the Consumer Protection Act, the complaints are decided by way of summary procedure. Primarily the proceedings before the Civil Court are civil in nature. It is an equally well settled proposition of law that civil cases are decided by way of preponderance of evidence unlike criminal cases, where the onus of proving the case to the hilt is on the prosecution alone. The complaint under the Consumer Protection Act cannot be said to be a criminal complaint in which the

burden to prove solely can be put on the complainant alone. Rather, as stated above, the complaints are to be decided on the principle of preponderance or probability of evidence. Keeping in view the above proposition of law, the evidence has to be evaluated," noted the consumer court of Ludhiana.

Noting that no interrogations were posed regarding the observations made by the treating doctor who discovered the scissor, the consumer court opined that the accused doctor and hospital, in a way, did not challenge and dispute the observations made by the other doctor.

"Thus, it can be safely inferred and held that a foreign body ie scissor was detected in the abdomen of the complainant on 09.08.2012. There is absolutely no evidence or any possibility that after surgery and before the scissor was detected in the abdomen, the patient, who reposed complete faith in the doctor who performed surgery to save him from a serious disease of cancer, would level false allegations or manipulate or twist facts to raise an accusing finger against the same doctor i.e. OP3," opined the Commission.

Further referring to the arguments that the complaint was made under the influence of the enemies of the treating doctor as "far-fetched", the Commission noted, "A doctor while carrying out lifesaving operation such as surgery to remove cancer from the part of the body, is supposed to exercise extreme care, caution and due diligence and even slightest of error or mistake can play havoc with the life of the patient. Taking into consideration these standards, leaving an object like scissor inside the body of the patient while carrying out surgery is out and out an act of negligence on the part of the OP3 who at that time was working with the OP1 as an employee."

"As a result of above discussion, the complaint as against the OP2 is dismissed but the same is allowed as against the OP1 and OP3 with an order that they shall jointly and severally pay a sum of Rs.7,00,000/- (Rupees Seven Lacs) as compensation to the complainant along with interest @7% per annum from the date of filing of complaint

till the compliance of the order be made within 40 days from the date of receipt of copy of order," mentioned the order.

Ref.: <https://medicaldialogues.in/news/health/medico-legal/scissors-left-inside-body-during-surgery-consumer-court-slaps-urologist-cancer-hospital-with-rs-7...> Accessed on 17/01/2022

No Medical Negligence In Exploratory Laparotomy: Consumer Court Relief To Indraprastha Apollo Hospital

New Delhi: The State Consumer Disputes Redressal Commission, Delhi, has recently exonerated the Indraprastha Apollo Hospital and one of its doctors from charges of medical negligence while treating a patient who was diagnosed with intra-abdominal collections and doubtful perforation.

Following an Exploratory Laparotomy surgery, the condition of the patient gradually worsened and ultimately, he expired. However, the Commission opined that there was no deficiency of service or medical negligence on the part of the doctor and treating hospital while treating the patient. Dismissing the complaint, the Commission noted in its order, "In totality and with due regard to the settled law in this regard, we are of the view that the doctors had performed their duties and exercised an ordinary degree of professional skill and competence, for which, they cannot be held guilty of medical negligence."

The history of the case goes back to 2011 when the husband of the complainant was being treated for Jaundice and gall bladder stone and was later shifted to Indraprastha Apollo Hospital. After examination, the treating doctor advised the patient to undergo surgery, and the same was done on 12.05.2011. Following this, the patient was discharged after a few days, and the whole procedure cost around Rs. 21,25,858.

However, the condition of the patient deteriorated and he had to be admitted to the hospital again and due to lack of funds, the patient was allotted a bed in the EWS (Economically Weaker Section) ward. The condition of the patient

deteriorated further after discharge and it had been alleged that the hospital discharged the patient even though his condition was not normal.

Following this, the condition worsened and even though the complainant tried to admit the patient to the hospital, the doctor refused to do so. Finally, when the patient was admitted to the Surgical ICU after a few days, his condition had become critical, which led to his death, it had been alleged.

It has further been claimed by the complainant that even though she had requested the doctor to conduct the postmortem of the patient, the request was declined. Alleging that the patient, who was the only earning member in the family, died due to the failure of the doctors and the hospital to provide proper treatment, the Complainant approached the State Commission and sought Rs 50 lakh as compensation for alleged medical negligence.

On the other hand, the treating doctor in his detailed reply contended that due care and caution was taken while treating the patient and it was further submitted before the Commission that the patient was critically ill at the time of admission. He was diagnosed with intra-abdominal collections and doubtful perforation and the patient was advised for Exploratory Laparotomy surgery, for which High Risk consent was taken.

It was further claimed by the Hospital that the condition of the patient improved gradually after admission and even though the patient died there was no scope of Deficiency of Service on the part of the Hospital.

During the case proceedings, the treating doctor failed to file the evidence by way of Affidavit and that is why, "the averments made in the Written Statement cannot be said to be proved and cannot be taken on record," the Commission mentioned in the order.

After perusing the available material on record, the Commission referred to the Supreme Court judgment in the case of Kusum Sharma and Ors. vs. Batra Hospital and Medical Research Centre and Ors., wherein the top court had clarified the law

while determining medical negligence. Referring to this judgment, the State Commission noted,

"In cases wherein the allegations of negligence are levelled against the Medical Professionals, negligence is an essential ingredient for the offence, which is basically the breach of a duty exercised by omission to do something which a reasonable man would do or would abstain from doing. However, negligence cannot be attributed to a doctor so long as he performs his duties with reasonable skill and competence and they are entitled to protection so long as they follow the same."

In the present case, the Commission while referring to the complaint that the patient was treated differently in the EWS ward, noted, "So far as the first leg of the argument, with respect to disparity in the treatment provided in the Paid General Ward and the EWS Ward is concerned, the perusal of the record reflects that the Patient was shifted to the EWS ward on 05.08.2011 on the request of the Nodal Officer, Ministry of Health and Family Welfare, Delhi. At the time when the Patient was admitted in the EWS Ward, his condition improved and the Patient was finally discharged on 25.08.2011. While discharging the patient, a course of antibiotics was prescribed, and the relatives of the patient were also told to regularly follow-up with the Hospital. The said fact has not been denied by the Complainant in her Rejoinder to the Written Statement."

"Hence, from the aforesaid, it can be concluded, that only after the Operating Doctors were satisfied that the condition of the patient was improving and with routine check-ups and medication, the Patient may recover, that he was discharged from the Hospital. To say that the Patient was not given proper treatment in the EWS Ward does not stand strong ground, otherwise, the Complainant could have easily raised the issue with the Hospital Authorities as well as the Nodal Officer, if the Complainant was actually dissatisfied with the Service," noted the Commission.

Further referring to the contention that the doctors had discharged the patient along with the

Discharge bag, the Commission observed, "With respect to the leaving of the Discharge Bag is concerned, the same has been refuted by the Opposite Party No. 1 stating that the said action was taken, considering the condition of the Patient. Moreover, the patient was advised regular follow-ups with the Consulting Doctors even after he was discharged from the EWS Ward, however, the same direction was not even complied with by the Complainant or the relatives of the Patient. It has been further argued that on 20.10.2011, the relatives of the Patient reported about the condition of the Patient to the Hospital, and the Patient was not even brought to the Hospital for check-up"

Thus, denying attributing medical negligence against the doctor and the hospital, the Commission noted, "The acts of the Medical Professionals varies from case to case and not one practice or procedure is applicable to all the cases. It is upon the Condition and Response to the Medical Practices, that the Medical Professional proceed with for the Specific Patient. In the present case also, the action of the Doctors of leaving the Discharge Bag, was taken only after considering the condition of the Patient. The record is also clear, that as a measure of precaution, the Antibiotics as well as regular follow-up was also prescribed, which the Complainant failed to comply with. Hence, we are of the considered view that the procedure followed by the Hospital and its doctors, of leaving the Discharge Bag intact, cannot be said to be an act of Medical Negligence."

Dismissing the complaint, the Commission in the order clarified, "In totality and with due regard to the settled law in this regard, we are of the view that the doctors had performed their duties and exercised an ordinary degree of professional skill and competence, for which, they cannot be held guilty of medical negligence."

Ref.: <https://medicaldialogues.in/news/health/medico-legal/no-medical-negligence-in-exploratory-laparotomy-consumer-court-relief-to-indraprastha-apollo-h...> Accessed on 17/01/2022

Patient Dies of Fever Due to Alleged Medical Negligence of Govt Hospital, Nurse; Rs 3 Lakh Compensation Directed

Chennai: Directing to compensate for the death of a teenager who died due to alleged medical negligence at a Government Medical College Hospital, Karur, the State Human Rights Commission (SHRC) has directed the State to pay Rs 3 Lakh to the family of the deceased. Such observations came from the Commission after it took note of the fact that the inquiry conducted by the inquiry officer was not satisfactory.

The father of the deceased had approached the Commission after his 18-year-old son, who had learning difficulties, had died from severe fever.

Back on the 30th November 2017, the patient was taken to the emergency ward of the Government Medical College Hospital, Karur. The patient was treated and then was shifted to the regular ward the following day.

Following this, on December 2, the duty doctor had advised for a CT scan. However, as the equipment at the treating hospital was not functional, the family had asked to shift the patient to another hospital.

On the same night, the patient developed fever once again. As per the latest media report, when the mother of the patient informed the duty nurse about this and asked him to report the same to medical officer it has been alleged that the nurse ignored the request and was on his mobile.

The next morning the patient died and the father of the deceased filed a complaint (with whom?) regarding the matter as well. However, the hospital authorities didn't face any action because of this. Consequently, the patient's father approached the Commission.

Responding to the plea, the hospital authorities denied all the allegations. The treating hospital further claimed that they had tried their best but the condition of the patient didn't improve.

Noting that the inquiry was not satisfactory, the Commission directed the State to compensate for the death. Further, recommendations for the transfer

of the duty nurse have also been given by the Commission. Besides, the Commission has also recommended initiating disciplinary proceedings against the nurse.

Ref.: <https://medicaldialogues.in/news/health/medico-legal/patient-dies-of-fever-due-to-alleged-medical-negligence-of-govt-hospital-nurse-rs-3-lakh-compen...> Accessed on 17/02/2022

Landmark Decision: HC Allows MTP of 34 Weeks 6 Days Old Fetus

Kolkata: In first of its kind decision The Calcutta High Court on Thursday allowed a petitioner to terminate her 34 weeks 6 days old conception, which is one of the longest pregnancy to receive a legal abortion sanction after considering the plea which stated there is a very less chance of the child being able to survive or it might develop long term disabilities, with limited period of survival.

The infant was suffering from Spina Bifida (an incurable disorder), as per doctors. The baby born with such condition cannot move or perform normal life functions and won't survive beyond few weeks.

Spina Bifida is a Neural Tube Defect that occurs when the spine and spinal cord don't form properly. Neural tube is the structure in a developing baby that eventually forms the brain, spinal cord and the tissues that enclose them.

The court comprising of a single judge bench of Justice Rajasekhar Mantha also noted that there is a chance of the health of both the child and mother being in danger if the medical termination of pregnancy is not allowed, as per a media report in the Live Law.

The petitioner and her husband had filed a plea before the court seeking permission for the MTP (Medical Termination of the Pregnancy), reasoning that a number of medical complications were found by three medical practitioners, subsequently affecting the health of the child and the mother.

The court had earlier instructed the director of IPGME&R, (SSKM Hospital), Kolkata to create a medical board as per the provisions of the Medical

Termination of Pregnancy Act, 1971 and submit a medical opinion before the Court accordingly.

The medical report submitted by the Medical Superintendent-cum-Vice Principal, IPGMER-SSKM Hospital, Kolkata dated February 15, 2022 was taken on record by the court, which also had the medical opinion of a team of nine senior doctors. The court said, "In the medical report it is clear and explicit, that there are remote chances of the child being born out of the instant pregnancy surviving or leading a normal life. The risks to the mother as well as the child are also highlighted in no uncertain term."

Relying on the medical opinions submitted, the court further observed, "An unequivocal view expressed by such doctors is that the likelihood of a healthy child being born out of this pregnancy is remote. Even if a child is born, the chances of survival are slim. It is also opined that even if a child is born by medical intervention, it is likely to develop severe impairments and long-term ailments and would have limited mortality."

The medical report was carefully considered by the petitioner and her husband and had eventually affirmed on oath that they are desirous of medically terminating the pregnancy. The petitioner orally stated in the court that she is aware of all medical consequences both on the child and herself if the pregnancy is taken to term or if the child is delivered prematurely.

The petitioners sought to proceed with the pregnancy termination, where they had submitted an affidavit stating the same despite of the uncertainty in course of surgery of this nature and consequences on the health of the petitioner and future consequences clearly indicated in the medical report.

The court observed that "the petitioner and her husband have unequivocally acknowledged before this Court that they shall not hold responsible any medical practitioner, or any of the advocates including their own and any court of any consequences that may arise out of the procedure of medical termination of pregnancy."

"The risks and consequences to the petitioner, that would follow in course of such procedure i.e. for terminating of pregnancy at this stage have also been clearly indicated and the petitioner as well as her husband have carefully considered the same and have accepted such risks. It also appears that there is no serious risk to the life of the petitioner," said the court.

The court relied on the judgement of the Supreme Court decision in *Sarmishtha Chakraborty and another Vs Union of India Secretary and others* wherein the Apex Court had allowed the termination of the 26 weeks old foetus, reports the Live Law.

Thus, allowing the termination of the pregnancy, the court observed, "Considering the entire gamut of facts and circumstances, this Court permits the petitioner to medically terminate her pregnancy at an authorized hospital and/or medical facility."

Advocates Sutapa Sanyal and Subhajit Dan represented the petitioners, whereas the state was represented by senior advocate Amitesh Banerjee and advocates T.M. Siddiqui and Nilotpal Chatterjee. Union government had notified the Medical Termination of Pregnancy (Amendment) Rules, 2021 on October 12, 2021 extending the gestational period from 20 to 24 weeks for certain categories of women for the medical termination of the pregnancy.
Ref.: <https://medicaldialogues.in/news/health/medico-legal/landmark-decision-hc-allows-mtp-of-34-weeks-6-days-old-foetus-88786> Accessed on 23/02/2022

Appendicectomy Mishap: Hospital Directed To Pay Rs 8 Lakh For Leaving Mop Inside

Ahmedabad: The State Consumer Disputes Redressal Commission, Gujarat recently directed an Ahmedabad-based hospital to pay Rs 8 lakh to a patient after a mop was allegedly left inside the intestine of a patient during appendectomy surgery. Holding the hospital vicariously liable for the alleged medical negligence, the Commission granted compensation to the patient for the mental and physical anguish which he had to suffer and for loss

of income during the medical treatment.

The hospital has been directed to comply with the order within 60 days and the Commission has clarified that otherwise, the amount will carry interest at the rate of 9% p.a. till its realization.

Back in 2008, the complainant had been admitted to the treating hospital due to severe pain of appendix and following this, appendix operation was performed. However, as the pain didn't get better, he again consulted the hospital and the doctors cleaned the pus by operating on the patient. Still there was no relief, and the hospital conducted tests including X-ray and Sonography and diagnosed the patient with normal pain.

As the health condition didn't improve, the complainant consulted another doctor who after conducting a Sonography advised him for operation, and during the operation, it was revealed that the root cause of pain was a mop/ piece of cloth trapped in the large intestine.

Thus, alleging medical negligence against the first treating hospital, the complainant approached the District Consumer Court Ahmedabad (Rural) and sought Rs 15 lakh as compensation. However, the district commission after hearing the counsels, and after considering the documents and evidences, dismissed the Complaint.

Being aggrieved with the order of the District Commission, the complainant approached the State Commission. The counsel for the Complainant contended that the panel of expert doctors of B. J Medical College had opined that the mop was found in the intestine of the appellant and therefore this clearly showed that there was negligence on the part of the hospital in performing the operation. In fact, in operation CD, it had been visually recorded that there was a mop that remained in the intestine while performing an operation by the Hospital. However, this fact was not considered by the District Commission.

Further, the District Commission had opined that since no fees had been charged by the Hospital, the appellant was not a consumer and therefore the

Consumer Protection Act would not be applicable and the complaint would not be maintainable.

However, the counsel for the complainant argued that the finding of the District Consumer Court cannot be accepted as in the Trust Deed it had been mentioned that medical help would be granted to the poor and deserving person and therefore as per the provision of Consumer Protection Act complainant is a Consumer. Further, the complainant had purchased medicines from the Hospital and in that way, he was a consumer.

On the other hand, the counsel for the hospital submitted that upon examining the patient it had been diagnosed as a case of perforated appendix and consequently, the complainant was advised for surgery of appendectomy.

The counsel further submitted that during follow-up treatment whenever the complainant had made any complaint the in-charge doctor had provided with immediate necessary treatment. During the follow up treatment, the complainant had developed infective abscess which is a known complication of appendectomy and there was pus, contended the counsel. He further argued that the complainant was given proper medical assistance and antibiotics had been prescribed.

He further argued that even though the complainant was advised to visit the hospital regularly, and he was responding well to the known complications of the surgery, all of a sudden the complainant stopped visiting the hospital. So, there was no negligence or carelessness on the part of the opponent hospital in treating the patient, argued the counsel.

It was further contended by the counsel that the question of using piece of cloth at the time of surgery doesn't arise at all and the complainant was having post-operative complication only because of large infected appendix, adhesion of intestine, etc.

The counsel further submitted that the surgeon in an affidavit before the District Commission had stated that no mop was used during the surgery and as the complainant didn't challenge

the affidavit, the contents of the affidavit had not been challenged. Besides, the X-ray and Sonography conducted at the hospital didn't detect any such mop. He also submitted that even though the Police panchnama had mentioned about the mop, there was no biopsy report of the mop to ascertain that it was the same mop that came out of the abdomen of the complainant.

After considering all the contentions, the State Commission noted that "In light of the above judgments of Hon'ble Supreme Court it is crystal clear that where services are rendered free of charge to everybody then complainant does not fall within the purview of Consumer but in the instant case considering Section 03 of the Trust Deed of the opponent hospital it becomes clear that in the opponent hospital the services of hospital were provided free of charge to poor and deserving persons and to every other person on payment of charges and hence in the considered opinion of this Commission the complainant does fall under the definition of the 'Consumer' under C.P. Act, 1986. Furthermore, opponent hospital has not produced any evidence which can prove that opponent hospital was providing treatment free of charge to all their patients."

Further referring to the contentions that as per the Cr. P.C and Indian Evidence Act, the statements of the second doctor and other doctors given to the Police authorities were not admissible as evidence in the Consumer Protection Act, the Commission observed, "It is pertinent to note here that the Consumer Protection Act, 1986 is a beneficial legislation to provide speedy, inexpensive and hassle free redressal to the grievance of the consumers. The provisions of the Code of Civil Procedure, except the one, provided under Section 13(4) of the Act, and the Evidence Act are not applicable to the Consumer disputes. The Consumer Commissions are to evolve their own procedure for adjudicating the consumer disputes by resorting to the principles of natural justice but are not required to enter into technicalities, with a view to deny the substantial justice to the

parties."

At this outset, the Commission referred to the Supreme Court judgment in the case of V. Kishan Rao Vs. Nikhil Super Speciality Hospital and Other and opined, "Looking at the above observation of the Hon'ble Supreme Court the allegation of the opponent that the statements given before the police authority are not admissible in C.P. Act is not sustained."

Regarding the expert panel report of BJ Medical College, the Commission took note of the contention by the hospital's counsel that some endorsements had been made in the report by someone and it was deleted as well and therefore the report cannot be considered as evidence.

At this outset, the Commission noted, "the expert doctors of panel have signed under the said observation report and the said report has also sent to the Civil Hospital Sola through the Dean of B.J. Medical College and this report was then submitted to Police department and therefore there is a possibility that during this transaction of report the said endorsement was made by someone and then it was deleted but this deleted hand written endorsement cannot prove that the said report is suspicious."

The expert report had mentioned, "From the evidences given, it is proved that mop was left inside the abdomen during the first surgery by *** of *** Hospital Surgery Department which has created all the consequent surgical complications".

Referring to this report, the Commission noted, "therefore in the opinion of this Commission it has palpably emerged from the above report that mop was left inside the abdomen of complainant.

Further the Commission noted that although the Sonography reports conducted by the Hospital didn't find any mop, the images had not been produced by the Hospital on record. "Hence in the opinion of this Commission opponent hospital has failed to prove that there was no such mop left inside the abdomen," noted the Commission. "It is crystal clear that on the basis of the above report of expert doctors' panel it is established that the mop was left

inside the abdomen and thereafter it had been removed by the operation and therefore it distinctly appears to be gross medical negligence of the treating doctor of the opponent hospital which indicates that this is a case of Res Ipsa Loquitur and therefore it is the duty of the opponent doctor to prove that he was not negligent," concluded the Commission.

Referring to the definition of medical negligence as established by the Supreme Court in a series of judgments including in the case of Jacob Mathew Vs. State of Punjab & Anr. and Achutrao H. Khodwa Vs. State of Maharashtra, the Commission observed, "In the instant case the report of expert doctors' panel has revealed that it was the result of negligence of treating doctor who has performed operation on the complainant and therefore in the considered opinion of this Commission the report itself proves that it was the gross medical negligence of treating doctor of the opponent Hospital."

"As far as liability of the Hospital is concerned, Hospital is liable with respect to medical negligence that may be direct liability or vicarious liability which means the liability of an employer for the negligent act of its employees. An employer is responsible not only for his own acts of commission and omission but also for the negligence of its employees, so long as the act occurs within the course and scope of their employment. This liability is according to the principle of 'respondent superior' meaning 'let the master answer'. A hospital can be held vicariously liable on numerous grounds on different occasions. Several Hon'ble High Courts Judgments have held hospitals vicariously liable for damages caused to the patients by negligent act of their staff," clarified the consumer court.

Commission directed the hospital to pay compensation amounting of Rs 8 lakh to the complainant along with Rs 10,000 for legal expenses.
Ref.: <https://medicaldialogues.in/news/health/medico-legal/appendectomy-mishap-hospital-directed-to-pay-rs-8-lakh-for-leaving-mop-inside-88865?infinite...> Accessed on 23/07/2022

Hospital Cannot Deny Treatment on Ground Of Anyone's Place Of Residence: High Court

Chandigarh: Providing relief to a pregnant woman, who had been denied treatment at GMCH-16 Chandigarh because of her place of residence, the High Court of Punjab and Haryana recently clarified that a government hospital cannot deny treatment on the ground of anyone's place of residence.

Observing that denying treatment on that basis violates a person's right to life and liberty, the HC bench comprising of Justice Rajbir Sehrawat noted, "Otherwise, also, the petitioner cannot be subjected to discrimination only on the ground of her place of residence. That, in fact, is a direct violation of fundamental right of the petitioner. Denying her treatment on the above said ground also violates her the right to life and liberty without there being any justifiable reason. This decision or even tendency of Government medical facility cannot be countenanced; by any means."

The High Court's directions came after a patient who was in the five months of her pregnancy when she approached the court after allegedly being denied medical treatment at GMCH-16. The ground for denial was the fact that in GMCH-16, the patients from outside Chandigarh cannot get treatment.

It was submitted by the counsel for the petitioner patient that being in the fifth month of her pregnancy, the patient needs medical treatment and health advices for the wellbeing of her fetus and for her own well-being as well.

For that purpose, the petitioner approached the treating hospital and got registered as a patient. However, subsequently, on 10.02.2022 the petitioner had been turned out from the hospital refusing her the treatment on the ground that she was not a resident of UT Chandigarh.

The patient's Counsel argued that there is no such law under which the Government Hospitals in UT could have denied the facility of treatment to the petitioner, in normal course, only on the ground that she was not a resident of the UT Chandigarh.

On the other hand, the counsel for the UT

Chandigarh could not point out any law which entitles the treating hospital for driving out patients by denying them the medical treatment only because they are not residents of UT Chandigarh.

Taking note of this, the High Court bench observed, "Otherwise, also, the petitioner cannot be subjected to discrimination only on the ground of her place of residence. That, in fact, is a direct violation of fundamental right of the petitioner. Denying her treatment on the above said ground also violates her the right to life and liberty without there being any justifiable reason. This decision or even tendency of Government medical facility cannot be countenanced; by any means."

"Accordingly, the present petition is disposed of with a direction to respondents to provide necessary medical treatment/advice to the petitioner, in normal course, as and when she approaches the respondent-hospital," further read the order. "The counsel for the UT Chandigarh is requested to take the petitioner today itself to the hospital and to ensure that the necessary treatment of the petitioner is started with immediate effect," directed the HC.

Ref.: <https://medicaldialogues.in/news/health/hospital-diagnostics/hospital-cannot-deny-treatment-on-ground-of-anyones-place-of-residence-high-court-89078> Accessed on 28/02/2022

Supreme Court Sets Aside HC Order Directing Rs 25 Lakh Compensation for Gross Medical Negligence

New Delhi: Taking note of the fact that none of the treating doctors were made party in medical negligence case proceedings, the Supreme Court recently set aside the order of the Allahabad High Court. The HC, while considering the Public Interest Litigation (PIL), had directed the doctors of S.R.N. Hospital to pay Rs 25 lakhs as compensation to the father of a 25- year-old man who died due to alleged medical negligence.

Observing that the way the PIL was initiated and dealt with by the HC was not a proper remedy, the top court bench comprising of Justices UU Lalit, S

Ravindra Bhat and PS Narasimha set aside the HC's order and noted, "We have, therefore, no hesitation in setting-aside the findings and the conclusions in the judgment under appeal about negligence on part of the hospital and the treating doctors and the operative directions"

The case concerned a 25 years old practicing advocate in the Allahabad High Court, who died on 30.10.2016 as a result of the alleged negligence on the part of the treating doctors and the hospital where he had got admitted for medical attention.

Live Law adds that the doctors of the S.R.N. Medical College allegedly diagnosed the patient wrongly and administered the patient with 'broad spectrum antibiotic', which was not prescribed in dengue fever in the State Government guidelines. As a result of it, the patient allegedly died. Following this, the father of the deceased had written to one of the High Court judges and consequently, the Public Interest Litigation was registered by the High Court. In the PIL, the HC issued certain interim directions without making any of the treating doctors a party to the proceedings.

The HC had directed that the doctors of S.R.N. Medical College would be liable to pay compensation of Rs 25,00,000 within six weeks. Apart from directing the doctors to pay the compensation, the HC had issued several other directions for prevention and treatment of Malaria, Dengue, Kala-azar and any Vector Borne Diseases. However, being aggrieved, the State approached the Supreme Court bench. Although the State did not challenge any of the directions issued in Paragraph 23, for public benefit, the award of compensation was challenged by it.

Taking note of the fact that none of the treating doctors were made a party in the proceedings, the top court bench noted, "During the course of its judgment, the High Court arrived at certain conclusions which were in the nature of findings on the issue of negligence on part of the concerned hospital and the treating doctors. Such findings and conclusions are definitely prejudicial to

the interest of the treating doctors and the hospital."

Leaving aside the question whether in a PIL, the matter could be adjudicated whether any negligence had occurred in an individual case, the bench opined, "the basic feature of the matter as it emerges is quite clear that none of the persons who could get adversely affected by a decision was made a party to the proceedings." Therefore, setting aside the HC's order of compensation, the bench directed, "We have, therefore, no hesitation in setting-aside the findings and the conclusions in the judgment under appeal about negligence on part of the hospital and the treating doctors and the operative directions issued in paragraph 20 as quoted hereinabove. We, therefore, allow this appeal and set-aside such conclusions and directions." However, the bench didn't interfere with the directions issued by the HC in Paragraph 23. "It is however made clear that the directions issued in paragraph 23 are left untouched and shall be operative."

The top court bench, however, allowed the father of the deceased to avail the remedy of law available to him and noted, "If the respondent has a grievance that his son died as a result of professional

negligence on part of the concerned hospital and treating doctors, he has every remedy in law either on the criminal side, or before a consumer forum or before any other competent authority. Public Interest Litigation in a manner it was initiated and dealt with by the High Court was certainly not a proper remedy."

"Therefore, leaving all questions open, we give liberty to the respondent to initiate such proceedings as are open to him in law. As and when, such proceedings are initiated, the time taken in prosecuting the instant public interest litigation shall be reckoned for the purposes of Section 14 of the Limitation Act, 1963 and in such eventuality, the proceedings so initiated shall be taken to logical conclusion purely on their own merits, without being influenced by any of the observations made by the High Court. The respondent shall however be entitled to rely on the material which was placed before the High Court," further read the order.

Ref.: <https://medicaldialogues.in/news/health/medico-legal/supreme-court-sets-aside-hc-order-directing-rs-25-lakh-compensation-for-gross-medical-neglige...> Accessed on 28/03/2022.



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- 2) Handin RI- Bleeding and thrombosis. In: Wilson JD, Braunwald E, Isselbacher KJ, Petersdorf RG, Martin JB, Fauci AS, et al editors—Harrison's Principles of Internal Medicine. Vol 1. 12th ed. New York: Mc Graw Hill Inc, 1991: 348-53.

Reference from electronic media:

- 3) National Statistics Online - Trends in suicide by method in England and Wales, 1979-2001. www.statistics.gov.uk/downloads/theme_health/HSQ20.pdf (accessed Jan 24, 2005): 7-18.

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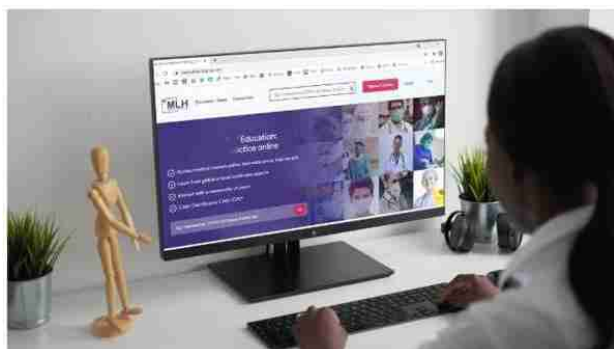
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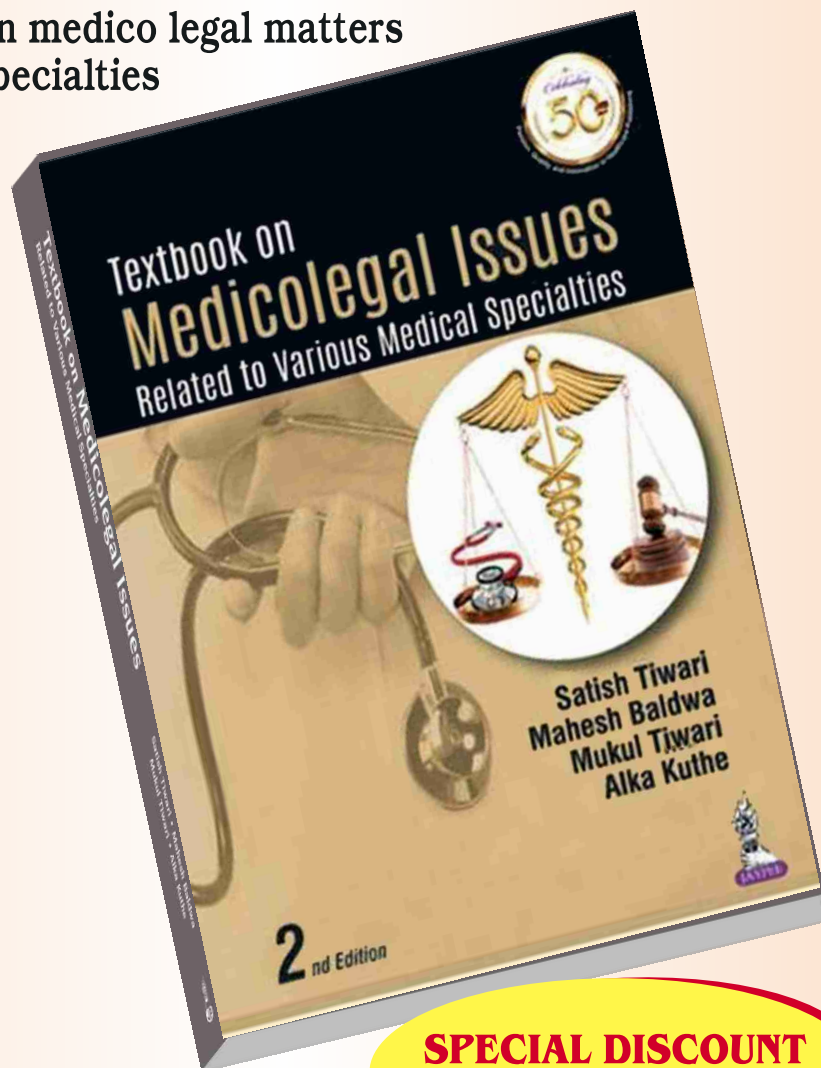
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