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Disclaimer

Address for correspondence :
Dr. Asok Datta,
ULHAS GRAV, 01, Post Joteram,
Dist. Burdwan - 713104 (WB).
Email:asokdatta31@yahoo.com
Ph. 08170993104.

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Editorial :

Consumer Protection Act: No Cause For Celebration

*** Dr Mahesh Baldwa ** Dr Varsha Baldwa ***Dr Namita Padvi **** Dr. Sushila Baldwa**

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Keywords :

CPA Doctor-Patient relationship, Supreme Court, Consumer Redressal Commission, Deficiency in service.

The Consumer Protection Bill 2019 proposed before 17th Lok Sabha and adopted by it and now stands adopted by the Rajya Sabha on it's last day during the present session in it's definition of word 'Services' under clause 2 at Seriatim 42 doesn't include the word 'Healthcare' as against the definition in the original Consumer Protection Bill of 2019. The Hon'ble Minister while piloting the Bill categorically stated that 'commensurate with the recommendations of the Parliamentary Standing Committee on Consumer Affairs, the 'Healthcare' has been kept outside the ambit of the Consumer Protection Act. This thrilled doctors, obviously!

The word "healthcare" was never used explicitly defined in 2(1)(d) of CPA 2019 similarly again not defined in new section 2(11) of deficiency in CPA-2019. Though 'healthcare' is not included in CPA-2019 in definition creating new section 2(11) read with section 2(42) on deficiency and services in CPA-2019 but position is same as it was in CPA 1986.

As you all know in 1995, doctors were included as service providers and patients as consumers after the decision of IMA versus V.P. Shantha (Three Judges bench). This judgment is not overruled till date by Supreme Court. In the present case Consumer Protection Act, 2019 is akin to Consumer Protection Act, 1986 where 'Healthcare' is not explicitly included in the definition of the word 'Services'. However, the said exclusion is not in terms of a required negative expression which in the normal course would have weaned away the operation and effect of 1995 pronouncement of the Hon'ble Supreme Court. Now, it is once again up to the Hon'ble Court to take its position as to whether 'Healthcare services' are included in the Consumer Protection Act or otherwise in tune with their interpretation made in 1995 pronouncement. However, it would not be automatic applicable to Consumer Protection Act, 2019 till it is explicitly interpreted by the Hon'ble Supreme Court for the simple reason that the interpretation made by the Hon'ble Supreme Court was in respect of the Consumer Protection Act, 1986 and that would not become automatically applicable to Consumer Protection Act of 2019. It will mandate a fresh interpretation for the Fresh Law i.e. Consumer Protection Act, 2019 in the present instance. Going by the letter and spirit of the definition of the word 'Services' at Section 2 in the Consumer Protection Act, 2019, by virtue of the word 'Healthcare' having been omitted from the same till such time an interpretative ruling under Article 141 of the Constitution of India, comes in vogue, within the scope and meaning of the said Act it would be 'Doctor-Patient Relationship' as against the hitherto 'Consumer - Service Provider Relationship'.

The situation is same today and there is no change in it unless Supreme Court rules otherwise. Only issue is Government added word telecom and healthcare positively in CPA draft bill 2018 but

*Senior Pediatrician & Senior Medico-Legal Advisor, Mumbai Email : drbaldwa@gmail.com **Pathologist, presently at Melbourne, Australia
*** Consultant Anesthetist, presently at Dubai, UAE **** Consultant Obstetrician & Gynecologist, Mumbai

removed healthcare. Under pressure Government dropped that healthcare, hence how can it change the original interpretation of Supreme Court? The new act does not say that "healthcare" is explicitly excluded from CPA-2019.

As per my opinion there is no change in previous situation and doctors will remain service provider and patient who hired the services of doctor will remain consumers. You are very much liable, and patients can haul doctors under CPA - 2019, even more aggressively.

A very quick and brief review (focused on points affecting doctors) of the CPA 2019 passed by Parliament on 07-08-2019 waiting for President's assent and notification is:

Our view is as below:

1. Earlier a patient wanting to claim compensation of Rs 20 lakhs had to file a complaint before the District Commission, to the State Consumer Forum if he wanted to claim Rs 20 lakhs to 1 crore and to the National Commission if the claimed amount was above 1 crore.Now, for a compensation up to Rs 1 crore, he has to complain to the District Forum, From Rs 1 crore to 10 crores to the State Commission and to National Commission for compensation above Rs 10 crores. As a consequence, you can now expect patients to claim higher compensation against you because up to Rs 10 crores he will not have to travel to Delhi and can conveniently file the complaint in Mumbai itself (for Maharashtra). So, get prepared to increase your Professional Indemnity Insurance Cover and shell out more money.
2. Earlier, if you had operated or treated a patient in Mumbai the patient could file a complaint only in Mumbai. Under the New Act, if you had done a cholecystectomy of a patient from Jharkhand, he has a right to file a complaint against you in a Jharkhand Consumer and you will have to travel to Jharkhand. You will have to grin and bear it. That is now the law.
3. If you fail to issue a bill or receipt to a patient (for whatever reason, maybe inadvertently) this now has been included in unfair trade practice, and you are liable to face under the CPA and may have to pay compensation.
4. If you disclose personal information given to you by a patient (unless required by law) you can face action under the new CPA-2019. Hence, strict confidentiality from now on.
5. Earlier, in all Consumer Forums, one of the members on the bench had to be necessarily an Ex- High Court or Supreme Court Judge. Under the new CPA there may not be a single person who has any knowledge of law. Hence you can expect more perverse judgments from now on.
6. Earlier the appointment of the members of the Commission had to be appointed by a State judicial committee. Now Central government will appoint members by a notification. Hence expect any Tom, Dick and Harry to be on the Forum.
7. Now a Mediation Cell will be attached to every Forum to facilitate Alternate Dispute Redressal (ADR) Hence expect to go through a longer trial –first before Mediation Cell for settlement, and then before the Forum if this fails.
8. Earlier, if you did not comply with the orders of the Commission you could face a jail term between one month and three years and a fine between Rs.2000 to Rs.10,000/-. Now you will face imprisonment of three years with a fine not less than Rs.25,000 and extendable to Rs 1 lakh. If parliament has not explicitly recorded that in section 2(11) read with 2(42) of CPA 2019 healthcare is excluded as below:

Section 2(11) "deficiency" means any fault, imperfection, shortcoming or inadequacy in the

quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service and includes -
(i) any act of negligence or omission or commission by such person which causes loss or injury to the consumer; and
(ii) deliberate withholding of relevant information by such person to the consumer;

Section 2(42) "service" means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, telecom, boarding or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service;"healthcare" was excluded then it would have been welcome, just deleting "healthcare", which was proposed in bill does not serve the legal purpose.

Now see for yourself what is there to celebrate? Whatever in parliament is deleted is not recorded. What the bill, when becomes act is interpreted by law courts.

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Reader's Ask:
Can a Doctor be Punished for Prescribing Irrational Drug Formulation?

A doctor presumes that all drugs available in the market are manufactured after obtaining a licence from appropriate authority. It is also presumed that the licencing authority would have checked whether the drug formulation is approved, safe and all contents are in appropriate quantity. Can a doctor be held guilty and punished if some harm occurs to a patient for prescribing an irrational or potentially harmful drug formulation? Sulbactum is approved for combination with Cefoparozone only and Clavulanic acid with Amoxicillin only, but many antibiotic combinations with Clavulanic acid or Sulbactum are available in the market. Can a doctor be sued for prescribing a drug combination which provides no known additional benefit to the patient, but, adds to the cost of therapy ?

Yash Paul
Pediatrician, Jaipur
E-mail: dryashpaul2003@gmail.com

Experts answer to this query shall be published in next issue of JIMLEA.

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 forth coming issues of JIMLEA. This is a peer-reviewed journal with ISSN registration. Please send your articles to Dr. Asok Datta,
email : asokdatta31@yahoo.com

Review Article:
No medicolegal case against doctors after 3 years of treatment

*** M. Garg, ** N. Garg ***P. Kumar**

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Keywords

Medical Negligence, Limitation period, Medical records, Frivolous litigations

Abstract

MCI stipulates to keep medical records for a period of 3 years. Once the medical records are disposed, the defence of medical professionals in any kind of medicolegal case is reduced to zero. Therefore, the implication and existing MCI guidelines are clear that no medicolegal case can be entertained after 3 years of treatment as 3 years is more than sufficient to know ill effects of any kind of treatment. However, in the absence of clarification to this effect from MCI (that no medicolegal case can be entertained after 3 years of treatment), a lot of doctors are being harassed and traumatized by frivolous litigations which are filed against them after 3 years of treatment. *A clarification of the existing guidelines is needed urgently from MCI and various state medical councils specifying that any kind of medicolegal case cannot be filed against a medical professional after 3 years of treatment especially in cases where the entire defence is dependent on medical records. In case, a litigation is still filed against a medical professional after 3 years of treatment and medical records are not available in that case, then the presumption would be raised in favour of the medical professional that all the records were correct and were in order.* Though health is a state subject, but a clarification from MCI would help state medical councils to issue such clarification in their respective states. In the absence of such a clarification, the sword of Damocles would always be hanging on every medical professional of the country throughout their lives as a lot of rogue elements are eager to misuse this shortcoming to exploit medical professionals for their petty gains.

Introduction :

Proper maintenance of medical records is vital for both patients and medical professionals. The medical record keeping is necessary mainly for two reasons :

1. Patient care
2. Alleged medical negligence

First, in patient care, the medical records are needed for providing continuing patient care, analysing the effect of treatment, pursuing clinical research and making guidelines at regional or national level.

Second, the medical records are of paramount importance in medicolegal cases. Whenever a medical negligence or irregularity is alleged against a doctor, the legal system relies mainly on the documentary evidence (medical records). The latter is often the only evidence which leads to the acquittal of the doctor. Therefore, this well-known saying is so pertinent *"Poor medical records mean poor defense, no records mean no defense"* [1].

Due to these reasons, the maintenance and proper upkeep of medical records is vital for a doctor's defense in any kind of medicolegal case whether the case is of alleged negligence, error in judgement, improper consent or any other consent related issues, deficiency in providing service etc.

Different countries have different guidelines on this but most countries have a statute of preserving medical records between two to five years. In India, under MCI Regulations, 1.3.1 of the Indian Medical Council (Professional conduct, Etiquette and Ethics) Regulations, 2002, "Every physician shall maintain the medical records pertaining to his / her indoor patients for a period of 3 years from the date of commencement of the treatment" [1].

When the destruction of medical records

* M. Garg - Indus International Hospital, Mohali
** N.Garg - Department of Surgery, Govt Medical College & Hospitals, Chandigarh Email- colorectalindia@gmail.com)
*** P. Kumar - Indus International Hospital, Mohali

makes the medical professional so vulnerable to conviction in any alleged medicolegal case, then why should the medical records be destroyed at all? Why a tenure of 3 years is prescribed for safekeeping medical records? It becomes important to understand the rationale behind this. The reasons for fixing a tenure for medical record keeping are :

1. It is logistically not possible to maintain records of so many patients for very long times.
2. The period of 3 years is more than sufficient for manifestation of any ill effect of any medical or surgical treatment. In fact, the ill effects of almost all kinds of treatment is known with in 3-6 months. Therefore a period of 3 years is fixed so as to safely cover all kinds of rarest circumstances.
3. For the purpose of peace and proper functioning of healthcare system in the country, it is necessary that a medical professional should not be kept under continuous apprehension that he may be prosecuted at any time particularly when the rate of false litigations is on the rise.

Therefore, the tenure of medical record keeping (3 years in India) is fixed implying clearly that no medicolegal case should be entertained after the period of this tenure. As these rules are framed by Medical Council of India (MCI), many legal professionals are not aware of this technicality. Therefore, there are FIRs being lodged and cases being filed in medicolegal cases even after 3 years of medical treatment.

What are the issues :

Notwithstanding, there have been judgements in Supreme Court and High Courts where the cases have been dismissed on this ground only (that the case has been filed after the tenure of medical record keeping has elapsed) [2].

It would be prudent to discuss the Limitations Act, along with Section 468 of the Criminal Procedure Code.

"Section 468 of the Code of Criminal Procedure lays down the period of limitation for taking cognizance of an offence. According to this Section, if an offence is punishable with fine only, the period of limitation shall be six months and if the offence is punishable with imprisonment for a term that does not exceed one year, the period of limitation is one year. Section 468, further makes it clear that if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years, the period of limitation shall be three years. However, this Section does not lay down the period of limitation for offences punishable with imprisonment exceeding three years. Meaning thereby there is no outer limit qua the limitation in relation to the offences having punishment for three years or more. Thus, Section 473 of the Code of Criminal Procedure enables the Court to take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary to do so in the interests of justice".

It states that in offences punishable with imprisonment exceeding three years, Section 468 and 473 enables the Court to take cognizance even after three years if the Court is satisfied that the delay has been properly explained. It is relevant to discuss whether this can be applied in medicolegal cases? Can the Court take cognizance in a medicolegal case after destruction of medical records (three years) assuming the imprisonment for the offence by the medical professional exceeds three years?

On Limitations Act, the Supreme Court had observed the following points as why delayed litigations lead to injustice [3].

Among the grounds in favour of prescribing the limitation may be mentioned the following:

1. As time passes the testimony of witnesses become weaker and weaker because of lapse of memory and evidence becomes more and more uncertain with the result that the danger of error becomes greater.
2. For the purpose of peace and repose it is necessary that an offender should not be kept under continuous apprehension that he may be prosecuted at any time particularly because with the multifarious laws creating new offences many persons at some time or the other commit

some crime or the other. People will have no peace of mind if there is no period of limitation even for petty offences.

3. The deterrent effect of punishment is impaired if prosecution is not launched and punishment is not inflicted before the offence has been wiped off the memory of the persons concerned.
4. The sense of social retribution (punishment) which is one of the purposes of criminal law loses its edge after the expiry of a long period.
5. The period of limitation would put pressure on the organs of criminal prosecution to make every effort to ensure the detection and punishment of the crime quickly.

The Supreme court observed that as time passes by, the evidence becomes weaker and weaker and the chances of error becomes greater.

The same observations are made in UK laws [4]. The purpose and effect of statutes of limitations are to protect defendants. There are three reasons for enforcing the Limitation Act:

1. A plaintiff with a valid cause of action should pursue it with reasonable diligence.
2. By the time a stale claim is litigated, a defendant might have lost evidence necessary to disprove the claim.
3. Litigation of a long-dormant claim may result in more cruelty than justice.

Here the second point, that the defendant might lose necessary evidence to defend himself holds utmost relevance in medicolegal cases. Because after three years when the medical records have been destroyed, the doctors have lost all evidence to defend themselves.

In special circumstances (where there is Special Act on limitation), the Supreme Court has ruled that the limitation period may be followed as per the Special Act [3]. The Supreme Court observed that Merchandise Marks Act was a special. Section 15 of Merchandise Marks Act specified that no case can be lodged after 1 year of the discovery of the offence. Hence a case filed after 1 year of the offence was rejected on this ground. As Merchandise Marks Act was a Special Act and therefore it would take precedence over CrPC. Similarly, in medicolegal cases, though there is no Special Act as of now, the situation is definitely special because of MCI guidelines that the medical records be kept for 3 years from the date of commencement of treatment.

Therefore, against this background, the following conclusions can be drawn :

a. Medical Council of India regulations prescribe maintenance of medical records for three years from the date of commencement of treatment.
b. With passage of time, the right of defendant becomes prejudiced as the defence evidence becomes weaker and weaker. However, in medicolegal cases, where the only defense of medical professionals are the medical records, the defense of medical professional is lost completely after three years.
c. The Court can take cognizance even after three years if the Court is satisfied that the delay has been properly explained. However this is not applicable in situations where there is a Special Act as there the latter takes precedence. Medicolegal cases after three years also fall under this category.
d. Though Courts have dismissed medicolegal cases where the cases have been filed after the lapse of medical record keeping duration, still a lot of cases are pending due to lack of clear understanding and absence of a special Act on this. Therefore, a Special Act needs to be passed specifying that any kind of medicolegal case (alleged negligence, error in judgement, improper consent or any other consent related issues, deficiency in providing service etc.) is not entertainable after the lapse of period prescribed for preserving medical records. In case, a litigation is still filed against a medical professional after 3 years of treatment and medical records are not available in that case, then the presumption would be raised in favour of the medical professional that all the records were correct and were in order.
e. With increasing digitalization, the medical records can be safely and easily kept for much longer periods. In case the need is felt in future, the stipulated duration for preserving medical records can be increased to any time-frame but the litigation after the stipulated duration cannot

be entertained. Otherwise, the medical professionals all over the country can be held to ransom anytime by anybody and the healthcare system in the country would become ineffective.

Thus this point that a medicolegal case cannot be entertained after 3 years of treatment needs proper implementation in our country. In other countries like UK, there is a clear statute regarding this [5].The importance of this point is further illustrated by few examples(situations) listed below :

Case No 1

Mr A got severe infection in his left kidney. The kidney got damaged as it was filled with lot of pus. Mr A's status starts going downhill as the infection starts spreading in the blood to the whole body. The removal of the damaged kidney becomes imperative to save the life of the patient.

Mr A contacted a surgeon,Dr S. The surgeon operated Mr A, removed the damaged infected kidney and Mr A's life was saved. The damaged kidney was sent for histopathology examination which confirmed that the kidney was grossly damaged and infected. The patient was discharged and recovered fully. The patient's file (containing the description of patient's clinical condition, ultrasound and CT scan reports showing swollen damaged kidney, operative findings mentioning enlarged damaged left kidney, histopathology report describing the damaged kidney and all duly signed consent documents) was archived. After 3 years, the full file was disposed of as per MCI guidelines.

After 11 years of surgery, Mr A happened to meet Mr B, who had animosity with the surgeon, Dr S. Mr B incited Mr A to file a criminal case against the surgeon accusing Dr S of "taking out Mr A's kidney with deceit (by giving him offer of Rs 10 lakhs) and selling (transplanted) his kidney to some other person". So in nutshell, the complaint was that Dr S took out Mr A's normal kidney by deceit and then didn't pay any money to Mr A. The police filed a FIR against Dr S under sections IPC 417, 420 and The Human Organ Transplant Act (THOTA),1994. The police got a medical examination of Mr A which showed an incision (cut scar) on the left side of the tummy corroborating with a kidney removal operation. The ultrasound and CT scan was done which showed that the left kidney was missing.

The patient, Mr A, didn't produce any of his medical records for obvious reasons and the doctor, Dr S, had none available with him (as they were disposed of several years back) to prove his innocence. The charge sheet was filed and the trial is on. The surgeon, Dr S, has no ways or means to defend himself. He is busy fighting a legal battle and his hard earned reputation of years is in tatters.

Summary : *Patient developed life-threatening Pyonephrosis - Timely operated (Damaged kidney removed) by surgeon successfully - Patient recovered well - Surgeon disposed all patient records after 3 years - After 11 years of operation, patient under influence of surgeon's enemy filed a police complaint that surgeon removed his kidney by deceit and sold it - FIR lodged - Police on investigation found a kidney operation scar and no kidney found on ultrasound - Surgeon charge-sheeted as he had no evidence to defend himself.*

Case No-2:

A Model, Ms M wanted to compete in a national fashion competition. She talked to her friend, another model, Ms N. Ms N encouraged her to participate in the competition, however she advised her that her nose was not that aligned. If she got her nose corrected, then she would look even more beautiful and her chances of winning would become very high. On being asked as where to get her nose surgery done, Ms N recommended the name of her friend, a Plastic Surgeon, Dr P. Ms M went to Dr P for nose beautification surgery. Dr P explained her clearly that the results of cosmetic surgery were never guaranteed and sometimes there could be a mismatch between the results and the expectations. At times, the final appearance might worsen after surgery. These are well known hazards of any surgery. Ms M understood all that and then signed the written consent.

The surgery was carried out. Ms M was satisfied with the surgery and thanked Dr P profusely. She however didn't win the national competition but her friend Ms N won that competition. Incidentally, after 4 years, she participated in another competition where she lost in the first round. One of the fellow participant commented to her that her nose was not that beautiful and that was the only reason she lost. Ms M got really perturbed and seriously started believing that her 'not so beautiful' nose which was due to

'botched up' surgery was the reason for her failure.

She started blaming Dr P for the bad surgery done. Along with that, she also felt that her friend Ms N conspired with Dr P to make her look 'ugly' so that Ms N could win the competition. She filed a police complaint against her friend, Ms N of brainwashing her to go for surgery and Dr P of taking improper consent (that he never explained that there is a possibility that the nose could also become worse after surgery) and conspiring with Ms N to make her ugly.

The police filed a FIR under sections IPC 417, 326 and 120-B. Since disfigurement of nose (face) comes under grievous injuries (section IPC 320) and surgery involves sharp 'weapon' (knife), so police justified section IPC 326.

Dr. P had destroyed the medical records containing all signed consent forms as 4 years had elapsed after the surgery.Dr P had no defense available, his bail was rejected and he spent 9 months in jail before he could get bail. Dr P's lawyer argued that "a medicolegal case cannot be entertained after 3 years as the defendant has no documents available with him to show that proper written consent explaining all aspects of surgery was taken from the patient". The Magistrate countered this by saying that the 3 year period in Limitations Act can be waived off at Court's discretion. The defence lawyer further argued that "MCI(Medical Council of India)guidelines stipulates that medical records be kept only for 3 years. After that the doctor has no defense left with him". The Magistrate countered this by saying that neither there were any specific guidelines from MCI nor was there any special Act which says that a medicolegal case cannot be entertained after 3 years.The doctor's reputation and professional career has suffered a major dent and the trial is going on.

Summary : *A model wanted a nose-alignment cosmetic surgery- On friend's recommendation, got operated successfully by a Plastic Surgeon- Patient recovered well and was happy with surgery - Surgeon disposed all patient records after 3 years- After 4 years of operation, patient felt that her nose was not looking good - Suspects a conspiracy to make her ugly by her friend - Filed a police complaint that her friend conspired with the plastic surgeon to disfigure her and the surgeon didn't explain the results of surgery properly - FIR lodged that surgeon didn't take proper consent - Patient didn't show any medical record and surgeon had disposed it off - Surgeon charge-sheeted under section 326 (grievous injury) as he had no evidence (medical records) to defend himself.*

These are examples of two case scenarios as how the failure to simply extrapolate the significance of MCI guidelines spoilt the careers of two medical experts. There are several examples like this all over the country. This 'evil needs to be stopped in the bud' otherwise it can open pandora's box. The rogue elements in the society take a clue from such cases and instigate innocent patients to file more and more frivolous cases against doctors. Any doctor can be blackmailed, harassed, his hard-earned reputation reduced to ashes and he be made to suffer for prolonged periods due to absence of clear clarification of guidelines by MCI. Incidentally, there is clear law in UK on this topic [5,6].

UK Law on this topic [5,6]

The general time limit for medical negligence and personal injury claims is 3 years from the date of the alleged negligence. This means that Court proceedings must be started by way of issuing a Claim Form at Court within 3 years. However, there are circumstances where the 3 year time limit will not start to run until later. The most common of these exceptions are:

1. Children

Children cannot bring a claim themselves and require a 'Litigation Friend', who is typically a parent or close relative, to bring a claim on their behalf. The three years does not start until the child reaches the age of 18, which gives the child the opportunity to bring a claim as an adult (as long as someone has not brought a claim on their behalf before). This means that the limitation period expires on the child's 21st birthday .

2. Date of knowledge

There are circumstances where it is difficult to identify the exact date when the negligence occurred and therefore when the 3 year time limit begins to run. In this situation the limitation period starts to run from the 'date of knowledge' of the injured person. There are 3

main requirements to be satisfied before a claimant can be said to have 'knowledge':

A. That the injury in question was significant;

B. That the injury was attributable in whole or in part to the act or omission which is alleged to constitute negligence, nuisance or breach of duty;

C. The identity of the defendant.

A patient is unlikely to be aware that there is a significant injury, until they are actually diagnosed and this can be months or even years later. Therefore, the later date would be the date of knowledge and they would have 3 years from that date to bring a claim .

3. Mental capacity

There are circumstances where the injured person lacks mental capacity to understand or bring a claim, and the law recognises how these individuals could be unjustly penalised by the 3 year time limit.

A. Where the injured person lacks capacity, the 3 year time limit will not begin until the injured person regains capacity. It may be the case that the injured person never regains capacity, which means that the 3 year time limit will never start and a claim can be brought at any time by their Litigation Friend.

B. If the injured person loses capacity at some time after they were injured, the 3 year time limit applies and proceedings must be commenced from the date of the negligence or the date of knowledge.

4. Death

In the unfortunate cases where the injured person dies within the three year limitation period, the 3 year period is extended to 3 years from either the date of death or the date of knowledge of the deceased, whichever is later. This allows the deceased's estate to bring a claim on their behalf.

In some cases, an individual may seek to make a claim for damages caused by the negligence of a medical professional under the Human Rights Act 1998, which would have to be made against a public body or authority such as the armed forces or the NHS. In this circumstance, the time limit would be 1 year from the date that their rights were breached .

Also the bigger damage is the long-term negative impact such cases have on the society as a whole. Rising indemnity insurance and litigation costs to doctors leads to increase in treatment charges of the doctors and the hospitals. So the whole healthcare system not only becomes more costly and unaffordable for common people but also the bitterness and frustration amongst medical professional become quite high. The yellow journalism and media sensationalism adds fuel to the fire. Due to tarnishing of the image of medical professionals, the trust levels between the doctors and the public takes a dip. The list goes on and on. Thus these frivolous litigations should be curbed at the early stage, otherwise their repercussions are far and wide and quite disastrous for the society.

Conclusions :

To conclude, it is high time that MCI and state medical councils pass clarification of the existing guidelines that no medicolegal cases can be entertained after 3 years of treatment. In case, a litigation is still filed against a medical professional after 3 years of treatment and medical records are not available in that case, then the presumption would be raised in favour of the medical professional that all the records were correct and were in order. MCI is the lighthouse for medical policy making in the country. Once MCI issues the clarification of the existing guidelines, then it would become easier for the state medical councils to issue such clarification.

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Media Watch :

Bribes to Doctors by Pharmaceutical Industry

Dr. Yash Paul

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Times of India dated November 29, 2019 quoted a study by Support for Advocacy and Training to Health Initiative (SATHI) where it was reported: "Medical representatives have revealed wide spread use of bribes including foreign trips, microwave ovens, expensive smart phones, jewellery and even women, by pharmaceutical companies. According to the medical representatives, hardly 10 – 20% doctors follow the MCI code of ethics, while the rest accept or even demand 'incentives' to prescribe products of a company. The most common inducement is the sponsoring of doctors for conferences". Question which needs answer is: Why pharmaceutical companies bribe the doctors?

According to the pharmaceutical people it is because of competition among pharmaceutical houses. Business philosophy dictates that competitors must strive not only to maintain the quality of the product, but, to provide better product at competitive price or even at lower price to attract more clients. It appears that pharmaceutical industry has turned upside down all the principles of business.

It would be pertinent to have a look at the business of Petrol Pumps. Petrol available all over the country is of uniform quality. One may buy from Hindustan Petroleum, Bharat Petroleum or Indian Oil outlet. Rates may vary from time to time but quality is unaltered so that no damage occurs to the engines of vehicles. Petroleum authorities take care of it, some times mischief is done at local level. On the other hand Pharmaceutical Industry which produces drugs for human beings some times make irrational and potentially harmful drug formulations that too after obtaining licence from appropriate licensing authorities. Many times there are reports regarding sub-standard and spurious drug formulations in the market. All this shows that this industry has scant concern for safety and welfare of the people and is interested only in making money by hook or by crook. The issue of concern is that while Petroleum authorities care about the engines of the vehicles, the Drug Controller General of India and the State Drug Controllers issue licences for unsafe or irrational drug formulations.

Price of petrol available at different petrol pumps in an area is same. But, prices of products having same drug formulations produced by different manufacturers may be different. I would like to mention lowest and highest MRP of some products. Cefpodoxime 200 mg tablets – Podomox (Torrent) Rs. 10.20 and Bactiloc (Intralife) Rs. 22; Amoxicillin 500 mg + Clavulanic Acid 125 mg Tablets – Acuclav (Macleod) Rs. 14.80, Adentin (Aden Healthcare) Rs. 25.00; Cefexime 200 mg tablets – Milixim (Glenmark) Rs. 7.24, Crinux (Pax Healthcare) Rs. 21.00, Azithromycin 100 mg / 5 ml in 15 ml bottle – Zathrin (FDC Ltd.) Rs. 26.10, Azibact (IPCA) Rs. 35.87. MRPs of two vaccines manufactured by same manufacturer defy all marketing rules. MRP of DPT + Hib (Easy Four) is Rs. 594.60 and MRP of DPT + Hib + HB (Easy Five) having one more component is Rs. 382.00.

One observation from this study needs special attention. This study is based on interviews of 50 medical representatives from six cities. It states that 'hardly 10 – 20% of doctors follow the MCI code of ethics, while rest accept or even demand 'incentives' to prescribe products of a company'. It means 80 – 90% of doctors prescribe un-necessary, irrational and more expensive drugs for their own benefit.One would take this observation with a pinch of salt. This small study projects doctors as villains and drug manufacturers as hapless victims. Perhaps the truth about this phenomenon is other way around. Some pharmaceutical houses produce irrational, sub-standard and even potentially harmful drugs and then they look for some gullible and greedy doctors with carrots of incentives (bribes) to prescribe their products.

Such act by a doctor who prescribes un-necessary drugs or irrational drugs should be condemned. Wrong is wrong and no logic can make it right. Doctors' Associations should take steps to reduce or eliminate dependence on pharmaceutical industry specially during the conferences. Investigative journalists should look in following two issues : (i) How licences are obtained to produce irrational and potentially harmful drug formulations? and (ii) What parameters or criteria are employed by Price Controlling Authorities to fix prices of drugs and vaccines ? □■□

Practcing Pediatrician, Malviya Nagar, Jaipur-302017 E-mail : dryashpaul2003@yahoo.com

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Perspective :
Gender Rights in Law and Policy

Adv. Dr Namita Awasthi

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Keywords :

Gender Justice, Rights,Law and Policy

Abstract :

It is unfortunate to say that women have been ill-treated in every society for ages in India. Women are treated as an object of male sexual enjoyment and reproduction of children. As per the observation, the reason of discrimination of women in the society is because of their gender and also due to grinding poverty. In our country where women are worshipped as "Shakti" the atrocities are committed against her in all sections of life. She is being looked down as commodity or as a slave, she is not only robbed of her dignity and pride outside her house but, also faces ill treatment and other atrocities within four walls of her house. Generally, it is seen that women are deprived of economic resources and are dependent on men for their living. A woman has to do all household works, which are many times not recognized and remain unpaid. Women works are often confined to domestic sphere. Any discussion on justice for women would be incomplete without relating it to the constitution of India. The preamble declares that one of the most fundamental provisions of the constitution is to secure social, economic and political justice for all it's citizens. In modern times many women are coming out to work where she is employed and secondly she also has to do all the house hold works, moreover, she is last to be considered and first to be fired. In the society females are under the clutches of numerous evil acts as discriminations, oppressions, violence, within the family, at the work places and in society.

Objectives of the study :

1) To study the constitutional provisions to prevent gender injustice, inequality, bias and discriminations.

2) To analyse and explore the impact of gender injustice, inequality, bias and discrimination towards the female gender and the outcome of the same in the form of social evils and crime against them.

3) To analyse the facts related to the issues and relevant provisions of Indian Constitution. UN Charter on Human rights addressing gender discrimination, injustice, inequality and bias.

4) To analyse the role of Judiciary in achieving gender justice and gender equality by implementing the provisions enshrined in the constitution of India for protecting the rights of the women.

Introduction :

Gender Justice is a human right, every women and girl is entitled to live in a fearfree atmosphere and also entitled to have a dignity and freedom. Gender justice is indispensable for development, poverty reduction and is crucial to achieving human progress. Realizing it includes sharing of responsibility and power between men and women at home, in the workplace and in the wider national and international communities.

It is observed that, during the ancient period, despite tremendous progress in the society as well as country, women were still not treated equally and were not afforded same opportunities. Women are still at the peripheries of economics, political, social and cultural rights. Gender Justice is necessary for the growth of economics, sustainable food security and in some cases political stability. We believe that strengthening women's agency and space is an essential precursor to achieving gender equality as well as political, social, economic, cultural and environmental security. Gender inequality is primarily an issue of unequal power relations between men and women. It violates human rights constrain, choice and agency. It is necessary that we work together and use our influence to create just

Assistant Professor, Dr. Panjabrao Deshmukh College of Law, Morshi Road, Amravati. Email : namitatiwari0871@gmail.com

and equitable relationships between men and women in order to achieve fair and sustainable communities. Unnecessary demands upon men and boys can also place gender inequality. Where economic and political power is concentrated among elite, where there is conflict and displacement of whole communities, where there are uncertain climate changes and the depletion of natural resources, it is increasingly hard for men to live unto the traditional gendered expectation that most societies place on them. Gender Justice to refer to a world where everybody, women and men, boys and girls are valued equally, and are able to share equitably in the distribution of power, knowledge and resources. The concept recognizes that women and men have different needs and power and that these differences should be identified and addressed in a manner that rectifies the imbalances between the sexes. This may include equal treatment, or treatment that is different but considered equivalent in terms of rights, benefits, obligations and opportunities. Though often used interchangeably, equality and equity are two very distinct concepts. While international human rights treaties refer to equality, in other sector the term equity is often used. Gender equity term sometimes has been used in a way that perpetuates stereotypes about women's role in society, suggesting that women should be treated fairly in accordance with the roles that they carry out. Gender inequality is the most serious and pervasive form of discrimination in the world. While this affects everyone, it is women and girls who face the most discrimination as a result of gender inequality. This is a key driver of poverty and a fundamental denial of women's rights. It is observed that women and girls living in poverty have fewer resources, less power and fewer influences in decision making when compared to men. Women and girls are exposed to various forms of violence and exploitation and experience further inequality because of their age, race, class, marital status, sexual orientation and disability. Women around the world nevertheless regularly suffer violations of their rights throughout their lives. Realizing women's rights has not always been a priority. For achieving equality between women and men requires a comprehensive understanding of the ways in which women experience discrimination and are denied equality so as to develop appropriate strategies to such discrimination. United Nations has a long history of women's rights activities and much progress has been made in securing women's rights across the world in recent decades. Many groups of women face additional forms of discrimination based on their age, ethnicity, nationality, religion, health status, marital status, education, disability and socio-economic status, among other grounds. These intersecting forms of discrimination must be taken into account when developing measures and responses to combat discrimination against women.

Analysing international law and international human rights law from a gender perspective is important because gender analysis helps us understand how men and women experience human rights violations differently as well as the influence of differences such as age, religion, culture and location. The right to equality between women and men in marriage and family life is also recognised in various human rights instalments, including the universal declaration of Human Rights, the International Covenant on Civil and political rights, the convention on the Nationality of married women, the convention on the elimination of all forms of discrimination against women, and the convention on consent to marriage, minimum age for marriage and registration of marriages. Though Indian constitution provides equality to all citizens irrespective of caste, creed, region and gender and also directs the state to take various, measures to remove different forms of domination and equality still the problem persist. It is common knowledge that despite constitutional safeguards, statutory provisions and very much of pronouncement to support the cause of equality of women changes in social attitudes and institutions have not significantly occurred. While enforcing the state's constitutional obligations, the court has been

fairly assertive about holding the Indian government to the international commitments it has made when ratifying numerous United Nation (UN) treaties. Including, the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICECR) and the convention on the Rights of the child (CRC).

In "Vishakha" case, it has been described by formers Supreme Court Justice as "one of the most notable success of Judicial action in redressing violence against Women" and recognised by the CEDAW committee as a landmark Judgement in Indians tradition of public interest litigation. "The Vishaka Judgement protocol Gender Justice by directly applying the provisions of constitutional and international law to enact enforceable guidelines against sexual harassment in the workplace of a time when the public was mobilized to embrace a judicial solution to a significant void in domestic legislation. According to National Crimes Record Bureau registered rape cases in India have increased by 900 percent in past forty years. Crimes against women are broadly classified into categories under the Indian Penal Code as under:

1. Rape
2. Kidnapping and abduction for specified purposes.
3. For dowry, dowry deaths or their attempts.
4. Torture both mental and physical
5. Torture assault on women with intent to outrage her modesty.
6. Insult to the modesty of women
7. Importation of girl from foreign country.

Also the crimes under the special and local laws are:

1. Immoral traffic (Prevention) Act,
2. Dowry Prohibition Act
3. Indecent Representation of women (Prohibition)Act.
4. Commission of sati prevention Act.

The potential for promoting women's equality and gender justice is buttressed by the rich legal sources including & powerful constitution and major international treaties that obligate the Indian Government to respect and protect women's right.

The Constitution of India, which came into effect in 1950 and has since been "the conscience of the Nation and the cornerstone of the legal and judicial system" contains twenty two parts.The most relevant sections for purposes of rights based approach to gender Justice are part III fundamental rights, defining the basic human rights of all citizens that are enforceable in court, and part IV directive principle of state policy, listing non justiciable guidelines for the government to apply when framing law and policies.

The constitution of India not only grants equality to women but also empowers the state to adopt measures of positive discrimination in favour of women for neutralizing the cumulative socioeconomic education and political disadvantages faced by then. Within the framework of a democratic policy, our laws, development policies, plans and programs have aimed at women's advancement in different spheres. Fundamental rights, among others, ensure equality before the law and equal protection of law prohibits discrimination against any citizen on grounds of religion, race, caste, place of birth and guarantees equality of opportunity to all citizens in matters relating to employment. Article 14, 15, 15(3), 16(3), 39(a), 39(b), 39(c) and 42 of the constitution are of specific importance in this regards.

Conclusion :

There is no sustainable development without gender equality from a development perspective.The world may miss accomplishable targets because of gender in equality. Gender equality is fundamental right which contributes to a healthy society filled with respectful relationship between one another.Furthering the above discussions into workable proposition is necessary. Legal philosophy needs to address the issues that are raised in the discussions.

Law should first start with removing the constraints imposed on men and women by the society. It is necessary to tackle individual cases of injustices, instead of laying down homogenised rules for men and women. As depicted earlier, law reforms directed towards bringing women at par with men has not yielded much success. Individual should be at the core of law reforms. Laws should enable the creation of social institutions and social conditions conducive for everyone to make autonomous choices. Raising the number of women members in parliament will help in reducing paternalistic laws and ensure autonomy to women in deciding for themselves. This will ensure women friendly laws.

Social engineering is required for the removal of social conditioning. Conscious measures need to be adopted to break-free of social-conditioning. Having gender neutral laws, promoting gender-neutral values and gender neutral institutions will go a long way in getting rid of gendered roles for men and women alike. During the past few decades the concept of human rights has assumed importance. Globally gender justice, simply put refers to equality between the sexes. Gender justice is a correlation of social, economic, political, environmental,cultural and education factors. These preconditions need to be satisfied for achieving gender justice.Globally, gender justice as a cause has gained in strength over the years, as it has been realized that no state can truly progress if half of its population is held back. The National Human Rights Commission is working for the protection of human rights of women especially in the matters of domestic violence, rape, custodial deaths, cruelty, sexual harassment and other forms of disgrace and undignified way in male dominated society. There are various legislations that have been passed in India with a view to curb the imbalance in gender hierarchy and aid in women's empowerment. Without the right to equality, the purpose of gender justice cannot be achieved. In the context of gender justice and equality, the Judiciary has attempted to venture into the critical role of a social reformer by upholding the rights of women and especially of the victims of subordination, suppression, and subjugation, judiciary has played this role both as a court of Judicial restraint and as a progressive, dynamic, creative and proactive institution for social, economic and cultural transformation. The contribution made by the Judiciary to the improvement of status of women, protection of and access to fundamental rights of women and provision of conditions of dignity of life can be discerned from a number of decisions delivered while interpreting laws and constitution. It’s also true to say that, the sensitization of society towards rights of women is needed, unless society especially the male members are sensitized the hectic planning, welfare measures, Judicial decisions and directions will go in vain.

Perspective :
Can forensic specialists give expert opinion in alleged medical negligence?

Dr. Vivekanshu Verma

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Keywords :-

Forensic Specialists, NCDRC, Cosumer Courts

New domain in career of forensic specialists of giving expert opinion in court of law related to alleged medical negligence to different specialties. It doesn't need to be a graduate in law to fight in consumer courts of law as forensic experts.

Recently after 2014 amendments in Consumer Protection Act Regulations (Procedure for regulation of allowing appearance of agents or representatives or non-advocates or voluntary organisations before the Consumer Forum), it does not require that only a lawyer can appear as representative for complainant, even doctors can give their expert opinion to prove the facts[1].

In Indian metro cities, some eminent forensic experts are running private medicolegal consultancy, charging legally for the medicolegal advice, prepare medicolegal reports, conduct audits in hospitals to prevent malpractice issues, train doctors in documentation & appear in consumer courts as forensic experts in cases of alleged medical malpractice.

Case: In 2016, NCDRC held radiologists negligent for missing out congenital anomalies in Prenatal Anomaly scans, on the basis of expert opinion from a Forensic Medicine expert, who opined it was a gross negligence of radiologists who have failed to provide reasonable skill to detect congenital malformation which was their basic duty while doing sonography[2].

Radiologist's lawyer commented that the Forensic Expert has overstepped in expression regarding ultra sound science as he is not qualified and acquainted with the technology of ultrasound. Counsel further raised objections on the expert opinion given by Forensic Expert, that, he is not a qualified expert in radiology or sonography. Thus, Forensic Expert has given a knowingly false expert opinion to subvert the course of justice, it is in violation of the Code of medical ethics, therefore, Radiologist reserves his right to complain to the MCI against him. Also the complainant and Forensic Expert are liable under IPC chapter XI for giving false evidence. The counsel prayed to issue necessary directions for prosecution of the complainant in terms of section 195 of the CrPC[2].

NCDRC bench observed- “It appears that, the doctors are often reluctant to testify against their colleagues (as the "conspiracy of silence"), hence it is difficult to find an unbiased expert willing to testify against a negligent doctor or label the care as substandard. The opinion of Doctor, who is a Forensic Expert is acceptable in Radiologist's negligence. We are not more convinced with the three expert opinions by radiologists on behalf of radiologists, because it is silent about procedural lapses of radiologists who issued reports casually as limbs are normal. It means either radiologists had not seen it or it was wrongly diagnosed. Experts relied upon Routine OBG Scan Vs Targeted Scan, but silent about the ethical obligations of Sonologist. We would like to quote few examples, if a pathologist while doing differential WBC count from the peripheral blood smear, and if he microscopically finds malarial parasite or any abnormality; he is ethically bound to reveal it to the referring physician even if it was not asked for. Pathologist should not conceal the crucial finding for the want of charges[2].

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1. Consumer Protection Act Regulations 2014
2. NCDRC judgement in case of Anil Dutt & Anr. vs Vishesh Hospital & Ors. on 16 May, 2016 https://indiankanoon.org/doc/109125621

* Associate consultant and Fellow, Emergency and Trauma care, Medanta-The Medicity, Gurugram. Email: vivekanshu@yahoo.co.in

Medicolegal News

Compiled by : Dr. Santosh Pande

Upto 5-year jail, Rs 1 Crore fine for medical negligence in Madhya Pradesh

Madhya Pradesh: Hospitals held accountable for medical negligence leading to death of a patient may now face a fine of upto Rs 1 crore and/or with a jail time extending upto 5 years, a recent draft bill of the Clinical Establishment Act in Madhya Pradesh has stated. The drafted Clinical Establishment Bill, 2019 has been recently placed in public domain. As stipulated in the recently drafted Clinical Establishment Bill, there can be upto one- year imprisonment and/or a fine up to Rs 10 lakh for clinical establishments in cases of medical negligence if a patient suffers serious injuries due to negligence during treatment, surgery or diagnosis. In case of death due to negligence, the penalty goes upto Rs 1 crore and/or a jail time extending upto 5 years. The bill also calls for the constitution of Madhya Pradesh Clinical Establishment Regulatory Commission that would regulate the functioning of clinical establishments as well monitor the functioning of the district registering authority with which all clinical establishments in the state would have to be registered. The draft bill goes on to define the meaning of clinical establishments that would include hospital, dispensary, clinics, sanatorium, nursing home, maternity home, dental clinic/hospital, critical care units, laboratories, mobile medical unity, healthcare or wellness center, physical therapy establishment, ambulance services as well ask consultation centers. The bill further defines recognized system of medicine to include allopathy, AYUSH as well as any other systems of medicine recognised by appropriate government. The bill calls that all clinical establishments have to be registered with the District Registering Authority. The bill also specifies the process of creation and the functions of the District Registering Authority as well as the Madhya Pradesh Clinical Establishment Regulatory Commission. Besides issues of medical negligence, the commission also possess the power to impose a monetary penalty up to 50 lakhs in case of any violation of the process under this Act. "If any clinical establishment whether by itself or by any other person on its behalf, while providing any diagnosis, treatment or care for illness, injury, deformity, abnormality, pregnancy and or medicine, surgery in any recognised system of medicine, causes death of such person, due to negligence, such person of the Clinical establishment or the Clinical establishment, as the case may be, shall be punishable with imprisonment for a term which shall not be less than three year, but which may extend to five years, or with fine which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both." With the bill issued on October 1, the Government intends to cancel and replace the Madhya Pradesh Upcharyagriha Tatha Rujopchar Samabandhi Sthapnaye (Registrikaran Tatha Anugyapan) Adhiniyam, 1973, with the Madhya Pradesh Clinical Establishments (Registration and Regulation) Act, 2019; that will provide for the registration and regulation of clinical establishments and to establish a District Registering Authority for Registration, regulation and dispute redressal and also to establish the Appellate body to hear appeal from the decisions, directions and orders of the District Registering Authority, and for matters connected therewith and or incidental thereto.

Ref.: *https://medicaldialogues.in/mp-clinical-establisments-bill-2019-5-year-jail-rs-1-crore-fine-for-medical-negligence/Accessed on 14/10/19*

Hip replacement with faulty hip implant: Consumer Court directs Rs 12 lakh compensation

New Delhi : Holding deficiency and negligence, District Consumer Disputes Redressal Forum has

*Practicing anesthetist & President IMLEA, Amravati Branch E mail:drpandesr@gmail.com

directed and ASR tm & ASR tm XL Hip Systems (Johnson and Johnson hip implant) to pay a compensation of over Rs 12 lakh to a patient on account of hip replacement surgery using DePuy ASR and AML Femoral Stem Implants which was later found to be broken.

The case dates back to 2006 when a 21-year-old was diagnosed with Juvenile Spondyloarthropathy with bilateral AVN of Hip joint and required the primary surgery. The patient underwent surgery at Krishna Institute of Medical Sciences for replacement of right Hip on 5 July 2006 and left Hip on 8 July 2006. However, after a few years he started suffering from severe pain in the left Hip while walking.

In 2016, he visited Maxcure Hospital where he was advised to undergo a revision Hip replacement as the X-ray showed a broken implant. The hospital informed the patient that the implants used were DePuy ASR and AML femoral stem which was recalled for a high incidence of failure.

The patient then approached ASR tm asking them to reimburse his second surgery expenditure. However, in 2017 the firm denied the claim. The patient moved a complaint with the consumer forum against the hospital as well as the implant manufacturer claiming a relevant refund.
The hospital in its submission, agreed that the said surgery was performed by them using the said implant. However, it stated that in so far as the second surgery the complainant underwent and recall and high incidence of failures in the implants used –these. The supplier of the implant – (implant marketed by DePuy Medical Private Limited which later merged with Johnson and Johnson Limited w.e.f. August 2014) and hence the answering opponent herein.

The company raised the objections that the complainant has failed to prove the inherent manufacturing defect in the ASR Hip implants and the onus lies heavily on him to do so. Not all patients who received the ASR implants have had revision surgery to allege manufacturing defect. In this instant case, the complainant is only complaining about pain in the left Hip – which further establishes that there were no defects in the implants.

In their submissions, they stated that they obtained import license from Drugs Controller General of India (DCGI) on 15th Dec. 2006 and subsequent renewal was valid till 31-10-2012. All artificial implants will have some wear and tear as they interact.They also submitted a background of ASR recall adding that after issue of recall notice, they did not sell any ASR products to the dealer or Hospital. The recall notice also explicitly stated the action points for surgeons,as well as patients follow up.

Based on their statistics – 4700 ASR surgeries were estimated to be conducted in India till the voluntary recall. Not all registered patients may require revision surgery.

The complainant was suffering from Juvenile Spondyloarthropathy with bilateral AVN of Hip joint. Thus the complainant's medical condition required the primary surgery. The ASR reimbursement program was only for patients who were required to undergo revision surgery within a period of 7 years, from date of primary Hip surgery. Later it was extended to 10 years. In the instant case, since the complainant's revision surgery is required after 10 years – he is not eligible. With these submissions, they sought the complaint be dismissed. The forum noted that the following point needed to be analysed.

Have the Opposite parties No.1 and 2 been deficient in using the said implants and not intimating the complainant regarding the voluntary recall? Going through the full details of the case the court noted :

The Opposite party No.2 (Company) has not taken proper remedial measures to inform the patients who had undergone implant surgery. The Hospital i.e., opposite party No.1 (hospital and Opposite party No.2 had the information on the complainant. By their own admission approximately 4700 ASR surgeries were carried out in India – were all the patients traced out? is the important question to be answered. The period of 10 years is not the valid ground to dispute and repudiate.

They had to reach out to patients who underwent surgery using their faulty implants. The evasive attitude in providing information on the faulty device only shows that opposite party No.2 cares very

less about the patients and proves their deficiency in service. A "remedial and reimbursement process" was put in place as per the evidence adduced by Opposite party No.2. They engaged the services of M/s. Puri Crawford and Associates India Private Limited to handle all claims related to recall. Obviously this was initiated since the implants were found faulty. The complainant did not receive any information from them. Due diligence was certainly lacking and not intimating the complainant about the recall amounts to grave deficiency and negligence on the part of Opposite party No.1 and opposite party No.2.

Have the Opposite parties No.1 & 2 been deficient and negligent in not reimbursing the 2nd surgery expenses incurred by the complainant?

On this point the court again noted :

In August 2010, the company – Opposite party No.2 voluntarily recalled ASR implants world wide – Ex. B6 to B10 is filed as evidence for this. The 10 years period then does not apply since the complainant had undergone the primary surgery in 2006 only. The suffering of the complainant cannot be limited by the 10 years period but that he needs revision surgery and he was not examined before this for the damage he suffered. For the extent of damage suffered he has filed, obviously Opposite party No.2 has established a helpline and if it is an ongoing process and they are aware that patients will reach out seeking their claim management services. Given this scenario, rejecting the complainants' case certainly lacks the dignity and care he deserves.

The forum then held the company responsible.

On view of the reasoning given in point no. 1 & 2, we opine that the complainant has proved his case beyond doubt and opposite party No.2 are well aware of their role and responsibility. Their act of evading speaks volumes for deficiency in service and gross negligence and is against the essence of the C. P. Act 1986, based on the principles of natural justice.

The complainant ought to be compensated reasonably for the delay and trauma he has had to suffer, especially given his health condition.The forum then directed the company to pay compensation

1. To pay Rs.5,03,930/- towards medical expenses incurred for revision surgery.
2. A sum of Rs.5,00,000/- is deemed reasonable and necessary as compensation and incidental expenses.
3. Rs.15,000/- towards costs of litigation.

The forum did not issue any directions against the hospital

Ref.: *https://medicaldialogues.in/hip-replacement-with-faulty-hip-implant-consumer-court-directs-rs-15-lakh-compensation/ Accessed on 17/10/19*

Hospital Wins Rs 1 crore Defamation Lawsuit against Patient who left without paying bill

New Delhi: In a first of its kind decision, a Pune court has directed a patient, who had left the hospital without paying the complete hospital bill, to pay the entire remaining sum while also directing him to pay Rs 1 Crore with interest as damages to the hospital for all the defamation that was caused by him afterwards.

The case was filed by Aditya Birla Hospital in Pune in the year 2013 after encountering a patient who left the hospital without paying the bill and consequently, articles were published in the newspaper with respect to the hospital which were allegedly defamatory in nature.

The hospital informed the court that on 04/01/2013 at about 6.10 am the said patient, was brought in the hospital by his own vehicle with a complaint of retrosternal chest pain, left arm pain and back pain with profuse sweating. He was immediately taken to cardiac section in the emergency department and he was examined by Dr Tapsale. Thereafter, Dr Kalia examined him and performed 2D Echo cardiography, on that report defendant was admitted in the hospital. The doctors had discussed with patient's friend, relatives and decided to have Coronary angiography SOS Coronary Angioplasty.

Accordingly, a friend of defendant accompanied the defendant and had signed document for consent and the defendant was shifted to Cathlab for Angiography. In the Angiography report, it was found there was 100% occluded proximal LAD artery and 50% stenosis of LCX artery. After going through angioplasty report wife of the defendant and his friend were informed that

angioplasty is required to be done. The wife of defendant agreed to carry out angioplasty and it was carried out on the 04/01/2013 at 12.30 pm. The defendant was given all the medical attention in an emergency with the belief and faith that he will make the payment i.e. hospital charges, doctors charges and other charges including that of the stent. The patient deposited a sum of Rs.40,000/. On 08/01/2013 the defendant was required to be discharged on payment of an outstanding bill of Rs.4,29,794.91/-.

After complete recovery and on receipt of bill the defendant started disputing bill as well as treatment. The patient along with other 25 persons without taking proper clinical discharge left the hospital without paying the bill.

The Hospital further alleged that the defendant, circulated defamatory content in newspaper. The reputation of Directors of plaintiff hospital was also damaged in their personal capacity and required to answer various clients. Due to the said act of defendant, they not only suffered mental agony but harm has been caused to their reputation. Therefore, the plaintiff hospital is entitled for damages to the extent of Rs.1,00,00,000/.

On 31/01/2013 the hospital issued a notice through its advocate to which the defendant replied but, failed to repay the treatment charges. Hence, this suit.

The defendant in spite of service of suit summons failed to appear hence, the suit proceeded exparte against him. The court went through all the documents related to the case, including the medical reports, the bills, the media reports, the doctor's submissions, the consents as well as the financial consents that were signed in the matter. The court analyzed the case based on the following questions

1. Whether the amount of treatment is due to the hospital?

The court took into record to testimonies of various witnesses, doctors, and all records and noted "the documents filed on record clearly reveal that the doctors of plaintiff has performed operation and the defendant without paying the entire treatment charges left the hospital. Therefore, considering the unchallenged testimonies of witnesses and documents placed on record, I hold that the plaintiff proved that an amount of Rs.3,89,795/is due and outstanding against the defendant".

2. Whether the hospital was entitled to the damages claimed?

The court held that the defendant was treated for cardiac ailment but instead of payment of treatment charges had circulated defamatory contents in newspaper. The court further held that the act of defendant not only caused mental agony but also harm the reputation of plaintiff hospital in the public at large. "Therefore, the plaintiff is entitled for damages against the defendant to the extent of Rs.1,00,00,000/," it stated.

"The perusal of documents especially the police complaint filed by the plaintiff and articles published in the newspaper with respect to the plaintiff hospital, I hold that the articles published in different newspapers are defamatory per se. These articles undisputedly caused mental agony and harm to the reputation of plaintiff and it's office bearers. It is an admitted fact that the plaintiff hospital is a reputed hospital all over the India as well as International. If really, the defendant had any grievance about medical treatment or medical bill charged then he has many recourses available to purport his grievance and pray for justice, but he failed to do so. Moreover, instead of choosing a legal way the defendant became self-proclaimed judge and passed judgment against the plaintiff hospital by defaming it. As mentioned above, the plaintiff hospital has reputation in the society of large and a defamation without any formal proof will definitely harm its reputation and will also cause mental agony to its Directors and all other staff members who are providing services for a good cause. Therefore, considering the above-mentioned reasons and documents placed on record, I hold that the defendant is liable to pay damages of Rs.1,00,00,000/- to the plaintiff towards defamation, damage to reputation of plaintiff hospital and causing harassment and mental agony to its office bearers. Therefore, considering the unchallenged

testimonies of plaintiff's witnesses and documents placed on record I hold that the plaintiff is entitled for damages of Rs.1,00,00,000/- from the defendant."

The court further upheld that the hospital was entitled to interest on the above damages. The court then directed the patient to pay Rs.1,03,89,795 along with an interest at the rate 18% p.a. on the said amount from the date of filing of suit till its realization.

Ref. *https://medicaldialogues.in/hospital-wins-rs-1-crore-defamation-lawsuit-against-patient-who-left-without-paying-bill/Accessed on 19/10/19*

Medical Negligence Versus Gross Negligence: NCDRC pulls up state commission for dismissing plea

New Delhi: Holding that there is a difference between negligence and gross negligence and the fact that a state commission while hearing a medical negligence case cannot solely pass the matter to the expert board, the National Consumer Disputes Redressal Commission recently pulled up Punjab State Commission for dismissing the matter in Limime (at the state of the hearing only) and asked then to hear the matter afresh.

The case relates to a minor patient, who was treated in 2014 in Dhawan Surgicare and Multi-Specialty Hospital by two doctors and later in Christian Medical College (CMC), Ludhiana for a fracture in the left arm. However, soon after, development of gangrene was witnessed resulting in the amputation of the left arm below the elbow of the minor.

Thereafter, the minor's parent moved an instant appeal with State Commission alleging medical negligence by the Dhawan Surgicare and Multi-Specialty Hospital and the doctors that left the minor permanently disabled, and in need of continuous further treatment. No allegations were made against the CMC.

In this regard, the State Commission called for a report by the expert body of doctors from Postgraduate Institute of Medical Education & Research, Chandigarh (PGI Chandigarh) to ascertain if there was any medical negligence in here. In 2016, the expert committee comprising of three members did not find any gross medical negligence and submitted its report that stated;

"Based on these findings the committee does not find any gross negligence of treating primary Orthopaedic Surgeon from Dhawan Surgicare and Multispecialty". Upholding the expert opinion, the Punjab Commission did not admit medical negligence.

Following this, the matter was brought before the NCDRC through an appeal. After careful examination and going by facts and reports of the case, the Commission took strict cognizance of the State Commission's verdict and held; "In the instant case, the State Commission did not admit the Complaint, did not issue notice to the Opposite Parties, did not direct the Opposite Parties to file their Written Versions, when, on the face of it, clear allegations of negligence and deficiency were well and truly evident in the Complaint. It, but, rather referred the matter to PGI Chandigarh to seek "report of expert body of doctors".

NCDRC reprimanded the State Commission, mentioning that it should have admitted the complaint and issued a notice to the hospital and the doctors to file their Written Versions under Section 13(1)(a) of the Consumer Protection Act, 1986. The NCDRC went on adding that the State Commission should have made its appraisal and passed a reasoned order on merit while noting, "The State Commission should, then, have proceeded to adjudicate the 'consumer dispute' on merit, in the normal wont, observing the principles of natural justice, affording opportunity to the Complainant to file his rejoinder to the Written Versions of the Opposite Parties, affording opportunity to both sides to file their Evidence, affording opportunity to both sides to file their briefs of written arguments in accordance with Regulation 13 of The Consumer Protection Regulations, 2005, affording opportunity to both sides to profess their arguments."

Significantly, the Commission also scrutinized the term "gross" as mentioned by the expert committee in its report stating; "Here we may note that the word "gross" in the phrase "any gross negligence", as contained in PGI's report dated

14.09.2016, is significant. Prima facie, if no medical negligence was made out, "gross" should ordinarily not have been included in its opinion."

The commission found the State Commission's reasoning erroneous stating that it can not and should not take recourse to its lack of expertise and blindly rely on an expert report. It has to understand the matter in its entirety including the contents of an expert report called for by it, examine and appraise the matter holistically, and arrive at its reasoned findings with the due application of mind. Empowering the state commission, NCDRC pointed out that nothing prevented the State Commission from calling the committee members (doctors) before it, for the members to explain the contents of their report. The NCDRC also took a strong note of the fact that it was the PGI committee that examined the patient's mother and not the state commission. "In the instant case we note elements of 'proceedings' being conducted by the committee of PGI, which should ordinarily have been conducted by the State Commission. In other words, the State Commission abrogated its jurisdiction, and, for a protracted period, the committee of PGI, in making it's report, exercised elements of proceedings falling in the jurisdiction of the State Commission. The committee transgressed it's role and ambit of making its opinion on an objective appraisal of the medical record and material placed before it."

"This is not how a Complaint containing clear allegations of medical negligence / deficiency in service should be dealt with," NCDRC noted.

"No Consumer Protection Forum can express its lack of expertise and blindly rely on an expert report without understanding the matter in its entirety including the contents of an expert report called for by it and dismiss the complaint." Subsequently, the Commission while setting aside the order by the State Commission held; "In the light of the above discussion, we have no hesitation in allowing the appeal and setting aside the impugned Order dated 07.11.2016 of the State Commission with the directions that the State Commission shall admit the Complaint, issue notice to the Opposite Parties and proceed with the adjudication of the case on merit."

Ref. *https://medicaldialogues.in/medical-negligence-versus-gross-negligence-ncdrc-pulls-up-state-commission-for-dismissing-plea-in-limime/ Accessed on 28/10/19*

NCDRC directed two doctors of Sahara Hospital to pay Rs 30 lakh for medical negligence

Lucknow: Apex consumer commission NCDRC has asked two doctors of Sahara India Medical Institute Limited, Lucknow, to pay Rs 30 lakh as compensation to a patient for repetitive medical negligence in 2012 that had resulted in kidney damage.

The National Consumer Disputes Redressal Commission has directed Doctors Sandeep Agarwal and Muffazal Ahmed to pay Rs 20 lakh and Rs 10 lakh, respectively, to Gyan Mishra, who died during the processing of the consumer complaint. The hospital shall be vicariously liable to pay the compensation amount to Mishra.

The commission said that since Mishra died during the processing of the complaint, there was no evidence to prove that his death occurred due to medical negligence of the doctors but it was definite that his kidneys suffered damage during the year he took treatment under them.

NCDRC Presiding member V K Jain said that in December, 2013, it is not known how much damage to his kidney has occurred during the intervening period as his creatinine level was not managed for more than one year.

As per Mishra's complaint, he was admitted in Sahara Hospital, Lucknow, in 2011 under the supervision of Doctor Agarwal. His serum creatinine was found to be above the permitted range, indicating a kidney disease. But, no further treatment was given to him before being discharged.

He was readmitted to the hospital in December 2013 and was seen by both Doctors Agarwal and Ahmed and was told to be suffering from end stage renal disease and needs dialysis. The complainant alleged that he was given iron injection during his stay in the hospital, however, it is contraindicated in case of patients suffering from kidney disease.

The counsel for the offending doctors said that Mishra was also a chronic alcoholic with a longstanding history of diabetes mellitus, which is a common cause of chronic renal failure. The doctors alleged that Mishra was suffering from kidney and chronic liver disease.

The Ethical Committee of Uttar Pradesh Medical Council had given a recommendation in favour of the doctors, but, NCDRC refused to dismiss Mishras complaint. The commission has asked the hospital and the doctors to pay Rs 25,000 as cost of litigation to the victim.

Ref: *https://www.emedinexus.com/post/14904/utm_source=newsletter&utm_medium=email&utm_campaign=breaking_campaign Accessed on 20/11/2019*

Laboratory fined Rs. 2 lakhs for diagnosing TB as cancer in Punjab

The district consumer disputes redressal forum has directed a Spiral CT & MRI Centre in Sector 44 of Chandigarh to pay Rs 2 lakhs as compensation and 15,000 as litigation cost to Vijay Ramola, a bank manager and a resident of Sector 22, for wrongly diagnosing with lung cancer instead of tuberculosis (TB).

Ramola, in his complaint, said he was suffering from a persistent cough for more than 15 days in 2014. He visited Government Medical College and Hospital, Sector 32 and doctors there suggested a CT scan of his chest. The reports pointed out abnormal growth, lymph nodes, in the lung region and hence he was advised to get a bronchoscopy test. On December 18, 2014, a report from the lab of GMCH, diagnosed as adenocarcinoma lung, that is cancer of the lung, and he was further referred to oncology department.

Spiral CT & MRI Centre conducted a PET scan test too. The report stated cancer had spread due to which bones were likely to become weak. The report had also diagnosed it to be a case of cancer stage IV. Ramola underwent three chemotherapies on January 2, 2015, January 31, 2015, and February 23, 2015 respectively. Yet, no improvement was seen. He then shifted to Tata Memorial Hospital, Mumbai where the doctors said a minor test of bronchoscopy and PET-CT scan had shown that stage IV lung cancer could not have been diagnosed. A biopsy test discovered it to be a case of tuberculosis. Ramola said he took treatment from a doctor in Dehradun and was healthy after taking his medicines for nine months.

After the alleged harassment, pain, suffering and mental stress he underwent on being diagnosed with cancer stage IV, he filed the complaint. The laboratory claimed that nowhere opined cancer had spread from lungs into the bones.

Ref:*https://www.emedinexus.com/post/14924/?utm_source=newsletter&utm_medium=email&utm_campaign=breaking_campaign. Accessed on 21/11/2019.*

Health department cancels license of a pathology laboratory for issuing false dengue report

Lucknow: Health department in Lucknow cancelled the registration of a private pathology in Keshavnagar for issuing false dengue positive reports.

The action came after a health department team conducted a sudden inspection and discovered that the reports given by the pathology mentioned that dengue test was done through ELISA (Enzyme-Linked Immunosorbent Assay) but no equipment used for the test was available in the lab. The staff was also unaware of how to use ELISA method for testing samples.

The four-member team headed by pathologist Dr. Rajesh conducted inspection at around 5 pm after finding inconsistencies in dengue positive reports issued by the pathology. Dr KP Tripathi, in charge of vector-borne disease control unit said that the variances in the reports were detected during an audit of patients who died due to dengue in the city. The pathology had also issued dengue positive report to a 34-year old woman who recently died due to high fever.

Chief medical officer Narendra Agarwal said that a FIR will be lodged against the pathology for threatening public health, as the center might have issued false reports to other patients as well. If a report is incorrect, it can lead to wrong treatment and death of a patient.

Ref.:*https://www.emedinexus.com/post/14791/?utm_source=newsletter&utm_medium=email&utm_campaign=breaking_campaign. Accessed on 13/11/2019*

Instructions to authors for publication in JIMLEA

JIMLEA is print and online peer reviewed journal with ISSN registration. You can contribute articles, original research work / paper, recent court judgement or case laws related to medico-legal issues, ethical issues, professionalism, doctor - patient relationship, communication skills, medical negligence etc in JIMLEA. The content of the journal is freely available on-line to all interested readers.

Please read the following instructions carefully and follow them strictly. Submissions not complying with these instructions may not be considered for publication.

Communications for publication should be sent to the Chief Editor, Journal of Indian Medico-legal and Ethics Association (JIMLEA) and only on line submission is accepted and will be mandatory. In the selection of papers and in regard to priority of publication, the opinion of the Editorial Board will be final. The Editor in chief shall have the right to edit, condense, alter, rearrange or rewrite approved articles, before publication without reference to the authors concerned.

Authorship: All persons designated as authors should qualify for authorship. Authors may include explanation of each author's contribution separately if required. Articles are considered for publication on condition that these are contributed solely to JIMLEA, that they have not been published previously in print and are not under consideration by another publication. A statement to this effect, signed by all authors must be submitted along with manuscript.

Manuscript: Manuscripts must be submitted in precise, unambiguous, concise and easy to read English. Manuscripts should be submitted in MS Office Word. Use Font type Times New Roman, 12-point for text. Scripts of articles should be double-spaced with at least 2.5 cm margin at the top and on left hand side of the sheet. Italics may be used for emphasis. Use tab stops or other commands for indents, not the space bar. Use the table function, not spread-sheets, to make tables.

Type of article must be specified in heading of the manuscript i.e. 1. Review article, 2. Original paper, 3. Case scenario / case report / case discussion, 4. Guest article, 5. Reader's ask and Experts answer, 6. Letter to editor. The contents of the articles and the views expressed therein are the sole responsibility of the authors, and the Editorial Board will not be held responsible for the same.

Title page— The title page should include the title of the article which should be concise but informative, Full names (beginning with underlined surname) and designations of all authors. with his/her (their) academic qualification(s) and complete postal address including pin code of the institution(s) to which the work should be attributed, along with mobile and telephone number, fax number and e-mail address and a list of 3 to 5 key words for indexing and retrieval.

Text— The text of Original articles and Papers should conform to the conventional division of abstract, introduction, material and method, observations, discussion and references. Other types of articles are likely to need other formats and can be considered accordingly. Abbreviations— Standard abbreviations should be used and be spelt out when first used in the text. Abbreviations should not be used in the title or abstract. Use only American spell check for English. Please use only generic names of drugs in any article/ paper.

Length of manuscripts— No strict word or page limit will be demanded but lengthy manuscript may be shortened during editing without omitting the important information.

Tables— Tables should be simple, self-explanatory and should supplement and not duplicate the information given in the text. Place explanatory matter in footnotes and not in the heading. Explain

in footnotes all non-standard abbreviations that are used in each table. The tables along with their number should be cited at the relevant place in the text.

Case scenario / case report / case discussion: Only exclusive case scenario / case report / case discussion of practical interest and a useful message will be considered. While giving details of cases please ensure privacy of individuals involved unless the case is related to a judgment already given by a court of law where relevant details are already available in public domain.

Letter to the Editor: These should be short and decisive observations which should preferably be related to articles previously published in the journal or views expressed in the journal. They should not be preliminary observations that need a later paper for validation.

Illustrations— Only good quality scanned photographs and drawings will be accepted.

References— Use the Vancouver style of referencing, as the example given below which is based on the formats used in the U.S. National Library of Medicine 'Index Medicus'. Mention authors' surnames and initials, title of the paper, abbreviation of the Journal, year, volume number, and first and last page numbers. Please give surnames and initials of first 3 authors followed by et al. The titles of journals should be abbreviated according to the style used in Index Medicus. Any manuscript not following Vancouver system will immediately be sent back to author for revision. Authors are solely responsible for the accuracy of references. Only verified references against the original documents should be cited. Authors are responsible for the accuracy and completeness of their references and for correct text citation. References should be numbered in the order in which they are first mentioned in the text.

Books should be quoted as Authors (surnames followed by initials) of chapter / section, and its title, followed by Editors—(names followed by initials), title of the book, number of the edition, city of publication, name of the publisher, year of publication and number of the first and the last page referred to.

Examples of reference style:

1) **Reference from journal:** Cogo A, Lensing AWA, Koopman MMW et al —Compression ultrasonography for diagnostic management of patients with clinically suspected deep vein thrombosis: prospective cohort study. BMJ 1998; 316: 17-20.

2) **Reference from book:** 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.

3) **Reference from electronic media:** National Statistics Online—Trends in suicide by method in England and Wales, 1979-2001. www.statistics.gov.uk/downloads/theme_health/HSQ 20.pdf (accessed Jan 24, 2005): 7-18.

The Editorial Process

All manuscripts received will be duly acknowledged. On submission, editors review all submitted manuscripts initially for suitability for formal review. Manuscripts with insufficient originality, serious scientific or technical flaws, or lack of a significant message are rejected before proceeding for formal peer review. Manuscripts that are unlikely to be of interest to the Journal readers are also liable to be rejected at this stage itself. Manuscripts that are found suitable for publication in the Journal will be sent to one or two reviewers. Manuscripts accepted for publication will be copy edited for grammar, punctuation, print style and format. Upon acceptance of your article you will receive an intimation of acceptance for publication.

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The purpose of the proof reading is to check

for typesetting, grammatical errors and the completeness and accuracy of the text, substantial changes in content are not done. Manuscripts will not be preserved.

Protection of Patients' Rights to Privacy:

Identifying information should not be published in written descriptions, photographs, sonograms, CT scan etc., and pedigrees unless the information is essential for scientific purposes and the patient (or parent or guardian, wherever applicable) gives written informed consent for publication. Authors should remove patients' names from text unless they have obtained written informed consent from the patients. When informed consent has been obtained, it should be indicated in the article and copy of the consent should be attached with the covering letter.

Please ensure compliance with the following check-list

· **Forwarding letter:** The covering letter accompanying the article should contain the name and complete postal address of one author as correspondent and must be signed by all authors. The correspondent author should notify change of address, if any, in time.

· **Declaration/ Warranty:** A declaration should be submitted stating that the manuscript represents valid work and that neither this manuscript nor one with substantially similar content under the present authorship has been published or is being considered for publication elsewhere and the authorship of this article will not be contested by anyone whose name (s) is/are not listed here, and that the order of authorship as placed in the manuscript is final and accepted by the co-authors. Declarations should be signed by all the authors in the order in which they are mentioned in the original manuscript. Matters appearing in the Journal are covered by copyright but no objection will be made to their reproduction provided permission is obtained from the Editor prior to publication and due acknowledgment of the source is made.

· Designation and Institute of all authors, specify name, address and e-mail of corresponding author.

· Specify Type of paper, Number of tables, Number of figures, Number of references,

· Original article:

- Capsule—50 words
- Running title of upto five words
- Structured abstract—150 words
- Manuscript—up to 2500 words
- Key words—3 to 5 words
- Tables—not more than 5
- Figures with legends—8 x 13 cm in size
- Reference list: Vancouver style

Case scenario / case report / case discussion & letter to editor - 500 words without abstract with 2-3 references in Vancouver style, & 3-5 key words

Review article—4000 words, unstructured abstract of 150 words with up to 30 references in Vancouver style & 3-5 keywords.

Dual publication:

If material in a submitted article has been published previously or is to appear in part or whole in another publication, the Editor must be informed.

Chief Editor, JIMLEA

Indian Medico- Legal Ethics Association Professional Assistance / Welfare Scheme

1) The scheme shall be known as PAS **"Professional Assistance Scheme".**

2) **ONLY the life member of IMLEA, IAP& PAI** shall be the beneficiary of this scheme on yearly basis. The member can renew to remain continuous beneficiary of this scheme by paying renewal fees every year. The scheme shall assist the member ONLY as far as the medical negligence is concerned.

3) This scheme shall be **assisting the members** by:
   - **i)** **Medico-legal guidance** in hours of crisis. A committee of subject experts shall be formed which will guide the members in the hours of crisis.
   - **ii)** **Expert opinion** if there are cases in court of law.
   - **iii)** **Guidance of legal experts.** A team of Legal & med-legal experts shall be formed which will help in guiding the involved members in the hours of crisis.
   - **iv)** **Support of crisis management committee** at the city / district level.
   - **v)** **Financial assistance** as per the terms of agreement.

4) The fund contribution towards the scheme shall be decided in consultation with the indemnity experts. The same will depend on the type & extent of practice, number of bed in case of indoor facilities & depending upon the other liabilities.

5) The financial contribution towards the scheme shall be as follows:

Admission Fee(One Time, non-refundable)	
Physician with Bachelor degree	Rs. 1000
Physician with Post graduate diploma	Rs. 2000
Physician with Post graduate degree	Rs. 3000
Super specialist	Rs. 4000
Surgeons, Anesthetist etc	Rs. 5000
Surgeons with Super specialist qualification	Rs. 6000

S. no	Qualification/ Specialty	Ten Lakhs	Twenty Lakhs	Forty Lakhs	Fifty Lakhs	One Crore
1	Physician / doctors with Bachelor degree and/or OPD Practice	**450 (625)**	**900 (1250)**	**1800 (2500)**	**2200 (3125)**	**4000 (6250)**
2	Physician / doctors with PG degree &/ or Indoor Practice	**950 (1250)**	**1900 (2500)**	**3700 (5000)**	**4500 (6250)**	**8500 (12500)**
3	Physician / doctors with Practice of Surgery	**1900 (2500)**	**3800 (5000)**	**7300 (10000)**	**8500 (12500)**	**16000 (25000)**
4	Plastic Surgeons, Anesthetist etc	**2800 (3750)**	**5600 (7500)**	**10000 (15000)**	**12000 (18625)**	**22000 (37250)**

Figure in brackets indicates amount if you directly do through Insurance Company

- The amount includes the charges of New India Assurance company charges as well as the charges of Human Medico-Legal Consultants Company.
- This scheme is for **AOY** (Any one year Limit); amount shall be calculated on individual to individual basis for extra **AOA** (Any one Accident limit) assistance.
- **5% concession on payment for three years & 10% concession for payment for five years** on individual to individual basis.
- Physician / doctors visiting other hospitals shall have to pay 5% extra
- The additional charges 15 % for those working with radioactive treatment.
- The a dditional charges can be included for other benefits like OPD/ indoor attendance, instruments, fire, personnel injuries etc

PAS for Hospital Establishments:

Annual Fee for Hospitals Establishment
Rs/- 300 per lakh + 1 rupee/OPD P atient (total OPD in one calendar year) + 5 rupee per IPD patient (total admissions in one calendar year) + GST 18 %+ 7.5 % of basic premium for Unqualified Staff.
The exact calculations will depend upon number of OPD & Indoor patients as per the actual number given by the hospital. Medical colleges/ Corporate hospitals after discussing with hospital administration.
This scheme is for**AOY** (Any one year Limit); amount shall be calculated on individual to individual basis for extra**AOA** (Any one Accident limit) assistance.
5% concession on payment for three years & 10% concession for payment for five years on individual to individual basis.

1) The hospital can become the member of this scheme only if all the members associated with the hospital have their personal professional indemnity under the scheme.
2) A trust / committee / company/ society shall look after the management of the collected fund. The scheme shall initially be run in collaboration with the New India Assurance or National Insurance Company.
3) The Financial assistance will be like Medical Indemnity welfare scheme, where indemnity part shall be covered by government / IRDA approved companies or any other private company.
4) ***The amount shall be deposited in the Central Indemnity Reserve Fund (CIRF) of the association. The association shall be responsible only for the financial assistance.*** Any compensation/cost/damages awarded by judicial trial shall be looked after by government / IRDA approved insurance companies or any other similar private company.
5) Experts will be involved so that we have better vision & outcome of the scheme.
6) The payment to the experts, Legal & med-legal experts shall be done as per the pre-decided remuneration. Payment issues discussed, agreed and processes shall be laid down by the members of these scheme.
7) If legal notice / case are received by member he should forward the necessary documents to the concerned person.
8) Reply to the notice/case should be made only after discussing with the expert committee.
9) A discontinued member if he wants to join the scheme again will be treated as a new member.
10) ***Most of the negligence litigations related to medical practice EXCEPT the criminal negligence cases shall be covered under this scheme. The scheme will also NOT COVER the damages arising out of fire, malicious intension, natural calamity or similar incidences.***
11) All the doctors working in the hospital (Junior, Senior, Temporary, Permanent etc) shall be the members of the IMLEA, if the hospital wants to avail the benefits of this scheme.
12) The scheme can cover untrained hospital staff by paying extra amount as per the decision of expert committee.
13) A district/ State/ Regional level committee can be established for the scheme.
14) There will be involvement of electronic group of IMLEA for electronic data protection.
15) Flow Chart shall be established on what happens when a member approaches with a complaint made against him or her [Doctors in Distress (DnD) processes].
16) **Telephone Help Line**: setting up and manning will be done.
17) Planning will be done to start the **Certificate / Diploma / Fellowship Course on med-leg issues** to create a pool of experts.
18) Efforts will be made to spread preventive medico-legal aspects with respect to **record keeping, consent and patient communication** and this shall be integral and continuous process under taken for beneficiary of scheme by suitable medium.

Subject Index

Author Index

Reviewer's List

Satish Tiwari
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Mahesh Baldwa
Alka Kuthe
Nilofer Mujawar
V P Singh
Prabudhh Mittal
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Balraj Yadav
Ashutosh Apte
Ashish Jain
Charu Mittal
Mukul Tiwari
Sushma Pande
Asok Datta
Kanya Mukhopadhyay
Pankaj Vaidya
Anjan Bhattacharya

The Members of Professional Assistance Scheme

S.N	Name	Place	Speciality
1	Dr. Dinesh B Thakare	Amravati	Pathologist
2	Dr. Neelima M Ardak	Amravati	Ob.&Gyn.
3	Dr. Rajendra W. Baitule	Amravati	Orthopedic
4	Dr. Yogesh R Zanwar	Amravati	Dermatologist
5	Dr. Ramawatar R. Soni	Amravati	Pathologist
6	Dr. Rajendra R. Borkar	Wardha	Pediatrician
7	Dr. Satish K Tiwari	Amravati	Pediatrician
8	Dr. Usha S Tiwari	Amravati	Hospi/ N Home
9	Dr. Vinita B Yadav	Gurgaon	Ob.&Gyn.
10	Dr. Balraj Yadav	Gurgaon	Pediatrician
11	Dr. Dinakara P	Bengaluru	Pediatrician
12	Dr. Shriniket Tidke	Amravati	Pediatrician
13	Dr. Gajanan Patil	Morshi	Pediatrician
14	Dr. Madhuri Patil	Morshi	Obs & Gyn
15	Dr. Vijay M Kuthe	Amravati	Orthopedic
16	Dr. Alka V. Kuthe	Amravati	Ob.&Gyn.
17	Dr. Anita Chandna	Secunderabad	Pediatrician
18	Dr. Sanket Pandey	Amravati	Pediatrician
19	Dr. Ashwani Sharma	Ludhiana	Pediatrician
20	Dr. Jagdish Sahoo	Bhubneshwar	Pediatrician
21	Dr. Menka Jha (Sahoo)	Bhubneshwar	Neurology
22	Dr. B. B Sahani	Bhubneshwar	Pediatrician
23	Dr. Poonam Belokar(Kherde)	Amravati	Obs & Gyn
24	Dr. Rakesh Tripathi	Satna	Pediatrician
25	Dr. Sandeep Dankhade	Amravati	Pediatrician
26	Dr. Ashish Dagwar	Amravati	Surgeon
27	Dr. Ashish Narwade	Mehkar	Pediatrician
28	Dr. Mallikarjun H B	Bengaluru	Pediatrician
29	Dr. Hemant Chandravanshi	Raipur	Obs & Gyn
30	Dr. Premchand Jain	Karjat	Pediatrician
31	Dr. Radheshyam Roda	Dhule	Opthalmologist
32	Dr. Virendra Roda	Dhule	Opthalmologist
33	Dr. Shabeer Ahmed	Hyderabad	Pediatrician
34	Dr. Sandhya Mandal	Medinipur(W.B)	Pediatrician
35	Dr. Sunita Wadhwani	Ratlam	Ob & Gyn
36	Dr. Sagar Idhol	Akola	Physician
37	Dr. Ashish Varma	Wardha	Pediatrician
38	Dr. Anuj Varma	Wardha	Physician
39	Dr. Neha Varma	Wardha	Ob & Gyn
40	Dr. Ramesh Varma	Wardha	Gen Practitioner
41	Dr. Jyoti varma	Wardha	Dentistry
42	Dr. Ravindra Dighe	Navi Mumbai	Pediatrician
43	Dr. Jyoti Dighe	Navi Mumbai	Ob & Gyn
44	Dr. Madan Mohan Rao	Hyderabad	Pediatrician
45	Dr. Pramod Gulati	Jhansi	Pediatrician
46	Dr. Sanjay Wazir	Gurgaon	Pediatrician
47	Dr. Anurag Pangrikar	Beed	Pediatrician
48	Dr. Shubhada Pangrikar	Beed	Pathologist
49	Dr. Abhijit Thete	Beed	Pediatrician
50	Dr. Kiran Borkar	Wardha	Ob & Gyn
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99	Dr. Nirmala Joshi	Lucknow	Pediatrician
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102	Dr. Kavita Satav	Dharni	Opthalmologist
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104	Dr. Narendra Gandhi	Rajnandgaon	Pediatrician
105	Dr. Chetak K B	Mysore	Pediatrician
106	Dr. Shashikiran Patil	Mysore	Pediatrician
107	Dr. Bharat Shah	Amravati	Plastic Surgeon
108	Dr. Jagruti Shah	Amravati	Ob & Gyn
109	Dr. C P Ravikumar	Banglore	Ped Neurologist
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114	Dr. Bharat Asati	Indore	Pediatrician
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118	Dr. Sanjeev Borade	Amravati	Ob & Gyn
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216	Dr. Dhanesh Volvoiker	Goa	Pediatrician
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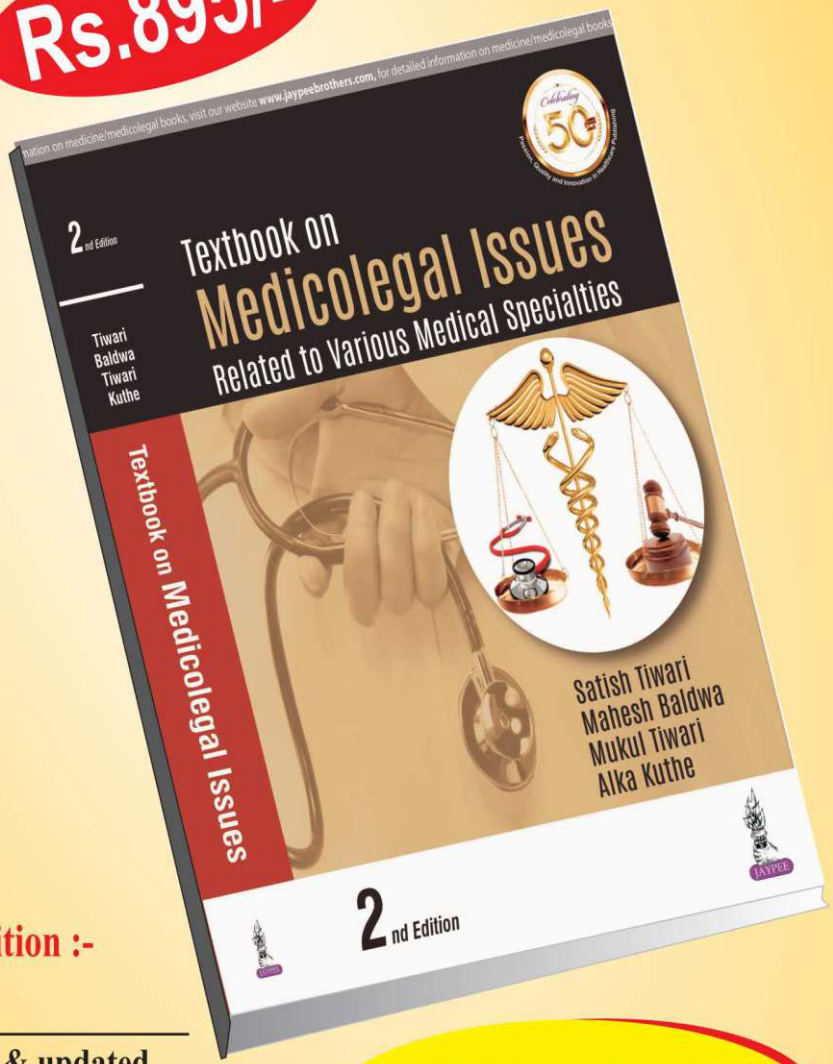

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3)	Dr. Rajendra Borkar	(Wardha)	9822240837
4)	Dr. Balraj Yadav	(Gurugram)	9811108230
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