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Editorial :

Not To Speak Against Wrongs Is Wrong

Dr Yash Paul

Received for publication : 10th Dec. 2021 Peer review : 25th Dec. 2021 Accepted for publication : 30th Dec. 2021

Keywords: Wrong acts, Wrong message, Wrong policies

Introduction:

In the year 1999 I had raised the issue regarding contra-indications of OPV [1]. I had further stated: "The message has been conveyed to the general public that OPV is an absolutely safe vaccine and there is no contraindication to its administration. Can we be accused of withholding vital information from the parents?" The then President of Indian Academy of Pediatrics and Chairman Polio Eradication Committee had stated: "There is a lot of merit in Dr. Yash Paul's loud thinking on two polio vaccines. However, the issues are inherently somewhat complex, to which additional and unfortunate complications have been contributed by some major players, for reasons that are not entirely science based. Like in many other situations, decisions and choices on issues of immunizations and polio eradication efforts are not quite as transparent and straight forward as they should have been. Yet, all of us, members of IAP, our government, international and bilateral aid organizations and the relevant United Nations agencies desire the eradication of poliomyelitis as soon as possible and certainly no later than the year 2000. Yes, in our enthusiasm to eradicate poliomyelitis, perhaps it is better to overlook certain issues of disagreement than to treat them as bones of contention, for several reasons. For one thing, poliomyelitis due to wild polioviruses can be eradicated by using OPV exclusively, and the Government of India has made conscious decision to do so, fully supported, or rather, fully directed, by the World Health Organization. Any discussion at this time is unwise and un-warranted, particularly so as we do not want to give any excuse to anyone to blame any delay in the achievement of polio eradication on such provision grounds as even a debate in scientific journal. [2]

This statement acted as a gag order, but after year 2000, when polio eradication did not occur I raised these issues again in Bioethics, a foreign journal [3] Later, it was published as a chapter in a book titled "Ethics and Infectious Disease" published by Blackwell Publishing[4].

Indian Academy of Pediatrics, the academic body of child specialists has not taken any stand on the following two issues:

1. Why cases of paralytic disease caused by OPV are not considered polio case?
2. Why no compensation is being paid to those children who have developed polio despite the polio eradication program, either because OPV failed to provide protection or OPV caused polio disease called VAPP (Vaccine Associated Paralytic Polio)?

On 10th February 2016 I sought information under RTI Act regarding the number of VAPP and Polio Compatible cases which had occurred in India from January 2011 to December 2015. The Ministry of Health and Family Welfare Immunization Division, Government of India letter no. Z.3313/2016-Imm /dated 8th March 2016 stated "that in this regard it is informed that no data on polio compatible cases/cases with VAPP is maintained by this Ministry. The data on compatible cases/cases with VAPP is maintained by WHO and uploaded on their website from time to time."

This letter raises two issues:

1- The Ministry of Health and Family Welfare is not aware of the fact that NPSP has stopped displaying figures regarding polio cases since India had been declared polio free. NPSP has never posted number of VAPP cases on its website 2003 onwards.

2- The Ministry of Health and Family Welfare mandates that all Adverse Events Following Immunization (AEFI) should be reported. Though VAPP is a serious adverse reaction

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following OPV, the Ministry has no record of this AEFI.

Conclusion: It reflects ignorance and negligence on part of the Ministry.

To take a stand against wrongs is not wrong, but necessary, though desired results may not be achieved every time. I would like to state here two issues where I was successful in getting rectification.

1. Broadcasting of awareness generation advertisements: During 1980s DoorDarshan was the only TV Channel available in India. Door Darshan broadcasted many short documentary films for creating awareness regarding immunization and one such film was regarding the Measles vaccine. Measles vaccine is administered at the age of 9 months. In the film, artist Alok Nath tells artist Rakesh Bedi that as his (Alok Nath's) daughter is 9 months old today, he has to take her for Measles vaccination and hence he will not attend the film shooting. Measles vaccination is neither a time consuming nor a painful procedure. Alok Nath cancelled his shooting as if it was some major operation that had to be performed. This can create a negative impact on the layman that Measles vaccination must be something very different from other routine vaccination, that is why Alok Nath needed to cancel the shooting, but how can a common man take leave from workplace or forgo the wages or earning for one day for Measles Vaccination for child, so instead he/she may forgo this vaccination in another film a woman laborer is shown seeking permission from her husband to take half day off so that she may take their child for immunization. Perhaps the government's intention is noble to stress upon the importance of immunization. No welfare government should even suggest the daily wage earners, laborers to forgo even half day's wages to take their child for administration of vaccines. It was published on pages 12 & 13 September 1995 issue of Academy Today an IAP publication. Dr. A. Parthasarthy, the then Convener IAP Committee on Immunization stated on page 14: "I suggest that Dr. Paul's apprehensions can be sent to Government of India for their comments".

The then Project Officer, Health Communications UNICEF India had stated in her response in October issue of Academy Today on pages 29-30: "I am very surprised that Dr. Yash Paul is criticizing the TV spot where Alok Nath is telling his friend that he is taking time off to take his daughter for measles vaccination. Yes, People, especially fathers, should take time off, if necessary to get their children vaccinated". She further stated: "One appreciates Dr. Yash Paul's great concern for poor people and the spirit in which he is insisting that immunization services should be organized at every construction site or where the people are." Although The Project Officer of UNICEF India had strongly defended the two documentary films, soon telecast of these films was stopped. It is highly appreciable that now the government also provides vaccination facilities outside health establishment.

2. Issue of bounced cheques: In case a cheque bounces because of insufficient balance in payee's account or due to some other error, bank imposes penalty on the person who had issued the cheque which has bounced, similarly cheque recipient's bank also charges money as penalty from the recipient of the bounced cheque. This penalty from cheque recipient is charged according to Negotiable Instrument Act, 1881.

On 17th January 2012, I sent a petition to The Council of States (Rajya Sabha) Delhi stating "Showeth-In case a cheque bounces because of insufficient balance in payee's account or due to some other error, bank imposes a penalty on the person who has issued the cheque recipient's bank also charges money in lieu of expenses incurred on handling such a cheque, but this money is charged from the recipient of the bounced cheque and not from the person who had issued such cheque. Natural justice demands that perpetrators of wrong act should be punished, but strangely our banks punish the victims also, for no fault on their part. Presently remedy under section 138 of the negotiable Instrument Act is available, but it is cumbersome, does not provide quick relief and adds further burden to the already overburdened judiciary."

"And accordingly your petitioner prays that: the bank where the bounced cheque has been deposited is fully justified to seek monetary compensation. But, this financial penalty should be imposed upon the person who issued such cheque. This amount should be realized through the cheque issuer's bank and not deducted from cheque

recipient's account. In addition suitable amount should be deducted from the said account to be paid to the person who had been issued this cheque which had bounced. This additional penalty should be imposed upon the person who has issued such cheque and created problems for the recipient of the cheque who has to take back the bounced cheque, and deposit a new cheque, and other incidental expenses incurred. Case should be initiated against the person issuing a bounced cheque and not against the recepient. This should be considered as a matter of general public interest."

I received communication from Rajya Sabha Secretariat and Government of India, Ministry of Finance, Department of Finance Services (BO. III Section) No.F.No.6/3/2012-**BO.III dated 24th July 2012, which stated as follows:**

Sub. :- Petition of Dr. Yash Paul, Jaipur (Rajasthan) on penalty imposed against bounced cheque.

The undersigned is directed to refer Rajya Sabha Secretariat's O.M.No.RS.7(2)2012-Com-II dated 1st May 2012 on the above mentioned subject and to inform that the matter was taken up with the Reserve Bank of India. It has been reported that the Committee on Customer Service in Bank: (Damodaran Committee) in its report has observed as "While there is a broad based consensus on the need for reasonable penalty on the drawee, payable to both the presenting and issuing banks, the presenting party should be exempt from penalties." The recommendation is under examination with Reserve Bank of India.

On 11th May, 2016 I had sent reminder to the ministry of Finance and Reserve Bank of India. Reserve Bank of India in its response dated 19th July 2016 Ref. No. DPSS CO (CHD) No. 232-103-06-03/2015 stated: "with regard to your suggestion that additional penalty may be collected from the drawer of a bounced cheque and paid to the beneficiary, we advise that this cannot be considered as a solution to the problem of cheque bouncing due to insufficient funds and such a proposal is not under examination by RBI".

Surprisingly RBI was silent on the issue that presenting party should be exempt from penalty, though it had been under examination with RBI for more than four years, This shows that we have lot of sympathy for wrong doer 'becharaa' (poor fellow).

On July 23rd 2018 Lok Sabha approved a bill which seeks to offer faster prosecution in case linked to dishonored cheques as well as compensation to the complainant. The bill amends the Negotiable Instruments Act 1881 (after on hundred and thirty seven years).

A wrong is a wrong and no logic can make it right, similarly keeping silence against any wrong is wrong and no logic can make it right even if wrong doer is very powerful person or institution. Since long time I have been raising two issues [3-6] though I have not met success till submission of the manuscript:

1. Irrational and potentially harmful during formulation.
2. Compensation to those children who had developed disability during Polio Eradication Program.

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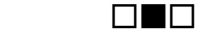

Perspective:
Clinical practice versus Publication - a SWOT analysis

Dr. T. R. Ashok

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Keywords :

Clinical practice, SWOT analysis, Publication redators, Ghost authors

Abstract :

Publication in science evolves beyond imagination from the way of its practice to its writing. Busy clinical practice is not the only qualification to produce publications. Scientific writing should be habituated in a clinician's day-to-day routine life-style to generate revolutionary ideas and to show the scientific world the impacts of one's observation and its alternate ways to make better lives for every living being. No boundaries, No rules and No clear ideas exist in scientific writing as well, unclear ideas and grey zones do play a role asking for tooth and claw relationship among writers and non -writers, commercials and non-commercials. SWOT analysis of clinical practice and publication are highlighted in this article.

Introduction

Clinical practice and publication were two different paths of practicing medicine, they involve multi-personal skill to exercise at times as required with a common interest for the community. Specialty among various disciplines is just only a way of practicing clinics at its best.

Scientific thinking of a researcher does not have boundaries or limits confined, multi-disciplinary and multitasking were inherent qualities of a researcher to produce publications following his daily routine clinical practice. Scientific thinking is an art of imagination with better ideas for improvement of living beings in the future.

A SWOT analysis - Strength, Weakness, Opportunities and Threat model of analysis / observation on dark zones of unexplained areas of publication have been illustrated in the following.

Workplace vs Doctor - who gains more weightage on onus of data?

Workplace/Laboratory- referred to as Clinic/hospital/tertiary care center or any institution private or government bodies, NGOs or missionaries associated with healthcare delivery system through medical professionals claim for onus of their own patient medical data.

Now which or who claims the most authority on data?

- Every doctor focuses on claiming authorship on publication for his OP/IP census without scientific contribution from his own census list.
- Unfortunately lab / workplace doesn't have any voice to ask or claim inspite of being the birthplace of that scientific work.
- Doctors may change their place of practice from time to time but birthplace of that scientific work can't be changed.

Conflict of interest

This terminology is selectively used as a weapon by incompetent people against those who publish work with their own good will, abilities, qualities and improved skills. People who don't do any publication or learn to do or improvise their writing eventually end up wasting the clinical data and claim ownership later with their interest only on getting names on the publication.

Indexing:

- What's indexing and what those agencies meant for? (PubMed / Scopus / Web of science)
- What are their roles and focus on scientific publications?
- If quality is their motto, then why so huge (APC - article processing charges) which a common author with his scientific work can never imagine of publishing.
- Does that indexing body have limitation to

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geographic boundaries?

- Does each country have its own indexing authorities within their geographic boundaries on scientific publications ?
- Are Scientific publications really meant for growth of scientific thinking and implementation for betterment of living community or a marketing tool with endless boundaries to generate income in the form of indexing bodies?

4. SWOT analysis on Publication

Strength	Weakness
Researchers with qualities who are able to think themself and scientifically. Able to write manuscript, spend time and effort as per publication guidelines. Self-analysis of content and understanding of publication boundaries with acknowledgement of work by other people. Able to include people with their research work as a goodwill gesture. Team leader with coordination of equal work recognition on authorship distribution.	Clinical work is a salaried type or charged on case basis service depending on workplace whereas Publication is a self-oriented interest of writing with balanced scientific thoughts of time consuming and its application. Dark areas without clarity on qualifying authorship status on publication and research work. Ghost authors - whose name appear without any effort for manuscript writing or scientific contribution to publication. Buyers of publication. Claiming authorship just only on clinical work without any intentions on writing for publication. Journals with - Huge publication charges (reason unexplained runs in dollars and pounds) - longtime for review - high rejection rate. Journals strongly adhering to their geographic boundaries. Editors with improper language communication to corresponding author. Specialty is just only a way of practicing clinical medicine at its best.

Opportunities	Threats
Manpower resources All under one roof - accessibility, reproducibility and research friendly environment. Data availability and storage Institution / Lab to be given more weightage on data than clinical ownership.	Senior colleagues / Consultants who claim data as their hereditary / ancestral property till their last breath. False accusations and moral degradation on publication writers by those who don't have any interest to write or publish. Those who were not willing to learn and evolve through consistent failures / rejections during the publishing process. Wasting data is also a potential negligence to be considered unethical on ownership without contribution to scientific writing Senior professionals - preaching about lifelong learning to younger generations but not practicing when comes to publication. Elder brain with chronic occupancy in high chair without interest or adaptive capability towards the current need of scientific community is a disaster.

Conclusion:

1. Clinical practice is a service provided on charged or non-charged basis, the provider and the consumer relations end at that point of time, when provided with any form of treatment.
2. Research writing / Publication requires a scientific mind with abilities of potential positive thinking for the benefit of the community, through each of clinical scenario examined or treated.
3. Validity - Medical data on day-to-day practice by each clinician across specialties not to be treated as ancestral / hereditary property (excluding - institution / lab) a valid period of ownership to be confined within which the clinician can claim beyond which cannot do so by any means.
4. Blinding of the study in research is acceptable but not blinding of a clinician to his own valuable medical data to be wasted without publishing.
5. Publication predators / Ghost authors - were those who never learn, evolve to current needs and just wait or threaten junior colleagues to do publication / research writing without any forms of contribution.
6. Scientific Publication is like a running race, with ill-defined rules and grey zones where the non-publishers and non-writers always demoralize the succeeded one that they ran fast without informing.

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Contribution in JIMLEA

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

Review Article:

Judicial decisions on Medical records

*** Mahesh Baldwa, **Satish Tiwari**

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Keywords -

Medical Malpractice,Consent, Negligence, Case laws, Consumer Courts.

Introduction-

Good medical records are the best defense against litigations. It is also a known fact that good records show quality medical care. Medical records are our best defense against allegations of negligence, deficiency of service, unfair trade practice and medical malpractice. Records should be transparent, correct, clear, comprehensive, written in a chronological manner with use of contemporaneous method of abbreviations so the accountability becomes apparent and kept transparent, free of all doubts. Thus maintaining, keeping safe custody of the medical records and handing over to patient party cannot be overemphasized [1]. But conflicting and confounding judicial decisions about medical records are collated herein below.

Giving medical records:

The National Commission in Poona Medical Foundation v Maruti Rao Tikare. 1995;1 CPR 661(NC) had held that there was no question of negligence for failure to supply the medical records to patients unless there is a legal duty on the hospital to give the records. The alleged hospital had provided a detailed discharge summary to the patient. It was held in Dr. Shyam Kumar v Rameshbhai Harmanbhai Kachiya I (2006) CPJ 16 (NC) that it is the duty of the person in possession of the medical records to produce it in the court and adverse inference could be drawn for not producing the records. Not producing medical records to the patient prevents the complainant from seeking an expert opinion. Contrarily, in Kanaiyalal Ramanlal Trivedi v Dr. Satyanarayan Vishwakarma 1996; 3 CPR 24 (Guj); hospital and doctor were guilty of deficiency in service as case records were not produced before the court to refute the allegation of a lack of standard care.

Preservation of Records:

In S.A.Quereshi v Padode memorial Hospital and Research Centre II. 2000 CPJ 463 (Bhopal) the opposite party healthcare professionals were found negligent as they should have retained the case records until the disposal of the complaint. The plea of destroying the case sheet as per the general practice of the hospitals appeared to the court as an attempt to suppress certain facts that are likely to be revealed from the case sheet.

The State Commission disbelieved the evidence of the surgeon because only photocopies were produced to substantiate the evidence without any plausible explanation regarding the absence of the original records. This was held in Devendra Kantilal Nayak v Dr. Kalyaniben Dhruv Shah I (1997) CPJ 103.

The State Commission in Nihal Kaur v. Director, PGI, Chandigarh 1996;3 CPJ 112 (Chandigarh (UT) CDRC) held negligence on the basis of the records, which seemed to be manipulated and artery forceps found from cremation ground.

Issues of tampering of medical records need detailed examination in a civil court rather that in Consumer Court. This was decided in Harenbalal Das v Dr. Ajay Paul 2001; 2 CPR 498.

Maintaining confidentiality of records:

With the enforcement of the NMC, it has been held without confusion that the patient has the right to claim medical records pertaining to his treatment and the hospitals are under obligation to maintain them and provide them to the patient on request. In Raghunath Raheja v The Maharashtra Medical Council and Ors AIR Bombay: 1996. P-198; Bombay High Court held that doctors cannot

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hide behind confidentiality when the patient party demands medical records. There are several other judgments similar to this.

Not maintaining confidentiality of patient information can be an issue of medical negligence. The HIV status of a patient was known to others without the consent of the patient. This was decided in Dr. Tokugha Yeptomi V Appollo Hospital Enterprises Ltd and Anr III 1998 CPJ 132 (SC).

Consent and Negligence:

The State Commission in Force v. M Ganeswara Rao. 1998 (1) CPJ 413 (AP SCDRC) held that there was negligence as the case sheet did not contain a proper history, history of prior treatment and investigations, and even the consent papers were missing. Records show no consent, surgeon was not gynecologist. A patient had cancer cervix, for which she consulted many doctors, and was told that she is inoperable. Surgeon operated under L.A. without doing investigations. Complication of burst abdomen occurred, re-operated and after that instructions regarding chemotherapy was not followed by Nursing Home. It was found that surgeon visited thrice only. Patient died. It was held that O.P. was a surgeon and not possessing gynecologist degree and the case sheet did not contain consent form, not showing administration of drugs which amounts to negligence. It was the bounden duty of Nursing Home to record the previous history of patient, summary of laboratory reports and sensitivity reports. Negligence was held.

Accidental injury : Doctor did not take x-ray of shoulder, so after 15 days consulted orthopedic surgeon, who also did not advice x-ray. O.P. doctor contended patient never complained of pain. Patient alleged negligence of O.P. doctor, complainant also alleged no record given by doctor. District Forum dismissed the case. It was observed by district forum that record was not asked by O.P. Hence adverse inference could not be drawn. As complainant did not specify which facts were overlooked by doctor in caring for him so District Forum dismissed the case Dr. S. Ali v Dr. Lahari IlI (1997) CPJ 611.

The State Commission held that failure to deliver X-ray films is deficient service in V P Shanta v. Cosmopolitan Hospitals (P) Ltd. 1997;1 CPR 377 (Kerala SCDRC). The patient party was deprived of their right to be informed of the nature of injury sustained.

The National Commission in another case; Meenakshi Mission Hospital and Research Centre v. Samuraj and Anr, I(2005) CPJ (NC) held that the hospital was guilty of negligence on the ground that the name of the anesthetist was not mentioned in the operation notes though anesthesia was administered by two anesthetists. There were two progress cards about the same patient on two separate papers that were produced in court.

Consent explaining complication properly is not negligence. This was held in, C Anjani Kumar v Madras Medical Mission I (1998) CPJ 533 (Chennai). The allegation of the patient regarding negligence of the doctor was rejected because consent showed possibility of vocal cord palsy in detailed written consent that showed that it was explained properly and consented by patient party.

The complainant failed to prove allegations of intra-operative death. The National commission decided this in; Sethuraman Subramaniam Iyer v Triveni Nursing Home I (1998) CPJ 10 (NC). The allegation of tampering with the operation notes was negated by the State Commission in a case of intra-operative death as the complainant could not prove the allegation.

Incomplete Record is Deficiency in Service:

Doctor recorded X-ray as 'ok' even though separated chip of head of humerus was not rightly placed while performing the operation the doctor did not maintain a proper written record of the treatment given by him and a rationale for giving such treatment. Hence, to that extent the courts held, there is deficiency in service. The doctor in his own admission has stated as under "I informed the complainant for the replacement of shoulder when he could not get relief even after doing open reduction. I orally informed the complainant about the replacement of the shoulder. It is not mentioned in the discharge card." Not maintaining a proper record amounts to deficiency in service. The cost

was quantified at Rs 10,000 in the case Dr. Paramjit Singh Grewal vs Charanjit Singh Chawla 19 October, 2006 by National commission.

Some other Case Laws:

Bill showing fees mean doctor treated patient:

The hospital was held vicariously liable in P.P. Ismail v K.K. Radha I(1998) CPJ 16 (NC); for the negligent action of the doctor on the basis of the bill showing the professional fees of the doctor and the discharge certificate under the letterhead of the hospital signed by the doctor.

Just don't hedge behind that operation was not performed:

Owner of nursing home called surgeon to perform operation. Patient died during operation. Surgeon contended that he never operated but record was contrary. Here, A. Ravi v Dr. Usharani. 1(1999) CPJ 581 only surgeon was held liable and not the Nursing Home. Court also "observed that even fee promised would be enough to make the patient a consumer.

Importance of medical records:

Medical records are very important and should be maintained meticulously, which include, OPD, IPD, investigations, imaging, consent forms. bills, invoices, receipts, discharge summary etc [1]. Not maintaining proper records or not giving them to the patients or relatives can result in allegation of negligence or deficiency in service.

Conclusion:

The legal system relies in the issue of alleged medical negligence mainly on documentary evidence in a situation where medical negligence is alleged by the patient or the relatives. Medical records are medico-legal documents and a treating doctor can be cross-examined pertaining to such records. In an accusation of negligence, this is very often the most important evidence deciding on awarding compensation for damages, sentencing jail term or acquittal of the doctor and dismissal of case.

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Review Article:

Cognizable Offence- Medicolegal facts

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Introduction

As a medical professional, and as an educated citizen of India, we should be aware of the laws and regulations related to Cognizable Offences. Section 304 of Indian Penal Code for alleged death due to medical negligence (Section 304-A: causing death by rash or negligent act), is a cognizable offence, in which police can arrest the suspect doctor /nurse. In certain circumstances, doctors need to register FIR against the culprits, like violence against health professionals caused by patient / their attendants. Violence against health care providers should become a cognizable offence.

Cognizable Offence

Cognizable offence and non-cognizable offence are classifications of crime used in the legal system of India[1]. Cognizable offences are offences which are of serious nature e.g. murder, homicide, rape, dacoity, abduction, criminal breach of trust etc. Cognizable offence means the police officer on duty recognizes the coded crime on complaint of victim/ witness. Cognizable literally means clearly identifiable, within the jurisdiction of a Court. *"Cogniz"ance* of crime: *re"cognize"* the coded crime.

In the Cognizable Offences, Police Officer on duty, has the authority to make an arrest of the suspect, even in midnight, without a warrant and to start an investigation with or without the permission of a court (without a court-mandated warrant), as per the First Schedule of the Criminal Procedure Code, 1973 [2].

By contrast, in case of a non-cognizable offence, a police officer does not have the authority to make an arrest without a warrant and an investigation cannot be initiated without a court order.

On 12thNovember 2013, the Supreme Court of India in case of **Ms Lalita Kumari** v/s **State of U.P.** said it was mandatory for the police to register a First Information Report (FIR) for all complaints in which a cognizable offence has been committed [3].

As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The categories of cases in which preliminary inquiry may be made are as under:

a) Matrimonial disputes/ family disputes
b) Commercial offences
c) Medical negligence cases
d) Corruption cases
e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry. While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound limit and, in any case, it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry [3].

We as healthcare providers, have mandatory duty to provide first aid and life saving measures to any victim of cognizable offence in need of immediate medical aid and it is our legal duty as citizen of India, to report about any cognizable offence, which comes to our notice, when the victim patient of trauma or toxicology tells us about the crime suffered by him/her leading to the sudden need

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for medical aid in emergency [4].

In unconscious victims, if we suspect foul play, we must inform the police and document all the injuries and relevant evidence of crime (torn clothes, blood-soaked clothes in gunshot and stab, vomitus-soaked clothes in suspected poisoning) should be preserved and handed over to the police as soon as possible, to prevent destruction of evidence of crime. Medicolegal report is to be prepared on police request in case of an unconscious patient who is not accompanied by any relative/attendant.

If there are no injury marks on the patient's body and the patient asks for MLR, the doctor should ask for any pain in that specific body part and physically examine by palpation. If he finds any local tenderness, it is advisable to get X-ray of the injured body part, and document that in MLR.

Non-Cognizable offence

Not classified as punishable offence requiring immediate arrest. For these offences monetary compensation may be awarded by court. Non-cognizable offences include misbehaviour, public annoyance, cheating, forgery, defamation etc. Assault is a broad term which includes physical and mental assault. Physical assault results in detectable injuries, which if not documented in medicolegal report by the concerned RMP (Registered Medical Practitioner), simple injuries like abrasion or bruise may disappear with passage of time due to the bodily mechanism of healing. Wounds like laceration or incised wound will leave a permanent scar, which can be detectable later, but correlation of duration of injury with incidence of crime will be difficult, if not recorded soon after the infliction of injuries.

Doctors treating victims of cognizable offence become automatic witness of crime in court trial, despite that they were never present at scene of crime. Doctors become the first independent witness of hearsay evidence, when victim discloses about the crime suffered during history taking for knowing about the injuries occurred, for specific medical investigations. Doctor become the expert witness while interpreting the nature of injuries, whether the injuries are simple, grievous or endangering life of the patient.

Serious offences are defined as cognizable and usually carry an imprisonment sentence of 3 years or more. In India, crimes like sexual assault, murder and theft are considered cognizable. Most cognizable offences are non-bailable and punishable for imprisonment for more than 3 yrs, in which police can arrest the accused without warrant from court, that means police can arrest as soon as possible, even in midnight, to prevent further commission of crime by accused, including destruction of evidence and threat to the witnesses and victim of crime. Similarly Judge will not bail out the accused of crime, to prevent further commission of crime by accused, including destruction of evidence and threat to the witnesses and victim of crime. But Section 304-A: causing death by rash or negligent act, is a bailable cognizable offence, in which police may arrest the suspect doctor /nurse, but can be bailed out [6].

Every cognizable offence is a criminal case:

In India, as per law arrest can be made by all law enforcement officers - such as police officers, police constable, magistrate etc. whether they are on or off duty in most cases as per the legal provisions permitting such an arrest. Besides police, any private individual can arrest a proclaimed offender and any person who commits a non-bailable and cognizable offence. Any person who sees a person committing a criminal offence and they have a good reason to believe that the person committed an offence can make an arrest. As soon as the arrest is made, they are required to take him/her to a police officer or a judge who is required to take him/her into the custody.

Procedure for arrest:

An arrest can be made with or without a warrant. Once an arrest warrant is issued, arrest can be made anytime. There is no time limit to make an arrest. If the person to be arrested does not submit to the custody through words or action then the person

making the arrest can touch or confine the body of the person to be arrested. If the person is trying to evade the arrest or resisting it then the person making the arrest can use all possible means to arrest the person. Resisting an arrest is also a crime and he can be charged for misdemeanour along with the crime for which he is charged.

As per Section - 75 of the CrPC, arrest warrant should be in writing, signed by the presiding officer and should have the seal of the court. The warrant should categorically state the name and address of the accused and offence under which arrest is to be made. The warrant is considered illegal if any of this information is missing.

In case, if name of the accused is not known then a "John Doe" warrant will be issued along with description of accused in it [5]. When the police is carrying an arrest warrant, accused must be allowed to see it. If the police is not carrying the warrant, he should be allowed to see it as soon as possible. If someone's name is mentioned in the FIR, the police must conduct a preliminary investigation before arresting such a person. In case, where the police is executing an arrest warrant issued by the magistrate, there is no need to handcuff the person to be arrested. He may be handcuffed if the order from the magistrate explicitly states so. Further, the person who is so arrested should not be subjected to physical violence or inconvenience unless it is required to prevent his escape. While arresting, the police officer must be wearing a clear, visible identification of his name. At the time of the arrest, a memo of arrest should be prepared and should be attested by at least one witness and should be countersigned by the person so arrested.

Police can also arrest without a warrant if the situation so demands as per Section 41 of CrPC. If the police believe that a fast action is needed to prevent a person from destroying or tampering evidence, escaping or endangering someone's life or seriously damaging property then they can make arrest without a warrant.

Rights of the person arrested for cognizable offence:

Whether a person an Indian citizen or a non-citizen, he has certain rights when he is arrested as mentioned under the Constitution of India.

Rights include:

- The person so arrested has the right to inform his/her family member, friend or relative as given under Section- 50 of CrPC.
- The person so arrested cannot be detained for more than 24 hours without being presented before a magistrate. This is done to prevent unlawful and illegal arrests.
- The arrested person has the right to be medically examined.
- He has the right to remain silent - he is not required to speak or confess anything in front of the police. Anything he says can be taken against him and hence he has the right to not say anything in front of the police.
- He has a right to have a lawyer present with him when he is questioned. In case he is not able to afford a lawyer, a lawyer will be appointed for him by the government.
- Right to be informed about the charges - As per Section-50 of CrPC and Constitution of India, the person accused of an offence needs to be informed about the offence and whether it is a bailable or non-bailable offence. Bailable offences are those in which getting a bail is the right of the accused, whereas in case of non-bailable offences bail is granted as per the discretion of the court.
- If one is arrested for a serious crime, he must contact a lawyer as soon as possible because a lawyer has a better understanding of what should be said before the police. The lawyer will also be able to assist him in getting bail.

Special rules while arresting a female Doctor, suspected for alleged medical Negligence:

A female should only be arrested in presence of a lady constable and further no female can be

arrested before sunrise and after sunset. There can be exceptions only when it is extremely urgent to arrest the accused [2].

First Information Report

First Information Report (FIR) is a written document prepared by the police when they receive information about the commission of a cognizable offence. It is a report of information that reaches the police first in point of time and that is why it is called the First Information Report. It is generally a complaint lodged with the police by the victim of a cognizable offence or by someone on his/her behalf.

Importance of FIR:

An FIR is a very important document as it sets the process of criminal justice in motion. It is only after the FIR is registered in the police station that the police take up investigation of the case [6].

Anyone who knows about the commission of a cognizable offence can file an FIR. Anyone can report the commission of a cognizable offence either orally or in writing to the police. Even a telephonic message can be treated as an FIR. It is not necessary that only the victim of the crime should file an FIR. A police officer who comes to know about a cognizable offence can file an FIR himself/herself. Facts to be mentioned in FIR can be easily recalled in following way (Ref. Table 1 below) :

Table: 1 Easy recall while registering FIR:

- W - Who you are- victim / witness? (Your name and address)
- W - When and Where the crime occurred (Date, time and location of the incident you are reporting)
- W - What Happened in Crime? (The true facts of the incident as they occurred)
- W - Who did it? Names and descriptions of the persons involved in the incident;
- W - Witnesses, if any (W-Who saw the crime done by the criminal on the victim at that place at that time?)

Procedure of filing an FIR:

- When information about the commission of a cognizable offence is given orally, the police must write it down.
- It is right of the person giving information or making a complaint to demand that the information recorded by the police is read over to him.
- Once the information has been recorded by the police, it must be signed by the person giving the information.
- One should sign the report only after verifying that the information recorded by the police is as per the details given by him/her.
- People who cannot read or write must put their left thumb impression on the document after being satisfied that it is a correct record.
- Always ask for a copy of the FIR, if the police do not give it to you. It is your right to get it free of cost. (Section 154 of the Criminal Procedure Code, 1973).2
- Even if the cognizable offence committed doesn't fall within the jurisdiction of that police station even then the police officer will have to register FIR and it is his duty to send it to the concerned police station.

Table 2: Procedure for FIR:

What Doctor can do, if FIR is not registered against patient/ attendants for causing violence inside Hospital ?

- One can meet the Superintendent of Police (SP) or other higher officers like Deputy Inspector General (DIG) of Police and Inspector General (IG) of Police and bring the complaint to their notice.
- One can send the complaint in writing and by post to the Superintendent of Police concerned. If the Superintendent of Police is satisfied with the complaint, he shall either investigate the case himself or order an investigation to be made.
- One can file a private complaint before the judicial session court having jurisdiction.
- One can also make a complaint to the State Human Rights Commission or the National Human Rights Commission (NHRC) if the police do nothing to enforce the law or do it in a biased and corrupt manner.

In case of non-cognizable offences, section 155 of CrPC provides that in a non-cognizable offense or case, the police officer cannot receive or record the FIR unless he obtains prior permission from the Magistrate [2]

Police may not take cognizance of the complaint and close FIR by FR (Final report)

The police may not investigate a complaint even if one files a FIR, when:

(i) The crime is not serious in nature;

(ii) The police feel that there is not enough ground to investigate.

However, the police must record the reasons for not conducting an investigation and in the latter case must also inform the person filing FIR [Section 157, Criminal Procedure Code] [2].

Incidents of violence against doctors in the Indian subcontinent have increased in the last few years. Most doctors in India are concerned about their safety at work. The problem is worse in government hospitals, which characteristically lack appropriate security protocols.

During Corona Pandemic, attacks on doctors, paramedic staff and ASHA workers have been made non-bailable and cognizable offenses, under Epidemic Diseases Act, 1897, in which the offender can be punished for 7 years imprisonment [7].

Conclusion:

In order to tackle the medicolegal issues, doctors need to discuss the various causative factors, understand the public sentiment and collaborate with the medicolegal associations to find a solution. The know-how of laws related to cognizable offence, can be helpful for the practising doctors, in their own safety and security, not just against violence, but also against false allegations of medical negligence by patients or their attendants. Formulation of legal provisions and standards to ensure the safety of health workers is the need of the hour.

Conflict of interest: Nil

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Medicolegal News

Compiled by : Dr. Santosh Pande

Hepatitis C Infection Due To Blood Transfusion: Court Slaps Rs 5 Lakh Compensation

Punjab: The consumer court in Mansa recently directed Health Department authorities of Punjab to pay Rs 5 lakh as compensation to a patient, who got infected with Hepatitis C virus due to transfusion of contaminated blood back in 2015. Holding the Health officials guilty, President of the District Consumer Court of Mansa, RL Mittal observed, "For the wrong doings of the staff of OPs, now the complainant would have to suffer with this lifelong disease which may require heavy medication and expensive treatment. Therefore, the complainant is surely entitled for an adequate compensation."

The commission had earlier awarded Rs 2 lakh as compensation. However, when the matter was remanded back by the State Commission, the amount of compensation was increased and the Commission noted, "On 11.12.2020, the present complaint was partly allowed and the OPs were directed to pay compensation of Rs. 2 lakh to the complainant. Considering the negligence of the OPs which caused irreparable loss to the complainant, this compensation seems to be inadequate. Therefore, the order passed by this forum on 11.12.2020 is modified and the OPs are directed to pay compensation of Rs.5 lakh to the complainant."

The case dates back to 2015 when the complainant was suffering from Dengue and he had been admitted to the Civil Hospital Mansa. It was submitted by the complainant that during treatment at the hospital, his TLC/DLC was reported 'decreased' and based on the recommendation of the treating doctor, two blood units 'bearing No.4656 and 4666' from Blood Bank of the Civil Hospital, Mansa were transfused to the complainant on 2.12.2015

It was argued on behalf of the patient that after 3-4 months from the date of discharge from the hospital, he felt difficulties in his health and he again contacted the treating doctor. After conducting necessary tests, the doctor found that the patient was suffering from Hepatitis C, which came as a shock to the complainant and his family.

The patient alleged that when he tried to investigate the origin of the disease, he found out that earlier during his treatment on 02.12.2015, one unit of blood which was transfused to him by the hospital vide Unit No.4666 was Hepatitis-C positive. He submitted that staff of the hospital carelessly and negligently transfused the Hepatitis-C infected blood to him but upon noticing their mistake and with a fear of exposure, staff changed the unit No.4666 to Unit No.4661 in their internal documents. Complainant alleged that unit No.4661 was actually transplanted to a patient of another Nursing Home on 16.12.2015. He submitted that one blood unit having the same unit number could not be transplanted to two different persons. Therefore, he alleged that OPs were playing with the health of the public.

It had been further submitted by the complainant that he is under treatment of Hepatitis C which has no permanent cure. He also pointed out that in order to recover from the disease, he would have to continue taking medicines till his last breath and all of this happened due to negligence of the Health Department. Submitting that till now he has already spent more than Rs 10 lakh for treatment, the patient further stated that despite treatment, his condition was worsening every day.

Further pleading that even though he had requested compensation from the Government, no action had been taken, the complainant further stated that enquiries had revealed that the Health Department and the Government hospital were negligent in rendering services to the patients.

Filing the complaint, the complainant claimed Rs 19 lakhs for the expenses which he had to spend upon his treatment for Hepatitis-C and for the harassment, physical & mental agony, and sufferings.

Last year the District Consumer Court had disposed of the complaint and had directed the hospital and the health department to pay Rs 2 lakh as compensation. However, when the Health Department made an appeal before the State Commission, the matter was remanded back to the

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District Forum and an opportunity was given to the Opposite parties to argue the case.

In their joint reply, the Hospital, Civil Surgeon and the Chief Secretary of Punjab Health Department submitted that when the patient was admitted to the Civil Hospital, he had been given the best treatment by concerned doctors and he had been discharged after recovery from the disease. They further pointed out that the complainant had only paid the fees fixed by the Government and being a Government institute, the Hospital was not working for profit.

Claiming that there was no mistake on the part of the employees of the government, they argued that it couldn't be established from where and when the complainant got the disease of Hepatitis-C. The complainant could have been a patient of Hepatitis C earlier before admission in the Civil Hospital or after discharge from the hospital. The complainant is not entitled to any relief.

The Hospital and Health Department further claimed that the complainant was not transfused any blood unit bearing No. 4666, rather he was given the blood units bearing labels No. 4656 and 4661 and there was no infection of any kind in these issued blood units. Both the parties had also submitted written arguments and medical literature to support their case.

After perusing all the relevant records the Commission also took note of the hospital's internal documents pertaining to the treatment, which had been obtained by the Complainant under the RTI Act and were produced by the Complainant before the consumer court. Those documents of "Ward Intake/Output Chart" showed that the label numbers of the blood units which were transfused to the complainant on 02.12.2015 by the staff of the hospital. From that document, it was completely clear that on 02.12.2015, blood vide label No. 4656 and 4666 was transfused to the complainant.

"Hence, the statement of the OPs that the blood bearing label No. 4666 was not transfused to the complainant is a completely false statement," noted the consumer court. The consumer court further noted that on the basis of the Newspaper reports and complaints, the Deputy Commissioner of Mansa had conducted an investigation under the supervision of the Asst. Commissioner (Public Grievances) Mansa against the alleged delinquent staff & officials of the concerned hospital and the Asst. Commissioner in his investigation report (Ex.C-24, Page-7) had recorded that the complainant was transfused 2 blood units vide Label No. 4656 & 4666 and Blood Unit No. 4666 was HCV+ which caused the disease of Hepatitis-C ("Kala Pelia" in local dialect) to the complainant.

Thus, the Consumer Court concluded, "Hence, from the above observation, it stands proved that the blood transfused on 02.12.2015 to the complainant was HCV(+). Further, the investigation report of Asst. Commissioner shows that the blood was not tested properly before transfusing to the complainant. The necessary Elisa Test which is performed to check the Hepatitis-C Virus infections in the blood was performed on 03.12.201 i.e. after the date of transfusion to the complainant. As such, it can be safely held that OPs have rendered deficient professional services. It was negligence per se, a complete failure of duty of care & caution which caused an incurable disease to the complainant".

"OPs have argued that complainant is not a consumer under the CPA. This argument is devoid of any merit. Complainant had purchased the 2 blood bags from the Blood Bank of Civil Hospital Mansa on payment of Rs. 600/- . Since, OPs received the consideration amount, the complainant is a consumer under the ibid Act," noted the commission.

Further referring to the contention that the complainant was already a patient of Hepatisis before admission to the Civil Hospital, the Commission noted, "As far as the previous history of the complainant is concerned, the staff of the hospital while examining the complainant on 02.12.2015 (Ex. C-5) had not reported/diagnosed any earlier history of hepatitis with respect to the complainant or his family members. And as far as the question of getting infected from some other source after discharge from the hospital is concerned, then it was upon the OPs to substantiate it by placing on record some cogent evidence, which they haven't. Hence, this objection is also unacceptable."

Apart from this, the Consumer Court also referred to the contention of the Health Department that Hepatitis infection usually occurs within 1 or 2 days of the blood transfusion. At this outset, the Commission referred the opinions of some leading

institutes and noted, "Above reports of WHO and DG, Health Services, India clearly show that Hepatitis-C is an asymptomatic disease, the symptoms of which may occur from 2 weeks to 6 months. Hence, the objection of the OPs that when infected blood is transfused, infection usually occurs within 1 or 2 days is also an out of place objection."

Nullifying all other arguments including the complaint was time barred, the complainant should have approached concerned higher officials for redressal of the grievance, the consumer court noted, "Other arguments/objections raised by the OPs also do not have any substantive force so as to tilt the preponderance of probabilities in their favour. Nothing of any substantive evidentiary value has been produced on record in support of them, therefore those objections are rejected."

"In view of the observations made above, it stands proved that the complainant was transfused HCV positive blood which caused Hepatitis C disease to him. As per the Medical Science, there is no effective vaccine for this disease. Only constant and quality treatment can reduce the viral load to undetectable levels which is considered as cured. For the wrong doings of the staff of OPs, now the complainant would have to suffer with this lifelong disease which may require heavy medication and expensive treatment. Therefore, the complainant is surely entitled for an adequate compensation," observed the Commission.

Therefore, the Commission directed the Health Department and the Hospital to pay Rs 5,00,000 as compensation within 45 days of the receipt of the order.

Ref: *https://medicaldialogues.in/news/health/medico-legal/hepatitis-c-infection-due-to-blood-transfusion-court-slaps-rs-5-lakh-compensation-85448 Accessed on 17/12/21*

Lack Of Expert Opinion to Prove Deficiency: Consumer Court Exonerates Pediatrician From Medical Negligence Charges

Cuttack: Taking note of the fact that no expert opinion was placed in the record on behalf of the complainant to prove medical negligence against the Pediatrician, the Odisha State Consumer Court exonerated the doctor and hospital from the charges of medical negligence in a case concerning a newborn baby, who developed Retinopathy of Prematurity (ROP) in eyes after birth. The clean chit for the doctor and hospital came after the Commission also took note of the fact that "there are several reasons for R.O.P. and no expert opinion is available."

Thus upholding the order of the District Forum, the State Commission noted, "In the facts and circumstances, it is held that the learned District Forum has gone to the facts and law in the matter and dismissed the complaint. Hence, this Commission does not find any error in the impugned order and accordingly, it is affirmed and the appeal stands dismissed. No cost.

" Back in 2013, the complainant had taken his wife to the treating hospital for her delivery. However, it was alleged that the hospital didn't take care of the patient and nurses were directed to take care instead. The wife of the complainant gave birth and the nurse attended her delivery. Since the baby was prematurely born, both the mother and the child were under treatment.

Meanwhile, the treating Pediatrician attended the child and since the baby was premature, the Pediatrician gave oxygen therapy along with many other treatments. After the mother and child were both cured, they were discharged from the hospital. During the stay, the hospital found out about the eye problem of the child.

After being discharged, the complainant took the child to an Eye Specialist who referred the matter to an Eye hospital based in Bhubaneswar. It was diagnosed that the child was suffering from ROP in his eyes and this was caused due to over oxygen therapy. Therefore, alleging deficiency of service on the part of the treating doctor and hospital, the complainant claimed compensation of Rs 15 lakh and a further Rs 2 lakh for expenses incurred during treatment at the hospital.

On the other hand, the hospital and Pediatrician denied all accusations and submitted that they had given best treatment to the mother and the child and claimed that there was no deficiency of service on their part. However, when the matter was being considered before the District Commission, it was dismissed and being aggrieved by the order, the complainant approached the State Consumer Court of Odisha.

The counsel for the appellant submitted that the child was born under the supervision of the treating doctor and hospital and the eye problem with the child got developed when oxygen therapy was extended to the child, of course,under the supervision of the Pediatrician. Therefore, any treatment which is defective is only due to negligence.

On the other hand, the counsel appearing for the doctor and the hospital contended that there are several reasons for ROP in the eye of the child and the oxygen therapy is one of the reasons but there is no occasion to apply excessive oxygen therapy. He further pointed out that even though the hospital and the doctor had advised the complainant to take the child to an Eye Hospital, the Complainant had insisted on continuing treatment there.

After listening to the contentions, the Consumer Court observed that the complainant could not prove through any expert evidence that the R.O.P was caused due to the negligent treatment of the Pediatrician. The State Commission further opined that the complainant should have filed a petition before the District Commission to obtain an expert opinion.

Thus, exonerating the hospital and the Pediatrician of all charges of medical negligence, the State Consumer Court of Odisha noted, "It is also discussed in the impugned order that there are eight reasons for which the R.O.P. occurs. One of the reasons is extra oxygen administered. The OPs denied to have administered extra oxygen. The complaint is also silent about such fact. However, when there are several reasons for R.O.P. and no expert opinion is available, rightly it is held by the learned District Forum that complainant failed to prove the deficiency of service on the part of the OPs. In the facts and circumstances, it is held that the learned District Forum has gone to the facts and law in the matter and dismissed the complaint. Hence, this Commission does not find any error in the impugned order and accordingly it is affirmed and the appeal stands dismissed."

Ref.: *https://medicaldialogues.in/news/health/medico-legal/lack-of-expert-opinion-to-prove-deficiency-consumer-court-exonerates-pediatrician-from-medical-... Accessed on 17/12/2021*

Delay in Diagnosis Increases Severity Of Condition: Kerala Hospital Told To Pay Compensation

Palakkad: The District Consumer Disputes Redressal Commission recently directed the Kerala Medical College Hospital to pay an amount of Rs 50,000 as compensation to a patient over delay in diagnosis.

The patient was suffering from several complications including Acute Meningo Encephalitis, severe Hyponatremia, Syndrome of inappropriate antidiuretic hormone secretion (SIADH) and Non-Insulin-Dependant Diabetes Mellitus (NIDDM). However, due to the delay in diagnosis of the condition the complainant had to face several complications.

Thus, holding the treating hospital vicariously liable, the Consumer Court observed, "Hence opposite party 1 (hospital) is directed to pay Rs. 50,000/- (Rupees Fifty thousand only) as compensation and Rs.25,000/- (Rupees Twentyfive thousand only) as cost to the complainants."

Back in 2015, the patient had visited the treating hospital with complaints of fatigue. Thereafter she underwent few tests and was admitted to the hospital. However, as her condition deteriorated, she was discharged and was taken to another hospital for treatment. Following that, she was diagnosed with Acute Meningo Encephalitis, severe Hyponatremia, SIADH and NIDDM.

Lodging a complaint against the treating hospital, where the complainant was admitted at first, she claimed that the delay in the diagnosis of her condition led to severity of the her condition and as a result, she is still suffering from the adverse effects of the disease and requires the assistance of others to carry out day-to-day activities.

Thus, the complainant alleged deficiency in services against the treating doctors and the hospital and demanded a compensation of Rs 15 lakh along with Rs 25,000 as costs. On the other hand, the treating doctors and the hospital were set exparte and they didn't file any version of their own.

After studying the materials placed on record, including the discharge summary from the second hospital, the Consumer Court noted, "History in Ext. A12 shows that the second complainant was "Evaluated outside and found to have UTI "(sic).

Here the word "outside" refers to OP1 hospital. None of the other symptoms are recorded to have been found in the OP1 hospital. Hence we take averment of non diagnosis of the actual indisposition of the second complainant to be a clear case of Res Ipsa Locquiter."

Taking note of the fact that the treating doctors failed to recognize the symptoms of the diseases suffered by the complainant, the Commission further observed, "In the absence of any evidence forthcoming to show that the failure is not owing to any negligence, we have no option but to hold that there is deficiency in service on the part of the opposite parties 2 to 3."

However, opining that there is no evidence to conclude that who amongst the treating doctors were responsible in failing to detect the condition of the complainant, the Commission held the hospital vicariously liable to compensate the complainant.

At this outset, the Commission held that the claim raised by the complainants in the relief portion as exorbitant and noted, "It is clear from the records that the complainant was already suffering from various diseases like Seizure, UTI, schizophrenia and Type 2 DM. Exhibit X1 is also not helpful to arrive at a clear picture as to the disability suffered by the complainant and owing to the delay occurred in detecting Acute Meningo Encephalitis, severe Hyponatremia, Syndrome of inappropriate antidiuretic hormone secretion (SIADH). In the absence of evidence to prove entitlement to the reliefs sought, we are inclined to grant only a compensation for failure in detecting the maladies suffered by the complainant."

Thus, the consumer court directed the treating hospital to pay an amount of Rs 50,000 as compensation for deficiency in service along with Rs 25,000 as a cost within a period of 45 days. "Hence OP1 is directed to pay Rs. 50,000/- (Rupees Fifty thousand only) as compensation and Rs.25,000/(Rupees Twenty five thousand only) as cost to the complainants," read the order.

Ref.: *https://medicaldialogues.in/news/health/medico-legal/delay-in-diagnosis-increases-severity-of-condition-kerala-hospital-told-to-pay-compensation-85585 Accessed on 17/12/2021*

Criminal Medical Negligence Complaints May Not Be Entertained Without Credible Expert Opinion: Kerala HC

Ernakulam: Dismissing a plea filed by a patient, who had accused a gynaecologist and a nurse of medical negligence during the delivery of her child leading to the death of the baby, the Kerala High Court has recently clarified that complaints concerning medical negligence may not be entertained unless a credible opinion supporting such a claim could be produced by the complainant.

Observing that the complainant couldn't produce any such evidence, the HC bench comprising of Justice Kauser Edappagath dismissed the plea and clarified, "...a private complaint alleging medical negligence may not be entertained unless the complainant has produced prima facie evidence before the court in the form of a credible opinion given by another competent doctor to support the charge of rashness or negligence on the part of the accused doctor."

The appellant had filed a private complaint at the High Court against the treating doctor and nurse and two other doctors alleging that they committed offence punishable under section 304A of IPC.

It had been alleged by the appellant that after she was admitted to the treating hospital for delivery of her second child, the baby died during delivery because she was not given proper medical care and attention, and the delivery was carried out in a most negligent manner.

She further claimed that she was subjected to hysterectomy without any knowledge of it and no consent of her family members was obtained either.

Initially, when she had approached the Police Station, the officials were not ready to register the crime. So, she had filed a private complaint at the magistrate court, which had forwarded the complaint to the police u/s 156(3) of Cr.P.C.

Following this, the case came to be considered by the trial court and at that time the doctor and the nurse had challenged the maintainability of the complaint itself relying on the decision of the Apex Court in Suresh Gupta v. Govt.of N.C.T. Of Delhi and Others.

Relying on the dictum laid down in the said judgment, the court found that the criminal prosecution alleging medical negligence against the

doctor and the nurse was not maintainable and they were acquitted invoking S.248(1) of Cr.P.C .

Challenging the judgment, the appellant had approached the High Court. During the proceeding of the case, the counsel for the appellant submitted there was error in the previous judgment in invoking the provision under section 248 (1) without examining the witnesses as it was a private complaint.

On the other hand, Sri Shyam Pradhan, the counsel for the nurse submitted that the complaint filed by the appellant alleging medical negligence was dismissed and it was confirmed by the State Commission.

The HC bench, after perusing the case records opined that even though there was irregularity in the procedure adopted by the trial court, the matter need not be remanded as the complaint itself was not sustainable. "It is true there is irregularity in the procedure adopted by the court below. Being a private complaint, that too summons trial, provision u/s 248(1) could not have been invoked. However, I am of the view that no purpose would be served in remanding the matter and directing the court below to give opportunity to the complainant to adduce evidence and to dispose of the case thereafter for the reason that, a perusal of the case records would show that the complaint itself is not prima facie sustainable as against respondents 1 and 2," noted the court.

Further referring to the Supreme Court judgment in Jacob Mathew v. State of Punjab, the court noted that the top court had clarified therein that as long as the doctor follows a practice acceptable to the medical profession of that day, he cannot be held liable for negligence merely because a better alternative course or method of treatment was also available or simply because a more skilled doctor would not have chosen to follow or resort to that practice or procedure which the accused followed.

Relying on the judgment, the HC bench noted, "In paragraph 53 of the said judgment, it is specifically stated that a private complaint alleging medical negligence may not be entertained unless the complainant has produced prima facie evidence before the court in the form of a credible opinion given by another competent doctor to support the charge of rashness or negligence on the part of the accused doctor. No such credible opinion has been obtained or produced by the complainant. On the other hand, the final report would show that during investigation, the investigating officer has obtained an independent and competent medical opinion from the Medical College, Calicut."

The bench pointed out that the doctor, who is the Professor and Head of Department of Gynaecology at Calicut, had opined that it was a case of "spontaneous rupture with ragged edges which the doctor has clearly documented as beyond repair, the treatment that can be undertaken is only subtotal hysterectomy."

"The case records would also show that the husband of the appellant has given consent for conducting hysterectomy. In these circumstances, I am of the view that no purpose will be served in proceeding with the private complaint further," further noted the bench at this outset.

Thus, dismissing the plea, the HC bench comprising of Dr. Kauser Edappagath noted, "For the reasons stated above, I find no reason to interfere with the impugned judgment. The appeal is accordingly dismissed."

Ref.: *https://medicaldialogues.in/news/health/medico-legal/criminal-medical-negligence-complaints-may-not-be-entertained-without-credible-expert-opinion-...Accessed on 21/12/2021*

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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.

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

Reference from electronic media: 3) National Statistics Online - Trends in suicide by method in England and Wales, 1979-2001.

www.statistics.gov.uk/downloads/theme_health/HSQ 20.pdf (accessed Jan 24, 2005): 7-18.

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

Citation : *J of Indian Med Legal and Ethics Asso.*

- 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	Fifty Lakhs	One Crore	Two Crore
1	Physician / doctors with Bachelor degree and/or OPD Practice	**400 (625)**	**700 (1250)**	**1500 (3125)**	**2800 (6250)**	**5500 (12500)**
2	Physician / doctors with PG degree &/ or Indoor Practice	**700 (1250)**	**1300 (2500)**	**3000 (6250)**	**5500 (12500)**	**10,000 (25000)**
3	Physician / doctors with Practice of Surgery	**1300 (2500)**	**2400 (5000)**	**5500 (12500)**	**10,000 (25000)**	**19,000 (50000)**
4	Plastic Surgeons, Anesthetist etc	**1800 (3750)**	**3500 (7500)**	**8000 (18625)**	**14,000 (37250)**	**27,000 (75000)**

Figure in Red fonts 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 lacs up-gradation after 3 years (for policies 25-50 lacs).
- 5% discount + 10 lacs up-gradation after 5 years (for policies 50 lacs – 1 Cr).
- 10% discount + 20 lacs up-gradation after 10 years (for policies >1 Cr).
- Physician / doctors visiting other hospitals shall have to pay 5% extra
- The additional charges 15 % for those working with radioactive treatment.
- The additional 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.

6) 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.
7) 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.
8) 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.
9) ***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.
10) Experts will be involved so that we have better vision & outcome of the scheme.
11) 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.
12) If legal notice / case are received by member he should forward the necessary documents to the concerned person.
13) Reply to the notice/case should be made only after discussing with the expert committee.
14) A discontinued member if he wants to join the scheme again will be treated as a new member.
15) The litigations involving criminal negligence cases shall be covered as per the agreement with New India Assurance Company. The scheme will NOT COVER the damages arising out of fire, malicious intension, natural calamity or similar incidences.
16) 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.
17) The scheme can cover untrained hospital staff by paying extra amount as per the decision of expert committee.
18) A district/ State/ Regional level committee can be established for the scheme.
19) There will be involvement of electronic group of IMLEA for electronic data protection.
20) 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].
21) **Telephone Help Line:** setting up and manning will be done.
22) 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. □■□

The Members of Professional Assistance Scheme

S.N	Name	Place	Speciality
1	Dr. Sunil Agrawal	Satna	Surgeon
2	Dr. Rashmi Agrawal	Satna	Ob & Gyn
3	Dr. Dinesh B Thakare	Amravati	Pathologist
4	Dr. Neelima M Ardak	Amravati	Ob.&Gyn.
5	Dr. Rajendra W. Baitule	Amravati	Orthopedic
6	Dr. Ramawatar R. Soni	Amravati	Pathologist
7	Dr. Rajendra R. Borkar	Wardha	Pediatrician
8	Dr. Satish K Tiwari	Amravati	Pediatrician
9	Dr. Usha S Tiwari	Amravati	Hospi/ N Home
10	Dr. Vinita B Yadav	Gurgaon	Ob.&Gyn.
11	Dr. Balraj Yadav	Gurgaon	Pediatrician
12	Dr. Dinakara P	Bengaluru	Pediatrician
13	Dr. Shriniket Tidke	Amravati	Pediatrician
14	Dr. Gajanan Patil	Morshi	Pediatrician
15	Dr. Madhuri Patil	Morshi	Obs & Gyn
16	Dr. Vijay M Kuthe	Amravati	Orthopedic
17	Dr. Alka V. Kuthe	Amravati	Ob.&Gyn.
18	Dr. Anita Chandna	Secunderabad	Pediatrician
19	Dr. Sanket Pandey	Amravati	Pediatrician
20	Dr. Ashwani Sharma	Ludhiana	Pediatrician
21	Dr. Jagdish Sahoo	Bhubneshwar	Pediatrician
22	Dr. Menka Jha (Sahoo)	Bhubneshwar	Neurology
23	Dr. B. B Sahani	Bhubneshwar	Pediatrician
24	Dr. Akshay Dhore	Amravati	Cardiologist
25	Dr Rahul Chhajed	Mumbai	Neurosurgeon
26	Dr. Poonam Belokar(Kherde)	Amravati	Obs & Gyn
27	Dr. Sandeep Dankhade	Amravati	Pediatrician
28	Dr. Ashish Dagwar	Amravati	Surgeon
29	Dr. Chinthalapalli Gowari	Bengaluru	Family Medicine
30	Dr. Ishita Majumdar	Asansol(W.B)	Cardiologist
31	Dr. Ashish Narwade	Mehkar	Pediatrician
32	Dr. Mallikarjun H B	Bengaluru	Pediatrician
33	Dr. Rajesh Kumar	Gurgaon	Pediatrician
34	Dr. Indu Bala	Gurgaon	Obs & Gyn
35	Dr. Premchand Jain	Karjat	Pediatrician
36	Dr. M. Shravani	Hyderabad	Pediatrician
37	Dr. Rajeev Peethala	Hyderabad	Pediatrician
38	Dr. Sandhya Mandal	Medinipur(W.B)	Pediatrician
39	Dr. Sunita Wadhwani	Ratlam	Ob & Gyn
40	Dr. Sagar Idhol	Akola	Physician
41	Dr. Ashish Varma	Wardha	Pediatrician
42	Dr. Anuj Varma	Wardha	Physician
43	Dr. Neha Varma	Wardha	Ob & Gyn
44	Dr. Ramesh Varma	Wardha	Gen Practitioner
45	Dr. Ravindra Dighe	Navi Mumbai	Pediatrician
46	Dr. Jyoti Dighe	Navi Mumbai	Ob & Gyn
47	Dr. Yogesh Saodekar	Amravati	Neurosurgeon
48	Dr. Kanchan Saodekar	Amravati	Ob & Gyn
49	Dr. Madan Mohan Rao	Hyderabad	Pediatrician
50	Dr. Pramod Gulati	Jhansi	Pediatrician
51	Dr. Sanjay Wazir	Gurgaon	Pediatrician
52	Dr. Anurag Pangrikar	Beed	Pediatrician
53	Dr. Shubhada Pangrikar	Beed	Pathologist
54	Dr. Abhijit Thete	Beed	Pediatrician
55	Dr. Sushil Sikchi	Amravati	Radiologist
56	Dr. Madhavi Joat	Akot	Anaesthetist
57	Dr. Shubhangi Verma	Amravati	Physician
58	Dr. Suresh Goyal	Gwalior	Pediatrician
59	Dr. Kiran Borkar	Wardha	Ob & Gyn
60	Dr. Prabhat Goel	Gurgaon	Physician
61	Dr. Sunil Mahajan	Wardha	Pathologist
62	Dr. Ashish Jain	Gurgaon	Pediatrician
63	Dr. Neetu Jain	Gurgaon	Pulmonologist
64	Dr. Bhupesh Bhond	Amravati	Pediatrician
65	Dr. R K Maheshwari	Barmer	Pediatrician
66	Dr. Jayant Shah	Nandurbar	Pediatrician
67	Dr. Kesavulu	Hindupur AP	Pediatrician
68	Dr. Ashim Kr Ghosh	Burdwan WB	Pediatrician
69	Dr. Archana Tiwari	Gwalior	Ob & Gyn
70	Dr. Mukul Tiwari	Gwalior	Pediatrician
71	Dr. Chandravanti Hariyani	Nagpur	Pediatrician
72	Dr. Gorava Ujjinaiah	Kurnool(A.P)	Pediatrician
73	Dr. Pankaj Agrawal	Barmer	Pediatrician
74	Dr. Prashant Bhutada	Nagpur	Pediatrician
75	Dr. Sharad Lakhotiya	Mehkar	Pediatrician
76	Dr. Kamalakanta Swain	Bhadrak(Orissa)	Pediatrician
77	Dr. Manjit Singh	Patiala	Pediatrician
78	Dr. Mrinmoy Sinha	Nadia (W.B)	Pediatrician
79	Dr. Ravi Shankar Akhare	Chandrapur	Pediatrician
80	Dr. Lalit Meshram	Chandrapur	Pediatrician
81	Dr. Vivek Shivhare	Nagpur	Pediatrician
82	Dr. Ravishankara M	Banglore	Pediatrician
83	Dr. Bhooshan Holey	Nagpur	Pediatrician
84	Dr. Amol Rajguru	Akot	Ob & Gyn
85	Dr. Rujuda Rajguru	Akot	Ob & Gyn
86	Dr. Sireesh V	Banglore	Pediatrician
87	Dr. Ashish Batham	Indore	Pediatrician
88	Dr. Abinash Singh	Kushinagar	Pediatrcian
89	Dr. Brajesh Gupta	Deoghar	Pediatrician
90	Dr. Ramesh Kumar	Deoghar	Pediatrician
91	Dr. V P Goswami	Indore	Pediatrician
92	Dr. Sudhir Mishra	Jamshedpur	Pediatrician
93	Dr. Shoumyodhriti Ghosh	Jamshedpur	Pediatric Surgeon
94	Dr. Banashree Majumdar	Jamshedpur	Dermatologist
95	Dr. Lalchand Charan	Udaipur	Pediatrician
96	Dr. Sandeep Dawange	Nandura	Pediatrician
97	Dr. Surekha Dawange	Nandura	Ob & Gyn
98	Dr. Sunil Sakarkar	Amravati	Dermatologist
99	Dr. Mrutunjay Dash	Bhubaneshwar	Pediatrician
100	Dr. J Bikrant K Prusty	Bhubaneshwar	Pediatrician
101	Dr. Jitendra Tiwari	Mumbai	Surgeon
102	Dr. Bhakti Tiwari	Mumbai	Ob & Gyn
103	Dr. Saurabh Tiwari	Mumbai	Pediatric Surgeon
104	Dr. Kritika Tiwari	Mumbai	Pediatrician
105	Dr. Gursharan Singh	Amritsar	Pediatrician
106	Dr. Rajshekhar Patil	Hubali	Pediatrician
107	Dr. Sibabratta Patnaik	Bhubneshwar	Pediatrician
108	Dr. Nirmala Joshi	Lucknow	Pediatrician
109	Dr. Kishore Chandki	Indore	Pediatrician
110	Dr. Ashish Satav	Dharni	Physician
111	Dr. Kavita Satav	Dharni	Opthalmologist
112	Dr. D P Gosavi	Amravati	Pediatrician
113	Dr. Narendra Gandhi	Rajnandgaon	Pediatrician
114	Dr. Chetak K B	Mysore	Pediatrician
115	Dr. Shashikiran Patil	Mysore	Pediatrician
116	Dr. Bharat Shah	Amravati	Plastic Surgeon
117	Dr. Jagruti Shah	Amravati	Ob & Gyn
118	Dr. Jyoti Varma	Wardha	Dentistry
119	Dr. C P Ravikumar	Banglore	Ped Neurologist
120	Dr. Sudipto Bhattacharya	Kolkata	Pediatrician
121	Dr. Anamika Das	Kolkata	Physician
122	Dr. Nitin Seth	Amravati	Pediatrician
123	Dr. Abhijit Deshmukh	Amravati	Surgeon
124	Dr. Anjali Deshmukh	Amravati	Ob & Gyn
125	Dr. Bharat Asati	Indore	Pediatrician
126	Dr. Rajesh Boob	Amravati	Pediatrician
127	Dr. Shirish Modi	Nagpur	Pediatrician
128	Dr. Apurva Kale	Amravati	Pediatrician
129	Dr. Prashant Gahukar	Amravati	Pathologist
130	Dr. Asit Guin	Jabalpur	Physician
131	Dr. Sanjeev Borade	Amravati	Ob & Gyn
132	Dr. Usha Gajbhiye	Amravati	Pediatric Surgeon
133	Dr. Kush Jhunjhunwala	Nagpur	Pediatrician
134	Dr. Anil Nandedkar	Nanded	Pediatrician
135	Dr. Animesh Gandhi	Rajnandgaon	Pediatrician
136	Dr. Ravi Barde	Nanded	Pediatrician
137	Dr. Pranita Barde	Nanded	Pathologist
138	Dr. Pankaj Barabde	Amravati	Pediatrician
139	Dr. Aditi Katkar Barabde	Amravati	Ob & Gyn
140	Dr. Shreyas Borkar	Wardha	Pediatrician
141	Dr. Vivek Morey	Buldhana	Ortho. Surgeon
142	Dr. Nitin Bardiya	Amravati	Pediatrician
143	Dr. Swapnil Sontakke	Akot, Akola	Radiologist
144	Dr. Deepak Kukreja	Indore	Pediatrician
145	Dr. Pallavi Pimpale	Mumbai	Pediatrician

146	Dr. Susruta Das	Bhubneshwar	Pediatrician
147	Dr. Sudheer K A	Banglore	Pediatrician
148	Dr. Bhushan Murkey	Amravati	Ob & Gyn
149	Dr. Jagruti Murkey	Amravati	Ob & Gyn
150	Dr. Sneha Rathi	Amravati	Ob & Gyn
151	Dr. Vijay Thote	Amravati	Opthalmologist
152	Dr. Satish Agrawal	Amravati	Pediatrician
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3	Usgaonker's Children Hospital	Goa	NICU
4	Chirayu Children Hospital	Nashik	Children Hospital
5	Yash Hospital	Satna	Children Hospital
6	Multi city Hospital	Amravati	Multyspecialty
7	Phulwari Mahila & Bal Chikitsalay	Gwalior	Mother & Child care
8.	Sarthak Hospital	Satna	Multispecialty
9.	Boob Nursing Home	Amravati	
10	SJS child Care Centre	Amritsar	
11	Paramitha Children Hospital	Hyderabad	Children Hospital

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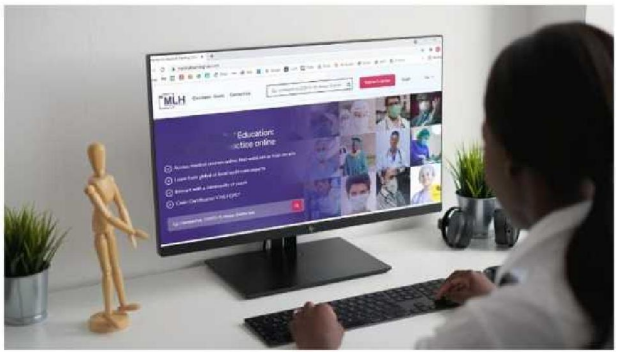

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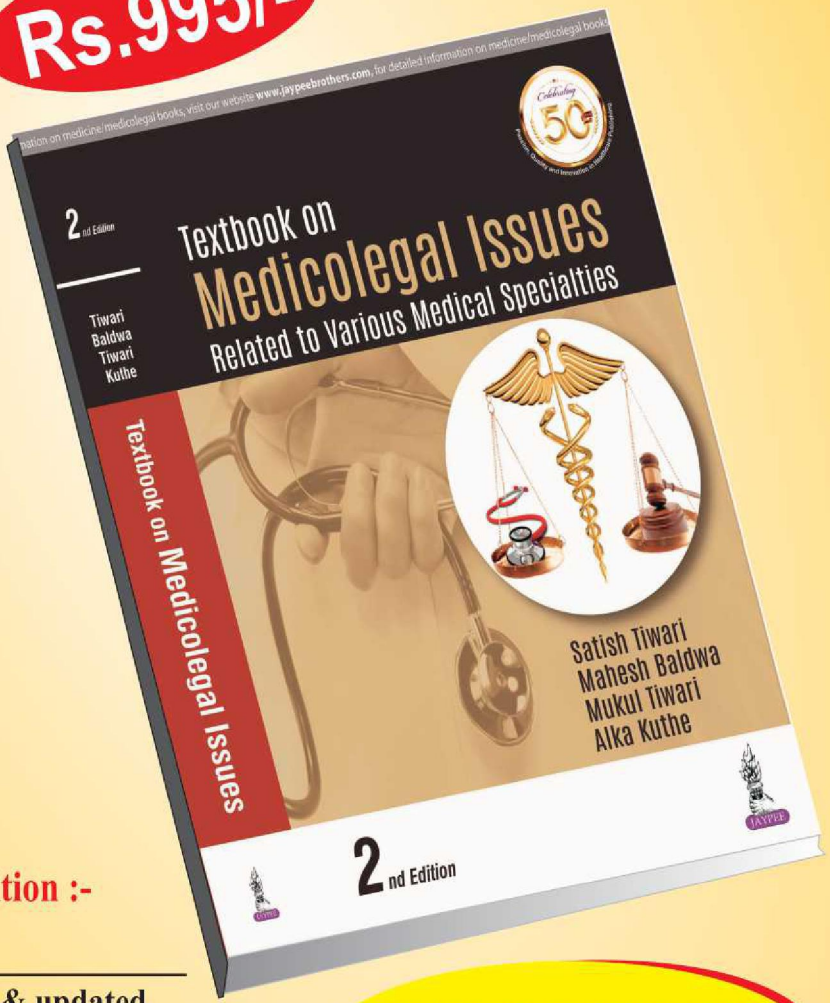

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