

Conclusions and Recommendations

After careful examination of the provisions relating to health care under the Indian Constitution, the Indian Penal Code 1860, the law of Tort and the Consumer law, in particular the Consumer Protection Act 1986, and in the light of judicial decisions of the Supreme Court, the High Courts, the National Consumer Redressal Commission and the State Consumer Redressal Commissions, the interpretation and implementation of various international conventions and recommendations, and keeping in view the suggestions made by various institutions, the following conclusions are arrived at:

1. Statutory Obligations to Provide Health Care

Despite the constitutional obligation upon the state to secure the health and strength of people, no effective steps have been taken to implement the constitutional directives. Even after more than 50 years of Independence, the constitutional goals have not yet been achieved. Poverty, lack of government resources and illiteracy of the masses are major hurdles in the way of health advancement. Though the Supreme Court of India, in a series of judgements, has declared the right to health care as a fundamental right, this has not been given effectively implemented by the states. In view of this, it is suggested that the legislature should take immediate and necessary steps to incorporate the obligations imposed upon the state and accordingly amend the relevant statutes.

2. Employer's Obligation to Provide Health Services During and After Employment

The Supreme Court has included medical services as a component of 'life' under art 21 of the Constitution and made it obligatory upon the state and

private employers to provide health services during and after employment. This would go a long way to secure health services for employees, during and after employment, even though they constitute a small percentage of working population. However, difficulties may arise in implementing the directives of the Supreme Court in private sectors in view of the fact that they are not covered by the use of the word 'State' and therefore no writ can lie against them. Further, financial constraints in small private establishments may come in its way. In view of this the state should provide health care and evolve health insurance schemes at nominal rates.

3. Obligation of Hospitals to Provide Medical Assistance in Emergency Cases

Despite the Supreme Court's directives that the denial of medical assistance to emergency patients by the state hospitals on the ground of non-availability of beds amounts to a violation of the right to life under art 21 of the Constitution, cases of refusal to admit the patients are still common. There is no lack of case where patients are discharged against their wishes even when they require further medical attention in the hospital. This is unfortunate in a country like ours where a good number of people are below poverty line and cannot afford the assistance of paid hospitals. We recommend that not only state hospitals but even private hospitals and nursing homes should be directed to provide medical assistance to an emergency patient by implementing the Supreme Court's directive.

4. Duty of a Doctor to Provide Medical Aid in Trauma and Medico-legal Cases

The Supreme Court has given the following directives:

(a) In trauma cases: It is compulsory on the part of all hospitals, whether government or private, to provide medical treatment/aid to the injured persons instantaneously to preserve life without waiting for the arrival of the police or completing legal formalities.

(b) In medico-legal cases: There is a need to sensitise the doctors and other medical professionals about the importance of providing immediate medical aid to the injured persons even in medico-legal cases irrespective of the fact whether or not the patient is innocent. It is the duty of the doctor to extend medical assistance to save the life of the patients. The doctors after giving the necessary medical aid may follow the necessary legal procedure and formalities.

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(c) Doctors of government hospitals to conduct medical examination of rape victim: It is obligatory upon the doctors of government hospitals particularly in rural areas to conduct the medical examination of rape victims irrespective of whether the case is referred to them by the police or not. The states and the medical councils should give wider publicity and issue directions to all the hospitals in this regard.

(d) Effect of zonalisation on treatment of serious patients: Patients in medico-legal cases brought to the hospital of their own (even if the incident has occurred in the zone of another hospital) should neither be denied the treatment by the hospital where the case is reported, nor the case be referred to a hospital in the zone where incident has occurred. However, in order to give wide publicity to the directives of the Supreme Court and to bring it into action, it is suggested that the government should issue a notification to this effect.

(e) Timely warning to the patient's family: It is obligatory on the part of the hospital or doctor attending the patient to inform the family members, relatives or friends about the accident. Further, the physician should give notice to the family members about the seriousness of the patient's condition and when he is to be discharged. The patient should also be informed of the same.

(f) Neglect and refusal to attend to the patient: No medical professional or registered medical practitioner shall wilfully commit an act of negligence that may deprive his patient or patients from necessary medical care. Having once undertaken a case, the doctor should neither neglect the patient nor to withdraw from the case without giving notice to the patient.

(g) Duty to consult or suggest specialists: A medical practitioner should either consult or suggest the consultation of another medical practitioner or a specialist if, he has in his mind, some doubt about the diagnosis or treatment.

It is strongly recommended that the aforesaid guidelines be incorporated in the relevant health legislations, notifications and bye-laws. The state governments should make necessary directions to all hospitals, nursing homes and other public health centres. Further, the Medical Council of India and the State Medical Councils should incorporate these guidelines in their Code of Ethics.

5. Post-operative Care

Post-operative care of an operated patient is also the legal responsibility of the hospitals, nursing homes and medical professionals.

6. Duty of Doctor to Maintain and Provide Medical Records

- (a) It is obligatory for the doctors in Government hospitals, private hospitals or nursing homes to clearly take note of the clinical history of the patient including the proper maintenance of the medical records of each patient and indicate findings, diagnosis, prescription, and treatment actually undergone by the patient.
- (b) It is obligatory for the doctor to supply free of cost to the patient a copy of his medical record on or before the conclusion of his visit, treatment or discharge so that gradually each patient would be in possession of a medical record which would facilitate further treatment as and when necessary.
- (c) It is the responsibility of the doctor/hospital in medico-legal cases to prepare a final medical report and give the same to the police and also to the patient immediately after the examination and treatment of the patient is completed.

7. Advertising of Medical Services Provided by Doctors

- (a) The Medical Council of India and other concerned Councils in their related disciplines should take steps to prepare a directory of health professionals giving details of the names of doctors, their specialisation, their fees, their location, office hours etc, to facilitate the general public with wide options.
- (b) The government should take steps to publicise from time to time the availability for sale of such a directory at all the government hospitals/health centers and by displaying on the website etc, for the benefit of the general public.

8. Treatment of Patients During Medical Camps

The Supreme Court, in view of the hardships caused to the patients during the various eye camps, has directed the Health Ministry to incorporate the following guidelines under its revised guidelines:

- (a) **Staff:** The operations in the camps should be performed only by qualified and experienced ophthalmic surgeons registered with the Medical Council of India or any State Medical Council. The camp should not be used as a training ground for post-graduate students, and no operative work should be entrusted to post-graduate students.
- (b) **Facilities to be made available during eye-camps:** There should be a pathologist to examine urine, blood-sugar, etc. It is preferable to

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have a dentist to check teeth for sepsis and a physician for a general medical check-up.

- (c) **Medication:** All medicines to be used should be of standard quality and duly verified by the doctor in-charge of the camp.
- (d) **Maintenance of sterile aseptic conditions:** The maintenance of sterile aseptic conditions in hospitals to prevent cross-infections should be taken care of. Purity of the drugs and medicines intended for human use would have to be ensured by prior tests and inspection. There should be a ruthless adherence to the virtue of method, and laying down practical procedures in the minutest of detail and by exacting – not merely expecting – strict adherence to these procedures.

9. Medical Facilities in Villages

- (a) In recent years there has been a great deal of commercialisation of the medical profession and services rendered by the medical professionals, polyclinics, diagnostic centres, and nursing homes. These have mushroomed in the various parts of cities and towns across the country. This, no doubt, has benefited the rich people and even those employed in the public sector undertakings authorised to avail such services, but these services are rarely available to the common man. Apart from this, such facilities are generally confined to cities and particularly big cities and not available even at a higher cost in villages. This is unfortunate, particularly when 70 per cent of India's population resides in villages.
- (b) Most of the hospitals/dispensaries particularly in villages do not have even the minimum medical facilities. In view of this, it is recommended that the Government should specify and make available the minimum facilities in every hospital/dispensary.

10. Doctor's Duty in Treating HIV/AIDS Patients

It has generally been noticed that HIV/AIDS patients are denied treatment and the health providers adopt a discriminatory attitude towards them. We, therefore, recommend that it should be obligatory on the part of the health provider to provide medical treatment to an HIV/AIDS patients. The necessary directions in this regard should be issued by the Union Ministry of Health and state governments. Further, there is a need to sensitise the doctors.

- (a) **Need to provide guidelines in HIV/AIDS cases:** In view of the increasing number of cases of HIV/AIDS patients reported, it is necessary,

to formulate some guidelines for protecting the right to privacy of these unfortunate victims and at the same time, protect the lives of others by passing on the information to the persons to be affected due to non-disclosure of the said information.

(c) Criminal action in HIV/AIDS cases: If a person, negligently or unlawfully, does an act, which he knew was likely to spread the infection of a disease, dangerous to the life of another person, then the former should be prosecuted under sections 269 and 270 of the Indian Penal Code 1860.

11. Professional Responsibility and Degree of Care under Law of Torts

A survey of decided cases under the law of torts reveals that the courts have mainly relied upon the principles such as:

- (i) test of reasonable foresight;
- (ii) duty to care and
- (iii) loss or injury.

The Court has viewed the charge of professional negligence against a person to be of a serious nature, and has awarded compensation in such cases. The court has also recognized the risks, which are inherent in surgical operations, and for wrong diagnosis that does not amount to an act of negligence. According to the courts, a doctor is not required to take the highest degree of care: he is only required to act in accordance with the practice accepted as proper by a reasonable body of medical men skilled in that particular art. The court rightly stated that, professional men should possess a certain minimum degree of competence and should exercise reasonable care in discharging their duties.

12. Burden of Proof in Non-performance of Surgery or Non-administration of Medicine

The courts have made no distinction while dealing with the cases under the law of tort, between doctors working in government hospitals or private hospitals. They have imposed an obligation upon all doctors to protect the life of patients. They have also taken a serious view where a surgeon has failed to perform an emergency operation, which has resulted in the death of a patient. In such situations, it is the duty of the doctor to prove that the non-performance of surgery or the non-administration of treatment was on account of refusal on the part of the patient to give consent thereto. Since the complainant finds it difficult to obtain evidence to prove negligence, the

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burden of proof should lie up on the doctor to prove that he is not guilty of committing an act of negligence.

13. Penal Liability

- (a) A review of the decided cases reveals that under the Indian Penal Code 1860 very few cases have been filed against doctors. In some cases, the courts have shown their full sympathy towards doctors, and have imposed a minor penalty when patients are killed because of rash and negligent acts. Cases are not lacking wherein the court has converted the sentence of one year imprisonment awarded by the trial court to a fine of Rs 100. Further, though a provision has been made under section 357 of the Code of Criminal Procedure for awarding compensation, the judiciary has very sparingly used this provision. The applicability of these provisions and the large number of acquittals and minimum sentences awarded in the cases necessitates that the police officials as well as the judiciary needs to be sensitised. Further, there is a need to award severe punishment to quacks who, under the guise of fake degrees, resort to rash and negligent acts resulting in the death of innocent patients. This is necessary to discourage the increasing number of 'quacks' practicing allopathic and other systems of medicine.
- (b) Separate provisions should be incorporated in the Indian Penal Code 1860 to deal with the offences committed by the medical professionals, since these offences are distinct from other offences and require special attention. This will create awareness among doctors and police officials and help in prevention of rash and negligent acts by these professionals.
- (c) The removal of a kidney or any other vital part of the body without the knowledge and consent of the patient or his legal representative should be made penal and be punishable under section 304 of the Indian Penal Code 1860. The Indian Penal Code may accordingly be amended.
- (d) There is a fear in the minds of doctors/ medical professionals that, they may be harassed by police or by the law courts particularly in medico-legal cases. This inhibits them in the handling of such cases. The judiciary and police should therefore, avoid summoning medical professionals for interrogation, unless it is absolutely necessary. There is a need to evolve certain guidelines and sensitise the police and medical professionals about the judgement of the Apex Court in this context.

14. Role of Medical Councils

- (a) A detailed examination of the various provisions contained in the Medical Council of India Act 1956 reveals, that though, the Act has made provisions for regulations of doctors, hospitals and nursing homes, it is silent with regard to protection of the interests of persons who have suffered any negligence or deficiency in the service rendered by members of the medical profession. The Medical Council of India Act has also provided for the setting up of the State Medical Councils for the regulation of the conduct of medical professionals. The joint study undertaken by the Indian Law Institute and VOICE reveals that in many of the states these Councils are not effective and have failed to serve their purpose. Though the National Capital Territory (NCT) of Delhi has attained statehood in 1994 the Medical Council for NCT of Delhi was set-up only in 2000. The general procedure being followed by the Indian Medical Council is that if a complaint is made against a doctor or medical professional, for professional misconduct, the Medical Council of India will forward the complaint to the concerned State Medical Council for necessary action. If the complainant is not satisfied with the decision of the State Council he is advised to approach the concerned state government. In general, the doctors being local members of concerned Medical Councils will be in a position to influence the State Councils, resulting in grave injustice to the complainants. This can be remedied by empowering the Medical Council of India with the powers to take strict disciplinary action to redress the grievances of the complainants by making suitable amendments under the Act.
- (b) It has been found that many of the colleges/universities providing medical education to the students and the hospitals attached with them, lack basic minimum standards and facilities. To improve the conditions in these colleges/universities it is necessary on the part of the Medical Council of India, like the Bar Council of India, to conduct periodic checks on these colleges and take action, including cancellation of licences of the institutions not adhering to the basic norms.
- (c) The Medical Council of India should take necessary steps to provide information about the latest developments in the field of medical technology including prescription of medicines, and conducting major operations.
- (d) **Review of the functioning of the Medical Council:** The government should take up a detailed review of the powers and functions of the

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Medical Council of India, Dental Council of India, Nursing Council of India, and the State Medical Councils for the effective safeguard of patients' rights. Besides separate legislations on the lines of the Maharashtra and Delhi Acts, be enacted to regulate the functioning of private hospitals and nursing homes.¹

15. Elimination of Quacks

It has been found that the doctor practicing homoeopathy, *ayurvedic* or *unani* system of medicine also practices allopathy. This has serious repercussions. The courts have also taken a serious note of this and ruled that if a person practices medicine without possessing the requisite qualifications or enrolment under the Medical Council Act, he becomes liable to be punished with imprisonment and fine. The court added that, since the law requires him to practice in a particular system of medicine, he is under a statutory duty not to enter in the field of other systems. According to the Supreme Court, a person who does not have knowledge of a particular system of medicine but practices in that system is a 'quack'. In India, particularly in villages, a good number of patients take recourse to an alternate system of medicine and often consult 'quacks' who earn huge sums of money. Apart from the aforesaid recognised categories of health providers in our country there are private practitioners not having any formal qualifications such as herbalists, *tantriks*, *hakims*, *vaidyas* and others. They are very popular in rural sectors and among the poor and illiterate class of people. It is now time to deal with them with a heavy hand. This is all the more so, due to lack of education and general awareness among the people in villages, and particularly due to non-availability of adequate medical services. Unless the government provide medical services it is doubtful that malpractice can be eradicated. It is, therefore, recommend that the law should be amended to prescribe deterrent punishment for violators. The Indian Penal Code and the Medical Council Act be accordingly amended.

Steps should be taken to implement the judgement of the Apex Court in *DK Joshi v State of UP & ors*² wherein, the court directed the district magistrates, and chief medical officers of all the districts in Uttar Pradesh to identify and take appropriate action against all the persons practicing

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- 1 Under the Maharashtra and Delhi Acts it is obligatory for all the private hospitals and nursing homes to renew their registration every year by submitting detailed information regarding their staff and qualifications, equipment, accommodation and sanitary conditions, with penalties for non-compliance.
 - 2 (2000) 5 SCC 80.

medicine without recognized qualifications. The Medical Council of India may give wide publicity to the judgement so that the States may also follow the procedure for preventing the entry of 'quacks' in protecting the life and health of individuals.

16. Guidelines to be Observed by Hospitals etc

The following norms may be incorporated in the Medical Council of India guidelines for compliance in all the hospitals/ health centres/ dispensaries:

- (i) Adequate care should be taken so that there is no inflow of visitors, which may be a cause of infection and create other complications.
- (ii) Emergency operations must take place within a reasonable time, what the reasonable time would be varies from fact to fact.
- (iii) Hospitals and nursing homes must seek the assistance of a specialist, if necessary.
- (iv) There should not be unreasonable delay in providing necessary treatment.
- (v) Life saving drugs must be made available in every hospital and nursing home.
- (vi) The government hospitals/ dispensaries must display the list of the facilities available along with the list of medicines available therein.
- (vii) There should be standardisation of maintenance of documents relating to treatment of patients.
- (viii) The Indian Medical Council and State Medical Council should take immediate steps to appoint Committees to examine the aforesaid basic requirements and issue directions to the hospitals, nursing homes/ dispensaries.
- (ix) The government/ Medical Council should notify from time to time the details of spurious drugs and ban the same. Further, effective measures should be taken to implement the same, and severe penalties be imposed upon violators.
- (x) The government/ Indian Medical Council/ State Medical Councils should prescribe the standard of care which the medical professional is required to observe in respect to:
 - (a) Clinical examination;
 - (b) issuance of instructions to the patient on do's and dont's.
 - (c) diagnosis;
 - (d) duty to warn the patient of the inherent risk;
 - (e) treatment;
 - (f) surgery;
 - (g) post-operative care.

17. Liability Under the Consumer Protection Act

The Supreme Court has brought the following within the fold of the Consumer Protection Act 1986:

- (i) Non-government hospitals/nursing homes, where charges are required to be paid by the persons availing of such services;
- (ii) non-government hospitals/nursing homes, where charges are required to be paid by persons who are in a position to pay and persons who cannot afford to pay;
- (iii) services rendered at the government hospitals/health centres/dispensaries on payment of nominal charges from some persons and free services to other persons.

However, a patient availing free services at government hospitals/health centres/dispensaries has not been treated to be a consumer and is not entitled to the remedies under the Act. The exemption to such categories of hospitals/health centres/dispensaries raises various issues:

- (i) Should doctors of such hospitals be exempted from liability or accountability in case of medical negligence?
- (ii) Can there be no negligence or accountability when there is a charity?
- (iii) Should the patient who cannot afford to pay for treatment be left without any remedy?
- (iv) Should the quality of services rendered in government and charitable hospitals be of a lower degree and duty to take care or standard of care be different?

These questions can only be answered in the negative.

After examining the reported and unreported judgements, press reports, and other records regarding the act of negligence caused in hospitals and dispensaries exempted above, a strong need has been felt for accountability on the part of the medical professionals in such categories and it is accordingly recommended that the Consumer Protection Act 1986 be amended to include the categories excluded by the court.

18. Assistance of Medical Experts

A survey of decided cases reveals that in deciding medical negligence cases, the District Redressal Forum often faces problems and difficulties and requires expert medical opinion. In order to meet this situation, it is suggested that the Consumer Protection Act be amended to provide for the assistance of medical experts when required in medical negligence cases.

Alternatively, a committee/ board comprising of expert doctors should be set up in each district to assist the Forums and Commissions for giving advice and expert opinions, when required.

19. False and Frivolous Cases

Decided cases reveal that false and frivolous cases have been filed against medical professionals. This tendency should be discouraged.

20. Delay in Disposal of Cases

Delay in disposal of cases has often been reported. Several reasons may be accounted for the same:

- (i) Fast rate of growth in the number of complaints;
- (ii) complicated nature of cases;
- (iii) inadequate infrastructural facilities and among others;
- (iv) inadequacy in the number of Redressal Forums at the lower level.

Even the time limit prescribed under the Consumer Protection Act is respected more in breach than in observance. Therefore, there is an urgent need to find out a way to avoid such delay and make the forums effective.

21. Difficulty in Proving Medical Negligence Cases: A Way Out

A survey of decided cases reveals that the complainants find it difficult to prove medical negligence before the consumer fora and courts. Several reasons may be accounted for the same;

- (i) the consumer faces difficulty in obtaining the opinion of another doctor in order to prove that the concerned doctor has been negligent;
- (ii) doctors are seldom prepared to go against their colleagues and issue certificates to the effect that another doctor was negligent;
- (iii) the strict application of law of evidence, technicalities involved and the cumbersome procedure many a times lead to dismissal of complaints;
- (iv) many cases have been rejected for want of proper evidence;
- (v) the consumer being unaware of his rights and the procedural technicalities involved in the presentation of evidence finds it difficult to prove the case beyond reasonable doubt;
- (vi) if there is more than one method of treatment and the doctor follows one of them it is difficult to hold the doctor liable for negligence.

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In view of the above, it is suggested that too much emphasis should not be laid on technicalities and the Indian Evidence Act 1872 may not be strictly followed. Further, the rules and procedure in dealing with medical negligence cases should be simplified.

22. Liability Under the Contract Act

The provisions contained under the Contract Act 1872 are wide enough to cover even a breach or non-fulfillment of a contractual obligation resulting in loss to the patient. However, it is difficult to prove the obligation and breach under this Act, since unlike the Consumer Fora, the procedure being followed by the Civil Courts is time consuming and technical and the amount of compensation being granted by them is relatively higher. The public and legal community should be made aware of the option of using the Contract Act 1872 in medical cases.

23. Role of the Government

- (a) The government ought to sensitise the doctors and other medical professionals about the importance of providing immediate medical aid to the injured persons even in medico-legal cases, irrespective of whether the patient is innocent or a criminal. As suggested by the Supreme Court, it is the duty of the doctor to extend medical assistance to save the life of the patients. The doctors may follow the legal procedure after giving the necessary medical aid.
- (b) The District Magistrate and the Chief Medical Officers should take up the responsibility of identifying and taking criminal action against unauthorised medical practitioners as directed by the Supreme Court.

24. Public Participation in Health Care

For achieving the Constitutional goals and also the objective of 'Health Care for All' there is lot of need on the part of the Government to mobilise NGOs and the general public towards their participation for monitoring and implementation of health care facilities. To this end the Government should formulate legislations and health policies facilitating the participation of the public in health care.

25. Role of Legal Aid and Advice Boards

- (a) The Legal Aid Board functioning in every district should give wider publicity about the free legal aid and advice programmes. They should also periodically review the cases of medical negligence

pending before various forums and take appropriate measures for their speedy disposal.

- (b) In cases involving complicated issues requiring recording of evidence of experts, the complainant may be asked to approach the civil court with the assistance of a legal aid advocate.
- (c) It has been found that the consumers do not avail the remedy under the Consumer Protection Act, 1986. This may be due to poverty, ignorance and illiteracy. There is a need for government, legal aid boards, non-government agencies and voluntary organisations and other groups to create awareness among consumers so that they may be able to approach the relevant Dispute Redressal Forums for redressal of their grievances.

26. Need to Enact the Patients' Rights Act

Strongly felt that the union and state governments besides formulating a health policy should enact a comprehensive health legislation on the lines of the Patients' Bill of Rights in USA and Patients' Charter in UK keeping in view the contextual and socio-economic scenario of our country. The proposed legislation should incorporate the guidelines suggested by the Supreme Court on the rights and obligations of the doctors, nurses, hospitals, nursing homes and health centres. Further there is a need to have special provisions for health provider services in villages where more than 75 per cent of the population of the country resides. Besides, it is also necessary to formulate health insurance schemes at nominal rates within the reach of all sections of society. It is hoped that the proposed legislation will go a long way and will mitigate the hardships caused to the patients' particularly those who are poor and below the poverty line and are unable to meet the health expenses. This would bridge to a great extent the gulf between the rich and the poor and bring accountability. It will also be a step towards achieving the Universal slogan 'Health for All'.