

To
Shri Ram Vilas Paswan
Honourable Minister of Consumer Affairs, Food and Public Distribution, Department
of Consumer Affairs
Rafi Ahmed Kidwai Marg
Rajpath Road Area, Central Secretariat
New Delhi 110114

Re; Introduce “Medical Injury Punishment & Compensation Bill” in Parliament

Sir

Medicos Legal Action Group is a Registered Trust formed by few doctors from all over the Country to look after interests and welfare of MBBS doctors and take legal action where needed.

Consumer Protection Act introduced nearly 3 decades ago has been used to prosecute medical professionals for errors causing damage to patients under their care. What was a trickle in 1990s has turned into a deluge in the past few years. Each and every negative or sub optimal outcome of medical treatment is now perceived as negligence. However Consumer courts are neither equipped nor is the summary nature of the process suited to adjudicate complicated issues related to medical treatment.

The argument that medical negligence cases should not be decided by non medical courts was dismissed by honourable SC in IMA vs V P Shantha and Ors in 1995. The SC in this judgment made it clear that only outright cases of medical negligence like amputation of wrong limb, leaving swab or clamp in body, giving wrong anesthetic gases would be covered under Consumer Protection Act. Cases which required evidence of experts were not to be covered under CPA. What is standard medical practice in other hospitals or by other average surgeons was also held not to be negligence.

However as we see it today dose of medicine, wrong diagnosis, method of treatment, conservative vs radical surgery, extension of surgical procedure depending on intra operative findings all have been adjudicated by consumer courts with the help of expert evidence even via video conferencing.

Dragging doctors to consumer Fora with increasing frequency is a trend with disturbing consequences. This is not to deny any need for accountability. The process under CPA however is flawed and urgent remedial measures need to be made failing which private medical facilities which fulfill bulk of healthcare needs of the country will be forced to shut shop. Govt does not have the resources, inclination, or manpower to provide universal state sponsored healthcare.

The quantum of compensation being awarded by courts today in cases of medical negligence is bordering on absurd with serious implications for medical profession and patients alike. Medical professionals have now started practicing defensive medicine. While taking medical decisions doctors have to contend with an additional factor of what the courts view will be. The hand that holds the scalpel has become shaky. The sword of compensation claims of exorbitant amounts sufficient to exhaust a doctor's lifetime (and maybe next 7 lives) earnings, is now hanging over every doctor's head.

For the patients also it is not good news because for every patient who claims compensation in crores, millions of other patients will pay for his indulgence by paying extra amounts charged by doctors to cover such eventualities. What is more absurd is the fact that as per law there is no cap on this amount and what was unthinkable 10 yrs ago is now a fact and 1000 crores may be unthinkable today but may become a fact.

Since compensation awarded is based on earning capacity of the victim, a rich industrialist could be awarded 100s of crores as per consumer Protection Act. Here the penalty is not commensurate with the crime whereas natural justice demands that for any crime the punishment has to be proportionate. Human life cannot be valued differently.

There is another horrendous aspect of this judgment. India is a resource poor country and in any large public hospital emergency it is common to see many patients being ventilated by patient's relatives using ambu bag while waiting for a ventilator/ ICU bed. If two patients need a ventilator in a hospital and only one is available what will the doctor do. One patient is rich and can ask for compensation in crores, the other a pauper whose death will result in a nominal compensation. Is the doctor supposed to choose the rich and hence bring a bias into treatment decisions because of this judgment. This is a frightening but real prospect not faced earlier by medical men. Is medical treatment and resources in India going to be the prerogative of the rich?

During treatment of a fatal disease, treatment given may lead to death earlier than the disease itself would have caused it. But this is the cornerstone of medicine. While handling an aneurysm it may burst causing bleeding to prevent which surgery was being done in the first place. By this argument no neurosurgeon should operate a head injury, no malignancy should be operated, no pancreatic abscess drained because in doing so death may occur. Despite actions of doctors being done in good faith unforeseen and adverse outcomes are now on basis of *res ipsa loquitur* condemned as negligence sometimes criminal. How is this comparable with killing or maiming normal healthy individuals either intentionally or contributing to it by negligence of a drunk driver of motor vehicle. Medical profession is unique and cannot and should not be compared with other service providers as defined in Consumer Protection Act. As practiced in India it is nothing short of miracle and thanks to the dedication, work ethics and empathy

of doctors we have cure rates similar to most developed countries for most of the diseases. Experience in surgery and various procedures due to sheer volumes is far more of Indian doctors than some of the foreign dignitaries who come to give lectures in conferences.

This is despite the fact that in India doctors have to battle and compete with Government sponsored quackery. Myths and misconceptions are deep rooted in Indian psyche. Working in such environment would be impossible for the foreign and NRI doctors and to try to impose standards and protocols of USA in India is nothing short of absurd. If we want ideal medical treatment it can only be provided in ideal treatment environment.

There is no denying the need for accountability of doctors and other professionals. The honorable supreme court has however granted stay on applicability of CPA on advocates in 2009. We request you to consider removing doctors from the ambit of Consumer Protection Act by Introducing a Medical Injury Compensation Bill in Parliament. Salient features of the bill being suggested could be as follows

- 1) It should cover all aspects of Compensation and punishment in cases of Medical Error and injury thereof exclusively.
- 2) It should cover criminal negligence as defined in Jacob Mathew vs State of Punjab and Martin F Dsouza vs Mohd Ishfaq judgments
- 3) It should over ride all other laws currently in place.
- 4) Multiple avenues of litigation should be barred. All litigation on this issue should be under this Act. Currently doctors who are accused are being prosecuted by different agencies like MCI, Consumer Courts, Criminal Courts and may also now include the Authority under CEA for same issue. This leads to 3-4 different places where a doctor keeps running to on different dates trying to defend a single case of alleged medical negligence each moving at a different pace. Also sometimes when a medical board has been formed the doctor appears before this said medical board in addition. The legal process before 3-5 different courts , fora, boards and commissions is more severe punishment for a practicing doctor than a 2 month imprisonment or suspension of registration.
- 5) Introduce a Cap on maximum compensation which can be awarded in case of medical error and injury thereof. This could be based on the fee charged for treatment. Consequent Loss of Earning of an individual should be compensated through Life and other health Insurances which all individuals should take. Earning capacity of Individual should be delinked from compensation awards since fee paid is not linked to earning capacity. A person whose life is worth 10 crores would anyway be having life insurance to the tune of 10 crores and hence accidental (may be medical accident) death would anyway recompense the nominee for the financial loss. Establishments may be divided into various

categories with maximum compensation cap dependent on category of the establishment. Different category establishments should then be charging rates for treatment commensurate with their grade. Following are the categories suggested ;

- a. Superspeciality Hospital with 24 hr emergency services with ICU
 - b. General hospital with 24 hr emergency services with ICU
 - c. General Hospital with 24 hr Emergency services without ICU
 - d. General Hospital with round the clock staff to look after indoor patients but no 24 hr Emergency services
 - e. Nursing home with limited specialties with 24 hr emergency services
 - f. Nursing home with limited specialties without 24 hr emergency services but with round the clock staff to look after indoor patients.
 - g. Day care center without 24 hr emergency services
 - h. Clinic without 24 hr emergency services and no indoor facility
 - i. Diagnostic centers with paid up capital of more than 1 crore
 - j. Diagnostic centers with paid up capital of less than 1 crore
- 6) It should provide mechanism for independent expert opinion taken from experts in working in similar establishments. An expert from a tertiary care institute may view events differently from an average practicing doctor in a similar area of work. Negligence has been defined now as doing something which an average practicing doctor would not do or not doing something which an average practicing doctor would do. "The man on the Clapman omnibus" is the reasonably educated and intelligent person of ordinary skill in the profession, whose actions are what are expected by courts.
- 7) The commission should comprise of at least one MBBS doctor preferably from the region with more than 20 yrs of clinical practice outside tertiary institutes.
- 8) It should provide mechanism of penalizing complainants for frivolous complaint. The penalty so imposed should be linked to the compensation asked for and not an arbitrarily low figure. It should be sufficient to act as a deterrent for the mischievous.
- 9) It should provide for stringent penalty for those who indulge in violence and damage to property of medical institutions and personnel following incidences of alleged medical negligence.
- 10) It should specify punishment for institutions which flout Supreme Court guidelines for working hours of resident doctors. It is routine for resident doctors to work 24 -72 hrs at a stretch and this increases risk of error.
- 11) Mechanism for rates of medical treatment charges commensurate with earning capacity of patient should be made and any

negligence thereafter should be compensated based on declared income and rates charged.

I request you to kindly initiate a discussion on this bill so that a consensus may be generated.

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