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"DENIAL OF JUSTICE AND TRUST: THE UNSEEN BATTLES OF MILITARY HEALTHCARE"

AUTHORED BY - ANSHIKA BHANDARI

Introduction:

The critical interplay and transfusing boundaries of duty of care and its accountability are explored through CPL Ashish Kumar Chauhan v. Commanding Officer and Others. The issue regarding the standard of medical care provided to armed forces officials under the course of their employment, along with how society views AIDS and attaches stigma leading to mental agony, trauma and suffering of the individual. By analysing the case and the organizations involved, the case seeks to explore accountability and the gaps in the functioning of medical bodies in the military healthcare system.

It shows the lack of sensitivity towards AIDS as a disability, denial of redress and constant denial of the individual's right to access his medical records; the appellant suffered from callousness and insensitivity of the respondents. The commentary seeks to work on issues like contamination of medical records and evidence by healthcare professionals; it shows how the definition of consumer under CPA fails to address armed officials. The commentary explores the medical rights of armed officials and the potential ramifications that can be considered.

Medical negligence and the determination of liability:

Negligence, as defined under Jacob Matthews V. Union of India, is the breach of a duty (of care) caused by the omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs would do or doing something which a prudent and reasonable man would not do.

This definition involves three essentials of negligence:

- A legal duty of care on the part of the defendant
- Breach of the said duty
- Consequential damage

Medical Negligence occurs when a healthcare professional's actions or inactions fall below the

accepted standard of care, resulting in harm to a patient. This can include errors in diagnosis, treatment, surgery, or medication and a failure to provide adequate care.

Medical negligence due to failure of duty of care is present in this case. It is determined using the Bolam doctrine in case of enquiry by NDCRC and IOC, but the court uses the Bolitho doctrine while accounting for liability.

Under the Bolam Doctrine established under **Bolam v. Friern Hospital Management Committee** [1957], it is stated that a professional man should command the corpus of knowledge that he or she professes, such that a professional should keep him or herself abreast with knowledge of updates in their field. What they must possess must not be an extraordinary competing professional skill but only an ordinary one. The professional must be alert to the hazards involved and bring expertise, skill, and care equivalent to an ordinary competent member. The requirement to do medical negligence under Bolam is that the person did not possess the skill that he or she professed, and even if they did, they did not exercise it with reasonable competence. The Bolam Doctrine, as it could be easily seen in this case, leads to a situation where a group of professionals within a larger body of such individuals come to the rescue of the defendant professional. Sometimes, it can be used to shift the liabilities, as seen in this case for the respondents; it is a very stable argument that they would have done the same in a similar situation. Deciding under the Bolam Doctrine, a judge is stripped away of his discretion to determine a matter with their reasonability. Thus, the judgment of NCDRC and IOC, in this case, is heavily influenced by the medical professionals appointed by the respondents themselves, leading to an unfair judgment on behalf of the appellant.

On the other hand, the Bolitho Doctrine established under **Bolitho v. City and Hackney Health Authority** [1998], which was used in the Supreme Court Judgment, returns the agency of the judge to decide the matter as per his reasonability after listening to the testification by the body of individuals. In most cases, the judge would rely on the testimony of these professionals, thereby not wholly disregarding the submissions by the medical boards. He may have, at times, completely disregarded their submissions and taken a position at variance, even if the majority of the body of professionals agreed to do the same. It is essentially an element that brings back the primacy of justice to the rights of the plaintiffs, and rather than arguing solely about the professional liability of the defendant, it takes into account the situation of the plaintiffs in a more profound way, as seen in this case, where the appeal is the social situation

and mental health was also taken into account while calculating the damages suffered by him, due to the negligence of the respondents.

Addressing the definitional and systematic Gaps in Consumer Protection Act, 1986:

The definition of consumer under the Consumer Protection Act Section 2(1)(d) inherently excludes the individuals who avail free services unless these services are part of a larger-scale agreement. Section 2(1)(o) includes healthcare services under the term service. It ties the definition of the transactional element to the healthcare providers. This narrow interpretation fails to capture the unique circumstances of the armed forces personnel, who rely exclusively on the state-provided healthcare system by the virtue of their service. This exclusionary nature of the military personnel from the CPA protections creates a void in accountability. The individuals tried under this are bound by the professional obligation to have no alternative but to depend on military healthcare, unlike civilians who can opt for private medical services. There is a systematic monopoly in these cases that prominently results in negligence. The absence of independent grievances and mechanism redressals compounds the plight and exposes the people to systematic failures without any avenue for justice. The judiciary's reluctance to extend the Consumer Protection Act to military personnel reflects a missed opportunity to evolve jurisprudence. In the ***Regional Provident Fund Commissioner v. Shiv Kumar Joshi*** **[(1999) 1 SCC 98**, the Supreme Court recognized that a beneficiary of a statutory scheme could qualify as a consumer. However, this has not been extended to military personnel, especially since their pay for the services indirectly proves a service to the nation. The systematic inconsistency in judicial interpretation further erodes the trust in legal redressals. While the Consumer Protection Act has been expansively applied in all other contexts, its restriction in the application shows a lack of empathy for the unique vulnerabilities of military personnel. The exclusion denies the individuals the ability to claim compensation, and it forces a culture of impunity in the military healthcare systems, providing no external accountability to incentivise the medical professionals' higher standards of care and proper record-keeping. As seen in this case, the throwing away of medical documents and the forging of evidence by the military hospitals in the NCRB report to address these gaps, legislative intervention is imperative. Broadening the CPC definition to include armed forces will help receive medical services with unique dependency.

Additionally, establishing specialized tribunals for military healthcare grievances can help in faster and fairer adjudication. This can help in the auditing and the independent reviews of military healthcare systems, enhancing transparency and accountability in the currently opaque and rigid system.

Judicial activism can play a crucial role in expanding consumer defamation and including armed officials inside it by using the interpretation in Article 142 to deliver complete justice and help the legislator void that exists or the protection of vulnerable groups. The restrictive interpretation in the case serves as a stark reminder for systematic reforms that envision the gaps and restoring confidence in the legal protections for those who dedicate their lives to serving the nation.

Failure of Military Healthcare Organizations:

This case is a somber reminder of how institutional neglect can amplify the suffering of those who dictate their lives to serve the nation. As a member of the armed forces, the respondent's trust was not only violated but compounded by the indifference and systematic gaps that followed his HIV diagnosis. Instead of receiving the care and support owed to him as a soldier, he was met with dismissal due to cardiac resistance and lack of empathy. The military medical bodies failed him in critical ways. Firstly, negligence in the screening of blood transfusion led to his HIV. The military hospitals did not adhere to the standard level of care that could have been avoided with basic rule procedures and not have resulted in him having this life-altering diagnosis. Adding insult to injury was the failure of the institutions to maintain essential medical records. According to the Indian Medical Council Regulation 1002, it is necessary to maintain medical records for at least two years.

This safeguard was disregarded completely, as the plaintiff could not get his records. The requests for transparency, accountability and justice were met with bureaucratic invasions. That left the plaintiff with little to no evidence to substantiate his claims while getting the disability certificate that he wanted.

The aftermath of his diagnosis underscores the systematic indifference. Rather than offering rehabilitation or psychological support, the military medical bodies treated him as an outlier. This obstructed him in very subtle and overt ways. The stigma that surrounds his condition is compounded by misinformation and HIV transmission. This has led to the exclusion of him

from a lot of professional opportunities, as we can see. He was denied his job. He was let go of his job and could not get the job in the Food Corporation of India. The institutions should have shielded him from these societal prejudices. Instead, it allowed these prejudices to dictate the treatment of his life. His struggle reflects the absence and the robust grievance mechanism within the military healthcare systems. This system's lack of independence and transparency led to institutional monopoly, leaving little room for justice and accountability.

This is evidenced in the dismissal of his case by the Consumer Protection Act. Through this failure, the military medical bodies violated his personal, professional and ethical obligations, along with the betrayal of honor, duty and care that was underpinned by the armed forces. This case is a stark reminder to those serving the nation that symbolic gratitude should be upheld and supported with the right to safeguard their dignity and deliver justice when wronged.

Failure of medical boards and NCDRC:

The failures by the medical boards and the NCDRC in these cases are marked by inconsistencies, procedural lack, and a lack of accountability exaggerated by the appellants suffering and undermining the credibility of institutional mechanisms. The failure of medical boards talks with evaluating whether the applicant's HIV infection was service-related. Firstly, inconsistent findings were present.

The initial medical boards linked the appellant's HIV to the blood transfusion in 2002 blood at 171 Military Hospital. However, the subsequent boards reversed this conclusion without clear justification. The reverse appeal coincides with the appellant's effort to seek figures and suggest the potential bias in findings. Such inconsistencies reflect the lack of rigorous and impartial assessment. Documentation was absent, as medical boards failed to preserve the key documents, including the blood screening records, consent forms, and detailed procedural reports on the transfusion.

This violated the appellant's right to access the medical records under Section 7.1 of the Right to Information Act and the Indian Medical Council's Professional Conduct Etiquette and Ethics Regulation 2002, which mandates record-keeping for at least three years—the bias and institutional influence. The boards operated within the military hierarchy. This raised the question about the independence of the boards. Their findings appear to have been influenced by the institutional priorities to minimise liability in their case, as this can be seen with medical

professionals, who defended themselves using the Bolam Doctrine—the violation of natural justice. In this case, the appellant was not allowed to present his case or respond to the board's findings. This exclusion breached the principle of natural justice, delegitimising the conclusions present.

The NCDRC, which dismissed the appellant's claims of compensation, failed to thoroughly examine the evidence and uphold justice. The NCRDC's over-reliance on procedural technicalities rejected the appellant's complaint on the grounds that he had not provided expert testimony to substantiate the claims of medical negligence. However, as noted in the case of V. Kishan Rao v. Nikhil Super Specialty Hospital (2010), expert testimony is not always mandatory, especially when negligence is evident from the circumstances, i.e. observed from the principle of res ispa locquitor.

Dismissal of Evidence Favoring the Appellant The Commission disregarded the findings of the earlier medical boards that linked HIV to the blood transfusion caused in 2002. Instead, it relied on the contradictory conclusions of the later Court of Inquiry, COI, which was conducted without the appellant's participation and appeared to be designed to absolve the respondents of any liability. In the Failure to Address Potential Procedural Lapses, the NCDRC failed to adequately consider the respondents' destruction of critical medical records. In this case, the omission is due to the obligation to assess whether the appellant's inability to address and present direct evidence was due to systematic lapses.

The Narrow Interpretation of Consumer Rights NCDRC ruled that the appellant did not classify as a consumer under Section 2(1)(d) of the Consumer Protection Act, 1986 (CPA), as the medical services were provided without any charges and were part of his employment. This interpretation ignored precedents like **Savita Garg v. National Heart Institute (2004)** and **Laxman Thamappa Kotgiri v. GM, Central Railway (2007)**, which held that services provided under unemployment terms can still fall under C.P.A.'s ambit.

The impact of these failures was the denial of a timely and fair resolution to the appellant for his grievances. This prolonged and led to mental and physical suffering, as the systematic gaps prevented him from obtaining adequate compensation for institutional accountability. This also highlighted the institutional bias and transparency in handling the cases involving forces and personnel. The Supreme Court, in this case, criticised the failure of NCDRC. The inability of

NCDRC is very prevalent in this case, as they failed to uphold fairness and procedural integrity. They had the task of safeguarding the rights and should have operated with impartiality and diligence, especially when an individual is vulnerable like the appellant. The addressing of these issues was met with failure. The judgment calls for systematic reforms in the medical boards and consumer forums and a broader interpretation of consumer protection laws in need of the hour, particularly for the individuals serving in the armed forces.

The use of the transformative potential of Article 142:

The Supreme Court invoked Article 142 of the Union Constitution to ensure that complete justice is fair in this case, as this article empowers the Court to pass any decree or order necessary to ensure justice and transcend the procedural and statutory limitations that arise when traditional legal remedies are insufficient. The Court exercises extraordinary jurisdiction to address procedural lapses, institutional failures, and the absence of statutory remedies that the appellant has faced. The original observations from the judgment emphasise the necessity of invoking Article 142 to provide compensatory relief to the appellant, stating:
"Even if, arguendo for some reason, appellate jurisdiction is contested, this Court deems that it would be unfair to drive the appellant to a fresh civil proceeding, particularly having regard to his vulnerability, and would instead, combine its power, drawing the source of its jurisdiction under Articles 32 and 142 of the Constitution, especially since the respondents are the armed forces and its authorities."

The court further observed that:
"By using Article 142, the Court can craft remedies to address gaps in justice delivery, particularly when procedural or statutory remedies prove inadequate. The destruction of records, the denial of access to information, and the procedural dismissal by consumer forums necessitated a holistic approach under Article 142."

Significance of Article 142:

The appellant's claim was dismissed by NCDRC on technical grounds. Due to the lack of technical testimony and disputed status of the consumer under the CPA 1986, the Supreme Court also noted that the invoking of Article 142 would help the procedural barriers established in this case by the rigid interpretation to adjust the merits of the appearance case. The case also involved complex and disputed factual questions. The including of a causal link between the

2002 blood transfusion and the appellant's HIV diagnosis in 2014, ordinarily, such disputes might preclude the intervention by Writ or Appellate Forums. The court, in this case, stated that the court must address the injustice, especially when procedural or evidentiary gaps arise due to institutional lapses. This exercise of Article 142 ensures that the gaps do not become insurmountable obstacles to justice. The comprehensive relief provided under Article 142 to address the economic losses, suicidal stigma, and mental trauma endured by the appellant includes the pecuniary and non-pecuniary damages within the void that was left by the failure of the medical boards and the consumer forums.

The precedents cited in this case are:

- **Nilabati Behera v. State of Orissa (1993)**:
  The compensation was awarded under Article 142 for a custodial debt emphasising monetary relief could be a remedy under Fundamental Rights Violation. Similarly, in this judgment, the compensation was made due to systematic failures impacting the right to health established under Article 21.
- **Delhi Development Authority v. Skipper Construction Co. (1996)**:
  The court stated that Article 142 allows crafting remedies to tackle situations that are not necessarily addressed by the existing law. This principle was applied to fill the legislative gap while addressing the military personnel receiving free medical aid.
- **MC Mehta v. Kamal Nath (2000)**:
  The court emphasised that Article 142 serves as a means of providing public interest and justice, transcending statutory limitations. In this case, the appearance of vulnerability and systematic lapses were justified by invoking Article 142 to achieve justice.

  Thus, when the SC invoked Article 142 in this case, it recognised the appellant's plight as a victim of systematic failures in procedural hurdles. By ensuring that justice was not derailed by the rigid statutory frameworks or evidentiary gaps, the SC upheld the Constitution's mandate to deliver fairness and equity. This judgment also demonstrated the transformative potential present in Article 142, addressing the institutional frameworks and their failures while protecting the rights of vulnerable people, particularly those serving in the armed forces.

Lack of consent as a denial of medical right:

The judgment of this case discusses the principle of implied consent in cases of emergency. Emphasizing that even when exigent situations are present, safeguarding and informed decision-making are paramount. The fact that the consent of the appellant was not taken while administering the blood transfusion on him, and also the fact that he was not made aware of the alternatives that he could have used instead of blood transfusion while carrying it out, is a clear violation of the IMC 2002 regulation, which mandates the informed consent for invasive procedures.

Also, as prescribed under the National AIDS Control Organization guidelines and the HIV and AIDS Prevention and Control Act of 2018, informed consent is mandated for HIV testing. The case demonstrates a failure to meet this requirement, too, as the appellant was not informed about the risks of transfusion or the protocols followed to ensure its safety. While in emergencies, for invasive treatment, it may be presumed that safeguards like pre-transfusion testing cannot be overlooked. In this case, the Supreme Court evaluated that the transfusion failed to meet the threshold for a medical emergency. The court also criticised the absence of proper protocols, while emergency doctors still do not absorb the healthcare providers from their responsibility to ensure minimum safety standards are being followed, even in extinguished circumstances. The court highlighted that the patient's right to safety and dignity under Article 21 has been violated. It also states that consent, whether it is implied or explicit, must be taken under reasonable measures to ensure that the patient is safe. The failure to screen the blood adequately, along with the subsequent lack of transparency amounting to the violation of the appellant’s rights, is and cannot be justified. This shows the systematic lapses in the maintenance of balance, emphasising the need for stricter compliance with emergency care protocols, ensuring transparency and patient safety measures.

Rehabilitation and Institutional Accountability:

Rehabilitation is not just a medical process. It is a holistic endeavour that restores the physical, mental, and social well-being of an individual. In this case, the long-term consequences have been faced due to the alleged negligent blood transfusions. These include the HIV diagnosis in 2014 that led to severe stigma, social isolation, and health complications of the appellant. Job rejection due to his HIV status resulted in his rejection from employment at the Food Corporation of India, further exaggerating his financial and emotional distress. The stigma

attached to HIV led to the breakdown of his personal relationships, including divorce and loss of family support. The appellant's ordeal, compounded by the institution's soon-falling, caused a lot of mental agony and eroded his confidence. The armed forces, as employers, have a heightened obligation to rehabilitate the persons injured, but they also fail to provide him with the necessary documents for him to get the pension under his disability certificate. Medical support and continuous treatment as ex-servicemen's contributory health scheme, ECHS, should have been ensured. But in this case, even a temporary ECHS card was issued late, leaving the appellant without timely access to care. Psychological support for the mental trauma caused by the diagnosis and the repercussions should have been facilitated by the Indian Air Force. Access to counselling and psychiatric care is essential in cases like this. The appellant's inability to secure alternate employment reflects the employers' absence of effective rehabilitation measures. As an HIV-positive individual, the appellant became a victim of social taboos. The Indian Air Force could have played a significant role in dispelling the myths and fostering acceptance through awareness campaigns and sensitisation processes. Accountability, in this case, encompasses both immediate and military hospitals and the broader systematic failure of the armed forces in general. The medical negligence and the duty of care of the 171 military hospital that acted as an ad-hoc facility lacks the licensed blood banks and necessary expertise to ensure safe transfusions, yet they carried out the blood transfusion. This failure led to HIV screening of the patient in 2014. The organization did not ensure the record-keeping and transparency as they failed to take accountability of losing the records. The appellant also faced the delayed compensation due to his failure to receive his pension and other compensatory benefits. The respondent also failed to address his post-charge-discharge needs, which the medical board attributed to his disability certificate. In this case, the stonewalling and procedural unfairness were marked by denial and invasion. The appellant's repeated requests for medical documents, disability certificates and redress were met with resistance, reflecting an intent to minimise the liability on the part of the respondent. The inquiry into the accident and the incident, the court of investigation lacked transparency, and the appellant was neither summoned nor allowed to participate in this situation.

This case underscores the urgent need for reforms in rehabilitation mechanisms for armed forces personnel. Some changes that can be brought about are the strengthening and rehabilitation frameworks. These can be more comprehensive in nature to implement programs that address medical, psychological, social, and economic rehabilitation needs. Initiatives like vocational training, skill development, and employment placement services should be

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prioritized for personnel discharge on medical grounds. Conducting awareness on HIV AIDS to combat social stigma and support affected personnel is also a necessary step in the making.

Mandatory adherence to medical protocols with compliance with NACO guidelines, INC regulations, and SOPs should be enforced in all military hospitals. The transparency and investigation should be carried out to ensure that the participation of the affected persons is shared without perception of bias. The exceptions to routine destruction of records should be introduced, ensuring that the preservation of critical documents is fair in the cases of alleged negligence.

Rehabilitation can be carried out under **HIV and AIDS Prevention and Control Act 2018**, which prohibits the discrimination against HIV-positive individuals and mandates equal treatment in the cases of healthcare, employment, and public services. In this case, the violation of the rights of the plaintiff is apparent through his rejection by the Food Corporation of India in lack of institutional support, contravening the Act provision. The Indian Air Force's obligation to ensure that non-discriminatory treatment and proactive measures for reintegration into the civil life of the plaintiff should have taken place. Rehabilitation and accountability are not merely compensatory measures, but they act as moral imperatives for institutions entrusted with national security.

In these cases, we need structural frameworks to support and ensure that accountability is present so that the armed forces can uphold the dignity of their personnel even when challenges are present.

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Social issue and stigma:

The appellant's experience in this case sheds light on the pervasive prejudice and isolation faced by individuals who are living with HIV that are deeply rooted in societal taboos and misconceptions when it comes to the Indian context. These factors amplified the harm that he endured both personally and professionally. The ignorance and fear, along with myths associated with HIV, lead to irrational fear and alienation. HIV is also associated with behaviours that are considered immoral. Cultural taboos in India about sexual health and HIV-AIDS remain, intensifying the issue and the stigma. It led to the isolation of the individual's personal life with his family, culminating in his divorce. The diagnosis not only strained his relationship but also subjected him to rejection and judgment, stripping him of emotional

support. The breakdown of his marriage reflects the societal reluctance to accept HIV-positive individuals.

The employment discrimination faced through the rejection by the Food Corporation of India highlights the persistent bias that is present in the workforce against HIV-positive individuals. Employers view these individuals as liabilities or risks for the company. His inability to secure employment further marginalised him, depriving him of financial independence and dignity. The armed forces, who were bound by their duty of care for personnel injured during service, failed to provide adequate rehabilitation and support to the plaintiffs. Delays in issuing his ECSS card and lack of proactive care reflect the institution's systematic disregard for this condition. By doing this, the institution stonewalled him and included the denial of his medical records. Resisting transparency, we suggested that the attempt to minimize association with an HIV-positive veteran led to reinforcing of stigmatisation. The appellant endured psychological harm due to societal rejection and the perception of being a burden. The stigma that was attached to his HIV-bound status reflected that he was emotionally in a state of dependency. The appellant's experience is embellished with broader societal issues that are associated with HIV, like misperceptions of transmission, moral policing and lack of awareness. The influence of institutional behaviours reflects the impact of stigma on justice. The reluctance of the armed forces to acknowledge the lapses and provide rehabilitation suggests the fear of reputational damages that are associated with HIV cases. In this case, the judiciary recognized the appellant's vulnerability and the stigma he faced. They emphasised that the need of the institution is to act with empathy and accountability. Amicus Curie played a major role in shedding light on the societal challenges faced by the appellant, framing his experience with the broader context of HIV stigma. We need to have more public awareness, institutional sensitisation, legal protections, and rehabilitation and support to deal with the social stigma that is associated with HIV and AIDS. As these are highlighted in the hardship faced by the appellant in this case, this is a reminder to address these biases with institutional apathy, ensuring that the individuals who live with HIV are treated with respect, empathy and equity.

Mental Trauma and Harm:

This case shows how individuals face immense mental trauma and harm when they are faced with systematic negligence, societal stigma, and institutional apathy. Beyond the physical consequences of his condition, the appellant faced profound psychological distress that added to and compounded his suffering and damages. HIV diagnosis and the stigma that was

associated with him after he was diagnosed in 2014 with HIV due to a blood transfusion was a deeply traumatic revelation. The stigma that was attached to HIV was with feelings of guilt, shame, and fear. He lost his family's support, and societal judgment was there as HIV is still considered a moral disease in India, after delayed rehabilitation like the receival of his ECHS card and disability pension that deprived him of timely and technical medical care and financial stability that he deserved. The stonewalling and lack of transparency by the institutions who failed to provide him with his medical records, this perception is being ignored or invalidated by the armed forces, thus intensifying his feelings of abandonment. His rejection from the Food Corporation of India was solely based on his HIV status. He lost his identity as armed forces personnel as he was pessimistic about his duty. He was facing unemployment and was psychologically devastated. Living with HIV is associated with complications that lead to frequent hospitalizations, fatigue, and physical dependency. These contribute to the feelings of helplessness. The cumulative effect of societal rejection, professional discrimination, and institutional neglect results in deprivation and anxiety along with post-traumatic stress. To address these issues, we need to have proper recognition of the psychological harm that can be caused. These can be addressed in legal proceedings as courts must explicitly state that mental trauma is a compensable harm, treating it on par with physical injuries. Supreme Court also emphasized in this case that mental agony is a critical area to consider. Compensation should account for pecuniary damages as well as emotional distress. The loss of dignity and psychological suffering should be taken into account. Institutions like the armed forces should have mandatory psychological support for the people who face trauma and ensure that therapists and counselors, along with community support groups, are present. Training programs and transparent communication should be sensitised in these institutions. Legislative and policy reforms should be present, such as the more vigorous enforcement of the HIV Act 2018 that prohibits discrimination in healthcare employment and public services. Its provision should be rigorously implemented to protect individuals from the harm and trauma that is associated with the stigma of HIV. Armed forces should establish dedicated units to address grievances of medical negligence, stigma and rehabilitation, along with a focus on psychological support. There should be a sensitive approach to such cases as trauma-informed judicial responses, apathy in the adjudication, comprehensive compensation that goes beyond financial damages, and remedies and should include direction for psychological rehabilitation in a long-term period. Proactive institutional measures like rehabilitation programs and public awareness campaigns should be prevalent along with community engagement that help in de-stigmatization efforts through collaborative efforts between government, NGOs and

communities along with supporting networks that help to advocate for care and advocacy for trauma and ensure that the individuals with HIV do not feel isolated.

Damages Associated with the case:

Damages are claimed and awarded by the court for the violation of the rights of the plaintiff, which are further compounded by the harm suffered by the plaintiff and awarded in civil cases. These are considered the most common type of remedy, but they are mostly unliquidated in nature. The essentials for claiming damages are the following:

- There should be a violation of the rights of the plaintiff
- Suffering of consequential harm which compounds the level of damages awarded
- It should be a matter of civil nature

In this judgement/case, the court awarded prospective damages, which are defined as the damages that are awarded in cases of continuing harm, and it is the compensation that covers the harm, i.e. the result of the defendant's wrongful act/omission but which has not actually arisen at the time of awarding damages. But it is, in all likelihood, expected to arise in the future.

While awarding damages, the court may include or factor present harm suffered as well as any prospective harm that the plaintiff may suffer in all likelihood as a consequence of the defendant's act or omission. However, this determination has to be made in the present, and the court cannot delegate it to the future to provide damages at regular future intervals or on an as-and-when basis.

How do we arrive at a just measure of damages for harm suffered?

1. Violation of the legal right of the plaintiff
2. Personal pain and suffering undergone by the plaintiff.
3. Medical and ancillary expenditures incurred.
4. Legal fees
5. Loss of enjoyment of life.
6. Any other actual monetary loss incurred by the plaintiff
7. The probable future loss of income or opportunity by reason of incapacity or diminished capacity of work.
8. Mental agony and anguish suffered and duration and severity of such harm.

All these measures were taken into account in this case while arriving at the final amount of compensation, i.e. at ₹ 1,54,73,000/- (Rupees one crore fifty-four lakhs seventy-three thousand only). It is also held that since individual liability cannot be assigned, in this case, as individual liability cannot be determined, respondent organizations will be held vicariously liable. respondent organizations (IAF and Indian Army) are held vicariously and jointly liable and the amount of compensation can be shared between the defendants or individual liability can be taken too based on their personal discourse.

The allotment of perpetual damages, along with the fact that the judgement mentions and takes into account the fact that mental agony and distress caused due to the acts of the respondents, should be taken into consideration. This case, though, could have allotted exemplary damages in this case, too, making it a landmark case for cases of medical negligence when taking military medical institutions into consideration. Exemplary damages are damages that are awarded with a view to preventing similar commission of torts and, thereby, similar violations of rights in the future. The damages may be called punitive or vindictive. The idea here is not just to restore the violated legal right of the plaintiff, but also to set a deterring example for preventing similar future violations.

The damages that were sought under this case reflect the multifaceted harm that was suffered due to the systematic negligence and the societal stigma. Supreme Court intervened using Article 142 to underscore the importance of just compensation. The case also highlights the critical gaps that are present in the existing framework, yet it fails to take into account certain future precedents that this case could have set. To ensure that justice is there for individuals like the appellant, it is imperative to adopt a comprehensive approach while discussing damages that encompass both pecuniary and non-pecuniary harm suffered by the plaintiff. We should also take into account the institution and its liability and accountability, as these measures would not only redress individual grievances but deter future negligence, fostering an environment of greater care and accountability.

Conclusion: As a call for justice and reforms

To conclude, this case can be viewed as a missed opportunity by the Supreme Court to set a precedent and fill the existing legal void by means of legal reforms in cases concerning misconduct and negligence of military medical institutions. This case shows that justice does not only require one’s adherence to the letter of the law but also the understanding of its

intricacies, taking into account the aspect of restorative justice and the empathetic understanding of its uplifting spirit.

It addresses a missed opportunity to address critical areas of medical negligence and sovereign functions of armed forces and their aligned institutions. It displays the failure to adopt progressive legal reforms for providing equitable relief, not restricting itself just to the Monterey domain and extending itself to more social and moral domains.

This case is a reminder of the procedural demand of justice along with understanding different human realities and its complexities. These reforms are essential for ensuring that the people who serve the nation receive fair and just treatment along with just compensation i.e. not just ex-gratia in nature but inclusive, incorporative and adoptive as they ensure that the dignity of the individuals in protected along with the proper adherence to duty of care and other ascribed rules and regulations.

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