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IMPACT OF MEDICAL FRAUD ON REALIZATION OF RIGHTS TO HEALTH IN INDIA: AN INTROSPECTION

AUTHORED BY - ANINDITA CHATTERJEE

Research Scholar, Fols, Motherhood University, Roorkee, Haridwar

CO-AUTHOR - DR. NALNISH CHANDR SINGH

Associate Professor, Fols, Motherhood University, Roorkee, Haridwar.

ABSTRACT

“God gives Life, Doctor saves Life” The Statement itself signifies its value and how valuable possession we Human possess as Health. Health and its value to Human right have recognized as a basic Natural Rights. As a basic Human right each and every citizen of India enjoys a legal obligation against States to provide them with acceptable and affordable health care. Hospital plays a Major role on this context, “Medical negligence, have become one of the serious issues in India now a days”. To prove Medical Negligence, three essentials are to be proven i.e. duty of care, that is owed to the Patient by the Medical Professional. Legally it is implied that a Doctor or the Hospital should perform their best and apply all their resources and knowledge in the treatment of the Patient. Another important essential is Standard of Care, to prove medical fraud the patient need to proof that the minimum standard of care is not being followed by the doctor or hospital authorities. Lastly the paper is going to conclude Causation and Damages an essential to proof Medical Negligence. Failure of Medical Professionals and a hospital to discharge its basic duties and following basic standards of Treatment is “a Tortious Liability as Tort is defined as a Civil Wrong (Right in Rem) against a Contractual Obligation (Right in Personam)”. In the Modern era medical science has developed a lot, it has come up with new modern technologies and cure for almost every diseases but it comes along with malpractices, fraud and negligence and infringing rights of common man and society. The Paper will be including “reason because of which cases of Medical Fraud arises and the Impact of Medical fraud and the Legal Jurisdiction surrounding it for safeguarding the interest of patients and their basic Human Rights”.

Keywords: Medical Negligence, Human Rights, Jurisdiction, Medical Professional.

Right to Health is one of our Fundamental Right under Indian Constitution Act, it is closely linked with Right to Life and Human Dignity. In short it says that basic amenities and an affordable and suitable health care along with the underlying determinants of health like safe food, water, and a healthy environment. This right is about access to Medical Care along with factors like sanitation, nutrition, and education related to health.

“Of all forms of inequality, injustice in health care is the most shocking and inhumane” Medical Fraud is the act of Knowingly misrepresenting or falsifying information about medical services to obtain unauthorized payments. Medical Fraud can be committed by Doctors, Health Care Providers, or suppliers. Few examples of Medical Fraud are **Fake bills** that is to submitting fake or duplicate medical bills to claim insurance, usually this category of fraud is committed by the Patients. Next we have **Inflated bills** that is to submitting of bills for more than the actual cost of services. Thirdly we have **False claim**, that is filling a claim for a treatment that was never received. Above are the kinds of the frauds that are committed by the patients. And if we discuss about the frauds committed by the Doctors or the Medical Authorities then there are certain Frauds namely-**Forged Document** that is altering medical documents of the patient, such as changing the patient name or the date of the treatment. Secondly we have **Exaggerated Claim** that is to overstating the cost of Healthcare Services and charging extra claim from the Patients. Another kind of **Medical Fraud** is Performing unnecessary services that are not medically necessary for financial gain. Also we have **Prescription drug Abuse** that is to creating of illegal prescription or abusing prescription drugs.

Key factors of the Right to health:

Availability-

Ensuring sufficient quality and quantity of health care facilities, goods and services.

Accessibility-

Making healthcare physically, economically, and informatively accessible to all without any kind of discrimination.

Quality-

Services should be scientifically sound and medically appropriate.

Negative Impact of Medical Fraud on Health Care:

Unnecessary Procedures-

In the name of providing top notch care, the hospital authority prescribes unnecessary

medication and formalities that are actually not required.

Counterfeit Drugs-

Prescribing fake medicines can be dangerous to health, leading to failure of treatment and causing potential harm to patient.

Over Utilization of Services-

Fraudulent billing and charging extra charges on medical services leads to over utilization of services and exploitation of medical resources and patient money as well.

“In short, medical fraud is not a victimless crime; it has far-reaching consequences for individuals and the healthcare system as a whole. It undermines the right to health by compromising the quality, accessibility, and affordability of care, and by eroding the public's trust in healthcare providers and institutions.”

Medical Fraud in Indian overview-

It refers to deliberate act of deception within the healthcare sector for unlawful gain. In India, this manifests in various forms:

Insurance Fraud: It can be classified in two forms hard fraud and Soft fraud. Hard fraud is something which is deliberately plans or invents a loss, such as a collision, auto theft, or fire that is covered by their insurance policy in order to claim payment for damages. Soft fraud is also known as opportunistic fraud, involves exaggerating a legitimate insurance claim or financial gain.

Corruption and kickbacks are serious issues that undermine integrity, fairness, and trust in both the public and private sectors. Kickbacks are a kind of bribery where one party provides a financial incentive to another in exchange for favorable actions, and can take various forms, such as cash, gifts, or inflated invoices. These types of practices undermine fair competition, erode trust, and can lead to significant financial losses.

Misuse of Government Health: Misuse of government health resources can include fraud, corruption, inefficient and ineffective practices leading to Medical Fraud. This can manifest as financial misappropriation, inflated claims, diversion of funds, or the provision of substandard care. Examples include fraudulent billing, embezzlement of funds, and informal payments to healthcare institutes.

Examples of Misuses of Government Health-

- Financial Mismanagement
- Fraudulent Claims
- Bribery and Corruption:
- Ineffective Healthcare Provision:

Illegal Organ Trade: From time to time, stories of the commercial dealings in organs, or cash for kidney scams, surface in the media. In December, one such possible organ racket was in the news, involving people from Myanmar, who had come to a private hospital in Delhi for transplant procedures. Organ transplants have been taking place in India since the 1970s, and after multiple instances of the commercial sale of organs, India brought in the Transplantation of Human Organ and Tissues Act, 1994. This law banned the sale of organs and only allowed organs to be given between close family members, or for altruistic reasons, with no money exchanging hands. Over the last decade or so, some cities in India have increasingly become major hubs for life-saving transplant surgeries of several organs including the kidneys, heart, liver, lungs and pancreas. The deceased donor programme, where organs are harvested from brain-dead donors, has also taken off in some parts of the country.

Medical Negligence: Medical negligence is also known as medical malpractice when a healthcare professional's substandard care, either through actions or omissions, causes injury or harm to a patient. This can involve misdiagnosis, incorrect treatment, surgical errors, or other failures to meet the basic standard of care within the medical ambit.

Key aspects of medical negligence:

Duty of Care- Minimum duty of care should be practised by the medical treatment providers, like lack of negligence, maintaining proper sanitation and a reasonable care should be there. Basic skills and care should be the top priority for the patients.

Breach of Duty:

When the treatment Providers fails to perform their duty of care then it results into breach of duty. When the authorities fails to provide the basic reasonable care.

Causation:

The breach of duty should result into negligence.

Damages:

The patient must have suffered damages, such as physical injury, financial loss, or emotional distress, as a result of the negligence.

Examples of medical negligence:

Misdiagnosis:

Failing to correctly diagnose a condition, leading to delayed or inappropriate treatment.

Surgical Errors:

Performing surgery on the wrong body part, leaving surgical instruments inside the patient, or causing nerve damage.

Medication Errors:

Prescribing the wrong medication, incorrect dosage, or failing to check for drug interactions.

Birth Injuries:

Negligence during labor and delivery that causes injury to the mother or child.

Failure to Monitor:

Not adequately monitoring a patient's condition, leading to complications or adverse events.

Consequences of medical negligence:

- **Patient Harm:** Physical injuries, emotional distress, and long-term health consequences.
- **Financial Losses:** Medical expenses, lost wages, and costs associated with ongoing care.
- **Legal Action:** Patients can pursue legal claims to seek compensation for their injuries and damages.

In India:

- Medical negligence cases can be pursued under both civil and criminal law.
- The Consumer Protection Act provides a framework for addressing negligence in the context of services, including healthcare.
- The Indian Penal Code (IPC) also addresses negligence that leads to death or injury.
- The Bharatiya Nyaya Sanhita (BNS) now includes provisions for causing death by negligence, with enhanced penalties for registered medical practitioners.

Dissemination of Medical Misinformation:

The dissemination of misinformation in health emergencies poses serious threats to public health and increases health anxiety. To understand the underlying mechanism of the dissemination of misinformation regarding health emergencies, this study creatively draws on social support theory and text mining. It also explores the roles of different types of misinformation, including health advice and caution misinformation and health help-seeking misinformation, and emotional support in affecting individuals' misinformation dissemination

behavior on social media and whether such relationships are contingent on misinformation ambiguity and richness. The theoretical model is tested using 12,101 textual data about COVID-19 collected from Sina Weibo, a leading social media platform in China. The empirical results show that health caution and advice, help seeking misinformation, and emotional support significantly increase the dissemination of misinformation. Furthermore, when the level of ambiguity and richness regarding misinformation is high, the effect of health caution and advice misinformation is strengthened, whereas the effect of health help seeking misinformation and emotional support is weakened, indicating both dark and bright misinformation ambiguity and richness.

Role of Legislation in upliftment of Right to Health-

Indian Constitution has placed Public Health Sanitation under the State list in Seventh Schedule under the Act which has empowered the State to impose various Act such as National Public Health Act to create an uniform framework across the Country.

Article 21 lays major provisions related to Right to Life, the Judiciary has interpreted Right to Health and Medical Care under the Article. Supreme Court has mandated the Hospitals to provide timely emergency treatment and failure to do so is violation of the Article 21.

Various Act of Healthcare Regulation-

The Clinical Establishment Act 2010 - Maintaining basic standards for health care facilities.

The Mental Health Act 2017- Protects the Right of people with Mental illness.

The Consumer Protection Act 2019- Allow consumers to redress for deficient medical services.

The Maternity Benefit Act 1965- Ensures maternal and child health.

Defining State obligation- The Directive Principles of State Policies (DPSP) in the Constitution Article 38,39,42,43 and 47 imposes duty on the State for improving Public Health, Nutrition Level, Working conditions.

Right to Health Bill

The term Right to Health Bill refers to different legislative efforts to ensure the right to health, most notably in India where Rajasthan became the first state to impose Right to Health Act in 2022. This law guarantees citizens access to quality healthcare, including the right to emergency treatment without pre - payment and free services in public institutions. Similar bills have been proposed at the national level in India, like the 2021 Right to Health Bill, which

aims for free and universal healthcare access and addresses public health determinants like clean water and sanitation.

Right to health and Human Right

In India, the right to health is a fundamental human right, primarily recognized through the judiciary's interpretation of the right to life under Article 21 of the Constitution. While not explicitly mentioned, the Supreme Court has held that a dignified life under Article 21 includes the right to health, medical care, and a healthy environment. This is further supported by Directive Principles of State Policy that place obligations on the state to ensure public health, and international human rights law.

Correlation with the Constitution of India

- Article 21: The right to health is considered an integral part of the right to life and personal liberty, which is a fundamental right. The Supreme Court has ruled that "life" means more than just an animalistic existence and includes the right to live with dignity, which requires a baseline level of health.
- Directive Principles of State Policy (DPSP): Articles like 38, 39, 42, 43, and 47¹ place a duty on the state to ensure public health, which indirectly reinforces the right to health. Specifically, Article 47 mandates that the state shall raise the level of nutrition and the standard of living of its people and improve public health as one of its primary duties.²

Correlation with international human rights law

- India is a signatory to international covenants that recognize the right to health.
- International Covenant on Economic, Social and Cultural Rights (ICESCR): Article 12 of the ICESCR recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. India is obligated to take steps to achieve the full realization of this right.

Judicial interpretation and its implications

- The judiciary has consistently expanded the scope of the right to health by linking it to other fundamental rights.

¹ The Constitution of India.

² *Ibid*

- The Supreme Court has held that medical professionals have a duty to provide services in a medico-legal emergency, whether in government or private hospitals.
- The right to health also extends to other areas, such as mental health and access to a healthy environment.

Impact of New Laws on Prosecution for Medical Negligence

When the new criminal laws were being tabled in the Parliament, several doctors raised objections to Section 106 of the Bharatiya Nyaya Sanhita, 2023 (BNS). Specifically, they sought exemption from criminal prosecution in cases involving death caused due to medical negligence. The Indian Medical Association took up the matter with the Ministry of Home Affairs, which promised to ‘free the doctors from this criminal negligence’. Pursuant to this, Section 106(1) of the BNS, which provided for a prison term of up to 5 years, was amended to the following effect:

...and if such act is done by a registered medical practitioner while performing medical procedure, he shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

However, this amendment does not free doctors from the noose of criminal prosecution; in fact, it mandates a prison term for death due to negligence by registered medical practitioners. While under Section 304A of the Indian Penal Code, 1860³—analogous to Section 106, BNS—the court had the discretion to impose only a fine instead of imprisonment, this is not the case under BNS.⁴ Under the new regime a fine is no longer an alternative to, but mandatory with a sentence of imprisonment that may extend up to two years. In fact, the amended law has significant consequences for the investigation and launch of criminal prosecution for medical negligence, as discussed in this blog post.

Applicability of Preliminary Enquiry

An unintended consequence of the amended laws under the BNS is the change in the applicability of preliminary enquiry. Preliminary enquiry is a procedural safeguard applicable to medical negligence cases as per the Supreme Court judgement in *Jacob Mathew v State of Punjab*⁵, and upheld in *Lalita Kumari v State of Uttar Pradesh*⁶. Conducted prior to the launch

³ The Indian Penal Code, 1860 s.304A.

⁴ Bharatiya Nyaya Sanhita, 2023. s. 173(3).

⁵ *Jacob Mathew v State of Punjab*, (2005) 6 SCC 1.

⁶ *Lalita Kumari v State of Uttar Pradesh* (2014) 2 SCC 1.

of investigation and registration of a First Information Report (FIR), the purpose of preliminary enquiry is to ascertain whether the information received reveals any cognizable offence. While the old law, i.e. Criminal Procedure Code, 1973 (CrPC), did not contain an express provision outlining the contours of preliminary enquiry, it has now been given statutory recognition under Section 173(3), BNS.

The BNS takes a broad-based approach to preliminary enquiry and invokes it depending upon the quantum of the punishment for an offence, irrespective of the nature of the offence. Under Section 173(3) of the BNS, preliminary enquiry may be conducted where information pertains to cognizable offences punishable for three to seven years 'to ascertain whether there exists a prima facie case for proceeding'.

It is important to note that there are many cognizable offences for which the prescribed punishment is less than 3 years. By a strange logic, or lack thereof, the benefit of preliminary enquiry has not been extended to such cognizable offences. Consequently, cases involving medical negligence resulting in the death of a person are ineligible for preliminary enquiry as the punishment under Section 106, BNS for registered medical practitioners is up to a term of 2 years.

Given an express provision for preliminary enquiry under the BNS, the Supreme Court judgements in *Jacob Mathew* and *Lalita Kumari* will no longer help doctors seek preliminary enquiry as these cases were decided specifically to address the absence of relevant procedural safeguards in the CrPC. When the legislature subsequently removes the very basis of a judgement, it is the legislation that prevails over the judgement.

Complaint Cases

Under the IPC, when a complaint was made to a magistrate, the onus was on the complainant to satisfy the Court with the existence of a prima facie case⁷. If found lacking in basis or frivolous, the court would dismiss the complaint. In effect, the accused had no role to play in the pre-summoning stage, i.e. till cognizance was taken, and this protected doctors from false and frivolous accusations. However, the BNS makes room for the accused to be heard *before* cognizance is taken⁸. While this provision seems to be a manifestation of the

⁷ Code of Criminal Procedure 1973, s 200-203.

⁸ Bhartiya Nagarik Suraksha Sanhita 2023, s 223(1), first proviso.

principles of natural justice, it is premature and unconstitutional. Firstly, it is not in consonance with the right of the accused to remain silent, which is guaranteed under the Constitution. Secondly, it will be a futile exercise to hear the accused before the court has come to a prima facie conclusion.

This provision will be particularly troublesome for doctors as they will have to show cause and present their defense *before* the Court has applied its mind to the complaint. While the complaint may ultimately be dismissed, the accused doctor will still have to undergo the hassle of being present in the Court and presenting their version of events. This will not only waste the precious time of doctors but also lower their morale.

Provision of Deemed Sanction

Another change that should worry doctors, especially those working in government establishments, is the newly introduced provision of deemed sanction.⁹ To prosecute a public servant for an act performed during the discharge of their official duty, previous sanction of the relevant government is mandatory. It is the prerogative of the government to grant or refuse sanction. This enables public servants to discharge their duty fearlessly, without bothering about the consequences of frivolous litigation. However, often despite a prima facie case against a public servant, sanction is either withheld or inordinately delayed. The concept of deemed sanction ensures that if the concerned government does not take a decision within a prescribed period (under the Bharatiya Nagarik Suraksha Sanhita, 2023, or BNSS, this is 120 days from the date of the receipt of the request for sanction), sanction is deemed to be granted. This appears to be an attractive solution to overcome the tardiness of government officials who sit over a file. However, this argument is shallow as it seems to suggest that the concept of sanctions is otiose and an unnecessary legal hurdle. The provision of deemed sanction does not in any way incentivise officials to take a decision within a reasonable time frame. In fact, it penalises those who could have otherwise challenged the grant or refusal of sanction on the basis of administrative grounds or non-application of mind.

Together, these developments make it difficult to dismiss the new criminal laws on the prosecution of medical negligence as old wine in a new bottle. The subtle changes brought into

⁹Bhartiya Nagarik Suraksha Sanhita 2023, s 218(1), second proviso

the law under the BNS regime could have far reaching implications, especially for doctors and other healthcare professionals.¹⁰

Conclusion and Suggestion

Medical Malpractice has taken colossal shape in present era. Health and its value to Human right has been recognized as a basic human right under Article 25 of the Universal Declaration of Human Rights.¹¹ As a basic Human right each and every citizen of India enjoys a legal obligation against States to provide them with acceptable and affordable health care. Hospital plays a Major role on this context, Medical negligence, have become one of the serious issues in India now a days. The high magnitude of medical fraud and deliberate misconduct by medical professionals has many times led to litigation. Medical Fraud had lead to massive corruption. With increasing negligence our law making body has adopted a border approach to control the malpractices in healthcare system. Also the Paper focuses on the Right to Life as a fundamental right of each and every citizen of India. Right to Health is considered as an human right for every citizen. The research is about the loopholes and to find the root cause of Medical Fraud which is increasing day by day in spite of strict Law related to it in India and to have special and significant provision related to Medical Fraud. Our Jurisdiction should include a separate Act dealing with the cases of the Medical Fraud and Moreover the term Medical Fraud need to be defined first as Indian Jurisdiction only deals with Medical Negligence.

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¹¹ Universal Declaration of Human Rights Act, 1948, Art.25.