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LEGAL PROVISIONS FOR HOSPITAL SERVICES

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Legal Provisions for Hospital Services

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Hospitals, being one of the most important components within the national health systems, have gradually changed their roles to respond to community needs and reach them through its linkages with primary health care. The best health services are those that are easily accessible, both time wise and distance wise to all classes of society, those that can be afforded by the society and government which provides them and affordable by people who utilize them, of a minimum acceptable standard in keeping with the need of the users at each level, available to all classes of society who need them, and which range in their coverage from womb to tomb, with effective deployment of available resources.[1]

Blakiston's New Gould Medical Dictionary (McGrawHill, New York, 1956, P560) describes a hospital as- an institution for medical treatment facility primarily intended, appropriately staffed and equipped to provide diagnostic and therapeutic services in general medicine and surgery or in some circumscribed field or fields of restorative medical care, together with bed care, nursing care and dietetic service to patients requiring such care and treatment.[2]

"Medical care is the major function of hospital organization. Medical care may be defined in different ways in different contexts, but as the World Health Organization (WHO) definition has it, it may symbolize personal health care. It encompasses preventive, curative and rehabilitative measures"[3], it is a team work.

The Directory of Hospitals in India, 1988 lists the various types of hospitals and the types of management.[4]

TYPES OF HOSPITALS

a) General Hospital: All establishments permanently staffed by at least two or more medical officers. This can offer in-patient accommodation and provide active medical and nursing care for more than one category of medical and nursing care for more than one category of medical discipline e.g. general medicine, general surgery, obstetrics, Pediatrics etc. As for example, different medical colleges and district and sub divisional hospitals.

b) Rural Hospital: Hospitals located in rural areas (classified by the Registrar General of India) permanently staffed by at least one or more physicians, which offer in-patient accommodation and medical and nursing care for more than one category of medical discipline

c) Specialized Hospital: Hospitals providing medical and nursing care primarily for only one discipline or a specific disease of one system (e.g. tuberculosis, ENT, eye, leprosy, orthopedic, pediatric, cardiac, mental, cancer, infectious disease, venereal diseases, maternity, etc). The specialized departments administratively attached to a general hospital and sometimes located in separate ward, may be excluded and their beds are not considered in this category of specialized hospitals.

d) Teaching Hospital: A hospital to which a college is attached for medical/dental education. They are found engaged in advancing knowledge, promoting the research activities and training the medicos. As for example, All-India Medical Institute, New Delhi, Post-Graduate Medical Education and Research Institute, Chandigarh, etc

e) Isolation Hospital: This is a hospital for the care of persons suffering from infectious diseases requiring isolation of the patients.

India has all the above given types of hospitals in every states and union territories. The 28 states and 7 union territories in India have many government hospitals and many private hospitals. The following table shows State/Union territory wise number of Government Hospitals & Beds in Rural and Urban areas in India.

TABLE

State/Union Territory Wise Number of Govt. Hospitals & Beds in Rural & Urban Areas (Including CHCS) In India

	State/UT/Division	Rural Hospitals (Govt.)		Urban Hospitals (Govt.)		Total Hospitals (Govt.)		Projected Population as on reference period(In thousands)	Average Population Served Per Govt. Hospital	Average Population Served Per Govt. Hospital Bed	Reference Period
		No	Beds	No	Beds	No	Beds				
	1	2	3	4	5	6	7	8	9	10	11
1	Andhra Pradesh	143	3725	332	34325	475	38050	83964	176766	2207	01.01.2011
2	Arunachal Pradesh	146	1356	15	862	161	2218	1184	5920	533	01.01.2009
3	Assam	108	3240	45	4382	153	7322	29814	19486	3911	1.01.2010
4	Bihar	NR	NR	NR	NR	1717	22494	93633	54533	4163	1.09.2008
5	Chattisgarh	119	3270	99	5158	218	9428	22934	105202	2433	1.01.2008
6	Goa	7	298	13	2388	20	2686	1714	85700	638	1.01.2011
7	Gujarat	282	9619	91	19339	373	28958	57434	153979	1983	01.01.2010
8	Haryana	61	1212	93	6667	154	7879	24597	159721	3122	01.01.2010
9	Himachal Pradesh	95	2646	47	5315	142	7961	6662	4692	837	01.01.2010
10	Jammu & Kashmir	61	1820	31	2125	92	3945	11099	120641	2813	01.01.2008
11	Jharkhand	NR	NR	NR	NR	500	5414	29745	59490	5494	01.01.2008
12	Karnataka	468	8010	451	55731	919	63741	58181	53309	913	01.01.2010
13	Kerala	281	13756	105	17529	386	31285	34063	88246	1089	01.01.2010
14	Madhya Pradesh	333	10040	124	18493	457	28533	71050	155470	2490	01.01.2011
15	Maharashtra	735	13376	1037	36627	1772	50003	111118	62708	2222	01.01.2011
16	Manipur	27	744	4	1574	31	2318	2421	78097	1044	01.01.2011
17	Meghalaya	29	870	10	1967	39	2837	2591	66436	913	01.01.2011
18	Mizoram	21	801	4	710	25	1511	981	39240	649	01.01.2010
19	Nagaland	23	705	25	1445	48	2150	2197	45771	1022	01.01.2010
20	Orissa	1629	10172	80	5708	1709	15880	40389	23633	2543	01.01.2011
21	Punjab	72	2180	159	8440	231	10620	26391	114247	2485	01.01.2008
22	Rajasthan	347	11850	128	20217	475	32067	63408	133491	1977	01.01.2008
23	Sikkim	30	730	3	830	33	1560	605	18333	388	01.01.2011
24	Tamil Nadu	533	25078	48	22120	581	47198	65629	112959	1391	01.01.2008
25	Tripura	14	950	18	2082	32	3032	3574	111687	1179	01.01.2011
26	Uttar Pradesh	515	15450	346	40394	861	56384	197271	229118	3499	01.01.2011
27	Uttarakhand	666	3746	29	4219	695	7965	9511	13685	1194	01.01.2009
28	West Bengal	14	2399	280	52360	294	54759	87839	298772	1604	01.01.2010
29	A&N Island	7	385	1	450	8	835	480	60000	575	01.01.2011
30	Chandigarh	1	50	3	570	4	620	1368	342000	2206	01.01.2011
31	D&N Haveli	1	50	1	231	2	281	337	168500	1199	01.01.2011
32	Daman & Diu	0	0	4	200	4	200	259	64750	1295	01.01.2011
33	Delhi	21	972	109	22886	130	23858	16955	130423	711	01.01.2009
34	Lakshadweep	5	160	-	-	5	160	75	15000	469	01.01.2011
35	Pondicherry	1	30	13	2311	14	2341	1331	95071	569	01.01.2011
	India	**6795**	**149690**	**3748**	**399195**	**12760**	**576793**	**1160804**	**90972**	**2012**	

Source: Directorate General of State Health Services

The above table (as per 01-01-2011) shows the State/Union Territory wise Number of Govt. Hospitals & Beds in Rural & Urban Areas (Including CHCs) In India. Government hospitals given above include central government, state government and local government hospitals. Bodies India has 6795 Government Rural Hospitals having 149690 numbers of beds, 3748 Government Urban Hospitals having 399195 numbers of beds. Orissa has the highest number of Government Rural Hospitals 1629 having 10172 numbers of beds. Maharashtra has the highest number of Government Urban Hospitals 1037 having 36627 numbers of beds.

LEGAL ASPECTS OF HOSPITALS IN INDIA

Health care in India features a universal health care system run by the constituent state and territories. Law is an obligation on part of the society imposed by competent authority and non-compliance may lead to punishment in formal fine or imprisonment or both. As the number of the qualified doctors in Indian medical colleges increased, and looking to the increasing population of our country the need of constitution of hospitals and health carrying institution have increase to a large extent for controlling the entrance of candidate in medical colleges and other institutions who are governing the studies of human body. There is a requirement of a law and act which can govern the entire setup therefore a national level statutory body is constituted known as Medical Council in India (MCI) and is governed by the Indian Medical council act 1933. The first legal recognition and registration for the Indian systems of medicine was passed in the year 1938.[5]

A medical profession is a public oriented and noble profession which can survive and thrive only by observance and practice of certain rules of conduct guided by ethical, moral, legal and social value of land. Hence laws governing medical acts of hospitals are formed which are given below:

(i). Laws governing license and certification required by hospital: There are the laws meant to regulate the standards of professional education and training of doctors, nurses, technician and controlling research activities. These laws are

a) Laws governing professional training and research

b) MCI rules for MBBS, PG and internship training

c) National board of examination rules for DNB training

d) CMR rules governing medical research

e) NCI rules for nursing training

f) Ethical Guidelines for Biomedical Research on Human Subjects, 2000

(ii). Indian Evidence Act: This act has three major parts dealing with relevancy of facts, proof and the production and effect of evidence, and eleven chapters(having 167 section) dealing with preliminaries, relevancy of facts, facts which need not be proved, oral and documentary evidence and its exclusion, burden of proof, examination of witness and improper admission/projection of witness.

Some important aspects are sec 45.- Opinion of experts, sec 61.- Proof of contents of documents, sec 62.- Primary evidence, sec 63. - Secondary evidence, sec 159. - Refreshing memory, sec 160. - Testimony to facts stated in document mentioned in sec 159 and sec 162. - Production of documents.

(iii). Law of Torts: Law of torts is the law of compensation of accidents that involve damage of person or property. Blocks' Legal Dictionary defines tort as a private or civil wrong or injury for which a court will provide a remedy in the form of an action for damages.

a) Guiding principles in tort cases: The common law states that any plaintiff, or the injured or aggrieved party, who files suit, must in order to have grounds for compensation, prove these four elements in the case against the person(s) who injured him, or his property, the latter person being called the TORTFEASOR.

(i) That there was an agreement or contract between the tortfeasor and the plaintiff i.e. the tortfeasor had undertaken to treat the plaintiff.

(ii) That the tortfeasor failed to keep the required standard of care i.e. there was failure of the said duty or negligence.

(iii) That there was actual injury and

(iv) That there was a link between the failure to keep standard of care the injury called the proximate cause. The word injury used here is in the legal sense as defined in Sec.44 IPC, and has been qualified above herein to pertain to only body or property.

In medical malpractice (also known as civil malpractice) litigations, the threshold question is the standard of care. Doctors have a duty, as reiterated in the code of ethics of the Medical Council of India to exercise a reasonable standard of care. Patients bring litigation against them thinking that the doctors breached their duty.

The courts ask doctors themselves to set the standard. Thus in such a suit, the plaintiff must provide expert testimony that the standard of care was not met and therefore the doctor was negligent i.e. she/he breached her/his duty to attain a certain standard of care, (it does not mean willful, deliberate, outrageous conduct which come u/s 323 to 338 and 304 A of IPC).

a) Defense of the doctor in tort cases: The concept of medical negligence in causation of injury has been around for nearly 4000 years. The Egyptians lessened the harshness of physician's liability by stating that so long as she/he followed an established method of treating a disease she/he was exonerated from un-favourable results. Roman rules like other modern concepts held the doctor to be not responsible for any malpractice without some types of fault.

(iv). Indian Penal Code 1860 (IPC): Section 52 (good faith), Sec 80 (accident in doing lawful act), Sec 89 (for insane & children), Sec 90 (consent under fear) , Sec 92 (good faith/consent), Sec 93 (communication in good faith)

(v). Consumer Protection Act 1986: With a view to easy, speedy, cheap and summary redressal of complaints involving contractual transactions, the consumer protection Act was promulgated and passed in 1986 with its rules in 1987 followed by the consumer protection (amendment) ordinance in 1993. Through this act, the Government has tried to ensure inexpensive, convenient, practical and expeditious remedy to consumer grievance through its form and commissions.

(i) Consumer Disputes Redressals Forum also called District Forum in each district of the state by a notification from the Government.

(ii) Consumer Disputes Redressals Commission also known as state commission by a notification from Government in each state.

National Consumer Disputes Redressals Commission established by the Central Government by notification

(a) & (b) can only be notified after prior approval of the central government.

a) Compliance of BMW Act. Biomedical Waste (Management and Handling) Rules

These rules were notified on 20th July, 1998 and are applicable to all, who generate, collect, receive, store, transport, treat, dispose off or handle bio-medical waste in any form. Bio-medical waste has been defined as "any waste, which is generated during the diagnosis, treatment or immunization of human beings or animals, or in research activities pertaining thereto or in the production or testing of biological, including categories mentioned in schedule 'A' "

The Act stipulates that it shall be the duty of every occupier of an institution generating bio-medical waste (which includes hospital, nursing home, clinic, dispensary, veterinary institution, animal house, pathological laboratory, blood bank) to take all steps to ensure that such waste is handled without any adverse effect to human health and environment. Occupier has been defined as the person who has control over the institution and/or its premises.

Bio-medical waste has been categorized into 10 categories, and these have to be segregated at the point of generation into different colour coded containers for collection, transportation, treatment and final disposal. The power of granting permission or authorization lies with the prescribed authority of each state/UT.

CONCLUSION

Various provisions are not adopted completely in all hospitals, various violations have been experienced by different hospitals. Major violations are regarding treatment of Bio Medical Waste and Medical Council Of India Guidelines/Rules are not being followed. It is very necessary that the Hospital should follow various legal provisions, so that better Hospital services are provided to the patients. The patients should not be treated as a customer but service motive should be adopted by the Hospitals. Government should take proper measures for getting the legal provisions fulfilled by Government and private Hospitals.

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