



***Medico-legal issues in  
Healthcare Management***



Presented by

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# COMPLAINT *MEANS* (S2(1)(e))

- a) Unfair trade practise or restrictive trade practice has been adopted by any trader
- b) The goods bought by him or agreed to be bought suffer from one or more defect
- c) The services hired by him or agreed to be hired suffer from deficiency (negligence) in any respect

# COMPLAINT *MEANS* (S2(1)(e))

d) trader who charged higher price for goods which was fixed by any authority by law

e) Goods which would be hazardous to life and safety are being offered

# CATEGORIES OF NEGLIGENCE

*(Indian and foreign decided cases)*

1. Medical negligence at the level of Doctor / Para Medical Staff / Hospital authorities. Liability for negligence can be fixed at individual level but vicarious liability is with the owner.
2. Negligence at the level of patient himself or his attendants – contributory negligence.

3. Negligence at the level of manufacturers of drugs, equipment etc.,

4. Composite negligence ie., more than one of the three

**MEDICAL NEGLIGENCE**  
***AT DOCTOR'S /***  
**HOSPITAL LEVEL**

1. Professing / holding out / performing beyond level of competence
2. Failure to attend or treat
3. Errors in diagnosis
4. Failure of advice and communication
5. Errors in treatment

...continues



**MEDICAL NEGLIGENCE**  
***AT DOCTOR'S /***  
**HOSPITAL LEVEL**

6. Mental cases
7. Dentists
8. Liability to third parties
9. Vicarious liability

# RES IPSA LOQUITUR

## (**examples**)

- a. Injecting anaesthesia in fatal dosage or in wrong tissues;
- b. Amputation of wrong finger, operation on wrong limb, removal of wrong organ
- c. Operation on wrong patients
- d. Leaving instrument or sponges inside the part of the body operated upon
- e. Leaving tourniquets too long, resulting in gangrene
- f. Transfusing wrong blood
- g. Applying too tight plaster which may cause paralysis

# RES IPSA LOQUITUR (the thing speaks itself)

## Patient

Doctor liable for negligence of his Jr. staff	: Yes
Vicarious liability – Hospital	: Yes
Is failure to write prescription legibly	
Negligence	: Yes
Equipments failure	: Yes
Maintenance and handing over of records	: Yes
Relying only on reports of investigations	: Not

correct

# *Nature of complaints*

- Pre mature discharge
- Post operative wound infection
- Failure to advise properly
- Failure to give proper treatment
- for infection

# *Consumer Protection Act 1986*

# DISTRICT CONSUMER REDRESSAL FORUM (Section 10)

1. Three members including one Chairman, Chairman (Judicial) plus one member District Judge.
2. Cases of Rs.20 lakhs and below
3. Powers of civil court under code of civil procedure 1908

*Appeal* : State Consumer Redressal Commission

*Duration:* 30 days

# STATE CONSUMER REDRESSAL FORUM (**Section 16**)

1. Three members where one judicial member not below the rank of High Court Judge
2. Judgement should have one judicial member plus one member
3. Jurisdiction : State
4. Rs.20 lakhs to 1 crore

*Appeal:* National Consumer Redressal  
Commission , New Delhi

- *Durations:* Thirty Days

5. Have appellant jurisdiction also





1. HOW TO REPLY THE COMPLAINT RECEIVED FROM THE PATIENTS.
2. HOW TO CONDUCT CONSUMER CASE BEFORE THE CONSUMER FORUM
3. APPEAL PROVISIONS IN LAW IF WE LOOSE A CASE BEFORE THE FORUM.

*How to win  
Consumer Cases  
before a Court of Law*

- Consent
- Medical Records
- Contributory Negligence

# Consent - Definition

- Consente – French
- CONSENTIRE – Latin
- 'Co' – together; 'Sentire' – feel

## ■ Law

- TWO or more persons are said to consent when they agree upon the same thing in the same sense
  - (sec. 13 Indian Contract Act)

# Genesis of consent in Medical Practice

- a) The Principle of mutual TRUST and understanding and Fiduciary relationships
- b) The Principle that a person of sound mind has a right to take a decision about what is to be done to or What is to become of his body

# TWO factors in consent

- i) It should be intelligent – Fully understood
- ii) It should be informed – informed of the nature and quantum of risk

# Legal validity of consent

- A) Sound mind
- B) Legally competent
- C) Obtained by free will
- D) Obtained based on correct information – Informed consent

# Defence of Estoppel

- ❖ Definition of ESTOPPEL
- ❖ How Doctrine of Estoppel helps the medical professionals



A vibrant field of flowers, featuring several large red poppies and numerous small white daisies with yellow centers, set against a lush green background. The text "Informed consent" is prominently displayed in the center, rendered in a bold, purple, 3D-style font with a white outline.

# Informed consent

## *Informed consent shall be working:*

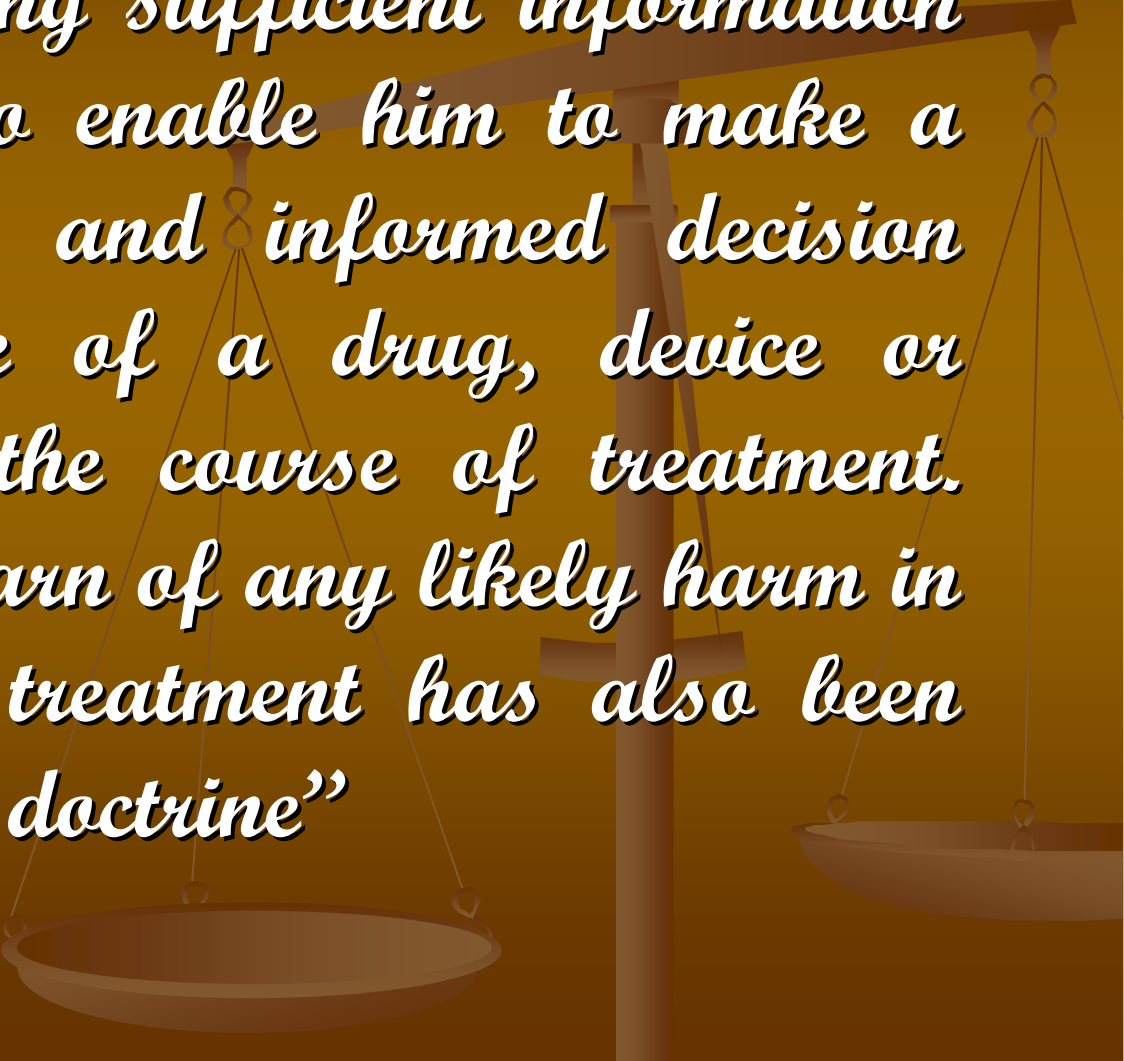
- a) In favour of Estoppel
- b) To revoke fiduciary relationships  
(see 16 of Indian Contract Act 1872)

*It should contain consent given to a  
Doctor by a patient with ingredients of:*

- a) Knowing possible consequences
- b) Having knowledge of possible risk
- c) Future benefits

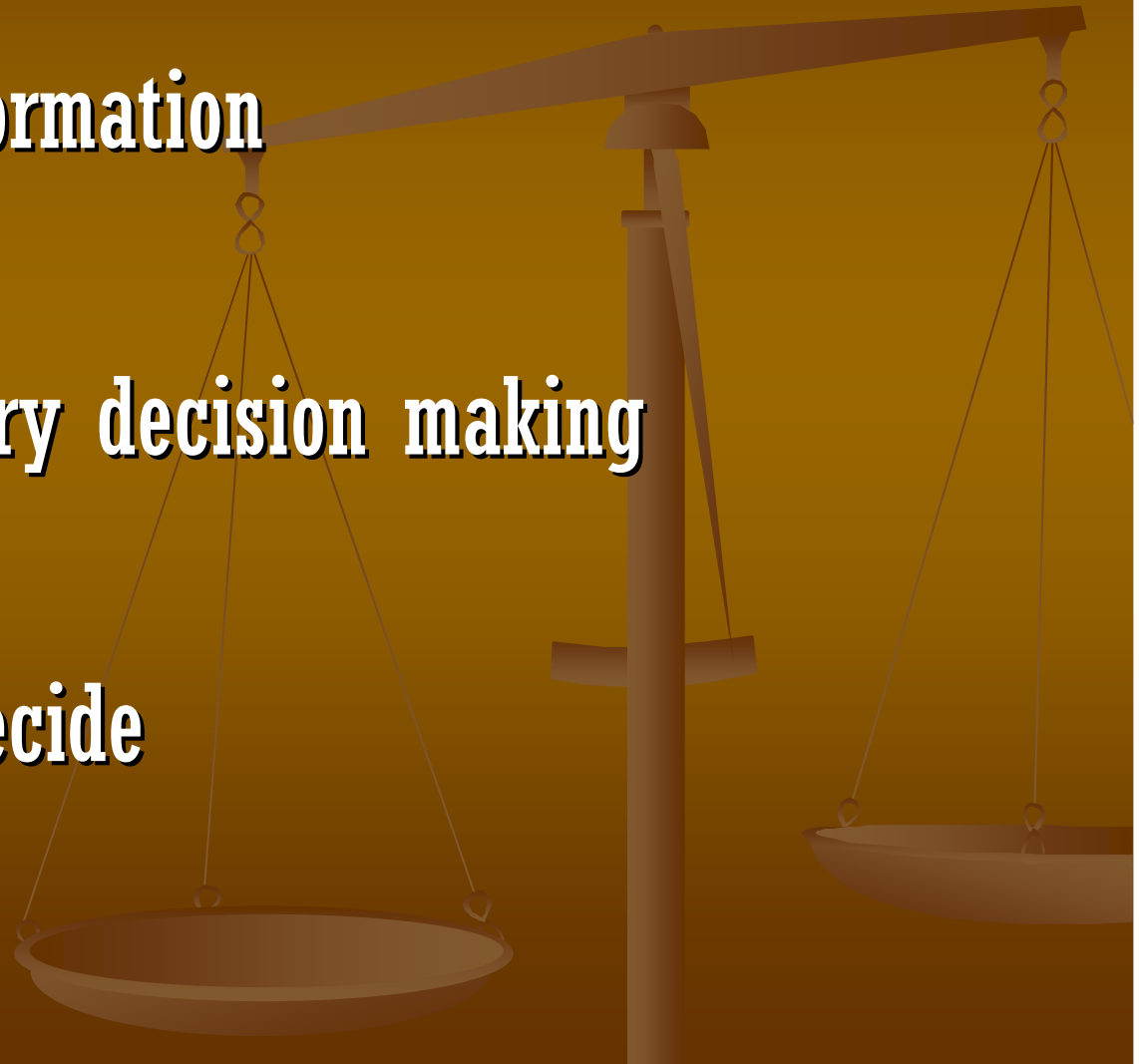
# Doctrine of Informed Consent

*"It aims at giving sufficient information to a patient to enable him to make a knowledgeable and informed decision about the use of a drug, device or procedure in the course of treatment. The duty to warn of any likely harm in the course of treatment has also been included in the doctrine"*



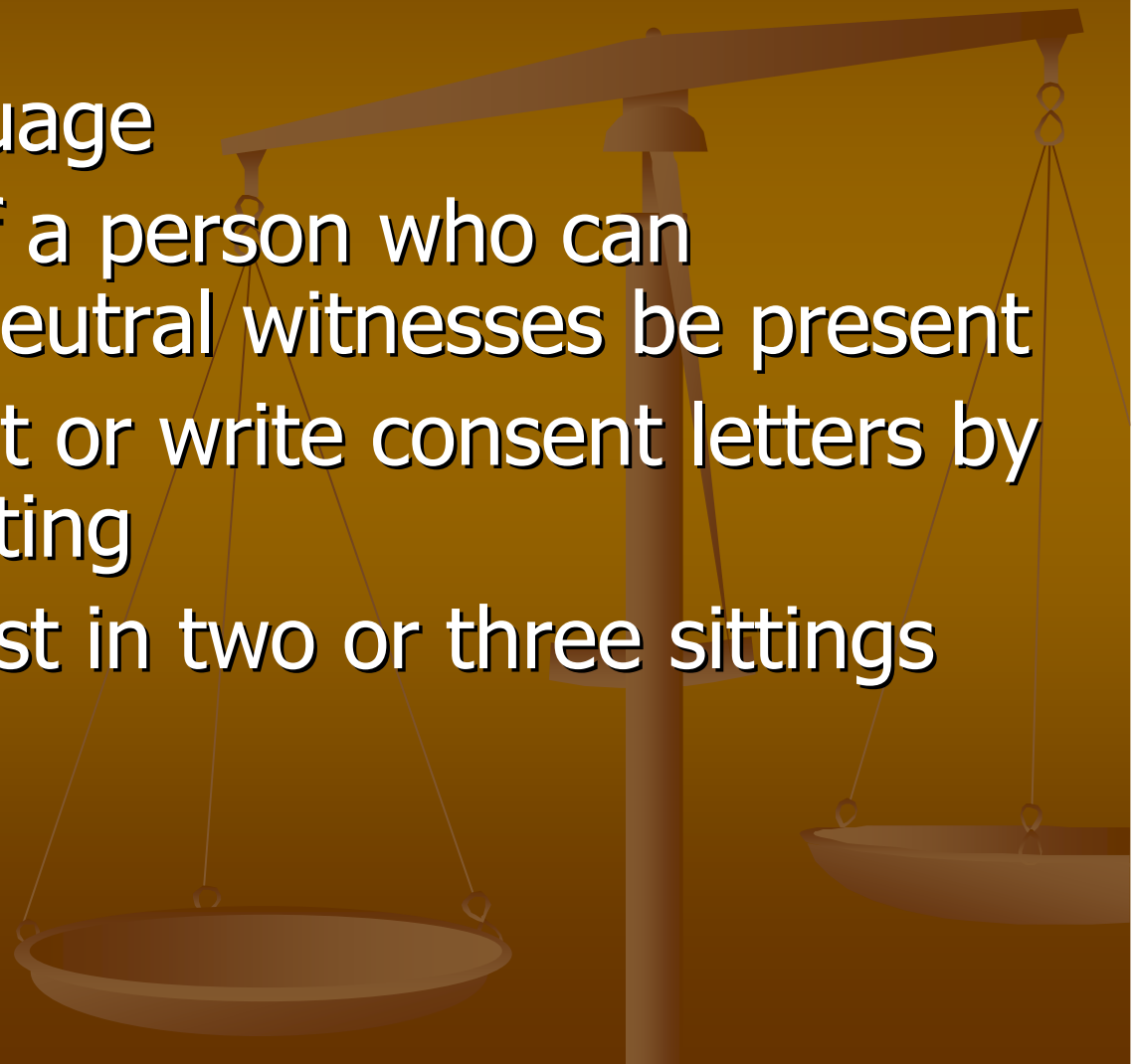
# Components of Informed consent

- **Disclosure of Information**
- **Free and voluntary decision making**
- **Competence to decide**



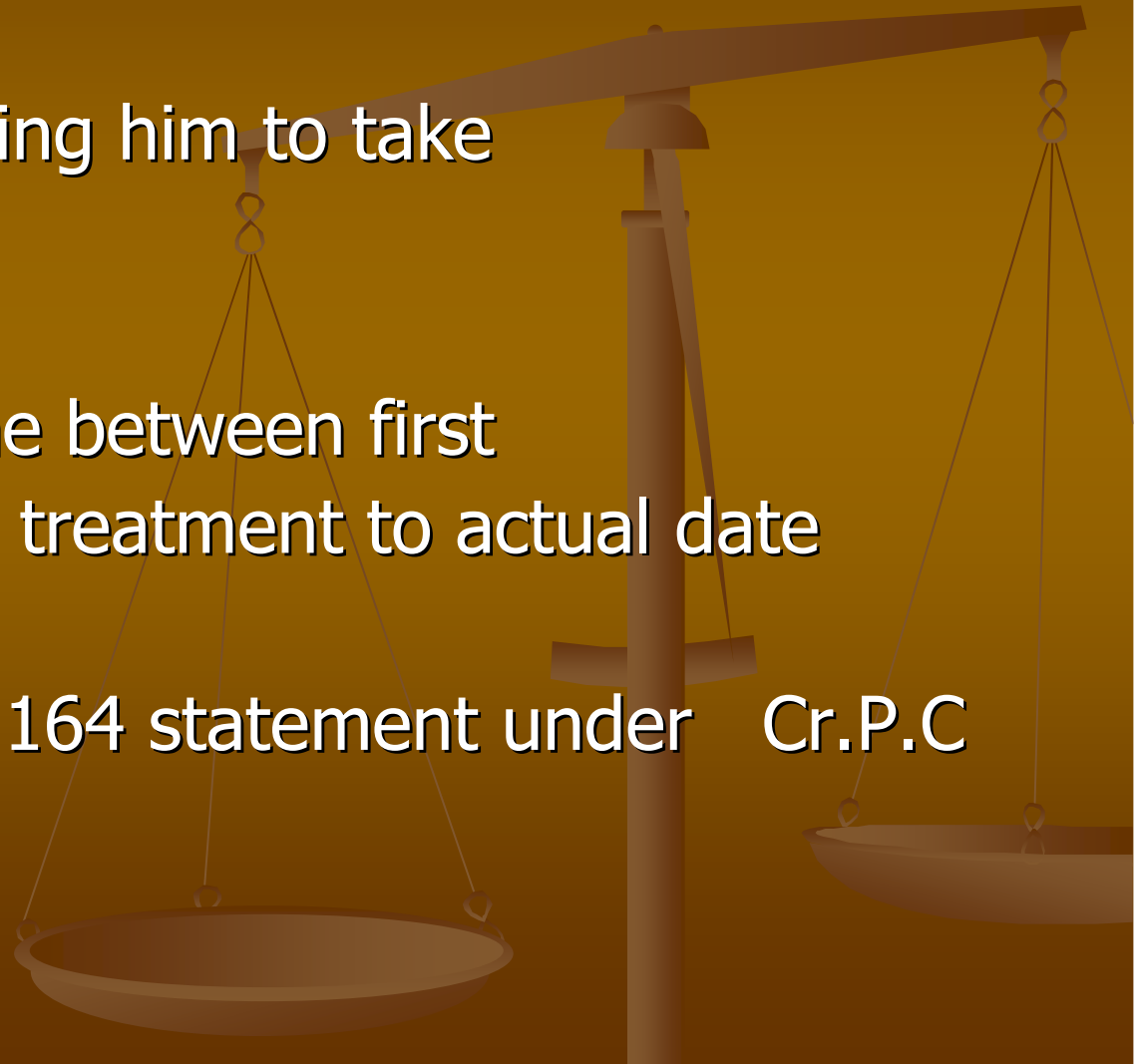
# Disclosure of Information

- By their own language
- In the presence of a person who can understand – let neutral witnesses be present
- Ask them to repeat or write consent letters by their own handwriting
- Inform them at least in two or three sittings

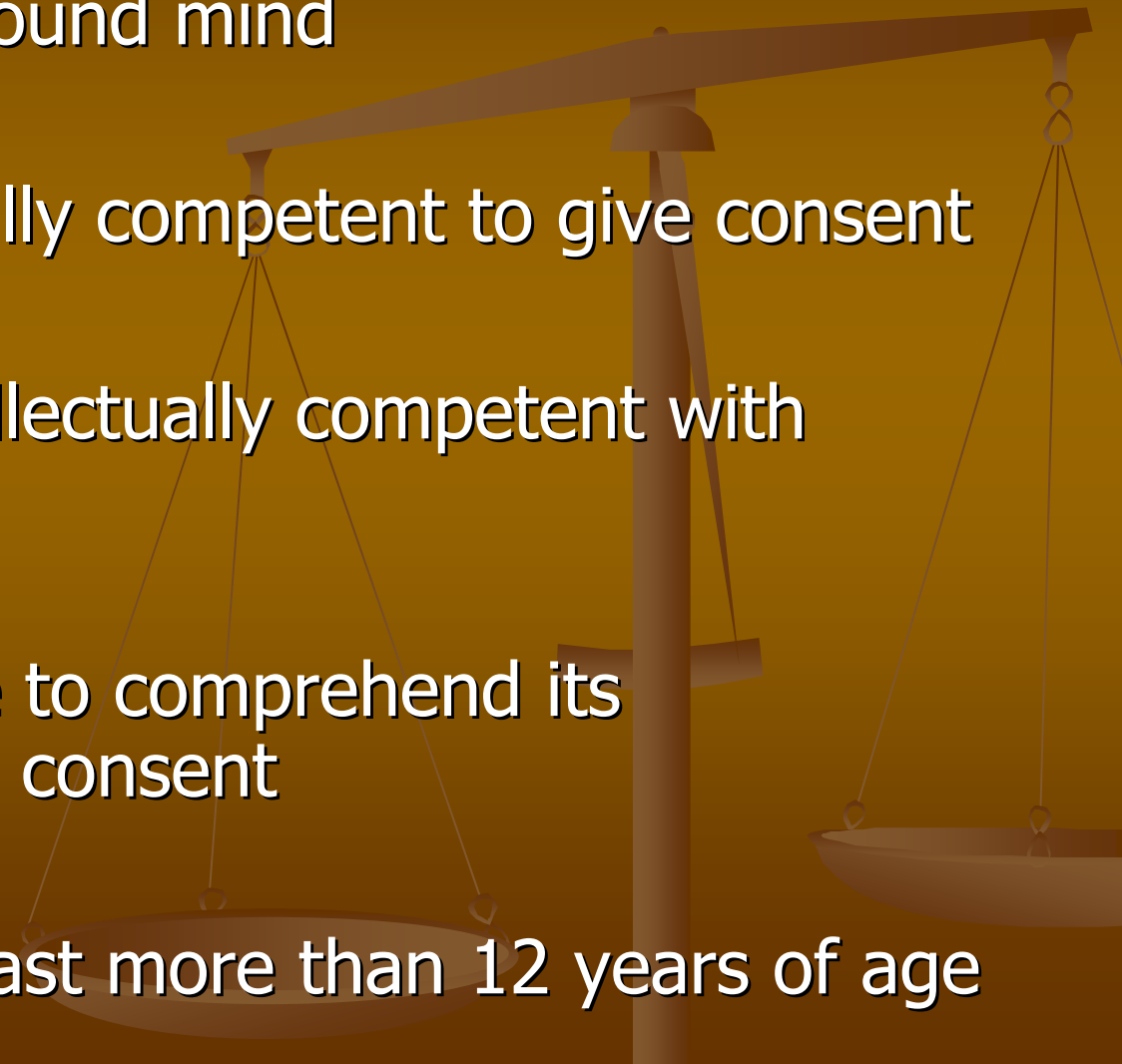


# Free and Voluntary Decision Making

- ❑ Give him sufficient time
  - ❑ No call letters asking him to take decision
  - ❑ Give sufficient time between first information about treatment to actual date of the research
- Magistrate taking 164 statement under Cr.P.C



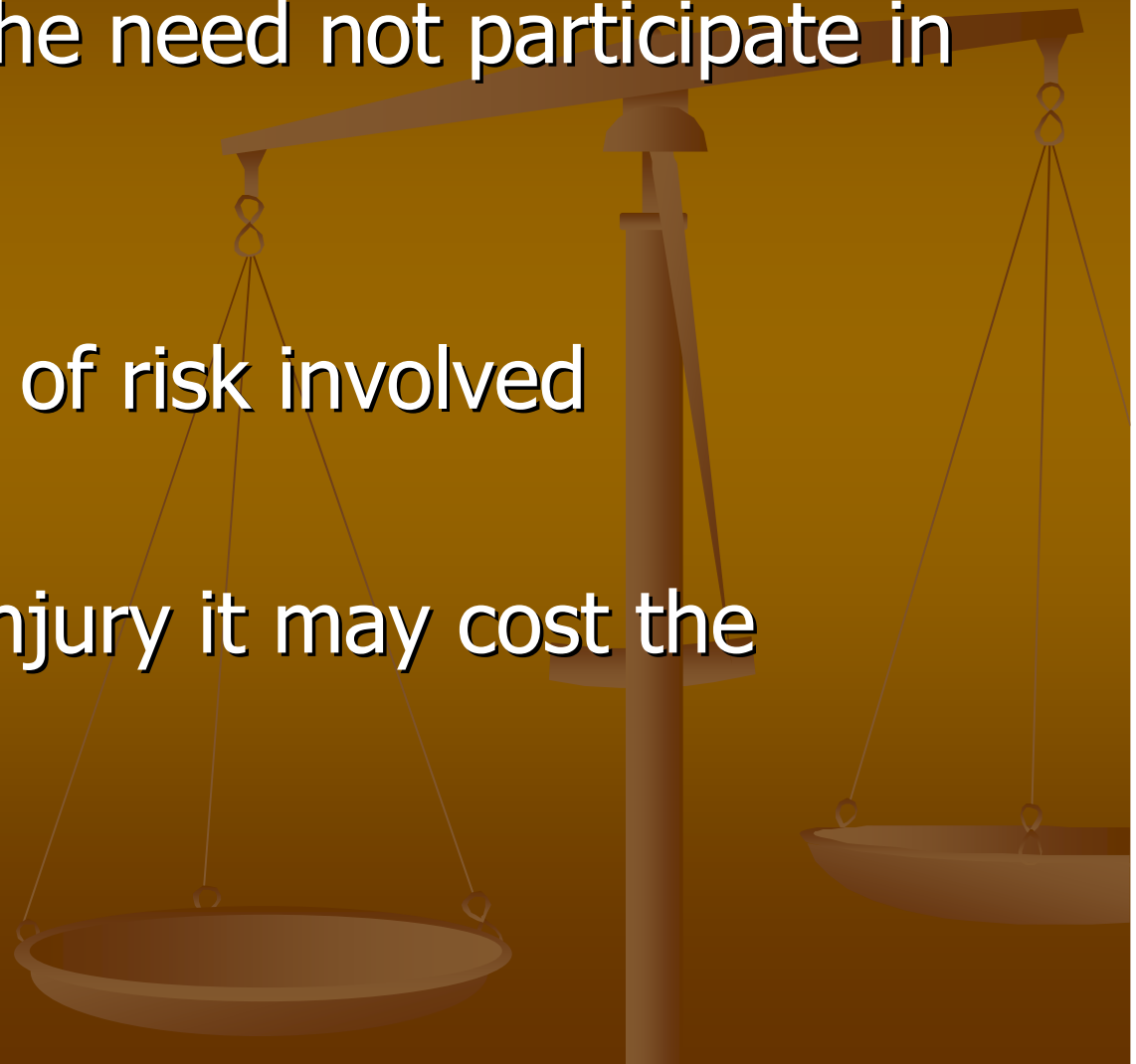
# Competence to decide

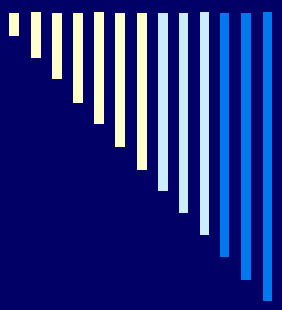
- He should be of sound mind
  - He should be legally competent to give consent
  - He should be intellectually competent with reasoning
  - He should be able to comprehend its implications of his consent
  - He should be atleast more than 12 years of age
- 



# Disclosure

- ✓ Disclosure that he need not participate in the research
- ✓ The percentage of risk involved
- ✓ The damage / injury it may cost the patient

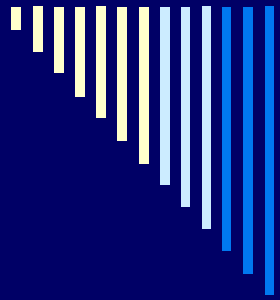




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# Medical Records

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Necessity for proper Medical Records

ARISES from

***Bolam Test***



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# Bolam Test

Due care test.

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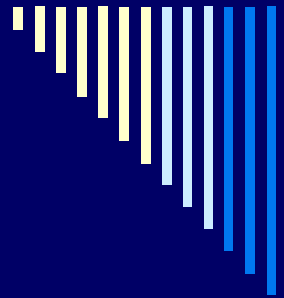
## **BOLAM TEST**

Bolam Vs. Frien Hospital  
Management Committee

Mc Nair. J.

It became a settled law

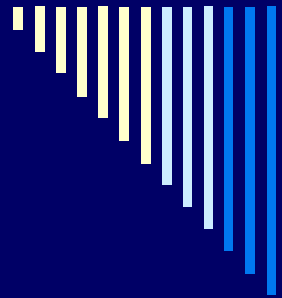
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## BOLAM TEST

Bolam – Patient – Electro Convulsive  
Therapy – danger of fracture – sustained  
fracture – Too use of drugs as relaxant –  
manual support for lower jaw

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## **Medical Records speaks before the Court by,**

- a. Explaining the condition in which a patient was admitted in the Hospital.
- b. Systematic diagnostic tests conducted and their results.
- c. To prove treatment procedure was decided on the basis of Diagnostic Test and NOT from extraneous consideration.

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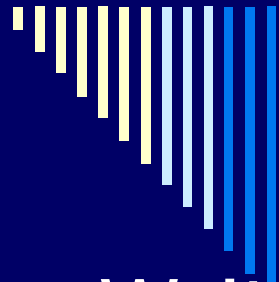
## **Medical Records speaks before the court by**

- d. The quantity and quality of drugs prescribed;
  - e. The Nursing care given to a patient by Nursing staff.
  - f. Post-operative and post-discharge advice given and recorded by hospital.
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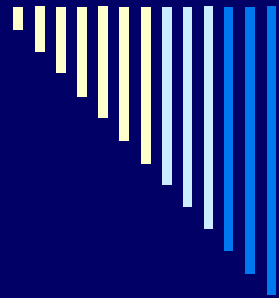


A photograph of two medical professionals, a man and a woman, both wearing white lab coats. They are standing in a clinical or office environment, looking down at a large document or chart they are holding together. The man is on the left, and the woman is on the right. The background shows a wall with a clock and some medical equipment. The text is overlaid on the image in a large, yellow, stylized font with a blue outline.

*Where discrepancies arise in  
Medical Records*



1. Writing wrong dates, even years while doctors are busy;
  2. Writing the name of medicine wrongly, which would be understood in another sense by another staff and acted upon, resulting composite negligence, which is likely to go against the hospital.
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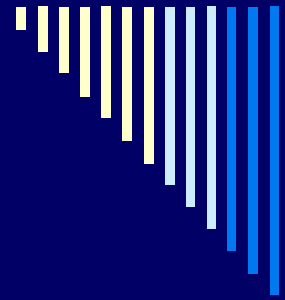


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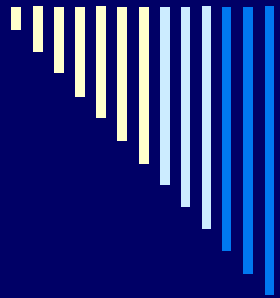
3. Omission to record vital information in the Medical Records.

4. Failure to record properly ie., nurses record one fact in one way and doctors write the same subject just opposite way – paving way to judicial intervention.

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5. Recording certain facts in inappropriate wording, especially in Medico-legal cases.
  6. Omission to note down anything which has not been followed by the patient to make it a **Contributory negligence** by the patient, which is in favour of the hospital.
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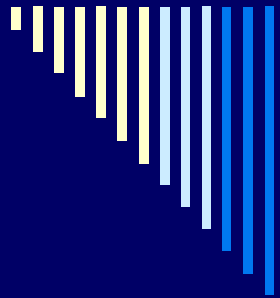


## *Example : 1*

In Emergency & Casualty department, a few doctors write, while preliminary notes

***"He has met with road accident, where a two-wheeler hit him while he was walking"***

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# *Example : 2*

*"This girl has been molested  
badly by her class-mate"*

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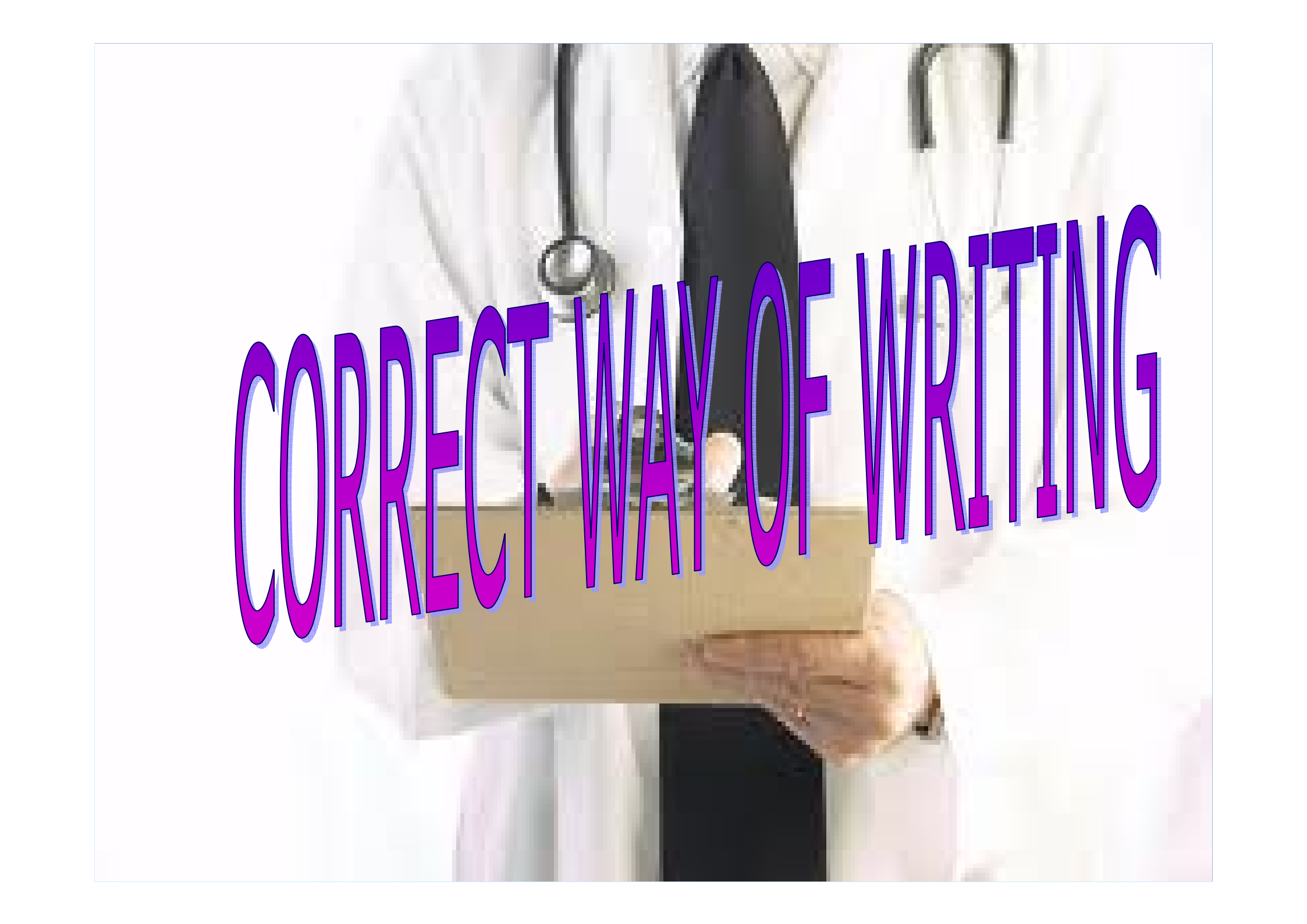
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## *Example : 3*

***“He was hit by a lorry while he was riding in a two-wheeler wrongly”***

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CORRECT WAY OF WRITING



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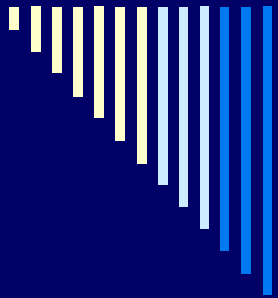


*"Alleged to have met with a road accident"*

OR

*"According to Mr. Shanmuga Sundaram,  
who accompanied the unconscious  
patient, he met with a road accident"*

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*“Alleged to have been subjected to sexually assaulted by somebody – not known to victim”*

OR

*“According to victim, she was sexually assaulted by her class mate Ramesh”*

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# CONTRIBUTORY NEGLIGENCE

1. Record the adverse contribution of the patient in
    - Food
    - Habit
    - Conduct
    - Record the accident or incident of the patient
    - Result of such incidents / accidents
    - Contributory effect of aggravating the existing disease.
-



# RECENT TRENDS



1. The Sexual Harassment of women at  
Workplace

(Prevention, Prohibition and Redressal Act,  
2013).

2. Protection of children from sexual offences Act,  
2012

3. Surrogacy law

4. Clinical Establishment (Registration and Regulation) Act, 2010

5. Latest judgment in Consumer cases

6. Judgment in Labour Cases.

# Part - I



**THE SEXUAL HARASSMENT  
OF WOMEN  
AT WORKPLACE  
(PREVENTION, PROHIBITION AND REDRESSAL)  
ACT, 2013.**

- The Sexual Harassment of Women At Work Place, Act 2013 came into force on April 22,2013.
- It replaced the *Vishaka* guidelines of the Supreme Court.

# Objective of the law

- No women shall be subject to sexual harassment at any work place

# Sexual harassment

- ❖ physical contact and advances; or
- ❖ a demand or request for sexual favors; or
- ❖ making sexually colored remarks; or
- ❖ showing pornography
- ❖ any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

# Workplace

- Any department of Government
- All Private organizations.
- Hospitals and Nursing Homes.
- Any place visited by the employee arising out of or during the course of employment including transportation provided by the employer for undertaking such journey.

# Behavior of sexual harassment

- Implied or explicit promise of preferential treatment in job, threat of detrimental nature and threat to job.
- interference with her work or creating an intimidating or offensive or hostile work environment.
- humiliating treatment likely to affect her health or safety

# ***Constitution of Internal Complaints Committee***

Senior level woman employee	– 1 Chairman
Two members from employees	- 2 Members
One member from NGO	- 1 Member

Note: At least one-half of the total members shall be woman nominated

# Duration of office

- Three years for members nominated from employees
- Member from NGO may be nominated by employer on specific duration with specific honorarium.



# **Time limit for adjudication of complaint**

- A complaint of sexual harassment can be filed within three months
- The ICC may receive a complaint even after three months of occurrence, if it thinks fit.

# Provision for Conciliation

1. ICC may settle the dispute through conciliation.
2. This option will be used only at the request of the women
3. No monetary settlement through conciliation.

# Completion of Enquiry

- ❑ To lodge a complaint = 3 months
- ❑ To forward a complaint to police, if it feels a fit case = 7 days
- ❑ To conduct an enquiry and complete the process = 3 months
- ❑ To submit the report to the employer after completion of enquiry = 7 days
- ❑ The employer shall be pass an orders on it recommendation with in =2 months

## **Recommendations by ICC**

- **it shall recommend to,**
  - **to take action against the delinquent as per the Service Rules.**
  - **To deduct salary of the delinquent, such some to consider appropriate to be paid to the aggrieved woman.**

# **Powers, jurisdiction and status of ICC**

- The ICC may recommend to the employer
- to transfer the aggrieved woman or the respondent to any other place.
- to grant leave to the aggrieved woman upto a period of three months.
- to grant such other relief to the aggrieved woman as may be required
- to leave granted to the aggrieved woman under this Section shall be in addition to the leave she would be otherwise entitled.
- to order deduction of wages from the perpetrator and paid to the aggrieved woman employee on the basis of her condition.

- The ICC shall have the same powers as are vested in a Civil Court under code of Civil Procedure, 1908. It may -
- summon and enforce the attendance of any person and examine him under oath;
- require the discovery and production of documents.
- Require any other matter, which may be prescribed.
- enforce its orders by issuing Recovery Orders under the provisions of Arrears Of Land revenue to the District Collector.

# Calculation of compensation to aggrieved woman

While determining the quantum of compensation, the ICC shall take into consideration:

- the mental trauma, pain, suffering and emotional distress caused to the aggrieved woman;
- the loss in the career opportunity.
- Medical expenses incurred.
- The income and financial status of the respondent. (Delinquent)
- Feasibility of such payment in lump sum or installments.

# False Complaint

- o If the ICC, after enquiry finds that the aggrieved woman has made false complaint, it may send a report accordingly to the employer.
- o If the complaint is false with malicious intent the complainant can be penalized as per the service rules
- o Mere inability to prove the case will not attract penalty



## Appeal Provision

If the women employee is aggrieved for non-completion of recommend

OR

If the delinquent employee is aggrieved for implementation of recommendation

They may approach Labour Court

## **Duties of employer**

- Adequate displays made by employer about the penal consequences and the Constitution of Internal Complaints Committee.
- In regular intervals, organize workshops and awareness programmes for the ICC. members and other employees of the organization.
- Provide the facility to the member of ICC for doing proper enquiry.

- Assist to secure the attendance of the respondent and witnesses.
- Make available such information to the ICC for adjudication of such complaints.
- To bring appropriate provision in the Staff Service Rules.
- To monitor timely submission of reports by ICC.

# **Third Party Harassment:**

The employer will take all steps necessary and reasonable to assist the affected person in terms of support and preventive steps.

# Penalty for employer

- Rs.50,000/- for fine;
- One Lakh for consecutive occurrence
- Cancellation of his license or withdrawal of permission or non-renewal or cancellation of registration

- He shall be punished with fine up to **fifty thousand rupees;** if repeated **one lakh rupees**
- besides cancellation of his license /non renewal or cancellation of registration, which may be required to carry on his business.

# The Law recognizes

- Gender equality under article 14 of Constitution of India
- The right to life and live with dignity under article 21 of the constitution
- Which includes a safe environment free from sexual environment

THE CRIMINAL LAW  
AMENDMENT ACT, 2013 (NO.  
13 OF 2013)

This Act is TO ensure  
women's safety in public  
places



# SEC 357C TREATMENT OF VICTIMS

- All hospitals(Public or Private) are required to provide free medical treatment or first-aid to the victims of any sexual offences and immediately inform the police.
- **In existing Law – No specific provision**

# Part - II

# **The protection of children from sexual offences act, 2012 (32 of 2012)**

## OBJECTIVES

An act to protect children

(i) From offences of sexual assault

(ii) From sexual harassment

(iii) From Pornographic

# Part - III



# SURROGACY LAWS



# Ending discrimination in surrogacy laws

## Debarring single persons and foreign nationals from being parents will amount to rewriting laws which have been enacted by Parliament

Anil Malhotra

Recent meetings on March 6 and 7 of departments and ministries of the Government of India, to discuss and review divergent views on the draft Assisted Reproductive Technology (Regulation) Bill, 2013 (ART Bill), have resulted in a proposal to revise the Bill with significant changes. The most crucial proposal is to restrict surrogacy in India to "infertile Indian married couples" only. Non-resident Indians (NRIs), Persons of Indian Origin (PIOs) and Overseas Citizens of India (OCIs) would be eligible but foreigners, unless they're married to Indian citizens, will not. The purpose of this is to prevent exploitation of Indian women who may be tempted to take the risk of surrogacy in the face of financial hardships.

### Existing policy

The Indian Council of Medical Research (ICMR), working under the Ministry of Health and Family Welfare (MoHFW) finalised the National Guidelines for Accreditation, Supervision and Regulation of ART Clinics in India in 2005 after extensive public debate across the country involving all stake holders. Under these guidelines, there was no legal bar for the use of Assisted Reproductive Technology (ART) by a single or an unmarried woman, and the child born would have legal rights on the woman or man concerned.

Thereafter, the draft ART Bills of 2008, 2010 and 2013, stated to be revised based on the recommendations of the Ministry of Law and Justice, have consistently proposed that ART in India would be available to all persons including single persons and foreign couples. The draft Bill 2013, an exhaustive document containing 100 sections addressing various issues relating to ART, is stated to now be 'Top Secret,' being a part of the Cabinet note as per the requirement and procedure of the handbook of the Cabinet Secretariat on Cabinet writing notes. The draft Bills and Rules of 2008 and 2010 were extensively circulated for public opinion, besides being sent to State governments, institutions, statutory bodies, NGOs, medical professionals and other stakeholders, but the 2013 Bill was not circulated or placed in the public domain.

The Supreme Court judgment in *Baby Manji Yamada vs Union Of India* case in 2008 took due notice that in cases of "commercial surrogacy," an intended parent may be a single male. The Court



**TEST CASE:** The Supreme Court in *'Baby Manji Yamada vs Union Of India'* took due notice that in cases of 'commercial surrogacy,' an intended parent may be a single male. Picture shows Japanese baby Manji Yamada in Jaipur in 2008. — PHOTO: AFP

had the occasion to consider the petition of a Japanese grandmother wanting issuance of a travel document for her Japanese divorced son's daughter.

In another matter decided by the Gujarat High Court in *Jan Balaz vs. Union Of India*, 2009, the decision of the High Court holding — that babies born in India to gestational surrogates are Indian citizens and are entitled to Indian passports — has been stayed by the Supreme Court. However, the twin German children in the case were permitted to leave India upon the directions of the apex Court.

The main issue of nationality and citizenship, being of grave importance, is still undecided.

The Ministry of Home Affairs (MHA), according to the guidelines of July 9, 2012, restricted

surrogacy to foreign nationals; i.e. a man and a woman married for at least two years would be required to take a medical visa for surrogacy in India. As of now, even though surrogacy is an administrative concern and in the domain of the MoHFW, it has been decided that till the enactment of a law on the ART Bill, 2013, the guidelines issued by the MHA will prevail till then. Hence, foreign single parent surrogacy is barren.

Restricting surrogacy to infertile Indian married couples only, and debarring all foreigners other than OCIs, PIOs and

NRI married couples, is a turnaround in the thought process. The suggestion barring foreigners from commissioning surrogacy in India is stated to be subject to there being no conflict with other Indian laws applicable to foreigners, such as those for adoption. The most important contradiction and inconsistency seems to be that arising from the Guidelines Governing the Adoption of Children, 2011, for inter-country adoptions, which now have statutory sanction by virtue of them having been enacted under the Juvenile Justice (Care and Protection of Children) Act, 2000. The Juvenile Justice Act clearly provides that a court may allow a child to be given in adoption to an individual, irrespective of his or her marital status.

Moreover, the Guardian and Wards Act, 1890 and The Hindu Minority and Guardianship Act, 1956 permit a guardian to be declared or appointed where the Court is satisfied that it is for the welfare of a minor. Barring single parents to adopt is not statutory but can be a restraint in a particular case upon examination by a competent court. Therefore, debarring single persons and foreign nationals from being parents will amount to rewriting laws in existence which have been enacted by Parliament.

### Recent decisions

The Supreme Court in *Stephanie Joan Becker vs State* in 2013 permitted a single 53-year-old lady to adopt a female orphan child aged 10 by relaxing the rigour

of the guidelines of the Central Adoption Resource Authority (CARA). It said the proposed adoption would be beneficial to the child as experts were of the view that the adoption process would end in successful blending of the child in the U.S. Likewise, in *Shabnam Hashmi vs. Union of India*, 2014, the Court upheld the recognition of the right to adopt and to be adopted as a fundamental right. It held that every person, irrespective of the religion he/she professes, is entitled to adopt. The latest verdict of the Supreme Court recognising transgenders as the third gender says "discrimination on the basis of sexual orientation or gender identity includes any discrimination, exclusion, restriction or preference, which has the effect of nullifying or transposing equality by the law or the equal protection of laws guaranteed under our Constitution." Clearly, legal recognition means that they would be entitled to rights of adoption, succession, inheritance and other privileges under law.

The sum and substance is not to shut the door to surrogacy which is an accepted societal practice in India and grown slowly over almost two decades. Medical technology, advancement of science permitting free export of frozen embryos and other scientific methods have offered hopes to childless people. The more pragmatic approach would be to make a law hedged with safeguards, checks and balances. The appropriate and desirable method would be to create a mechanism to judge the suitability of proposed surrogate parents rather than to debar all single and foreign persons. This would also avoid any conflict with existing laws of adoption wherein foreign persons including single parents are allowed to adopt through a strict and rigorous mechanism provided by CARA.

Simply trying to shut out surrogacy for foreign nationals and single persons may not be the ideal way to stamp out the hopes of persons wishing to be a parent. Whether Indians or foreign nationals, law treats persons as individual parents when required. A restrictive meaning to the word "person" cannot qualify or change the definition by restricting it to an Indian national. The celebrated view of the apex court in widening the horizons to prevent discrimination on grounds of sex or gender identity is a new thought process based on international covenants of human rights. We cannot permit our thinking to be retrograde simply because of the problems accompanying surrogacy. Administrators cannot usurp law making functions to be a law unto themselves.

(Anil Malhotra is the author of *Surrogacy in India - A Law in the Making. He is a Chandigarh-based practising lawyer.*)

## **A child born in India for surrogate Mother from an embryo of foreigner shall:**

- Birth certificate with his adoptive father and mother's name (not his surrogate mother's name).
- Shall not become an Indian citizen automatically.
- Shall be issued Travel clearance by Government of India to the Country of its adoptive father and mother.
- Either Adoptive father or mother is adequate.

# *Latest law in Surrogacy laws*

- ❑ Single person can adopt
- ❑ Foreign nationals – single person can be adoptive father/mother for Indian Surrogate Gestational mother.
- ❑ Restriction of age 45 years relaxed.



# Adoption of abandoned child

- May be adopted by a single woman/man
- No religious bar
- No caste bar

Central Adoption Resource  
Authority can give the  
abandoned children of foreign  
adoptive mother/ father.

# Giving Adoption & Taking Adoption by couples by couples

- Now possible only both the couples consenting.
- Only if they belong to Hindu religion
- Christians can get only guardianship privilege.
- Only in Kerala Christians can adopt a child from other couples.

# Sources

**Baby Manji Yameda**

**Vs.**

**Union of India**

**(W.P. (C) NO.369 of 2008) S.C.**

# Sources

*Stephanie Joan Becker*

*Vs.*

*State & Ors.*

**(C.A 1053 of 2013 ) S.C**

# Sources

*Shabnam Hashmi*

*Vs.*

*Union of India & Ors.*

**[W.P. (C) No.470 of 2005] S.C.**

# Sources

*Manuel Theodre D' Souza*

*2000 (3) Bom CR 244*

# Sources

*Philips Alfred Malvin*

*Vs.*

*Y.J. Gonsalvis & Ors.*

*AIR 1999 Kerala 187*



# Part - IV

***The Clinical Establishments  
(Registration and Regulation)  
Act, 2010***

# MAIN OBJECT

An Act to provide

Licensing of Nursing Home and Clinical  
Establishment.

i. Connected matters

For

a. Standardization

b. Achieving improvement

## Section 2 (b)

### Clinical Establishment means

- i. a medical laboratory
- ii. A physiotherapy establishment
- iii. An hospital
- iv. A clinic
- v any other establishment

## Section 2 (c) Clinic means

Any premises having facilities for treatment of sick and used for their reception and not stay.

## Section 2 (d) **Hospital means**

Any premises having facilities for treatment of sick and used for their reception or stay.

## Section 2 (e) **Maternity Home means**

Any premises used or intended to be used for the reception of pregnant women or women for delivery or immediately after child birth.

## Section 2 (f)

### **Medical Laboratory means**

An establishment manned by qualified pathologist and radiologist, where Bio-Medical tests such as Haematology, Bio-chemistry, serological tests, bacteriological, cytology, histology genetic investigations or any other diagnostic test are carried out.



## Section 2 (g) **Nursing Home means**

A place where patients are treated with facilities for admission as inpatient for treatment of illness with or without surgery

.....

## Section 2 (g) **Nursing Home** also includes

Old age Homes and Day Care Centres  
(any intervention, which would require  
observation and ongoing care/monitoring)

## Section 2 (h) **Physiotherapy Establishment** means

An establishment where massaging electro therapy, hydro-therapy, medical gymnastics or any other similar procedures are usually carried out.... Indian System of medicine.

Section 2 (i)  
**Qualified Medical Practitioner**  
means

A medical practitioner registered in any State in India under any law for the time being in force for the registration of medical practitioner.

## Chennai » Health

Published: April 30, 2014 11:56 IST | Updated: April 30, 2014 12:10 IST

### **Doctors seek wider consultations on Act**

Staff Reporter

The medical fraternity has urged the Tamil Nadu government to hold district-wise consultations with professional medical bodies in the State before enacting The Clinical Establishments (Registration and Regulation) Act, 2010.

Representatives of various medical organisations, including Indian Medical Association, Association of Surgeons of India, Association of Physicians of India and those of obstetricians and gynaecologists, paediatrics, cardio thoracic surgeons, cardiology and orthopaedics on Sunday came together for an interactive session on the implications of key aspects of the Act.

The Act aims at registering and regulating clinical establishments run by the government and private sector, except those managed by the armed forces. It has outlined standard treatment guidelines, minimum standards for hospitals and laboratories and a draft template for costs of medical treatment procedures.

M. Arulpitchai Narayanan, chairman of Arma Medical Foundation and organiser of the meeting, said the Union Ministry of Health and Family Welfare did not take into consideration the views of professional medical bodies before coming up with the standard treatment guidelines or minimum standards.

“No two patients are the same. The physician should have supremacy in deciding the treatment. It should be rolled back and all medical associations should be consulted. These guidelines cannot be made mandatory,” he said.

The doctors suggested that establishments should not be dealt as commercial ones and should be provided with reduced power tariff, continuous power supply and reduced statutory payments such as property tax. They also suggested setting up of an exclusive medical tribunal for medical litigations and reimbursing or compensating cost of emergency services rendered free of cost.

# Part . V

*A few settled laws*

consumer



# SPECIAL ATTENTION / LATEST CASE

- *“Dr. Kunal Saha Vs. Dr. Sukumar Mukherjee & Ors.”*
- **A Claim of Rs. 77,76,73,500/- - rare in India  
– TEN TOXIC Epidermal Necrolysis –  
Petition Dismissed  
(2006 CPR – 62)**



**Dr. Kunal Saha**

**Vs.**

**Dr. Sugumar Mukerjee & Ors.**

**(AIR 2010 SC 1162)**

**Rs.5 lakhs awarded as cost**

- 1. Criminal appeal dismissed.**
- 2. Dr. Mukerjee, Dr. B.N. Halder, Dr. Abani Roy Choudhury found to have committed medical negligence.**
- 3. Rewarded back to National Commission for deciding adequate quantum of compensation.**

*Dr. Kunal Saha*

*Vs.*

*Dr. Sugumar Mukerjee & Ors.*

*2012 (1) CPR 154 N.C.*

*Awarded on 21.10.2011*

**(i) Dr. Sukumar Mukerjee : Opposite party – 1**

**Rs.40,40,000 – compensation**

**Rs. 1,50,000 – Cost**

**(ii) Dr. B. Halidar : Opposite Party – 2**

**Rs.26,93,000 – Compensation**

**Rs. 1,00,000 – Cost**

**(iii) Dr. Balram Prasad : Opposite party – 4**

**Rs.26,93,000 – Compensation**

**Rs. 1,00,000 – Cost**

**(iv) AMRI Hospital :Opposite party – 3  
Rs.40,00,000 – Compensation  
Rs. 1,50,000 – Cost**

**(v) To remit these amounts within eight weeks from the date of order, failing which the amount shall carry 12% per annum.**

*Dr. Kunal Saha*

*Vs.*

*Dr. Sugumar Mukerjee & Ors.*

*Awarded on 24.10.2013*

*SUPREME COURT OF INDIA*

# ORDER

**Modified the judgment and order of the National Commission**

- **Dr. Sukumar Mukherjee – Rs.10 lakhs**
- **Dr. Baidyanath Haldar - Rs. 10 lakhs**
- **Dr. Balram Prasad - Rs. 5 lakhs**

•••continues

# AMRI HOSPITAL

- ❖ Enhanced compensation from Rs.1,34,66,000/- to Rs.6,08,00,550/-
- ❖ AMRI Hospital to pay the compensation after deducting the amount fastened upon the doctors.

# 2013 (1) CPR 222 T.N.

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*B. Suvarama Phani*

*Vs.*

*MIOT Hospitals Ltd.*

Death of a patient due to wrong diagnosis of T.B. –  
Master check-up – no indication of disease –  
complainant established the case – Award of 35 lakhs  
plus 5 lakhs and cost with 9% interest.



# 2012 (4) CPR 565 NC

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*Smt. Tilak Chowdry & Anr.*

*Vs.*

*AIIMS, Delhi.*

Section 2 (i) (g), 2 (1) (D) & 21

Once it is shown that due medical protocol was followed, no case of medical negligence is made out.

**Claim of Rs.30,58,923.00 is dismissed.**

AIR 2011 SC 1290

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*Aruna Ramachandra Shanbag*

*Vs.*

*Union of India.*

- ❖ *Voluntary Euthanasia*
- ❖ *Passive Euthanasia*
- ❖ *Non-voluntary Euthanasia*

# Part - VI



**Labour**



2013 (4) LLN 450 S.C.

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*Devendrakumar*

*Vs.*

*State of Uttaranjal & Ors.*

Suppression of information like involvement in criminal case – amounts to moral turpitude – dismissal of Appellant justified.

# 2013 (4) LLN 797 (Raj)

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*Rajasthan Tourism Development Corpn. Ltd.*

*Vs.*

*Presiding Officer, Labour Court*

Involvement in Sexual Harassment – Order of reinstatement given by L.C. set aside.

# New Interpretation

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**Delhi High Court  
2012 (4) LLN 674 (Del)**

Doctors are not “***workman***”

Under Industrial Disputes Act, 1947.

2012 (2) LLN 170 D.B. Ker

---

*Employees Provident Fund*

*Vs.*

*Employees Provident Fund Appellant Tribunal*

Doctors are not employees in a Nursing Home  
– No EPF payable to him.



# Importance of Staff Service Rules

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Punishment not in the Service Rules of the Company/Institution cannot be awarded by the employer.

*Vijay Singh*

*Vs.*

*State of Uttar Pradesh*

2012 (5) SCC 242

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2013 (4) LLN 648 (Jhan)

*Bharat Cooking Coal Ltd.,*

*Vs.*

*Their workmen & Anr.*

Workmen would automatically become employees  
of the Principal employer.

# Importance of License for Contractors

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*Oil and Natural Gas Corporation Ltd.,*

*Vs.*

*Petroleum Employees Union & Ors.*

2011 (5) LLN 580 Bombay

In line with the judgment of the Supreme Court of India, in ***Steel Authority case***, all the contract workers were to be absorbed by the Principal Employer.

ANY DOUBT / CLARIFICATION

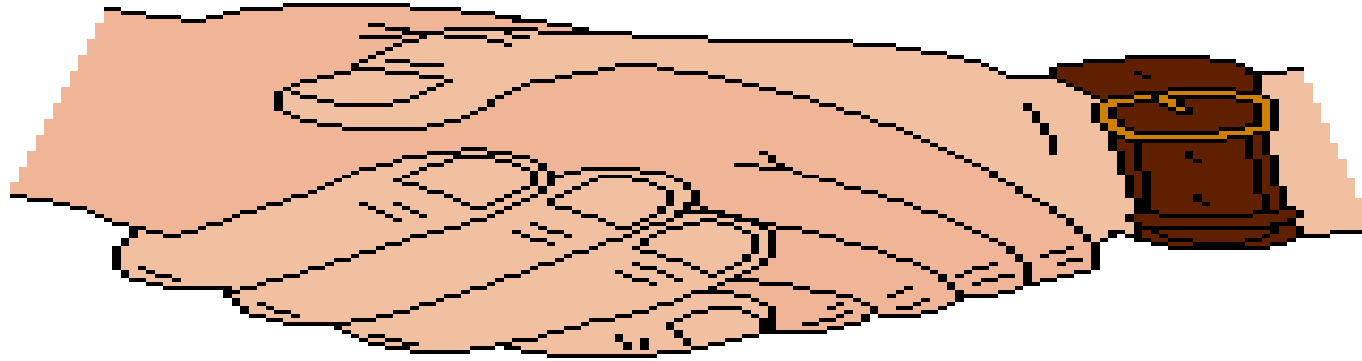
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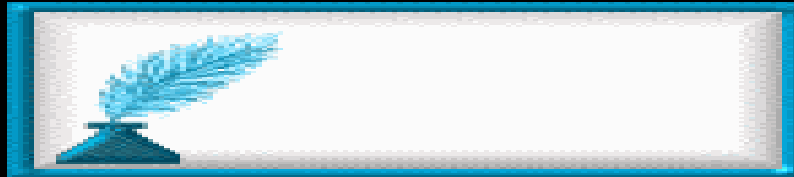
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**God Bless you**

**Hope to see you once again**