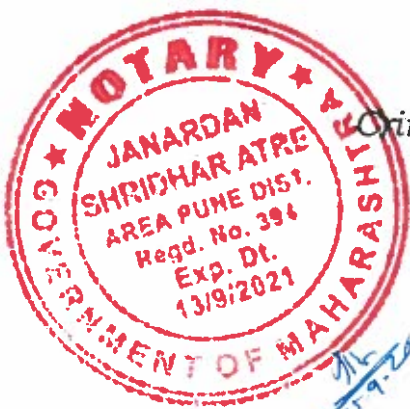


In the High Court of Judicature
at Bombay

[Criminal Appellate Jurisdiction]

Criminal P.I.L. (E-Filing) No. _____ of 2020

From District: PUNE



15.9.20
JK

(2)

IN THE MATTERS OF:

Article 226 of the Constitution of
India

AND

Article 19(1)(g) and Article 21 of
the Constitution of India

AND

The Maharashtra Medicare
Service Persons and Medicare
Service Institutions (Prevention of
Violence and Damage or Loss to
Property) Act, 2010

AND

Non-effective implementation of
the Maharashtra Medicare Service
Persons and Medicare Service
Institutions (Prevention of
Violence and Damage or Loss to
Property) Act, 2010

AND

Issuance of guidelines for
effectively curbing violence
against medical professionals



Dr.RAJEEV DIGAMBAR JOSHI)
Medical Practitioner, aged about 60 years)

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(3)

Residing at Shree J Bungalow, 13/1/98)
Sukhasagar Nagar, Katraj, Pune 411046) Petitioner
(Mobile No.98220 84614))
PAN ABDPJ4339D)
e-mail "rajeevdjoshi@gmail.com")

v/s

1. The Chief Secretary, State Govt.)
Govt.of Maharashtra, Mantralaya)
Mumbai 400032)
2. The Additional Chief Secretary to the)
State Government (Home), GOM)
Mantralaya, Mumbai 400032)
3. The Principal Secretary,)
Law & Judiciary Department, GOM)
Mantralaya, Mumbai 400032)
4. The Principal Secretary)
& Rememberancer of Legal Affairs)
Law & Judiciary Department, GOM)
Mantralaya, Mumbai 400032)
5. The Director General of Police)
for the State of Maharashtra)
6. The Secretary, Public Health Deptt.)
7. The Secretary, Finance Department)
8. The State of Maharashtra) Respondents
9. The Secretary, Ministry of Home)
Affairs, Govt. of India)



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10. The Secretary, Ministry of Health)
& Family Welfare, Govt. of India)
11. The Union of India)

To,
The Hon'ble the Chief Justice
and Companion Hon'ble Judges
of High Court, Mumbai

Humble Petition of the Petitioner above named:

MOST RESPECTFULLY SHOWETH AS UNDER:

01. The Petitioner is a citizen of India. He is a medical practitioner, registered with Maharashtra Medical Council, vide No 51010. He completed Post Graduation in M.D. Paediatrics from B J Medical College, Pune. He is practising medicine since 1987. His mobile number, e-mail ID and PAN have been mentioned in the cause title of this P.I.L. He is holder of Aadhaar Card and is willing to furnish its details, if this Hon'ble Court so demands. By way of this P.I.L. he is praying to this Hon'ble Court that guidelines be framed and directions be issued to the Respondents to implement those guidelines in order to protect medical professionals and institutions from mob violence at the behest of the friends and relatives of the patients. Insufficient protection



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to Medicare Service Institutions and Medicare Service Personnel is serious violation of their Right to Practice Medical Profession, without any hindrance and also their Right to Life. The Respondent No.1 is the Chief Secretary to the State Govt. of Maharashtra. He is the Administrative Head of the Respondent No.8 State. The Respondent No.2 is the Additional Chief Secretary to the State Government, Home Department and the Respondent No.3 is the Principal Secretary, Law & Judiciary Department. The Respondent No.4 is the Principal Secretary & Rememberancer of Legal Affairs, Law & Judiciary Department. The Respondent No.3 is responsible for looking after the legal affairs and the Respondent No.4 is concerned with legislative drafting of the State Government. The Respondent No.5 is the Director General of Police. The Respondent Nos.2 & 5 are responsible for maintenance of law and order in the State of Maharashtra. The Respondent No.6 is the Secretary, Public Health Department. This Department is concerned with administration of health care to the people. The Respondent No.7 is the Secretary, Finance Department. This Department is impleaded through its Secretary



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because rest of the Respondents cannot take any decision, having financial implications without consulting this department. These Respondents function under the Respondent No.8, who is the State of Maharashtra. The Respondent No.9, Ministry of Home Affairs of the Central Government, is concerned with the law and order throughout the country. This Department is impleaded because of the view expressed by it that no special protection is necessary for medical professionals. The Respondent No.10 is the Ministry of Health and Family Welfare, who proposed to pass central legislation for protection of medical professionals and institutions. The Respondent Nos.9 &10 function under the Respondent No.11, the Union of India.

02. The Petitioner's name, complete postal and e-mail address, phone number and PAN are mentioned in the cause title of this petition. The Petitioner is a medical practitioner. He has filed this Public Interest Litigation (P.I.L.) espousing the cause of the medical professionals, as also of the general public. The Right to Life of the general public very much depends upon Right to Life of the Medicare Service



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Personnel. The Petitioner has not filed any civil, criminal or revenue litigation, nor any such litigation is pending against him. The Petitioner is aggrieved in public interest against the violence against medical professionals. This has adverse effect not only against the medical professionals, but also the general public is the sufferer. As a medical professional, the Petitioner has *locus standi* to file this Public Interest Litigation. He is also one of the beneficiaries if this Hon'ble Court accepts this PIL, both as Medical Practitioner and as a member of general public. However, given the importance of the issue involved in this PIL, this aspect may not come in the way of the Petitioner in maintaining this petition.

03. The Petitioner had filed a Public Interest Litigation, Writ Petition No.4277 of 1987, challenging admission given to the son of the then Dean of the B.J. Medical College, on secretly and illegally created extra seat by making misstatements in the court in WP 25/1987. He had succeeded in the said Writ Petition. The Petitioner started his own hospital in 1994 and since then, he has conducted more than 50 preventive health care camps of various kinds under the banner of his "Shree J Hospital". Thousands of



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patients have been benefitted by his Cervical Cancer Detection Camps, Oral Re-hydration Solution Camps, Immunisation Camps, etc. It is pertinent to note that these camps are conducted by the Petitioner on his own and without any sponserer.

04. Additionally, the Petitioner has informally helped several patients in their complaints regarding medical negligence and has also helped his fellow professionals against such complaints. Currently, he is studying in Y.C. Law College in the third year of Three Years' Law Course. He published a paper entitled, "Consumers, Courts and Doctors" during National Seminar on Contemporary Challenges in Consumer Protection. The Petitioner was actively associated with Indian Medical Association, Pune Chapter (2014 to 2017) as a Chairman of e-Communication Cell of IMA Pune.

05. The Petitioner undertakes to pay costs, if ordered by this Hon'ble Court, if it is ultimately held that this PIL is frivolous and has been filed for extraneous consideration or that it lacks *bona fides*. He undertakes that he will disclose the source of his information leading to the filing of this Public



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Interest Litigation, if and when called upon by the court, to do so. The Petitioner adds that this PIL is based upon Petitioner's personal information, which is in public domain. Nothing stated in the petition is within his exclusive knowledge, which requires express disclosure of his source of information.

06. The following issues are involved in this PIL.
- (A) The provisions of the Maharashtra Medicare Service Persons and Medicare Service Institutions (Prevention of Violence and Damage or Loss to Property) Act, 2010 are inadequate to curb the menace of violence against the medical professionals and institutions.
- (B) It is essential that this Hon'ble Court may fill the gaps in the prevalent law and issue guidelines to be observed by the Respondent Nos.1 to 8 to effectively prevent the violence against medical professionals and institutions.
- (C) It is essential that the Government forms a Committee of Experts to look into - Definition of medical accident and possibility of medical accident insurance.



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**The Magnitude of Violence against
Medical Professionals and Institutions:**

07. Unfortunately, the violence against medical professionals is global phenomenon. According to World Health Organization, about 8-38% healthcare workers suffer physical violence at some point in their careers. However, it is more acute in our country. Hereto annexed and marked as **EXHIBIT "A"** is copy of the relevant portion of October 2017 issue of Indian Journal of Pediatrics. It is disheartening to note that as per this article, India seems to lead the world in violence against doctors. According to IMA, 75 per cent doctors have experienced violence at some point in their career. Irked by the death of his pregnant wife due to alleged negligence during operation by a woman surgeon at the government medical college hospital, her husband murdered the doctor at her clinic in 2012. **EXHIBIT "B"** is copy of news item reporting this incident which could have been one of the worst possible incidence of violence. Affidavit of Dr. Navarange, Senior Medico-legal Expert from Pune throws much light on this sorry state of affairs. This affidavit is annexed hereto as "**EXHIBIT C**".



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08. The Constitution of India guarantees Right to Practice any Profession. Medical profession is no exception. It is only subject to the reasonable restrictions, mentioned in Article 19 (6) of the Constitution. The said sub-article only permits the State to lay down professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business or the carrying on by the State or by State owned Corporation any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise. The Petitioner states that in case of medical professional, the State run hospitals, private hospitals and individual medical professions, work complimentary to each other. The Constitution also guarantees Right to Life under Article 21 of the Constitution of India. The Supreme Court has widened the scope of Article 21, bringing within it various aspects of life. It is trite law that right to life does not mean merely right of animate existence, but it means right to live meaningful life. In State of Punjab v/s Mohinder Singh Chawla (1997) 2, SCC, 83, it is recognised that right to health is part of right to life.

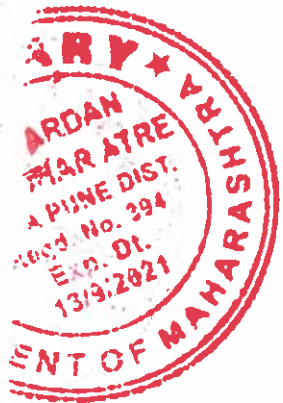


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09. The Petitioner states that the society at large has right to health. Needless to underline that here the society VERY MUCH includes MEDICARE SERVICE PERSONNEL. If the Medicare Service Personnel are attacked by violent mobs and if they do not get adequate protection, then their right to life is seriously affected. Due to lack of protection, they have to function under tremendous mental stress. Such doctors cannot effectively give treatment to the patient fraternity and that affects the right to health of the public at large as well. On account of frequent attacks of violence against medical professionals, which cannot be justified at all, no Medicare Service Person can confidently presume that he will not be attacked. This has resulted in mental trauma to the Medicare Service Person all over India.

Though the Hon'ble Gujarat High Court has observed that Doctors are personification of Gods on earth, Petitioner submits that it is enough if they are treated as ordinary human beings and their life and limb is protected. The news Item to that effect is annexed hereto as **EXHIBIT "D"**

10. In 2015, the Indian Medical Association (IMA) has prepared a video clip on "Violence against Medical Professionals",



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<https://www.youtube.com/watch?v=kB0ZG-FobZk>.

Following few videos show attacks.

https://www.youtube.com/watch?v=v9_ynTpUryE
<https://www.youtube.com/watch?v=RzUC2bHx3x4>
<https://www.youtube.com/watch?v=C-8q6bkj-cs>
<https://www.youtube.com/watch?v=aIWlUgCwapA>

On account of attacks on resident doctors, they had gone on strike in Maharashtra in the year 2017. This is clear from the following video clip from ABP Majha News channel.

<https://www.youtube.com/watch?v=UvrTZhCaG20>

11. The public is becoming increasingly intolerant to a large number of social issues because of poor governance and vote bank politics. Laws to prevent violence against doctors do exist but they need to be made more stringent and implemented properly.
12. It is submitted that, no doubt, in 19 States, there is specific law in this regard. With effect from April 28, 2010, the Respondent No. 8 has brought into effect the Maharashtra Medicare Service Persons and Medicare Service Institutions (Prevention of Violence and Damage or Loss to Property) Act, 2010, running in just nine Sections. Hereto annexed and marked as **EXHIBIT "(I)"** contains the bare text of the



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said Act. To the best of the Petitioner's knowledge, which is based upon informal information received by him from police sources that since April 28, 2010, only 90 FIRs are registered under this Act all throughout Maharashtra. If this data is compared with the Statement of Indian Medical Association, then one thing is clear that the Act of the Respondent No.5 is totally inadequate. The Petitioner has come across an Article written by one Dr. Neeraj Nagpal, Convenor, Medicos Legal Action Group (MLAG). In this Article, he has stated that under the Right to Information Act, his trust asked all Senior Superintendents of Police in Punjab & Haryana, the two States where the Prevention of Violence against Doctors Act, is in place for over eight years, for the following information:

- (1) How many complaints by doctors or hospitals were registered under these Acts against Patients or attendants?
- (2) How many of those accused of assault were punished under these Acts from 2010 to 2015?

According to the replies, most complaints were not registered as First Information Report (FIR), a mandatory procedure to be followed by all police officials as per the



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Judgment delivered in case of Lalita Kumari v/s State of Uttar Pradesh, (2014) 2, SCC, 1. Very few cases have reached court after filing of a challan, but no person accused of assault on a Medicare Establishment has yet been penalised under the Medicare Service Persons and Medicare Service Institutions (Prevention of Violence or damage or loss of property) Acts of Punjab and Haryana from 2010 to 2015. Annexed hereto EXHIBIT "E" is copy of this article from Dr. Neeraj Nagpal.

13. The Petitioner has not heard of any conviction in the State of Maharashtra. On the other hand, the position all over the nation is worrisome. The following Graph shows the number of cases of strike all over India. The State enactments have no effect on the mob, given the alarming increase in the number of strikes by medical professionals during recent years.



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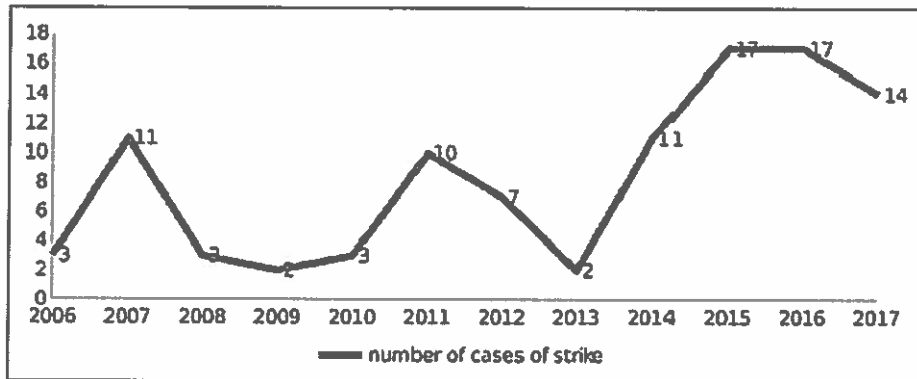


Figure 1: Trend of case of vandalism resorting to strike reported in India from January 2006 to May 2017

(Source: September 2018-December 2018 issue of Journal of Health Research and Reviews (in developing countries) published by Wolter Kluwer Medknow described Epidemiology of Violence against Medical Practitioners in a Developing Country (2006-2017)

Hereto annexed and marked as EXHIBIT "E" is the Source Article, mentioned above. In this Article, the Learned Author specifically states that Delhi and Maharashtra have maximum instances of violence against doctors. This Article was published in 2018 that is eight years after the Respondent No.8 passed the legislation. This shows that the State Enactment is inadequate to meet the challenge of the situation. In other words, it has failed to achieve its objectives all over the country, particularly in Maharashtra.

14. The Petitioner states that recently around June 10, 2019, a doctor in Kolkata suffered from violent attack by a mob so



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All India Indo Asian News Service, updated September 03, 2019). To this, many people including the Petitioner had responded on September 06, 2019. EXHIBIT "M" is a copy of e-mail by the Petitioner to MOHFW). MOHFW drafted a Bill and submitted it for comments from all stakeholders. Subsequently, MOHFW prepared a Draft Bill and submitted it to Cabinet Committee for approval. (EXHIBIT "U") contains Draft Legislation titled "The Healthcare Service Personnel and Clinical Establishments (Prohibition of violence and damage to property) Bill, 2019". According to the MHA, if there is a central law for doctors, then other people will also demand the same. Hence, the central law to protect any specific fraternity will not come up for consideration and approval, said the official from MHA. (EXHIBIT "N" is a Report from Business World, dated December 15, 2019, entitled "MHA Rejects Health Ministry's Draft Of Legislation Bill to Protect Doctors from Assault").

18. On April 03, 2020, BBC News reported that during Corona Virus Epidemic, Indian Doctors are spat and attacked (Hereto annexed EXHIBIT "O" is a BBC News Report). The

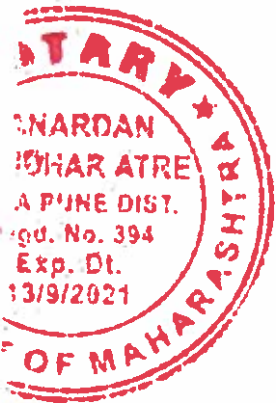


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doctors had gone to a densely populated area to check on a woman suspected of having COVID-19, when they came under attack. On April 10, 2020, Indian Medical Association, Maharashtra State Branch, requested the Minister of Health to amend the Maharashtra Act No. XI of 2020 and include punishment of imprisonment of seven years, instead of three years and make the offence "non-bailable". Hereto annexed and marked as **EXHIBIT "P"** is a copy of the letter written by the President & Secretary of IMA to the Minister of Health. However, it did not suggest any comprehensive and detailed measures to protect the life and limb of Medicare Service Personnel. Be that as it may.

After the onset of COVID-19 pandemic, miscreants in society mishandled the dead body of a doctor working as a CORONA warrior. (**EXHIBIT "Q"** is News Report – Local Residents Protest Cremation of Doctor's Body in Chennai in Medical Report Today). Speaking about the atrocities faced by the healthcare workers amid the Corona virus pandemic, IMA President, Rajan Sharma said, "IMA has shown much restraint in spite of extreme provocations. That doesn't mean our patience is endless. Abuse, violence, spitting,



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pelting of stones, denial of entry to societies and residential accommodations have been tolerated so far, since we expected the governments to do their normal duty. "When they are unable to discharge their constitutional obligations, perhaps these are not normal times. Denial of dignity in death is the ultimate sacrilege". (EXHIBIT "R" is a Report of OUTLOOK, dated April 20, 2020).

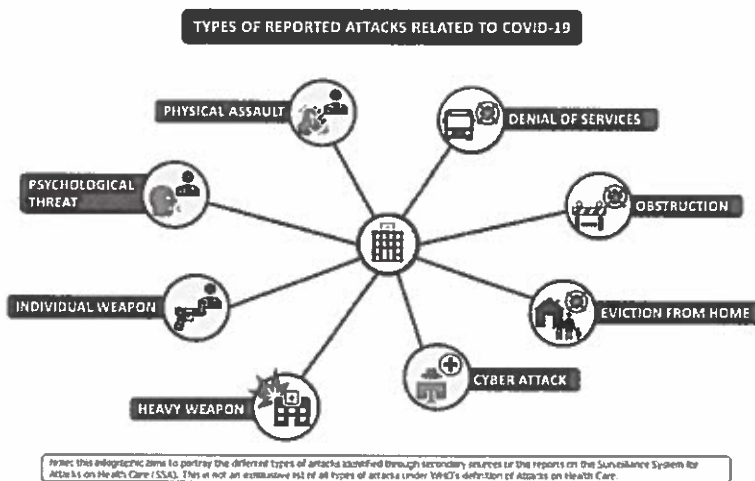
19. Immediately, the IMA declared white alert candle march agitation and black day. (EXHIBIT "S" is a letter from IMA dated April 20, 2020). The Home Ministry invited an online meeting and requested IMA to call off the strike. They assured that the Act proposed by MOHFW will be passed as an ordinance immediately and protection will be offered to the doctors. (EXHIBIT "T" is a news item of India TV News Desk, New Delhi dated April 20, 2020, in which, IMA called off April 23, Black Day Protest after Amit Shah's Assurance of Full Support). On withdrawal of the strike, the Government declared an amendment in the Epidemic Diseases Act, providing protection to Corona warriors during epidemic period. (EXHIBIT "U" is a Report from Business World dated April 23, 2020), in which, Cabinet



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approved Epidemic Disease Amendment, 2020. This was a clear case of misleading the association of doctors, but since there was an epidemic situation, the association of doctors kept quiet and continued to work.

20. The attacks on doctors continued in various pockets of the country, and it was seen that nowhere the Epidemic Diseases Act was applied by the police. Covid Warriors as well as doctors not working for Covid patients continued to get harassed by miscreants.



(Source: July 30, 2020 – Publication of W.H.O. describes various types of attacks on healthcare in the context of COVID-19 in above Diagram).

Hereto annexed **EXHIBIT “W”** is copy of source article mentioned above. Reasons for these problems are culled out below.

NOTARY
ANANDAN
DIPHARATRE
PUNE DIST.
Regd. No. 394
Exp. Dt.
13/9/2021
STATE OF MAHARASHTRA

Absence of post-graduate training in emergency medicine in India

Poor quality of emergency care in hospitals

Poor grievance redressal mechanism

Poor pre-hospital emergency care network

Poor communication skills of healthcare workers

Lack of emergency resources, *i.e.*, blood, laboratory services workforce, relevant drugs, *etc.*

Emergency intake capacity overwhelmed

Nursing homes run emergency services without proper training

Mistaken public belief that hospital should give its services free/almost free

Increasing education, intolerance, fearlessness against rule of law and restlessness amongst youths

High work load of government hospitals

Lack of civic responsibility in the public

Political interference in hospital affairs

Absence of legislation and reluctance of its application for a strong law against violence to healthcare workers

Negative image of doctors portrayed in the media

Unrestricted public access to all areas in government hospital with overcrowding

Lack of security, surveillance and mob preventing drills in the hospital

Adapted from Table I of Ref. 19

(Source: Article in Indian J Med Res Aug 18, 2018)

Hereto Annexed EXHIBIT "X" is copy of the said article.

The attacks on Doctors continue both in Maharashtra and outside the State. Attack on doctor in Latur is recent



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example. (EXHIBIT "Y" is a photograph of Assault on Doctor).

Causes of Violence

21. Article in Indian J Med Res Aug 18, 2018 published various reasons of violence against doctors. Some of which are as under:

From the Maharashtra Budget Analysis, 2020-2021, it is clear that the State Government has budgeted to spend 4.0% of the expenditure on Health & Family Welfare. Hereto annexed and marked as EXHIBIT "Z" is the said Analysis. This is meagre amount given the poor quality of State Government run hospitals, District Hospitals and PHCs. They are running short of infrastructure, manpower and consumables. Most of them do not have effective ambulance facility. On account of poor returns, new doctors are reluctant to serve in these hospitals. Resultantly, the citizens get poor medical service.

One of the main reasons of violence against doctors is that they have to work in adverse conditions in these hospitals. On account of lack of facilities, effective treatment cannot be provided to the patient. Most of the times, the patients are required to be shifted to bigger hospitals due to this



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reason. This annoys the patients and their relatives under wrong impression that the doctor is avoiding to treat their beloved one, thereby putting him in danger. The staff is also inadequate and the doctors are overworked. By making more budgetary provisions, this can be avoided. The Petitioner submits that considering the fact that these aspects deal with right to life of both, healthcare providers and the healthcare seekers, the State Government be requested to increase the expenditure and treat expenditure on Health and Family Welfare as "Charged Expenditure" under Article 202 (3)(f) of the Constitution of India.

Effects of Violence

22. As early as 28th April 2017, Internationally Acclaimed Journal Lancet had published (EXHIBIT "AA")an Article, entitled "Rising Violence Against Healthcare Workers in India". Some doctors donning safety helmets at work as a mark of protest. Cases of verbal abuse, and angry exchanges involving nurses and paramedics often go unreported. "We are seeing a decline in interest among young doctors to join government service, attack on doctors being one of the reasons. As a result, a number of



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posts in public hospitals are lying vacant which, ironically, adds to the problem”, notes Yatish Agarwal, professor of radiology at Safdarjung Hospital and Vardhaman Mahavira Medical College (New Delhi, India).

23. WHO in its publication on Violence against health workers says it is unacceptable. It has not only a negative impact on the psychological and physical well being of health-care staff, but also affects their job motivation. As a consequence, this violence compromises the quality of care and puts health-care provision at risk. It also leads to immense financial loss in the health sector (EXHIBIT“AB”).

24. According to study conducted by CEHAT along with MARD and KEM hospital, More than 35% doctors have become fearful, developed anxiety and lost motivation. This will certainly have an impact on patient care and worsen the doctor-patient relationship further. (EXHIBIT “AC” is a Report of TNN, dated June 18, 2019).

25. September 2018-December 2018 issue of Journal of Health Research and Reviews (in developing countries) stated that if these types of relentless attack on this health-care profession is unchecked by the policy makers, political leaders, regulatory bodies and administrative authorities, then brilliant students will



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be scare to opt for this profession and the needs of the people in healthcare will be disregarded by the backbenchers of the school. (EXHIBIT "AD" is article on Epidemiology of Violence against Medical Professionals)

Solutions proposed by various authors on violence against Medicare Service Institutions and Persons

An article entitled Violent-acts against doctors and healthcare professionals in India: Call for action published in J Family Med Prim Care. 2019 Nov issue states that 'More alarming is that common people are justifying the acts of killing, beating, and provoking others to do more such acts, thereby triggering a vicious cycle. Most of them get away without any legal proceedings being instituted against them.' (EXHIBIT "AE")

Vitull K. Gupta wrote in Indian Heart Journal, 68(2016)231-241 that an important contributing factor for increasing violence against doctors is poor image of medical professionals projected by the media leading to general belief that doctors are the greatest villains and extortionists who exploit patient's miseries to extract money. Moreover, public's lack of faith in judicial system, the inactivity of the police, and the impression that the police will take no action and can easily be bribed are other contributing factors.(EXHIBIT "AF")



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Editorial of Journal of Clinical and Diagnostic Research. 2019 Oct, Vol-13(10): asks Has Violence against Doctors Become the Norm in India? It states that around 18 states in India have laws for violence against doctors. However, these Medicare Acts are largely ineffective due to poor implementation, weak clauses, and inadequate knowledge of police personnel. It further states that violence in any form and in any setting should be condemned. However, acts of violence in hospitals are unpardonable and should be dealt with an iron fist. (EXHIBIT "AG")

Editorial in Indian Journal of Ophthalmology Volume 67 Issue 7 Page 982 (2019) entitled It's a doc's life – Workplace violence against doctors, points out that the media is never shy from creating a poor image of the medical profession and propagating an anti-doctor fervor among the people. They present often inaccurate, warped, and sensationalized news aimed at garnering higher target rating points. Death of a patient in the hands of a "killer," "money-minded," and "monster" doctor sounds so much more exciting than "overworked and sleep-deprived doctor" or a "patient dying due to inherent complications in the last stage of the disease" or "lack of infrastructure in government hospitals leave doctors helpless." They are meant to provide news, neutral



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and unbiased, not form opinions and baselessly malign individuals and institutions. The Author further adds that despite all that the media tells because it sells, a doctor will not discriminate on caste, creed, religion, or financial status. He treats patients with tuberculosis, human immunodeficiency virus infection, hepatitis B, getting pricked and inhaling droplets, but he still does his work. This is because treating a patient is their biggest satisfaction. If after all this, all that the society gives back to them is a slap, a punch, a broken skull or a lost eye, is it wrong on their part to demand safety or justice? Authors suggest that there is a need to implement uniform stringent laws safeguarding the rights of doctors all over the country. Violence against healthcare workers should be included in the Indian Penal Code and the Indian Criminal Procedure Code as a cognizable offense with strict punishment. An appeal filed by the patient's family should be deemed infructuous if proof of violence by patients or relative can be provided by the doctor/hospital. (EXHIBIT "AH")

An article in Indian express entitled Doctors as victims: Law to deter assaults on healthcare personnel is needed, Written by K Srinath Reddy | Updated: September 12, 2019 reports the battering to death of a 73-year-old doctor by a frenzied mob, in



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the hospital of an Assam tea estate, which was especially brutal and shocked the nation. The article points out that Administrative, security and sanitation staff employed in clinical establishments are not explicitly listed though they, too, are vulnerable to mob violence either because of a direct confrontation or as bystanders rushing in to protect doctors or nurses under assault. On why there is need of special law for healthcare workers, the author says "There is a strong rationale for making a distinction because when a healthcare provider is assaulted, disabled or even killed, the victims of crime also include other patients who are being cared for by that person or many others who have been affected because the services of that clinical establishment are disrupted by the violence and vandalism or stoppage of work by the aggrieved hospital staff or even widespread strikes by doctors." (EXHIBIT "AI")

Editorial of INDIAN PEDIATRICS 629 VOLUME 56__AUGUST 15, 2019 entitled "Violence Against Doctors" written by DIGANT SHASTRI National President, Indian Academy of Paediatrics stated that assault on any doctor should be equated with assault on a government officer on duty. Existing laws should be amended to prevent future incidents of violence against doctors. Though



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about 19 states of India have some kind of Act for protection of medical professionals and healthcare establishments, the implementation and prosecution rate are extremely poor. Protective mechanisms should exist to prevent counter filing of complaints by patients or the relatives in case proof of violence by them is provided by the doctor. (EXHIBIT "AJ")

Article published in Indian Journal of Psychiatry Published by Wolters Kluwer - Medknow 2019 entitled Violence against doctors: A viral epidemic? points out that there is an attempt by relatives to allege negligence in cases of sudden death of a patient; this leads to first investigation reports being lodged for murder, culpable homicide, and cheating many a time. This practice needs to be discouraged by making legal provisions deterring relatives from doing so unless evidence is present. It is necessary to understand that Doctors cannot be held accountable for every death that occurs in the hospital on account of negligence. In total, 19 states of India have some kind of act for protection of medical professionals and health-care establishments. However, inquiries into its effectiveness in the states of Punjab and Haryana have revealed that very few cases have reached courts after filling of a challan, but no person



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accused of assault on a medical professional or hospital has yet been penalized under the said acts till 2015 (EXHIBIT "AK")

Necessity of Guidelines

26. The Petitioner submits that Article 19(1)(g) of the Constitution of India confers the fundamental right to practice any profession and carry on any occupation, trade or business. It is subject to the restrictions imposed under Article 19 (6). The two sub-clauses in the said sub-article enable the State to prescribe professional or technical qualifications or to carry on any trade, business or service to the exclusion of other persons. The latter part gives constitutional sanction for creation of a State monopoly. Needless to say that the medical professionals have fundamental right to carry out their profession. Save and except the justification under Article 19 (6), the said fundamental right is absolute. At the same time, Article 21 confers upon them right to life. The word "life" has been explained in the classic judgment of Field J. in *Munn v/s Illinois* (1876) 94, US, 113. These are the words that explain the scope of the word "life": --



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“By the term ‘life’ as here used, something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limits and faculties by which life is enjoyed...”

27. The right to life includes the right to live with human dignity (Francis Coralie v/s Union Territory of Delhi, AIR, 1981, SC, 746). This fundamental right has been expanded by the Supreme Court to include right to reputation as well [Board of Trustees for Port of Bombay v/s Dilip Kumar Raghavendra Nath Nadkarni (1983), 1, SCC, 124]. The right to life has rightly been characterised as “supreme” and “basic”; it includes both so called negative and positive obligations for the State. The negative obligations mean the overall prohibition on arbitrary deprivation of life. In this context, positive obligation requires that State has an overriding obligation to protect the right to life of every person within its territorial jurisdiction. The obligation requires the State to take administrative and all other measures in order to protect life of persons.

28. The protection of life of medical professionals and those who are directly and indirectly associated with them is very



important obligation of the State. This is because these persons save life of others and at times, by putting their own life in danger. This has been noticed during current pandemic of COVID-19. It has been reported that at least 200 doctors lost their lives while treating patients of this disease. The rate of mortality in general population is around 2.5 to 3.0%, whereas the doctors have about 4 to 5 times mortality, i.e. 10 to 12% if they contract the disease clearly indicating that doctors are at very high risk.

29. As stated earlier, the State has an over-riding obligation to protect the right to life of every person within its territorial jurisdiction. This is more so in case of doctors. The country is facing the dearth of doctors (0.77 doctors per 1000 population as against 1 per 1000 recommended by the WHO). Doctors, therefore, are very precious assets of the country and healthcare professionals should be protected against violence. **EXHIBIT "A1"**

It is further submitted that State controls the property of private hospitals right from granting permission to imposing an obligation on hospitals by reserving beds and infrastructure for epidemic and other situations. **EXHIBIT**



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"AM" is the copy of Pune Municipal Corporation order reserving 80% beds in private hospitals.

Collector of Pune in his order dt 16/07/2020 has asked all the doctors to join duties failing which strict action will be taken against them. EXHIBIT "AN" is the copy of the said order. It is further submitted that State controls the property of private hospitals right from granting permission to imposing an obligation on hospitals by reserving beds and infrastructure for epidemic and other situations.

30. Even otherwise, the State can take certain extra ordinary measures with regard to doctors, whenever extra-ordinary situation like the current COVID-19 erupts. This is substantiated because of the Order dated August 13, 2020 passed by the State Government through the Civil Surgeon, Kolhapur under the Disaster Management Act, 2005, Indian Epidemic Disease Regulation, 1897, COVID Control Rules, 2020, the Maharashtra Essential Services Maintenance Act, 2011 and Bombay Nursing Home Act, 1949. The said Order makes it compulsory for all the private medical practitioners to work in COVID Centre at Indira Gandhi General Hospital, Ichalkaranji for eight hours every day.



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They are supposed to work for 24 hours on rotation basis. Hereto annexed and marked, as **EXHIBIT "AO"** is the said Order dated August 13, 2020.

31. It is common knowledge that the State makes it compulsory for a doctor in making to undergo compulsory rural posting as a pre-requisite to qualify as a doctor. Resident doctors shoulder the responsibility of providing health care to the patients. These doctors are not allowed to go on strike even for their genuine demands because medical profession comes under Maharashtra Essential Services Maintenance Act, 2011 (ESMA). Therefore, the State has more obligations to protect life of doctors.

32. Part-IV of the Constitution of India contains directive principle of State policy. They are fundamental in the governance. Article 38 imposes an obligation on the Respondents to secure a social order for the promotion of welfare of the people. Article 47 casts duty to improve public health on government. All these obligations are just not possible to discharge unless the doctors function in tension-free atmosphere and their life & limb and property are protected.



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33. Queen's Bench in case of Jennison v/s Backer, 1972 (1), All. England Reporter, 1006 has observed:--

"the law should not be seen to sit limply, while those who defy it go free and, those who seek its protection lose hope".

Hon'ble Dr.A.P.J. Abdul Kalam has also offered his following comments:

"If real criminals in our society are left without punishment for years because of delay in criminal justice for various reasons, it will indeed result in the multiplication of people taking to criminal acts".

34. In this regard, a fruitful reference can be made to the observations of the Apex Court in case of PtParamanand Katara v/s Union of India (1989) 4, SCC, 286. It was a Writ Petition under Article 32 filed by the Petitioner, who claims himself to be a small human right activist. He had complained about refusal of doctor to attend an injured, who required urgent treatment. In this context, the Hon'ble Supreme Court made a brief reference to the Code of Medical Ethics drawn up with the approval of the Central



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Government. The Hon'ble Supreme Court has made the following observation:

"There can be no second opinion that preservation of human life is of paramount importance. That is so on account of the fact that once life is lost, the status quo ante cannot be restored as resurrection is beyond the capacity of man. The patient whether he be an innocent person or be a criminal liable to punishment under the laws of the society, it is the obligation of those who are in-charge of the health of the community to preserve life so that the innocent may be protected and the guilty may be punished. Social laws do not contemplate death by negligence to tantamount to legal punishment".

"Article 21 of the Constitution casts the obligation on the State to preserve life. The provision as explained by this Court in scores of decisions has emphasised and reiterated with gradually increasing emphasis that position. A doctor at the Government hospital positioned to meet this State obligation is, therefore, duty-bound to extend medical assistance for preserving life. Every doctor whether at a Government hospital or otherwise has the professional



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obligation to extend his services with due expertise for protecting life. No law or State action can intervene to avoid/ delay the discharge of the paramount obligation case upon members of the medical profession. The obligation being total, absolute and paramount, laws of procedure whether in statutes or otherwise which would interfere with the discharge of this obligation cannot be sustained and must, therefore, give way....." Hereto annexed and marked as EXHIBIT "AP" is a copy of the said Judgment.

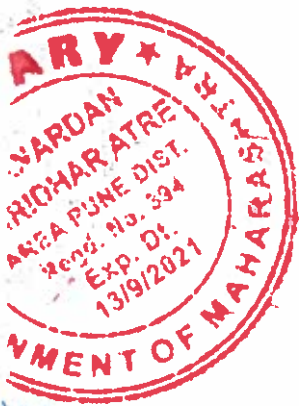
In Writ Petition (C) No.235 of 2012, Save Life Foundation & Another v/s Union of India & Another, a petition filed in public interest for the development of supportive legal framework to protect Samaritans, i.e. bystanders and passers-by who rendered the help to the victims of road accident. In the said Judgment, the Apex Court has made a reference to a notification dated May 12, 2015 issued by Ministry of Road Transport & Highways, containing guidelines for protection of good Samaritans to be in force till appropriate legislation is framed by the Union Legislature. The Guideline No.11 reads thus:



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“(11) Lack of response by a doctor in an emergency situation pertaining to road accidents, where he is expected to provide care, shall constitute “Professional Misconduct”, under Chapter 7 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulation, 2002 and disciplinary action shall be taken against such doctor under Chapter 8 of the said Regulations.” The Supreme Court has also observed that – *“We would also like to mention that whenever on such occasions, a man of the medical profession is approached and he finds that whatever assistance he could give, is not sufficient really to save the life of the person, but some better assistance is necessary – it is also the duty of the man in the medical profession so approached to render all the help which he could and also see that the person reaches the proper expert as early as possible”*. Hereto annexed and marked as **EXHIBIT “AQ”** is a copy of the said Judgment.

The Petitioner submits that Hon’ble Supreme Court has rightly imposed the above obligations. However, he may add that the court and the State Government should also recognise the necessity to protect the life of medical



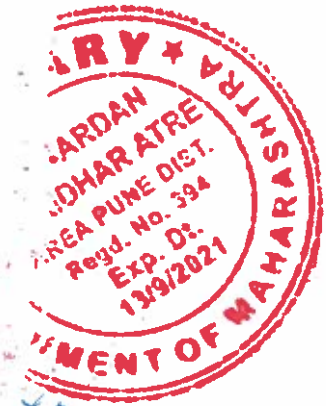
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professionals from attacks of violence, which is never justified. It is the grievance of the Petitioner that the helping hand provided by the legislature is insufficient.

35. The Petitioner submits that the State Government has enacted the Maharashtra Medicare Service Persons and Medicare Service Institutions (Prevention of Violence and Damage or Loss to Property) Act, 2010. However, inquiries into its effectiveness revealed that very few cases have reached courts and no person accused of assault on medical professional or hospital has yet been penalised under the said Act. It is a cryptic enactment, which does not meet the needs of the hour.

36. As stated earlier, on June 10, 2019, a doctor in Kolkata was attacked, after which, IMA decided to go on nation-wide strike. What is important is the World Medical Association also condemned such attacks. On June 15, 2019, the Hon'ble Health Minister asked the States to consider enacting law to protect medical professionals from violence. During the meeting held in the first week of July 2019, IMA decided to withdraw the strike because they were assured that the Central Government would pass Act



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to deal with such miscreants. Accordingly, a Bill was drafted by the concerned Ministry, i.e. The Healthcare Service Personnel and Clinical Establishments (Prohibition of Violence and Damage to Property) Bill, 2019, but the Home Ministry on the ground resisted its conversion into an Act that the doctors do not need special protection. Even this Bill does not satisfy all the needs. After onset of COVID-19 pandemic, Union govt has also shown the need for central legislation by amending the Epidemic Diseases Act (EDA 1897), prohibiting violence, but the amendment remains in force till epidemic period only. Thus, the Central govt is "prohibiting violence in epidemic period" and not accepting the need of central law for "violence against doctors and medical institutes during non-epidemic period. This dichotomy of the Central government is not acceptable. Petitioner states that there is need of Central law in addition to the State Act, because concerned police officers do not know about the anti-violence law in the State, and it is personal experience of the petitioner that this has to be again and again informed to the new



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Commissioners of Police when they get appointed usually for short period.

The Petitioner submits that he conducted a survey amongst the doctors all over India regarding the need for a comprehensive legislation. 950+ doctors participated in the survey and only 4% were happy with amendment in EDA(1897), 63.5% doctors wanted an independent Act and 32.5% wanted amendment in IPC. This clearly indicates that the medical community is not happy with the temporary protection. Hereto annexed and marked as **EXHIBIT“AR”** is the Analysis of the responses received from participants.

**Power of Supreme Court and
High Courts to frame guidelines**

37. In exercise of the powers of this Court under Article 32 read with Article 142, guidelines and directions have been issued in a large number of cases and a brief reference to a few of them is sufficient. In Erach Sain Kanga Etc. v. Union of India and Anr., (Writ Petition No. 2632 of 1978 Etc. Etc.) decided on 20th March, 1979, the Constitution Bench laid down certain guidelines relating to Emigration Act. In Lakshmi Kant Pandey v. Union of India, (in re : Foreign Adoption),



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[1984]2SCR795 , guidelines for adoption of minor children by foreigners were laid down. Similarly in State of West Bengal and Ors. Etc. v. Sampat Lal and Ors. Etc., 1985CriLJ516 , K. Veeraswami v. Union of India and Others, (1992)IILLJ53bSC , Union Carbide Corporation and Others v. Union of India and Others, AIR1992SC248 , Delhi Judicial Service Association Etc. v. State of Gujarat and Others Etc. (Nadiad Case), 1991CriLJ3086 , Delhi Development Authority v. Skipper Construction Co. (P) Ltd. And Another, AIR1996SC2005 and Dinesh Trivedi, M.P. and Others v. Union of India and Others, [1997]3SCR93 , guidelines were laid down having the effect of law, requiring rigid compliance. In Supreme Court Advocates-on- Record Association and Others v. Union of India (IInd Judges case), AIR1994SC268 , a Nine Judge Bench laid down guidelines and norms for the appointment and transfer of Judges which are being rigidly followed in the matter of appointments of High Court and Supreme Court Judges and transfer of High Court Judges. In Vishakha and Others v. State of Rajasthan and Others, AIR1997SC3011 , elaborate



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guidelines have been laid down for observance in work places relating to sexual harassment of working women.

38. In Vishaka, it was said by the Apex Court that there is an obligation of the court to frame guidelines for the enforcement of the fundamental rights in the absence of legislation. What is appropriate in case of absence of legislation is equally appropriate if the legislation in force has failed to meet the challenges. Though this Hon'ble Court does not possess powers that are available to the Apex Court under Article 142, the powers under Article 226 are equally wide to empower it to issue mandatory guidelines.

39. The Petitioner submits that though the Central Government has enacted The Prevention of Damage to Public Property Act, 1984, the Apex Court in case of – Kodungallur Film Society and Others – Appellants v/s Union of India and Others – Respondent (AIR, 2018, SC, [SUPP], 2519) has issued guidelines filling the gaps of the legislation. Hereto annexed and marked as **EXHIBIT "AS"** are is copy of this judgment.



40. In Re: Destruction of Public and Private Properties AIR, 2009, SC, 2266, Hon'ble Supreme Court has held

"20. There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the government or a public authority, and in a proper case, in order to prevent injustice



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resulting to the concerned parties, the court may itself pass an order or give directions which the government or the public authority should have passed or given had it properly and lawfully exercised its discretion."

EXHIBIT "AT" is copy of said Judgment of Supreme Court. The Petitioner is annexing both these Judgments because some of the guidelines given by the Supreme Court can be made applicable in case of violence against the doctors.

41. In Jacob Mathew v. State of Punjab & Anr., (2005)6 SCC 1 decided by a three judge bench of the SC (CJI R.C. Lahoti, G.P. Mathur & P. K. Balasubramanyan), Supreme Court said, "Statutory Rules or Executive Instructions incorporating certain guidelines need to be framed and issued by the Government of India and/or the State Governments in consultation with the Medical Council of India. So long as it is not done, we propose to lay down certain guidelines for the future which should govern the prosecution of doctors for offences of which criminal rashness or criminal negligence is an ingredient. A private complaint may not be entertained unless the complainant has produced prima facie evidence before the Court in the form of a credible



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opinion given by another competent doctor to support the charge of rashness or negligence on the part of the accused doctor. The investigating officer should, before proceeding against the doctor accused of rash or negligent act or omission, obtain an independent and competent medical opinion preferably from a doctor in government service qualified in that branch of medical practice who can normally be expected to give an impartial and unbiased opinion applying Bolam's test to the facts collected in the investigation. A doctor accused of rashness or negligence, may not be arrested in a routine manner (simply because a charge has been levelled against him). Unless his arrest is necessary for furthering the investigation or for collecting evidence or unless the investigation officer feels satisfied that the doctor proceeded against would not make himself available to face the prosecution unless arrested, the arrest may be withheld."

This indicates that Supreme Court not only recognized nature of difficulties faced by doctors, it ordered that due respect should be given to the doctors and it has framed the required guidelines. This has been done though the



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provisions of Criminal Procedure Code and Indian Penal Code are very much in force. (EXHIBIT "AU"). Thus, existence of a legislation is no bar for this Hon'ble Court to issue guidelines to meet the challenge to make the existing legislation more effective.

42. There are several instances where High Courts under Article 226 have issued guidelines. The glaring instances are, in *Suo Motu* Petition No.466 of 2010, this Hon'ble Court took *suo motu* notice of alleged murder of an RTI Activist, only for the purpose of framing guidelines for protection of RTI Activists. This Court went one step ahead and has made the scheme for protection of RTI Activists applicable to witnesses, who need protection. Accordingly, guidelines were issued and the State Government has passed a Resolution to that effect on February 27, 2013. Copy of GR No "CRT-2012/Pr.Kra. 696/Pol-11 " is annexed hereto as EXHIBIT "AV".

43. Similarly, the Hon'ble Delhi High Court in case of Neelam Katara v/s Union of India W.P. 247/2002, (2003) ILR, 2, Delhi 377, Division Bench has issued guidelines for protection of witnesses. Hereto annexed and marked as

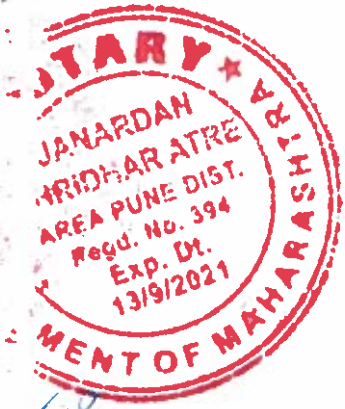


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EXHIBIT "AW" is a copy of the Judgment. From the judgment of Andhra Pradesh High Court, in case of Manga Madhvilatha v/s Rajamundry Municipality (2001) 2, ALT, 482, it is apparent that the said High Court had framed guidelines regarding demolition of illegal structures in Writ Petition No.21198 of 1997. The High Court of Madras did it despite existence of express legislation. The said Judgment is at EXHIBIT "AX". Thus, this Hon'ble Court has power to frame guidelines by filling the gaps in the existing legislation to meet the needs of the hour.

44. As pointed out in Vishakha, it is the duty of the executive to fill the vacuum by executive orders because its field is coterminous with that of the legislature, and where there is inaction even by the executive for whatever reason, the judiciary must step in, in exercise of its constitutional obligations under the aforesaid provisions to provide a solution till such time as the legislature acts to perform its role by enacting proper legislation to cover the field. It is submitted that the guidelines by this Hon'ble Court are necessary because 2010 Act referred to above for prevention of violence and damage or loss of property of



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doctors does not confer any rule-making power upon the executive.

45. The Petitioner submits that he has analysed the provisions of various State Acts and the Central Draft Bill and also Epidemic Diseases Act 1897 as amended in 2020. Hereto annexed and Marked as Exhibit "(I)" collectively are the said bare acts.

46. The petitioner has pointed out the deficiencies in the State Act with reference to various other State Acts on this topic, some of the glaring examples of which are as under :

- a. Term "Medicare Service" has not been defined in State Act.
- b. Central Draft gives list of entities included under this Act, important among them are missing in State Act.
- c. State Act does not recognize medical personnel such as individual doctors, consultants working in private clinics or consulting rooms but not working in institutions such as hospitals, nursing homes or maternity hospitals.
- d. State Act does not mention mental violence, which is more common than physical violence.
- e. Central Draft punishments are stricter than State Act, but they need to be graded gradually from mental violence and



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the extent of harm caused to the Medicare Service Personnel or Medicare Service Institutions.

- f. Category of investigating officer not mentioned in State Act.
- g. The State Act does not confer rule making power upon the State Government.

Hereto annexed and marked as **EXHIBIT “(II)”** is the said analysis.

- 47. The Petitioner has also culled out provisions from the other State Acts, which should be included in the Maharashtra Act. The said additions suggested are annexed to this petition and are marked as **“EXHIBIT (III)”**

- 48. The petitioner has also suggested certain guidelines to be framed by this Hon’ble Court, which are independent of the said 19 State Enactments. Those guidelines are relevant and are based upon other Acts that are similar as also some Supreme Court Judgments dealing with somewhat similar issues. The said Judgments are –

- (i) PtParamanand Katara v/s Union of India, AIR, 1989, SC, 2039 (EXHIBIT “AP”)



- (ii) Kodungallur Film Society and Others-Appellants v/s Union of India and others, AIR, 2018, SC (SUPP) 2519 (EXHIBIT "AS")
- (iii) In Re: Destruction of Public and Private Properties v/s State of A.P. & Ors. AIR, 2009 SC 2266 (EXHIBIT "AT")
- (iv) Ramesh and Ors. v/s State of Haryana, AIR, 2016, SC, 5554 (EXHIBIT "AY")
- (v) Usha Badri Poonawalla v/s K. Kurian Babu AIR 2002 BOMBAY 29 (EXHIBIT "AZ")
- (vi) Soma Suresh Kumar v/s Government of A. P. And others AIR 2013 SC (SUPP) 816 (EXHIBIT "BA")
- (vii) Court on its own motion v/s State of Maharashtra, WP 266 /2010 (EXHIBIT "BB" colly.)
- (viii) Mahender Chawla v/s Union of India AIR 2018 SC (SUPP) 2561 (EXHIBIT "BC")
- (ix) Tehseen Poonawalla v/s Union of India AIR 2018 SC 3354 (EXHIBIT "BD")

Hereto annexed and marked as EXHIBIT "(IV)".While working on this aspect, the Petitioner has also applied his own experience as a medical practitioner.



49. The petitioner has suggested Healthcare Protection Guidelines, which should be implemented by the respondents. Salient features of the guidelines are--
- a. Filing complaint under the appropriate provision of IPC/ State Act / Central Act as the case may be.(as per list in the exhibit).
 - b. Application of provisions already available in other Acts to violence against healthcare professionals and individuals.
 - c. Protection to be offered to doctors and staff (victims and witnesses) in hospital under witness protection scheme.
 - d. CCTV footage from hospital or recording on mobile phone to be accepted as evidence.
 - e. Separate Distress Number and if possible, designing an app for Medicare Service Institutions and Persons to be provided for lodging complaints.
 - f. Maintenance of website for publishing list of offenders with photographs regarding incidences of violence against healthcare professionals and institutions.
 - g. Formation of Doctor Patient Relationship Improvement Committee, which will have various roles described in detail.



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- h. Security Audit of Hospitals as per standard prescribed format. (EXHIBIT "BE")
- i. Protection from Retired Police Officers' Association (EXHIBIT "BF").
- j. Need of Healthcare Protection Fund.

The Petitioner urges to this Hon'ble Court that it may direct the provisions, which require to be added in the State Act and the said guidelines, may be implemented till a comprehensive legislation is passed, either by the State Government or by the Central Government. The said suggestions are combined together in the "EXHIBIT (V)".

50. Petitioner submits that it is necessary to appreciate that similar to road accidents, railway accidents, airline accidents there is possibility of medical accident. While all other accidents are covered by insurance, medical accident is one for which there is no insurance cover. Patients who suffer due to medical accident do not get cover because it is not medical negligence. Main hurdle to get such insurance is non-availability of definition of term "medical accident".

This term is dealt with by Jackson & Powell on Professional Liability, 3rd Edition. The Hon'ble Supreme Court has

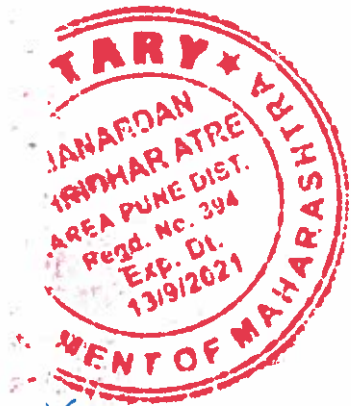


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referred to this book in Indian Medical Association v/s V. P. Shantha & Others, AIR, 1996, SC, 550(EXHIBIT "BG"). In Jacob Mathews v/s State of Punjab & Others, 2005, Cri.LJ, 3710 (para 32)(EXHIBIT "AU"), Supreme Court said that "...for a medical accident or failure, responsibility may lie with the medical practitioner and equally it may not..." In Ins. Malhotra Ms. v/s Dr. A. Kriplani & Others, AIR, 2009, SC (SUPP), 2774 (EXHIBIT "BH") Supreme Court followed above statement in V. Kisanrao v/s Nikhil Super Speciality Hospital, AIR, 2010, SCW, 4252(EXHIBIT "BI") again the term "Medical Accident" was referred to. However, petitioner could not find any medical or legal definition of "Medical Accident".

Petitioner had discussed and debated the issue of medical accident when he was co-chairman of medico-legal cell of IMA Pune, which came out with definition of medical accident as under:

Patient, who was reasonably evaluated to be fit for the planned surgical / medical procedure with or without anaesthesia; dies within 24 (minor), 48 (major) or 72 hours (supra major) of starting procedure/surgery as per HOTA



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(Human Organ Transplantation Act) OR suffers significant trauma / injury / damage to brain or other body parts, in unforeseen manner, suddenly, unexpectedly and unintentionally due to reason/s which can be attributed to abnormal host response, OR reason/s which are unexplained OR reason/s which cannot be attributed to normal course of the disease Or reason/s which cannot be attributed to gross negligence of healthcare provider/hospital or its staff OR reason/s which cannot be conclusively determined even after post-mortem examination will be termed as medical accident.

Petitioner says that he has culled out a List of examples of medical accidents, which is annexed hereto as **EXHIBIT "BJ"**. Petitioner submits that such definition of Medical Accidents will pave the way for insurance companies to provide insurance cover for medical accidents. Petitioner feels that if such definition is recognized by courts and law implementing agencies, most of the torture of doctors due to frivolous litigation and also due to violence against doctors and hospitals is likely to reduce substantially, giving hope for improved doctor -patient relationship. Such



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insurance can be made available to the patients whose procedures are planned in Medicare Service Institutions.

51. The interest of justice, therefore, demands that this Hon'ble Court may issue a writ of *mandamus* and issue guidelines to the Respondents for protection of Medicare Service Institutions and Medicare Service Personnel. This Hon'ble Court may also issue writ of *mandamus*, directing the Respondent No.9 to ensure that medical accidents are also covered by suitable insurance policies.

52. The petition is in time.

53. Proper Court Fee has been paid.

54. This Court has necessary jurisdiction to entertain, try and decide the present P.I.L.

55. Except this criminal P.I.L., the Petitioner has no other alternate, efficacious remedy available in law to redress his grievances.

56. Except this criminal P.I.L., the Petitioner has not filed any other Writ Petition, either in this Hon'ble Court or in any other courts in India.

57. The Petitioner has not received a copy of the Caveat.



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58. The Petitioner craves leave of this Hon'ble Court to add to, alter and/or amend the foregoing paragraphs, as and when required.

59. PRAYERS:

The Petitioner, therefore, most respectfully praysthat –

- (a) this Hon'ble Court may by way of appropriate writ Order or direction, issue guidelines as per Annexure "V" and any other just and proper directions, for protection of Medicare Service Institutions and Medicare Service Personnel;
- (b) this Hon'ble Court may direct the Respondent No.11 to constitute a committee of experts to look into the definition of medical accident and possibility of covering Medical Accidents with suitable insurance,
- (c) till the Committee submits its report to this Hon'ble Court, this Hon'ble Court may issue guidelines, regarding protection of Medicare Service Personnel from action on the ground of negligence in case of medical accidents,



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(d) during the pendency and till the hearing and disposal of this PIL, this Hon'ble Court may direct the Respondents to implement the provisions of –

(1) Maharashtra Govt. Resolution in its Home Department bearing No. CRT-2012/ Pra.Kra. 696/ Pol-11 regarding protection to the RTI Activists, whistleblowers and social workers, which has been made applicable to witnesses by this Hon'ble Court;

(2) The Maharashtra Police Act No. 37, 47, 49, 50, 51, 52, 125, and

(3) the Draft Act prepared by Ministry of Health & Family Welfare entitled Healthcare Service Personnel and Clinical Establishments (Prohibition of Violence and Damage to Property) Bill, 2019.

(e) pass such other or further Orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

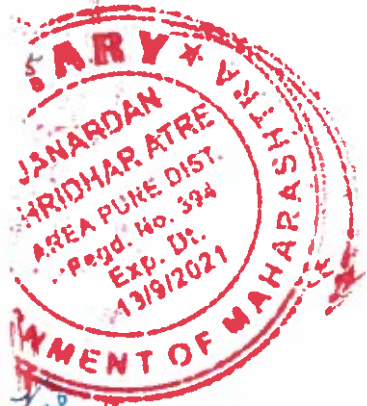
and for this act of kindness and justice, the Petitioner above named as duty bound shall ever pray.

Mumbai

Dated :September____, 2020


Advocate for Petitioner





AFFIRMATION

I, Dr. Rajeev Digambar Joshi, Medical Practitioner, aged about 60 years, residing at Shree "J" Bungalow, 13/1/98, Sukhasagar Nagar, Katraj, Pune 411046, the Petitioner above named, do take oath and state on solemn affirmation that I have gone through the memo of above Criminal P.I.L.

I say that the contents of para Nos.01 to 25 are the statements of facts and the same are true to the best of my knowledge. The contents pertaining to the other Petitioners are based upon the certified copies of the documents annexed to the petition and the contents of the remaining paragraphs are true to the best of my belief.

Solemnly affirmed at PUNE on this 15th day of SEPTEMBER month of the year 2020.

I know the Affiant.



[Signature]
Advocate

[Signature]
DR. RAJEEV JOSHI
M.B.B.S., M.D. (Paed)
M.M.C. Reg. No. 51010
(Rajeev D. Joshi)
Affiant

The Deponent / Executant is identified by me through Shri Nitin Deshpande who is personally known to me. *Advocate*

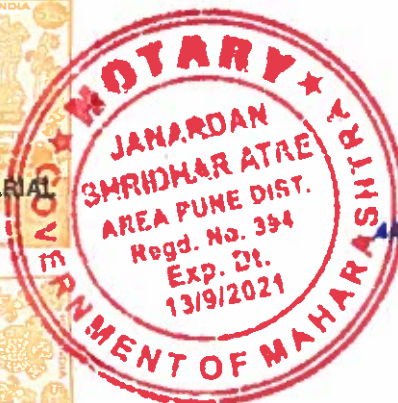
Attestation of Affidavit
I do swear in the name of God that this is my name and Signature (or mark) and that the contents of this my affidavit are true and correct

[Signature]
J. S. ATRE
NOTARY MAHARASHTRA STATE
PUNE DIST. PUNE

[Signature]
J. S. ATRE
NOTARY MAHARASHTRA STATE
PUNE DIST. PUNE **15 SEP 2020**

BEFORE ME

[Signature]
J. S. ATRE
NOTARY MAHARASHTRA STATE
PUNE DIST. PUNE
4041, Navsahyadri Co-op. Hsg. Secy.,
Karve Nagar, Pune - 411 052.
Phone No. 25447128



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