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- * Decision is an authority for what it decides and not what can logically be deduced therefrom. 222
- * If two views are possible on the basis of evidence, the view favourable to accused has to be taken. 305
- * True fiscal and penal laws are normally construed strictly, but this rule is not free from exceptions. 192

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PROFESSIONAL FEES AND
CORRUPTION: A STUDY IN THE
LIGHT OF SUPREME COURT'S
DECISION IN KANWARJIT
SINGH'S CASE*

By

Prof. (Dr) Mukund Sarda**

The paramount duty of a physician is to uphold the dignity and honour of the profession to which he belongs. The medical profession is primarily committed to rendering service to humanity. All other consideration either monetary gain or reward is only a subordinate to rendering service to the people who are sick and suffering with diseases. All efforts must be made by the medical professional to cure the patients.

Article 21 of the Constitution of India, guarantees that no one can be deprived of his life or personal liberty. Right to life implies right to health which includes the right to treatment in cases of sickness and disablement. Preservation of human life is of highest duty to medical practitioners, whether in a Government, or private hospitals. The Supreme Court upheld an important code of conduct for medical practitioners while re-stating thus: "No law or statute can intervene to avoid or delay the discharge of a paramount obligation cast upon members of medical profession"¹, to save a human life.

The Government doctors face an obstacle in the discharge of their professional duties, while rendering medical help to the sick and disablement, when the patient approach them at their residences not in the hospitals. This is widely known as "private practice" which

is prohibited by Government under the conduct rules and not a rigid rule, as the Government can permit their doctors to take up private practice.² The power of the Government to permit private practice by their doctors is only to be viewed as the power possessed by the employer and cannot otherwise be explained. What policy the Government might follow in granting such permission is not clearly spelt out.

In *Kanwarjit Singh Kakkar's case*,^{3a} Government doctor doing private practice treated a patient and charged a fee of ₹ 100/- as prescription fee. The doctor concerned checked the blood pressure of the patient and after checking properly charged the fee while issuing prescription slips and medicines to the patient. This was viewed as a violation of Section 68 of the Indian Penal Code and Sec. 13(1)d read with Sec. 13(2) of the Prevention of Corruption Act, 1988.

The question arose for consideration whether acceptance of fee by the Government doctor while doing private practice constitutes an offence of 'corruption' within the meaning of Prevention of Corruption Act and engaging in private practice constitutes 'Trade' within the meaning of Sec 168 of the Indian Penal Code, 1860?

'Corruption' is explained as acceptance or demand of illegal gratification for doing an official act.⁴ In order to constitute an offence under Sec. 13(1)(d) of the Prevention

* *Kanwarjit Singh Kakkar v. State of Punjab* (2011) Cr LJ P.3360

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1. *Pt. Parmand Katara v. Union of India*, AIR 1988 SC P.3038.

2. As in the case the present study Punjab Civil Services (Punishment and Appeal) Rules which provides for contravention punishment by way of departmental action. However, the State Government have the power to permit private practice by Govt. doctors under Punjab Civil Medical (State Service Class I) Rules, 1972.

3. *Supra* P.3363.

4. See Sec. 7 of Prevention of Corruption Act, 1988.

of Corruption Act, the following ingredients are required to be fulfilled:-

The accused must be a public servant at the time of the offence;

He must have used corrupt or illegal means and obtain for himself or for any other person any valuable or pecuniary advantage;

or

While holding such office he must have obtained for any other person any valuable thing or pecuniary advantage without any motive.

The Supreme ruled thus: "we find no difficulty in accepting the submission and endorsing the view that the demand / receipt of fee while doing private practice by itself cannot be held to be an illegal gratification as the same obviously is the amount charged towards professional fee"⁵. The Court also ruled that it would be definitely illegal gratification, if the doctor took money by way of illegal gratification for admitting the patients in the government hospital or any other offence of criminal nature like prescribing unnecessary surgery for the purpose of extracting money by way of professional fee and several other acts of criminal nature⁶. The ruling of the Court is consistent with the paramount duty of a doctor to treat sick and the disabled and is in a way give effect to realization of fundamental right (Art,21). Further the fee of ₹ 100/- may not be adequate to reimburse himself for the medical expenses like supply of medicine and other medical reliefs. When no law can come in the way with discharge of the paramount duty of the doctor to save a human life, much more so the Government service conduct rules (an instance of power framed by Govt. by virtue of delegated

power of the legislation). The conduct rules so far as medical profession is concerned cannot survive any attack on it vires or Constitutionality.

The other crucial question relates to whether private practice can be regarded as 'trade' so as to bring it within the scope of an offence as defined under Sec. 168 of the Indian Penal Code, 1860.

Whoever being a public servant and being legally bound as such public servant not to engage in trade, engages in trade shall be punished with simple imprisonment for a term which may extend to one year or with fine or with both.

The Supreme Court had no hesitation to hold that private practice by a doctor and acceptance of fee does not constitute 'trade' as it does not involve any profit-making⁷. Even the Punjab Government Vigilance Department issued a circular⁸ to withdraw cases of Government teachers holding private tuition classes and acceptance of fee on the ground that such acts can neither be termed as 'corruption' nor can it be said to be a demand for remuneration for some official act. There can be no doubt, whatsoever that fee charged by government doctors for treating patients while engaging in private practice do neither come within the term 'corruption' nor can be said to be a demand for remuneration for some official act. In most of the case the doctors treat cases on humanitarian grounds to provide immediate relief and ask the patients to go a regular hospital for complete treatment required. If they are not banned not to take such cases, not only the doctors are violating their paramount duty which the

7. *State of Gujarat v. Mahesh Kumar Dheerajlal Thakkar* AIR 1980 SC P.1167.

8. Punjab Government Vigilance Dept. (Vigilance -3 Branch Memo No. 53/168/02-54/20094 dated. 23.12.2004.

5. Supra Para 11 Page 3363.

6. Supra Para 11 Page 3368.

profession demands them to fulfil and be the cause for patients death, by such refusal to treat on the ground of violation of a rule framed by the Government. There is no difficulty to assert that the rule of the Government cannot stand superior to an apex court declared law.⁹

The time is ripe now to make suitable amendments to the Prevention of Corruption Act in these terms:-

Section 13(1)(d)

Private practice by Government doctors on humanitarian grounds in treating patients to provide quick relief to the suffering and acceptance of professional fee by way of reimbursement of expenses for supply of medical and other related expenses shall not constitute "illegal gratification".

A similar amendment to Sec. 168 of the Indian Penal Code to this effect be made: Proviso to Sec. 168 .

Professional fee charged by persons during the course of professional discharge of duties shall not be regarded either as an illegal act or "trade".

THE JUDICIAL STANDARDS AND ACCOUNTABILITY BILL, 2010 – A CRITIQUE

By

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"If the Indian Constitution is our heritage bequeathed to us by our founding fathers, no less are we, the people of India, the trustee and custodians of the values which pulsate within its provisions! A constitution is not a parchment of paper, it is a way of life and has to be lived up to. Eternal vigilance is the price of liberty and in the final analysis, its only keepers are the people.

9. See for details Art 141 and Art 144 of the Constitution of India.

*Imbecility of men, history teaches us, always invites the impudence of power."*¹

-Justice H.R. Khanna

Background

The recent years have witnessed a vigorous debate about the working of our judiciary, including the higher judiciary. At one level, serious charges of corruption, nepotism and acquisition of assets disproportionate to known sources of income have been levelled against some members of the judiciary, raising concerns about the integrity and impartiality of our judicial system and processes. While these have undoubtedly damaged the high regard in which the judiciary is usually held, there is simultaneous appreciation that the judiciary is not only the last bastion for the citizen against state excess, arbitrary behaviour and apathy but also the ultimate guarantor and upholder of the Constitution and democracy.

During Indira Gandhi's rule, there was political stability in the country and the Congress enjoyed a majority in Parliament. Days after the historic Kesavananda Bharati case verdict² in April 1973, in which Supreme Court propounded the theory of basic structure, four senior SC judges were superseded and Justice AN Ray was appointed the CJI. As a result, four senior-most judges resigned. Later, Justice HR Khanna too was superseded. During the Emergency, several judges became victims of punitive transfers as they were transferred without the consent of the CJI.

Since the 1989 general elections, no individual political party has got a majority in the Lok Sabha. With political instability and coalitions being the norm

1. Extract from 'Making of India's Constitution' by Justice H.R. Khanna (1981)

2. Kesavananda Bharati v. The State of Kerala and others; AIR 1973 SC 1461