



**Spreading Legal and
Economic Awareness**

A Social Initiative by
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Special points of interest:

- What comprises of breach of duty by doctors
- How NGOs have helped shape human rights
- Laws for car parking spaces in societies
- Laws that central govt mulls over removing
- What if complainant mentions wrong time in FIR
- Benefits of Gold monetization scheme

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Medical Negligence Breach of Duty of Care in the case of Doctors

Breach of duty means omitting to do something, which a reasonable doctor would do. This also means doing something which a reasonable doctor would not do.

A doctor cannot be responsible for a trifling injury, if he has taken reasonable care and exercised reasonable skill. The courts have accepted that there is enough scope of genuine variations in the realm of diagnosis. So negligence cannot be alleged against a doctor merely because his opinion or diagnosis differs from other doctors or nutritionists or para - medical health care. However, certain things are required from a doctor.

Before commencing the treatment the doctor must examine of the patient. Prescribing medicines by phone in an emergency is acceptable, but in appropriate cases the doctor must examine the patient as soon as possible. During treatment, the doctor must attend to the patient with reasonable promptitude, and failure to do so would be a breach of duty. On an emergency call, his duty is to leave eve-

rything, and rush to see the ailing patient. To put it rather crudely, failure to discharge duties which a doctor has undertaken, is breach of duty.

A doctor is also supposed to supervise the post operative care of the patient, must warn him about the surgery which the patient is going to be subjected to and what is to be done or not done in the after care. In case a patient is beyond a condition that can be treated by a particular doctor or beyond the competence of a particular doctor, the doctor must refer the case to another doctor or state it in writing that the bare minimum that can be done by him in a particular case. In case a doctor is heading a team, he must give all necessary instructions to the subordinate doctors.

Mistaken diagnosis and wrong therapy based on mistaken diagnosis may cause harm and injury to the patient, and this will make the doctor liable. At the same time, all doctors are not infallible, and so all mistaken diagnosis do

not amount to negligence. But if he follows below accepted standards, in making a diagnosis and thereby causes injury or a belated treatment, he is legally liable. In many cases, early symptoms may be obscure and may lead to wrong diagnosis which is not negligence. But later developments may make things clear. If a doctor does not take this later developments into consideration and does not modify his earlier mistaken diagnosis, he may be held as negligent. The breach of duty must have produced an injury. The injury must be a direct result of the breach of duty. A doctor may not be liable to pay compensation if the injury is a remote result of the breach of duty. Therefore in order to make out a case of compensation, the injury must proximate to breach of duty. The patient therefore is expected to prove that the deviation from normal standards was a proximate cause of the injury and that the injury would not have occurred without this deviation.

Role of NGOs in Human Rights

Numerous NGOs exist in our country, specifically in various fields of human rights-child welfare, environment, women rights and rehabilitation of manual scavengers. Some NGOs are working as national sections of international NGOs, and indeed many NGOs, without any direct international ties have succeeded in implementing human rights law in ways unavailable to international NGOs. The role of local NGOs are active in nearly every sphere of international human rights. These NGOs have advocated and helped to draft interna-

tional human rights. These NGOs have advocated and helped in draft international human rights norms in multilateral treaties and resolutions, also assisted in intergovernmental organisations and governments in the implementation of human rights norms. Indian NGOs are playing an important role not only in monitoring human rights violations, but also equally in rehabilitation of victims and promotion of the implementation of human rights. NGOs have been playing a crucial role in the protection of fundamental rights of people. There are

several instances where the NGOs were first to report the violation of human rights to appropriate authorities. The National Human Rights Commission at New Delhi has taken action on several human rights violation complaints mainly reported by local NGOs from different parts of the country.

It is a sacred duty of the NGOs to educate the local masses about their rights and report each case of violation of human rights to appropriate forum.

Bye laws for Car Parking Spaces under Societies Act

A member having a motor vehicle, will only be eligible to have stilts or parking space. No member shall normally be eligible for holding more than one stilt of parking space for parking the car owned by him or allotted or allotted to him by his employer or the firm of which he is a partner or the company of which he is a director. If any stilts or parking spaces remain un-allotted for want of applicants for allotment, a second or third person may be

allotted the stilt or parking space to the same member who had earlier been allotted the stilt or parking space, such allotment would be on a year to year basis, provided the said stilt or parking space is not required by any other member, who has not even been allotted a single stilt or parking space. All initial allotments are to be done on a first cum first served basis. In case the number of vehicles are in excess, than the space available, then the allotment

would be done by the managing committee in lots, on a yearly basis. Every member having a scooter, or an autorickshaw or a motor cycle shall obtain prior permission of the Committee for parking his vehicle in the compound of the society. Charges of parking are fixed by the Managing Committee and members who are allotted the stilt or the space are required to pay those charges, irrespective of the fact as to whether they use the stilt or space or no.

It is Proposed to Repeal 261 Obsolete Laws

Better late than never, on 12. 09. 2014 (finding its mentioning in the 20th Law Commission Report), the Centre has proposed a deletion/abolition/ repeal of at least 261 obsolete laws, some of them are Bombay Rent Free Estates Act, Sheriff's

Fees Act, Forfeited Deposits Act and many others. The complete list is available on the internet, in Appendix V of the Report dated 12. 09. 2014 of the 20th Law Commission Report on Obsolete Laws - Immediate Repeals).

These unnecessary laws have been taking their toll in the form of expenditure to state in the form of stationery for printing, un-necessary litigations, pending cases, etc. Removing these laws will also save precious judicial time.

Wrong Timing of Incident Reported in False Complaints-A Note

More often than not, when false complaints are registered, the timing of the incident stated/reported is wrong. Later when such 'after-thought' plans are unveiled, the false complainant comes back with false excuses, that the time was stated wrongly as a result of various concocted reasons. In these circumstances, a very important section of the Evidence Act 1872 could prove as an aid to "good" police officers investigating such false cases.

Section 157 of the Evidence Act reads as under:

"Former statements of witness may be proved to corroborate later testimony as to same fact in order to corroborate the testimony of witness, any former statement made by such witness relating to the same fact, at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved."

'At or about the time when the fact took place'. – These words mean that the statement must be made at once or at least as soon as a reasonable opportunity presents itself. What a reasonable time is, is a question of fact in each case. The object of the section is to admit statements made at a time when the mind of the witness is still so connected with the events as to make it probable that his

description of them would be accurate. But if time for reflection passes between the event and the subsequent statements can be easily brought into being. Such delayed statements are inadmissible. The section says that the statement must be made "at or about the time" not "at any time after the event". The Supreme Court has held that the main test as to whether a previous statement was made "at or about the time when the fact took place" is whether the statement was made as early as could reasonably be expected in the circumstances of the case and before there was an opportunity for tutoring or concoction.

The expression "at or about time when fact took place" in S. 157 should be understood in the context according to facts and circumstances of each case. Eg- Where the testimony of witnesses is that soon after the incident when they arrived at the spot, eye-witnesses told them that accused chopped deceased by axe, while appellant – accused dealt a blow of lathi, the testimony is admissible in evidence and is relevant piece of evidence in terms of S. 157.

In *Mahabir Singh V. State of Haryana*, the Supreme Court construed the words "at or about the time when the fact took place". There was the solitary eye-witness to the fact of a murder. Soon

after the incident he narrated the details to his father. The father narrated the same details in the FIR lodged by him. The court said that the interval between the occurrence and the time of communicating its details by the eye-witness to his father had not crossed the boundaries envisaged by the words "at or about the time when the fact took place". The testimony of father could be used to corroborate the evidence of his son, the eye-witness. The court said : "It is useful to refer to the decision of this Court in *State of Tamil Nadu V. Suresh*.

Following passage in that decision will be opposite : "We think that the expression 'at or about the time when the fact took place' in Section 157 of the Evidence Act should be understood in the context according to the facts and circumstances of each case. The test to be adopted, therefore, is this : Did the witness have the opportunity to concoct or to have been tutored?

In this context the observation of *VIVIAN BOSE J.* in *Rameshwar V. State of Rajasthan* in apposite : 'There can be no hard and fast rule about the 'at or about' condition in Section 157. The main test is whether the statement was made as early as can reasonably be expected in the circumstances of the case and before there was opportunity for tutoring or concoction."

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*A law and economics knowledge
sharing initiative*

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Chanderlawpal.com is an online legal advisory portal, for people from all over the world, seeking legal advice on Indian or/and international laws.

This newsletter is an initiative by Advocate Charanjeet Chanderpal for making public aware about the laws that exist in India for protection of common man. Legal jargons and financial language are seldom understood by laymen and this causes public to lose faith in legal and economic (financial) systems.

-An attempt to restore this faith and to help people use the existing machinery to become self reliant.

The Gold Monetisation Schemes and its Benefits

After fifty years since 1965, the Government has thought of Gold Monetization Scheme (GMS) to bring unproductive investment held in the form of gold and gold jewellery to be used for productive purpose. The estimate of idle gold lying with the people of the country is over 20,000 tones. Hence, to bring such gold to productive channels, the FM, Shri Arun Jaitley has mooted a gold monetization scheme while presenting the budget for the year 2015-16.

Benefits to the depositors

1. Gold would grow overtime and the accretion to the original deposit would be tax free.
2. The tax free minimum lock-in period for the gold deposited would be one year. After that the

depositor on redemption can take cash for the gold deposited and interest accrued on the same.

3. One can deposit old jewellery lying idle as little as 30 grams.

Benefits to the Banks and intermediaries with whom deposit is made

1. Banks & other intermediaries will develop a source of income.
2. The freedom to decide interest rates on such deposits will be with banks.
3. They can sell gold to generate foreign exchange for lending to importers and traders.

Bank can make coins from the gold and sell the same.

4. There will be increase in business of analyzers and refiners.

5. Such deposits can be considered for SLR and CRR of Banks

Gain to economy: The overall gain to the economy would be that the gold which is lying presently in the form of unproductive assets will come out in the open and contribute to the overall benefit of the economy. Gold imports will surge, saving valuable foreign exchange to the country.

Gain to the depositors: Though this has not been spelled out categorically in the draft scheme, the benefits to the depositors are expected to be exempted from wealth tax, capital gains tax and income accruing or arising on such deposits.