

# Medico-Legal Profiling of Sher-i-Kashmir Institute of Medical Sciences Srinagar under Consumer Protection Laws of Union Territories of Jammu and Kashmir

M.Z.M. Nomani<sup>1</sup>, Ajaz Afzal Lone<sup>2</sup>, Faizanur Rahman<sup>3</sup> Alaa K.K.Alhalboosi<sup>2</sup>, Aijaj A.Raj<sup>2</sup>

<sup>1</sup>Professor, <sup>2</sup>Research Scholar, <sup>3</sup>Assistant Professor, Faculty of Law, Jamia Millia Islamia, New Delhi, India

## Abstract

The *Jammu & Kashmir (J&K) Consumer Protection Act, 1987* needs a closer scrutiny from the standpoint of medico-legal services in the wake of J&K Union Territories' (UTs) uneven health profiling and developmental progress. The doctor-patient's relationship needs an analysis in terms of access to health care and medical and para medical services. The consumer rights under *Consumer Protection Act, 1986, Jammu and Kashmir Consumer Protection Act, 1987* and *Consumer Protection Act, 2019* represents a trajectory of deficiency of medical service and lack of medical professionalism and capacity building among health personnel. The paper is a medico-legal profiling of Sher-i-Kashmir Institute of Medical Sciences (SKIMS), Srinagar in regard to diligence and negligence of doctors and para legal medical inspectorate in auguring health care and medical services to patients.

**Key words:** *Medico-Legal Services, Uneven Health Profiling, Health Care Services, Diligence & Negligence of Doctors, Para Medical Inspectorate.*

## Introduction

The health services in UTs of J&K since three decades discern uneven health profiling and developmental progress. The state is reeling under infectious diseases and chronic health disorders. The inadequacy of preventive and curative system is adversely affecting health equity as well quality.<sup>1</sup> The healthcare system, emergency preparedness and trauma prevention in geographic oddities of UTs of J&K are proving detrimental to health and welfare of people. This is further aggravated by inverse doctor-patient ratio of 1:1880 as against the World Health Organisation ratio of 1:1000.<sup>2</sup> The woefully understaffed 14,686 paramedics against the requirement of 18,436 paramedics makes the access to health care precarious to sickness. Despite

sizable number medical institutions and mammoth funding there is a shortage of critical care ambulances at district, sub-district and medical colleges in the state to provide life support system to seriously injured patients. The healthcare infrastructure seems to be ineffective in innovative quality care, accessibility and affordability and regulatory measures standards and norms.<sup>3</sup> There was a sudden decline in annual birth rate which fell to nearly 20 per million from the level of 34 per million. The annual death rate also registered a sharp decline from 7.90 in 1990 to 5.40 in 1998 in the state. A comparison of infant mortality with the rest of the country shows that the IMR in Jammu and Kashmir is 45.4, far below the national average of 71.6 per thousand. The state of J&K has once again registered a significant decline in the infant mortality rate (IMR) from 26 per 1000 live births to 24 per live births as per latest sample registration system (SRS) bulletin by Registrar General of India.<sup>4</sup>

---

## Corresponding Author:

**M.Z.M. Nomani**

Professor, Faculty of Law, Aligarh Muslim University, Aligarh-202001(U.P./India)e-mail: zafarnomani@rediffmail.com

## Materials & Method

The study employs material and methods of legal research by critical scrutiny of consumer laws at central and state levels in legal pragmatism discourse.<sup>5</sup>

The *Consumer Protection Act, 1986*, *J&K Consumer Protection Act, 1987* and *Consumer Protection Act, 2019* are studied *pari materia* under canons of statutory interpretation in Scalia and Garner construct in the context of health care services.<sup>6</sup> The material and method partakes an empirical frame work of SKIMS, Srinagar a premier medical institution in J&K state on medical services, doctors diligence and negligence, Emergency and trauma, capacity building assessment of para medical personnel in actualisation of consumer justice.

## Findings

The need of for transparent management of consumer justice and compensation inclusive of health services and disease overburden needs proper regulation. The health status has not been able to keep pace with the national level of achievements because of the political turmoil and poor infrastructure. The J&K Consumer Protection Act, 1987 has substantially vindicated patient's rights to health access and compensatory justice.<sup>7</sup>

**Constitutional & Legal Dimensions:** The *Consumer Protection Act, 1986* was not applicable to J&K because of its special status under Article 370 of the Constitution of India, 1950. Under this constitutional scheme, the state of J&K has to decide either to extend the central law to state or to enact similar law for state of J&K.<sup>8</sup> Accordingly the State enacted *J&K Consumer Protection Act, 1987* to give effect to *Consumer Protection Act, 1986* with a few variations to take care of health care services. The government took a constitutional leap by abrogating Article 370 and bifurcated the State into two Union Territories (UTs) under *Jammu and Kashmir Reorganisation Act, 2019* on 9th August, 2019. Coincidentally the Consumer Protection Act, 2019 was also passed on same date *i.e.*, 9th August, 2019 but clearly mentions that 'it extends to the whole of India except the State of Jammu and Kashmir.' Therefore the *J&K Consumer Protection Act, 1987* is still a valid law although it will undergo a revamping in the light of *Consumer Protection Act, 2019* by the J&K legislature under *J&K Reorganisation Act, 2019*.

**J&K Consumer Protection Act, 1987:** The *J&K Consumer Protection Act, 1987* provides speedy redressal to consumer complainants inclusive of health care services by setting up of a District Consumer Redressal Forum and State Commission having jurisdiction to claim of Rs. 10 lakhs and Rs. 30 lakhs respectively. Section 2 (1) (d) *J&K Consumer*

*Protection Act, 1987* defines 'consumer' to mean any person who buys any goods or hires any service for a consideration which has been paid or promised or partly paid and partly promised, or under any system.<sup>9</sup> Section (2)(1)(g) defines 'deficiency' to mean any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under in any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service. section 2(1) (0) defines 'service' to means service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, entertainment, amusement or the purveying news or other information, under a contract of personal service. Thus it applies to all goods and services except those which are specially exempted by notification by the state government; however the state government has not specifically exempted health care services provided by government hospitals.<sup>10</sup>

**Comparison of Central & State Consumer Laws:** This Consumer Protection Act applies to the whole of India except the State of Jammu and Kashmir having their own legislation J&k consumer protection act 1987 with some variations and covers all goods and services purchased by the consumers and to all sectors private, public and cooperative. The objective of the Act is "to provide for better protection of the interests of consumers and for that purpose to make provisions for the establishment of Consumer Councils and other authorities for the settlement of consumer disputes and for matters connected therewith". It protects the consumers from unfair trading or unfair trade practices. It is important to note that the both Consumer Protection Acts are social welfare legislation and has been designed to avoid technicalities, procedural delays, procedural requirement, court fees and costs. Under the Consumer Protection Act 1986 three-tier consumer disputes redressal system at the District, State and National levels has been set up and in state of J&K two tier redressal agencies one Divisional forum and state commission. The Consumer Commissions are authorized to impose penalties on trader or person against whom complaint is made if he fails to comply with the order of the redressal agency. The penalty or punishment may involve imprisonment for a period not more than 3 years or a fine or both.<sup>11</sup> The 'service

of any description made available to potential users’

under *Consumer Protection Act, 2019* can be statutorily interpreted and liberally construed as a beneficial piece of legislation for auguring consumer justice but does not absolve doctor from the purview *Consumer Protection Act, 2019*.<sup>12</sup> Moreover the judicial enunciations in *Indian Medical Association v. V.P. Shantha* Case by Supreme Court in 1996 being good piece of law is not even barred by the *Consumer Protection Act, 2019*.<sup>13</sup>

### Discussions

The perusal of The *Consumer Protection Act, 1986*, *J&K Consumer Protection Act, 1987* and *Consumer Protection Act, 2019* applied to the case study of SKIMS manifests that the doctor owes duty of care in treatment and any breach gives a cause of action by patient for medical negligence and award of compensation. The medical negligence and deficiency of service is based on the cardinal test for liability in tort and *ipso facto* applied by Section 2 (I) (o) *J&K Consumer Protection Act, 1987* in SKIMS. The institution is semi-

autonomous super-specialty hospital and the deemed university having gastroenterology, cardiology, urology nuclear medicine and general medicine etc. These departments are delivering functions on across modern and scientific lines also the hospital administration is supervising the administrative affairs of hospital.<sup>14</sup> It has College of Nursing and College of Paramedical Sciences. It awards degrees in all subjects of Medicine and allied specialties such as DM, M Ch, MD, MS, Ph D, MBBS, M Sc Technology, M Sc. Nursing, B Sc Nursing & Technology, etc. It is one of the top ranking medical institutes in India and provides prevention, treatment, rehabilitation, obstetrics, substance abuse, health education, and screening for cancers and other diseases.<sup>15</sup>

**Medical & Health Care Services:** The central inquiry pertains to medical and health care services by applying randomized sample survey of 100 patients in and out patients department of SKIMS. The Table-1 depicts the responses of patients having varying degree of satisfaction towards medical and health services.

**Table -1: Medical & Health Care Services**

Patients	Respondents	Yes	%age	No	%age	Indifferent	%age
In Patients	50	33	66	15	30	02	04
Out Patients	50	15	30	24	48	11	22
Total 100	100	48	48	39	39	13	13

Source: Field Work

The above table discerns that 48% respondents faced trouble while getting admitted in the hospital while as 39% respondents said they have not faced any problem admitted in hospital. However the remaining 13% respondent is oblivious of any opinion on the subject.

**Doctors Diligence & Health Care:** The aim and the objectives of medical services are to provide treatment to those who are in need of urgent medical care and patient needs immediate health care in hospitals.

**Table-II: Doctors Diligence & Health Care**

Patients	Respondents	Yes	%age	No	%age	Indifferent	%age
In Patients	50	33	66	12	24	05	10
Out Patients	50	26	52	21	42	03	06
Total 100	100	59	59	33	33	08	08

Source: Field Work

The patients interviewed while undergoing the treatment in SKIMS reveals that 59% respondent are pretty satisfied with doctors’ diligence while 33% shows that doctors don’t show their due care and circumspection in examining and treating the patients. However 8% respondents are either ignorant or indifferent about doctors’ diligence and negligence.

**Medical Negligence & Liability:** Put it differently, as to whether the doctors are having negligent behaviour towards medical care and therapeutic treatment in SKIMS, the 33% respondents said that they are quite satisfied with their due diligence.

**Table-III: Medical Negligence & Liability**

Patients	Respondents	Yes	%age	No	%age	Indifferent	%age
In Patients	50	13	26	29	58	08	16
Out Patients	50	20	40	18	36	12	24
Total 100	100	33	33	47	47	20	20

Source: Field Work

Whereas a majority of 47% respondents express dissatisfaction about hospital housekeeping staff with specialised knowledge are indifferent towards specific to health care site and cleaning protocols at work. However, one fifth of respondents ignore to have any opinion about the housekeeping facilities in hospitals.

**Health Care Services & Emergency Preparedness:** The health care services can be gauged from the emergency preparedness’ of SKIMS which involves acute injury or illness, immediate risk to a person’s life and long-term health effects.

**Table -IV: Health Care Services & Medical**

Emergency

Patients	Respondents	Yes	%age	No	%age	Indifferent	%age
In Patients	50	25	50	23	46	02	04
Out Patients	50	15	30	29	58	06	12
Total 100	100	40	40	52	52	08	08

Source: Field Work

The health care services can be gauged from the emergency preparedness’ of SKIMS which involves acute injury or illness, immediate risk to a person’s life and long-term health effects. The medical care in an

emergency data revealed that 40% respondents agreed to adequacy of safeguard mechanism. On the other hand, 52% respondents are deprived of medical care in emergency while and 8% respondents feign ignorant

about it.

**Para Medical Personnel & Health Care Delivery:** The overall perception about medical and para medical personnel in health care delivery, protocol and therapeutics seems at a low level. There is no denying of fact that the hospital administration have duty to provide care but while interacting with patients they are not found sobering towards medical ethics.

**Table -V: Para Medical Personnel & Health Care Delivery**

Patients	Respondents	Yes	%age	No	%age	Indifferent	%age
In Patients	50	13	26	29	58	08	16
Out Patients	50	20	40	18	36	12	24
Total 100	100	33	33	47	47	20	20

**Source:** *Field Work*

The behaviour of hospital staff, according to survey reveals that 33% of respondents saying it up to mark. The 47% respondent chooses to disagree and 20% remain indifferent to behaviour of hospital staff and nurses. It is under this backdrop, the Comptroller and Auditor General (CAG) of India has reported that there are over 4,000 deaths at SKIMS in 2007-2012. In a published report that says that Kashmir's dream hospital has seen 12,860 deaths. It is based on CAG Report which has noticed that out of 12,860 hospitalized patients died as many as 7,875 after 48 hours of their admission during 2007-2012.<sup>16</sup> The pragmatic analysis of *J&K Consumer Protection Act, 1987* reveals that there has been substantial consumer right awareness<sup>17</sup> and realization of right to health and medical services during last three decades of its enactment.<sup>18</sup>

### Conclusion

The medico-legal profiling of SKIMS under *J&K Consumer Protection Act, 1987* in regard to health status of the people in the union territories of Jammu and Kashmir has been deeply interwoven with medical care, doctors' diligence, negligence and liability, emergency preparedness, protocol and therapeutic delivery by medical and para medical staff. On the broader plain, the medico-legal profiling has direct nexus with poverty, poor infrastructure and incidence of chronic and infectious and political instability driven life style diseases. Thus the trajectory of *Consumer*

*Protection Act, 1986, J&K Consumer Protection Act, 1987 and Consumer Protection Act, 2019* orient to a novel discourse in medical & health care services, doctors diligence and negligence, health care services and emergency preparedness, para medical personnel in health care delivery. The *Consumer Protection Act, 1987* is nicely drafted enactment and meticulously tilted towards consumer oriented aspirations but eludes in therapeutic perception as well as consumer justice. The judicial annihilation of compensatory jurisprudence in medico-legal cases are far clear in clamping civil and criminal liability but seems in nascent stage of formation in union territories of Jammu and Kashmir. The empirical evidence of SKIMS under the preponderance of balances is not very encouraging to healing effects of patients under the *J&K Consumer Protection Act, 1987*.

**Conflict of Interest – No**

**Source of Funding- Self**

**Ethical Clearance – No**

### References

1. Balarajan, Y. Selvaraj, S. & Subramanian, S. V. Health Care and Equity in India: *The Lancet*, 2011; 505-515.
2. World Health Organization. International health regulations. Geneva: World Health Organization; 2005. [Internet]. [Cited on 2008 May 30]. Available

- from: <http://whqlibdoc.who.int/publications/2008/eng.pdf>.
3. Syed Tabish Amin. Healthcare Delivery in Jammu and Kashmir: December; 2010. See also: Syed Tabish Amin. Health Scenario in Jammu & Kashmir. A Dilemma: [Internet]. Available from: <http://medind.nic.in/haa/t02/i1/haat02i1p1g.pdf>
  4. VHAI. The Status of Health in Kashmir. Voluntary Health Association of India; 1999; 7-20. [Internet]. Available from: <http://medind.nic.in/haa/t02/i1/haat02i1p1g.pdf>.
  5. Brint, Michael & Weaver, William. Pragmatism in Law and Society: West View Press, Boulder; 1991.
  6. Canons Of Construction: Adapted From Scalia & Garner, 2010. [Internet]. [Cited on 2019 Oct 15]. Available from: <https://www.law.uh.edu/faculty/adjunct/dstevenson/2018Spring/CANONS%20OF%20CONSTRUCTION.pdf>.
  7. Nomani, M.Z.M., Alhalboosi, Ala K.K. & Rauf M. Legal and Intellectual Property Dimension of Health & Access To Medicines In India', XIII (4) Indian Journal of Forensic Medicine & Toxicology, 2019;. [Accepted]
  8. Noorani, A. G. Article 370. A Constitutional History of Jammu and Kashmir: OUP India: Reprint edition; 2014.
  9. Jammu and Kashmir Consumer Protection Act; 1987: (Act No.16 of 1987) (Dated 29.8.1987). [Internet]. Available from: <http://www.bareactslive.com/JK/JK056.HTM>.
  10. Nomani, M.Z.M., Lone, A.A., Alhalboosi, Ala K.K., Raj, A.A.& Ahmed, Z. Health Care Services Under Consumer Protection Laws Of Union Territories Of Jammu & Kashmir: A Socio-Legal Mapping', XI(2)Indian Journal Of Public Health Research & Development, 2020;. [Accepted]
  11. The Consumer Protection Act, 1986. (Act 68 of 1986). Government of India: [Internet]. Available from: [http://ncdrc.nic.in/1\\_1.htm](http://ncdrc.nic.in/1_1.htm).
  12. Nomani, M.Z.M. Climate Change, Environment Sustainability and Consumer Justice: IV [7&8] International Journal of Environmental Consumerism, 2009; 52-63. See also: Nomani, M.Z.M. Public Interest Litigation Movement and Consumer Protection in India: In: A. R. Kidwai, Ed. New Directions in Higher Education in India. Viva Books: New Delhi; 2014. p. 152-165.
  13. Indian Medical Association v. V.P. Shantha, [AIR 1996 SC 550].
  14. Sher-i-Kashmir Institute of Medical Sciences: (Grant of Degrees) Act, 1983 (Act of 12 of 1983). [Internet]. [Cited 2019 July 05]. Available from: <http://www.bareactslive.com/JK/JK297.HTM>.
  15. Govt medical college Srinagar and its associated hospitals: [Internet]. [Cited 2019 May 01]. Available from: <http://www.gmcs.edu.in/>
  16. Kashmir's dream hospital has seen 12,860 deaths in last 5 years: CAG. The Hindu [Internet]. Available from: <https://www.thehindu.com/news/national/other-states/kashmirs-dream-hospital-has-seen-12860-deaths-in-last-5-years-cag/article4585689.ece>.
  17. Nomani, M.Z.M. & Azvar Khan. Consumer Right Awareness and Its Enforcement in Rural and Urban Areas of Muzaffarnagar and Saharanpur District of U.P [Ph.D. Thesis] A.M.U. Aligarh; 2006. See also: Nomani, M.Z.M. & Azvar Khan. Consumer Right Awareness & Development of Rural Marketing Strategies in Shamli District of Uttar Pradesh: An Empirical Mapping. in Babita Agarwal Ed. Role of Rural Consumer Awareness in Development of Rural Marketing Strategies, Managlam Publisher & Distributors, Delhi; 2013. p. 79-93.
  18. Nomani, M.Z.M. Right To Health: A Socio- Legal Perspective. 56-85 Uppal Publications. New Delhi; 2004.