individualized consideration mandated in the *Bakke* and *Grutter* case. It did not indicate a lower allocation of points to the minority groups, and expressed clear disapproval of allotting l/5th of the points needed to guarantee admission solely on race. Such methods were held to be similar to quotas and separate tracks, which was declared always as unconstitutional. While Justice Souter in his dissenting judgment opined that an equivalent number of points was available to other socio economic disadvantaged class. The policy at large was rejected, as allotting marks to other classes would not serve any beneficial purpose other than creating a strong minority applicant pool.

Conclusion: The decision of the US and the various surveys and records placed before it including an extensive report in the form of Gurin report (see the case of *Daubert v. Merrell Dow Pharm Inc,* 509 US 579, 597 (1993), that form a part of the petition for seeking diversity show an unflinching support to the policies of the universities that focus on the development of the students as worthy citizens of the nation. While money and power are keys to gain admission in good institutes surveys have proved that it is not a proper method of educating students. The experience gained in Gurukuls of ancient days have been reported as the best form of education which had permitted the king's son to study along with the son of a poor peasant. Education is not merely knowledge it is a means to develop the character of an individual as a human being to serve mankind. These cases are of considerable importance and can have a great impact on education policies across the world. There has been a considerable spurt of National Law Schools in India catering to the needs of the elite, without any provision for the minority sections of the society. The moot question that now remains in the minds of the society is whether educational institutions are shops selling their wares in accordance with the investments made to run different courses. These judgments will hopefully be an eye-opener that cannot be ignored or discarded in this global era. These decisions are of vital importance to all the educational institutions that have to be noted at the earliest so that the policy makers take into consideration the significance of diversity. There is an imminent need to admit students on their **individual capacity**. There are several factors that are ignored in the educational policies. The president of United States placed before the Supreme Court various factors, for example: the highest marks scores awarded to the student from each institution regardless of the facilities granted to them - be it an urban or rural institute. This is a welcome feature and the author is of the view that this point has to be considered and is very essential in the Indian scenario as students who are intelligent yet due to lack of funds study in rural areas. Despite the fact that there are no adequate facilities yet prove their caliber and secure high marks such students have to be encouraged. Similarly students with special skills also have to be given some extra points to get admissions into good colleges. The two cases are different and as the courses offered are also different, therefore, the Courts examined them as per their requirements. This also has to be noted and a vibrant campus is the need of the hour. The students have to be taught basic moral science to treat their colleagues with respect and prove themselves worthy citizens of the Nation.

MEDICAL NEGLIGENCES V. COMPENSATORY JURISPRUDENCE

By

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Preserving human life is given paramount importance in a welfare state. To discharge constitutional obligation of preserving human life, various health centers and Government

hospitals were established by the state Governments & Central Government. But, unfortunately over the years not even a day passes without there being a case of negligence of staff of the Government hospitals and health centers. This is due to careless and callous attitude of doctors and staff of Government hospitals and health centers and up course private hospitals are no exception to this. The reasons are very obvious. Due to Massive Commercialisation in the medical profession. In most of the Government hospitals and health centers the staff expects additional monetary benefits from the palfents apart from salaries and other allowances they get from Government No doubt there are exceptional and honest doctors and staff but their number seem to be very low. In order to achieve their extra financial ambitions, the Government doctors also are conducting private practices. This commercial attitude is not allowing the Government doctors to be service-motive and charitable.

Right to life is the fundamental light of every citizen envisaged under Article 21 of Indian Constitution. There a statutory obligation by State Governments and Central Government to ensure that every citizen in need of free medical services gets good and timely treatment in Government hospitals and health centers.

Article 38 of the Constitution envisages that the state shall strive to promote the welfare of the people and endeavour to eliminate inequalities in status facilities and opportunities among the people etc.

There are directive principles of state policy envisaged in Part - IV of the constitution. In the said directive principles under Article 39 it is envisaged that state shall in particular in its policy towards ensuring that the health and strength of workers men and women and the tender age of children are not abused *etc.*

Under Article 39-A which was inserted by the Constitution 42nd amendment Act 1976 that the state shall secure that the operation of legal system promotes justice on a basis of legal opportunity and shall in particular provide free legal aid *etc.* under - Article 47 it is envisaged that the state to raise the level of nutrition and the standard of living of its people and the improvement of public health is its primary duties *etc.,* Under Part IVA and under Article 51-A, it envisages fundamental duties in which every citizen is duty bound to inculcate to uphold unity and integrity of this great Nation *i.e.,* republic of India. We can proudly say that our constitution provided fundamental rights which are guaranteed and are enforceable through High Courts and Supreme Court, and under Law of Torts the Lower Courts are also empowered to award compensation apart from Hon'ble High Courts and Supreme Courts

Compensatory Jurisprudence

The judiciary never remained silent spectator particularly when there is a violation of fundamental rights specially " Right to live ".As seen from catena of judgment the judiciary went further ahead and gave compensatory reliefs for the injury caused by the negligent and callous attitude of authorities of the sate by violating the " Right to live" of citizens. The Apex Court evolved the system of compensatory Jurisprudence in order to give much relief to the family members of the effected person. In *P&O Steam Navigation Co v. Secretary* of state it was held that a suit lies against the Government for wrongs done by public servants incourse of transactions which a trading company or a private company can engage in. In this case the Government was made liable for injury caused due the negligence of servants of the Government employees in dockyard. So the law suits also can be filed against Government for compensation for the wrongs done by its servants.

In consumer education and *Research Center v. Union of India,* reported in AIR 1995 SC 922 the Hon'ble Supreme Court held that right to health and Medical aid to protect the health and vigor of worker while in service and post retirement period is a fundamental right guaranteed under Article 21 with

Articles 39(E), 41, 43, 43(A) and all related articles and fundamental human rights to make the life of workmen meaningful and purposeful with human dignity. In this judgment the Hon'ble Supreme Court held that employer is vicariously liable to pay damages to the workmen.

In *Rudul Shah v. State of Bihar,* reported in AIR 1983 SC 1086 the Supreme Court set up an "important precedent in human right, jurisprudence by evolving compensatory Jurisprudence for infringement of the Article - 21 of constitution.

The apex Court awarded monetary compensation to the victims and their families as for as Medical Negligence in Government hospitals and health centers are concerned. Because due to negligence and reckless/ attitude of doctors of Government hospital timely treatment is not rendered to the effected persons. As a result valuable human life is lost. As the Government Hospital are public institutions the doctors and staff are accountable to people for their professional negligence. As and when the victims approached the Hon'ble Supreme Court and High Courts, the Hon'ble Supreme Court and High Courts came to rescue of such victims and their families by rendering valuable judgments of public importance and thus awarded monetary compensation in cases of medical negligence. Even lower judiciary granted compensation in law suits. In Smt. *Kalavathi v. State of Himachal Pradesh,* reported in AIR 1989 HP 5 the division Bench of Hon'ble High Court of Himachal Pradesh granted interim compensation to the dependents of the each deceased where the death of the patient is causerdue to negligence of Government hospital staff.

In the present case two patients died as a result of administrations of nitrous oxide instead of oxygen at the time of performance of surgical operation up on them on the account of negligence of staff of Government hospital.

The Allhabad High Court awarded compensation to lady victim in *Tubassum Sultana v. State of U.P.,* reported in AIR 1997 All. 177, when operated upon for involuntary tubectomy in Government family planning center. In this case the State Government was directed by the Hon'ble Court to recover the said amount from the employees who were found guilty.

In another Judgment reported in AIR 1996 SC 2426 the Hon'ble Supreme Court held that failure of Government hospitals to provide timely emergency Medical treatment to person in need amounts to violation of his "Right to life" under Article 21 of Indian Constitution. In this case the Hon'ble Supreme Court awarded compensation to the victim. In this judgment the Hon'ble Supreme Court further held that it cannot be ignored that it is the constitutional obligation of state to provide adequate Medical services to the people and the state cannot avoid its constitutional obligation on account of financial constraints.

Doctrine of Sovereign Immunity

The plea of Sovereign Immunity has no basis and it is no defense to the constitutional remedy. The Hon'ble Supreme Court held in A.I.R. 1995 SC 922 that in public law, claim for compensation is a remedy available under Articles 32 or 226 for the enforcement and protection of fundamental and human rights. The defense of sovereign immunity is inapplicable and alien to the concept of guarantee of fundamental rights. There is no question of defense being available for constitutional remedy. It is a practical and inexpensive mode of redress available for the contravention made by the state, its servants, its instrumentalities, company or a person in the purported exercise of their powers and enforcement of the right claimed either under the statutes or for the enforcement of any right or duty under the constitution of the law.

Therefore compensatory jurisprudence evolved by the judiciary is an welcome measure and it is more effective and fit remedy, for redressal of the infringement of right to life of a citizen. Strict liability is fixed as basis for the public law in which the plea of sovereign immunity is not available. However the state can recover the amount

of compensation paid to the victim from the negligent staff concerned.

In the end it is worth mentioning about Sri *Sachchidananda Sinha* in his inaugurate address, as Provisional Chairman to the consitutent assembly on 9th December, 1946 quoting the words of 'Joseph Story' which are as follows:

"The constitution has been reared for immortality if the work of man may justly aspire to such a title, it may, nevertheless, perish in an hour by the folly or corrupt or negligence of its only keepers **"THE PEOPLE"**.

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GOVERNING MEDICAL EDUCATION — MEDICAL COUNCIL OF INDIA REGULATIONS AND EVOLVING JUDICIAL APPROACHES[1]

By

—Dr. YARLAGADDA PADMAVATHI[2]

Under the Medical Council of India Act, 1956, as amended from time to time, the Council has the power to make regulations to maintain minimum standards of medical education. According to Section 10A, [Ins. By Act 31 of 1993, Section 2 (w.e.f. 27, 1992)], of M.C.I. Act, 1956, permission of the Central Government is essential to establish a new medical college or a new course of study. The permission will be given only on the basis of the recommendations of Medical Council of India, subject to other conditions. Section 10B, See note supra, of the Medical Council of India Act deals with non-recognition of medical qualification in certain cases. Section 19-A of M.C.I. Act, 1956, [Ins. By Act 24 of 1964, Section 10 (w.e.f. 16-1964)], deals with powers of the M.C.I. to prescribe the minimum standards of medical education required for granting recognised medical qualifications (other than post-graduate medical qualifications) by Universities or medical institutions in India. Section 33 of the Act deals with power the M.C.I. to make regulations generally to carry out the purposes of this Act. This can be done with the previous sanction of Central Government. Very interesting case law has developed in the above areas with respect to the powers of M.C.I. to govern medical education.

The object of this study is to analyse the evolving judicial approaches with respect to the M.C.I. Regulations in governing medical education.

This study is divided into three parts. Part I analyses mainly the case law surrounding Sections 10A, 10B, & 10C, See note supra, of the Indian Medical Council Act, 1956. The cases of withdrawal of recognition of medical colleges for non-compliance with the provisions of the Act, consequential problems, judicial approaches in accommodating students displaced in this connection is looked into. Approach of the Apex Court towards powers of High Court in giving directions to the Central Government against provisions of M.C.I. Act is analysed. In case of repugnancy between Central Government and State Government enactments, the Apex Court's response is studied. In a catena of cases, the Apex Court had to decide whether the

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