



## II 'Our Struggles'

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## *Why Do I Decry Prafulla Desai?*

P C Singhi

All those who are born have to die one day and no one can have a grouse against this universal law. The question arises, why then do I anguish over the death of my wife Leela on February 26, 1989 while under the treatment of Prafulla Desai, cancer specialist and former director of the Tata Memorial Hospital?

Leela was diagnosed as having breast cancer in July 1977 at Bombay Hospital by Dr J C Paymaster who operated upon her and removed her left breast. Unfortunately, soon after, Leela started bleeding heavily, leading to a drastic fall in her haemoglobin level. She had to be given blood transfusion. We were living in Jaipur then and Paymaster had advised her to come to Bombay every three months for a check-up. After sometime, Leela became almost normal except for the psychological feeling of not having a breast. It was unfortunate but so what? God had destined so and she accepted it boldly. Leela was a teacher not by profession but by commitment. She taught girls for about 20 years in schools, 10 years she taught only the deaf-mute. She almost adopted a girl for whom she found a suitable match and got her married. She continued teaching even after surgery. We thought now she would have no problem and life would move on as usual. Alas, it was not to be.

I was an officer of the IAS cadre in Rajasthan and had to move from place to place. In 1984, I was posted as collector and district magistrate in the tribal district of Banswada on the Gujarat border. Leela was with me. One morning, I found that I was passing blood in urine. I called the local doctor who could only advise me to go to either Ahmedabad or Jaipur and consult a specialist. Leela was shocked. She refused to go to Bombay for her three-monthly check-up, leaving me in the hospital at Jaipur. Dr K C Gangwal, a friend and an eminent urologist in the SMS hospital at Jaipur broke the dreaded news that I too was suffering from cancer. The carcinoma was in my bladder. I was operated upon and Leela took care of me for a full month in



Jaipur. Her check-up got delayed by a month and I could take her to Bombay only in August.

In the meanwhile, she had developed a breathing problem. The chest x-ray and the blood test reports clearly indicated that Leela now had lung cancer. Leela was instantly hospitalised. Paymaster started chemotherapy as her condition was serious. He told us that she may not survive long. My daughters, Vanmala and Ruchira, and I were in tears, heart broken. Leela told me that she wanted Ruchira to get married immediately. I also agreed. Ruchira decided to postpone her final examination of B Arch and get married to make her mother happy. Fortunately, we had no problem finding a suitable boy. Ruchira had done that herself and we welcomed her choice. Rameshwar was explained the situation on telephone at Ahmedabad and he agreed. His parents were sympathetic and understanding. The marriage was performed in Jaipur to Leela's joy.

Luckily, Leela's condition, too, had stabilised to some extent. I decided to take Leela to the US for treatment. The only hurdle was money. I decided to sell off my only house in Jaipur to the first buyer within 24 hours. Leela and I went to New York with a letter from Paymaster addressed to Dr Urban, a cancer specialist in Sloan Kettering Memorial Hospital. He examined Leela and referred her to Dr Greenberg, a well-known chemotherapist of the same hospital. They appreciated the treatment given by Paymaster and offered some advice. We spent a month in the US, saw Washington, Niagara Falls and Disneyland and returned home to Jaipur. Leela passed another two years happily.

It was in October 1987 that the trouble started again. Leela had constant colic pain. Dr P K Wanchoo, cancer surgeon and Dr Kunal Kothari, physician, attended on her. It was found that she had some ascetic fluids in her lower abdomen. She was also examined soon after by doctors in Bombay Hospital who said she had a fibroid growth in the pelvic region. Anyway, I decided to take her once again to New York in the last week of October 1987. Greenberg who had treated her in 1985 also examined her but found nothing significant. Leela and I both felt relieved and

decided to stay in the US with Ruchira and Rameshwar who were there for four years. Leela wanted that both of us should get our eyes checked and change our glasses which had become shabby. One fine morning, we reached the chamber of an eye specialist for our checkup. While we were waiting for our turn, Leela went to the toilet and after a few minutes I heard her calling me loudly. I rushed and was horrified at what I saw. There she was in a pool of blood and was almost unconscious. I brought her out of the toilet and helped her to lie down on the couch. Nurses and doctor came running. They too, were stunned as they could not understand what the matter was. Leela could only say she was passing urine when blood flowed out and she could not control it. The ophthalmologist contacted Greenberg who advised immediate hospitalisation.

I called Leela's sister from Fresh Meadows, about 30-40 km away from New York. She reached us in half an hour. Leela was taken to the nearest hospital named Doctor's Hospital close to Sloan Kettering Memorial Hospital. It was about 9 pm Leela was admitted in the emergency ward. I did not have enough money to deposit at the hospital. But I discovered that unlike India, in the US no hospital can refuse admission to a patient in emergency and once admitted, the patient is given the necessary treatment irrespective of the payment made.

Perhaps, it was the most unlucky day for both of us because after that day, Leela was never normal and happy. The smile on her face disappeared. Dr Brockunier, the renowned gynaecologist examined her and suggested a hysterectomy. I was stunned. In that alien land and without any medical insurance or money! Worse, we did not know what was in store. Friends and relatives, including one or two doctors, advised me to take Leela back to India for the operation. I asked Brockunier for the approximate cost of the operation. He gave an estimate of \$20,000. To add to this was \$5,000 more for my stay. I didn't know how I would manage Rs 5 lakh! My elation at getting Leela admitted to hospital without being forced to deposit money had evaporated. However, I had gone all the way to the US and so I asked myself, would it be a right to take her back to India for the operation only for the sake of money?



I decided to have Leela operated in the US itself by Brockunier. Leela was admitted to Doctor's Hospital in New York. She was taken to the operation theatre for examination. However, Brockunier found that it was just not possible to do a curettage because of an extraordinarily hard cervix. The doctor could only do a biopsy of the cervix. It was sent to the pathological laboratory of Sloan Kettering Memorial Hospital as well as Doctor's Hospital. The doctor said that if the biopsy reports were all right he would do the hysterectomy. The day for the operation was fixed. Leela was to be taken to the theatre at 4 pm. By that time, the biopsy reports were to arrive. At 4.10 pm Brockunier came to our room and told us the cancer traversed from the left breast to the entire pelvic region. It was impossible to operate. We realised the gravity of the situation. If the entire body had been affected by cancer, what hope was there now. I contacted Greenberg. He, too, was sad for Leela. He told me, he was sorry. There was no chance of doing anything except medicinal treatment.

We decided to leave Doctor's Hospital the following day. But the biggest problem was paying the bill of \$ 5,689. I did not have that much money and did not want to borrow either, in view of the fact that friends and relatives had earlier advised me not have Leela's operation in the US. I decided to pay whatever I could and gave a letter to the hospital that I would remit the rest from India. Since I had been sponsored by the Rajasthan government, I mentioned this fact in my letter and forwarded a copy of it to the Indian embassy also. It came as a pleasant surprise that the lady-in-charge of Doctor's Hospital not only did not press for payment before discharge but actually said, we need not make even part payment if it was not possible. This was really a great relief. I think this outstanding amount of Doctor's Hospital was paid, if at all, by the government of Rajasthan after about three years.

We arrived in Bombay on November 28, 1987. Ruchira, our daughter also came with us. Immediately, I contacted Dr A K Mukherjee who was Paymaster's assistant in Bombay Hospital. He came to see Leela and went through the reports. He also informed us that Paymaster had retired from the Bombay

Hospital. I met Paymaster at his residence. He saw the US reports and agreed to start the treatment recommended. As per the report, one CEA test was to be done. Mukherjee said the test was not done in Bombay Hospital, so we went to Breach Candy Hospital. After having obtained the report, Leela was asked to start the first course of medicines prescribed by Greenberg and purchased from the US. Soon after starting the treatment, Leela again began bleeding vaginally. Mukherjee advised immediate hospitalisation. Since Paymaster had retired, I wanted Leela to be treated only by Dr P B Desai whom I had never met, but had heard a lot about. He was reputed to be the top cancer surgeon in India and internationally known. Luckily, Desai was the head of the oncology department in Bombay Hospital and Mukherjee was an assistant honorary under him.

Mukherjee gave me a note recommending Leela's hospitalisation which I took to the hospital manager, G P Sharma, who knew me for almost two decades. On December 9, was Leela admitted under the care of P B Desai. She was admitted the same day. Two plates, one bearing the name of Desai and the other of the patient, Leela Singhi were hung on the door of room no 1005 (MRC). Mukherjee came the following day to see Leela and said that he would get one or two routine tests done before calling Desai. Meanwhile, I tried to contact Desai on the phone at Tata Memorial Hospital but could not get him. However, he came on December 17 to see Leela, accompanied by Dr Maniyar, the registrar of the oncology unit, and examined Leela, for about five minutes after which he decided that he would perform an operation to take out the uterus. Leela asked how he could do it when the US doctors had categorically ruled out any operation without serious complications. Desai replied, "We will take out the uterus. Don't worry... Don't worry". Leela reluctantly agreed, saying only that he should operate on her and none other. When Desai came out of the room along with Maniyar I followed him to the lift. "Please reconsider your decision", I urged him. Desai's face showed some displeasure. He said, "Mr Singhi, I know my job". I instantly apologised. I also told him that he himself should perform the operation. After a couple of days Mukherjee said he had spoken twice to Desai and that December 22 had been fixed for the operation.



I informed all my close relatives, including Leela's sister, Asha, in New York. Asha spoke to Greenberg about Desai's decision to perform hysterectomy. Greenberg was very upset and stated that surgical intervention would be a great folly as it would be very hazardous. But I was helpless. Perhaps, it was our destiny. All the relatives who gathered the day before the operation, questioned the logic of my consenting to get Leela operated. Both my daughters were also against it but did not resist too much.

### **December 22, 1987: Doomsday**

On December 22, Leela was wheeled into the Operation Theatre (OT) at about 8.30 am Desai came around 9 am. I tried again to urge him very politely to reconsider the decision, but he did not respond and walked into the theatre. We all waited outside nervously. After some time I heard Mukherjee call me from the halfopen door of the OT. I rushed to him Mukherjee's face was grim, his voice low and he appeared to be nervous. He said apologetically, "We could not do anything. We just closed the abdomen. Desai was in the next operation theatre but did not do anything. His response was 'very poor'. We are sending Leela to the room". I was stunned. We were in tears.

Leela was brought into the room. She was fully conscious because she had not been given general anaesthesia. She narrated the entire sequence of events that took place in the OT which left us even more devastated. "Mukherjee opened my abdomen with the help of Maniyar and Rashmi Kotak, was the anaesthetist. On seeing the condition inside, Mukherjee got nervous and sent Maniyar to call Desai from the OT No 1. It took some time. Mukherjee asked the ward boy to keep the door of OT No 2 open so that he would see when. Desai came out after some time and Mukherjee rushed to him. They talked just outside the door of OT No 2. Mukherjee explained to him what he saw inside the abdomen and asked him to come and see me on the operation table. But I heard Desai telling Mukherjee, 'Well, Mukherjee, in this situation, nothing can be done. You close the abdomen.' So saying this internationally known cancer specialist walked out". Leela was sobbing bitterly while

narrating this to us. Perhaps, she knew her end had come faster than expected. I sat beside her shocked to learn that Desai had not only failed to operate himself, but had also not bothered to come and see the opened abdomen in spite of Mukherjee's requests. I wondered why and where his opinion given in favour of operation only five days ago had gone wrong. He had refused to change his line of treatment in spite of protests from the patient, Leela, and the firm opinion against any surgical intervention by US cancer specialists. Leela and I had reluctantly agreed to the operation only on his assurance that he would perform it. Apart from that assurance, was it not his moral duty to see Leela on the operation table?

I was expecting Desai to come and see Leela at least after the operation. Two days passed. Mukherjee told us that Desai would come but another two days passed without any sign of Desai. I got upset. Meanwhile, C G Joshi, executive director of Bombay Hospital and G P Sharma, manager of Bombay Hospital, came to see Leela. Both of knew me. Leela had by this time, developed a fistula on her gastrointestinal tract. So fluids – including acid – were oozing out causing an intolerable burning pain. The abdominal dressings were increasing in number. I told Sharma to send Desai to see Leela at least once. He and Joshi both promised to do so but I waited in vain. On December 27, 1987, Sharma conveyed to me that he had asked Desai to see Leela but the latter had told him that he would not do so because she was not his patient. I almost collapsed on hearing this. How could he say such a thing?

Leela had been admitted under Desai. All papers in her medical file, all test reports and consent forms, day and night reports maintained by daily private nurses etc, had Desai's name and none else. Mukherjee was only an honorary assistant surgeon under Desai and was not authorised at all to admit any patient in his name or operate upon any patient independently. He was only to assist Desai in an operation and thereby to get one-third the fee which Desai charged.

I became suspicious. I spoke to Mukherjee. He too was upset. He was to go on leave for a few days for some personal work.



Leela had started complaining of severe burning around the fistula. I asked Mukherjee to call Desai to see Leela. He told me later that since Desai may not come, he would ask Dr Hegde to look after Leela in his absence. Hegde, an honorary cancer surgeon under Desai, came only once to see Leela in the absence of Mukherjee and that too very casually.

By now Leela was crying day and night because of the pain and burning due to bile and acids flowing out of the fistula. The number of dressings had gone up to 15 to 20 a day. She had practically stopped eating. The junior doctors, Dr Anil Sanganeria, I H Maniyar and Jain, were coming to see her as per their convenience at no fixed hours. Even when anyone of them was needed the sister-in-charge would send a message through a ward boy who would return half an hour later only to say that the doctor on night duty was not traceable. I had to run from one floor to another in search of them. The three special private nurses engaged by me from December 22, 1987 onwards through the hospital were the only ones to attend Leela all the 24 hours, each for eight hours. Leela's suffering had increased so much that even these nurses would cry. One of the nurses, M A Bashi, a 70 year-old-Muslim was so sad about Leela that she would sometimes herself cry. One of the nurses told me one day that Leela wanted to jump out of the window just to end her torture. We had to keep the windows closed. My daughters could hardly bear to see their mother's suffering. Leela was now just skin and bones. Her constant cries and curses on Desai and Mukherjee and even on me, day and night echoed in our ears. Patients in the neighbouring rooms and their relatives were also disturbed and dismayed.

Almost a week later, on December 31, a wardboy brought a bill (No 2899) dated the same day. What was most surprising was the amount of Rs 5,000 charged as operation fees for Desai and Rs 1,666, i.e. one-third of Desai's fees, for Mukherjee as his assistant. I was furious. I could not understand how Desai or the hospital could charge Rs 5,000 as operation fees when he had not operated at all. In fact, Desai had even disowned Leela as his patient. This was, I felt, not only unethical but outright cheating. I talked to the manager G P Sharma about this. D P Vyas, the

then administrator, now medical superintendent, was asked to inquire. A few days later, I was informed by Sharma that the hospital would drop this amount from the bill. However, this was not done till March 13, 1988, when it was changed and a copy was given to me. However, Bombay Hospital sent all the bills including this bill to the government of Rajasthan for payment without revising the amount. More shocking was the fact discovered by me at the end of December 1988 that the manager, Sharma was pursuing the government of Rajasthan to make payment of the bills including Rs 5,000 as fee for Desai, and continued to do so until March 1989!

A patient, Mrs Karnawat was admitted in the room opposite Leela. Her husband Sardar Singh Karnawat, a prominent chartered accountant in Bombay, advised me to make a complaint against Desai to the management of Bombay Hospital. By this time, I too, was very angry. So I made a written complaint, dated January 19, 1988, and requested Karnawat to pass it onto Bharat Tapadia, vice-president of the Hospital Trust. Karnawat was the income-tax consultant to Tapadia and he kindly obliged. For long I waited for a response from the management and reminded Sardar Singh also to contact again Bharat Tapadia. Then, on February 13 or 14, 1988, Anil Sanganeria, personally handed me a letter. To my utter surprise, it was not a response from the hospital management but a copy of a letter dated February 12, 1988 addressed by Desai to S P Jain, chairperson of the Hospital Trust and to C G Joshi, executive director. I reproduce here the contents of the letter:

I wish to bring to your kind notice the untruth and false statements that the above mentioned patient is making about me in relation to the treatment of his wife, Mrs Singhi.

Mrs Singhi is NOT my patient and I was requested only ONCE by Mukherjee to examine and opine on her problem.

I did opine, that since there was no other alternative for her advanced cancer a chance may be given by a surgical exploration.

Mukherji never requested me to either do or assist him in this operation which he undertook on his own; neither has he requested me at any time (during her complications postoperatively) to see the patient.

My medical ethics do NOT permit me to intervene or opine in other patients problems without a specific request from the attending doctor.

It is, therefore, absolutely unjustified, if Mr. Singhi has complained to you about me or the care that I render to my patients.



Medical science is largely a matter of opinion and experience and I am not bound by any opinion anywhere else be it USA, UK or Japan.

I would also request the administration NOT to admit patients on my name when actually they are patients of other doctors like Mukherji or anyone else. The administration may investigate further into this episode to get the facts straight and not rely on the patients version alone.

### **Attitude of Bombay Hospital**

It was clear that Desai had decided to tell lies in order to save himself by implicating Mukherjee, his assistant. It also exposed his terrible ego. The letter blamed the hospital management for its policy or practice of admission, which he was aware of since many, many years, and was benefiting from it.

I met Sharma and showed him this letter. He had the utmost sympathy for my wife Leela and me. In fact, he was extremely helpful to me since Leela came to Bombay Hospital for the first time in 1977 for her treatment. He advised me to meet S P Jain. I took an appointment and met him at his residence. Luckily Joshi was also present. I narrated the whole episode to Jain and requested him to conduct an inquiry into it. But to my shock, Jain said, "Mr Singhi, I have spoken to Desai. I have also received his letter of explanation in response to your complaint. I am more than satisfied with that and therefore, I don't believe your story". I said, "Jainsahib, you are neither a child and nor am I a storyteller. My wife is on her deathbed in the hospital. She is Desai's patient who has been criminally negligent towards her and I want you to ask him to see her and take action against him". Jain replied, "If you want me to initiate any inquiry against Desai, you ask Mukherjee to give in writing the facts in detail of the entire case. You may otherwise go to the court." I was disappointed as well as angry. In an angry tone, I said, "Okay, Jainsahib, now I shall meet you in the court."

I returned to the hospital. I appraised Sharma immediately about my meeting. I wrote a letter on the same day addressed to Jain repeating what he had said and sent copies to Joshi, Mr S V Mazumdar, secretary of the Trust, and to Sharma. A friend of mine suggested that I meet Kisan Mehta, a well-known social worker. He told me that I should file a complaint with the Maharashtra Medical Council (MMC). Regarding a civil suit in

the high court, he said apart from being time consuming, it would also be very expensive. I returned disappointed because I had no money. However, I filed the complaint in May 1988 with the MMC.

I knew that going to court was not easy, more so when my opponents were going to be world renowned persons like Desai and a rich and powerful institution like Bombay Hospital. With Leela on her death-bed and suffering it was even more difficult to think clearly and act. I thought perhaps the best way was to first approach Mukherjee and get his position on the issue. I wrote a letter to him on February 19, 1988, enclosing a copy of Desai's letter of explanation. I also told him that if he did not give me the reply stating the actual facts of the incident, I would proceed against him too because the consent for operation had been given only in favour of Desai. I also sent a reminder dated March 24, 1988. Mukherjee avoided replying for quite some-time. Finally, sometime in the first week of April, he gave me a letter which reads as follows:

Kindly refer to your letter dated February 19, 88 and subsequent reminder dated March 24, 88.

I being a student of P B Desai as well as his Asst did not want to get involved in the incident. However, it became obligatory on my part to clarify my position as my name has been dragged into the picture by Desai in his letter dated February 12, 1988.

The facts are as follows:

On your return from US on November 28, 1987 I was called by you to see Mrs Singhi at your daughter's residence in Santacruz, first on November 29, 1987 and thereafter on other days. Since she been an old patient of CANCER since 1977 and treated by J C Paymaster and me in Bombay Hospital ever since, I too had been associated with her treatment in my capacity as an asst to Paymaster. After his retirement you had been consulting me as well as Paymaster. This time too as usual I examined your wife (Mrs Singhi) and started the treatment as prescribed by Greenburg of Sloan Katterring Memorial Hospital. Unfortunately she started vaginal bleeding on December 6, 1987 and I recommended hospitalisation. You accordingly got her admitted on December 8, 1988 in room No 1005 (MRC) of Bombay Hospital under P B Desai. (Mrs) S Jagirdar talked to me to refer the case to P B Desai which I willingly did. In the meanwhile, all routine tests including CT scan were got done in the Bombay Hospital itself. P B Desai examined clinically the patient in her room No 1005 (MRC) and advised removal of the uterus. It is correct that the US Doctors had declared the case to be inoperable but on the basis of the CT scan report we all felt sure regarding prognosis. On your request I contacted



P B Desai on phone at his residence to operate the case himself. Maniyar, the House Surgeon also talked to him. He suggested to fix up the case of Mrs Singhi on December 22, 1987 when he was having another case already fixed up. My (AKM) conversation with P B Desai (PBD) on phone went on like this:

PBD- "You go ahead. Just take care of lung cancer."

AKM- "Sir, case is complicated. Has come from New York. They want you to do the operation."

PBD- "See me tomorrow in CST."

I met him on the MRC ground floor when he was in his car. He told me to take help of Hegde but I told him that the patient and her relation want you (Sri Desai) only to operate. Desai told "I cannot come on Tuesday - Wednesday. Keep it on Thursday. Fix it with Maniyar."

On Thursday I waited till 9 am. Hegde and Nagarkatti started thoracotomy in 1st Theatre. Desai came and entered into 1st OT. I took the case (of Mrs Singhi) in 2nd OT. Maniyar was with me. I opened the case on epidural anaesthesia. Rashmi Kotak was the anaesthetist. As soon as the abdomen was opened, a lot of adhesions ascitic were found all over. I sent Maniyar to call Desai. But Desai was in OT No 1. Therefore I sent out myself and requested Desai to come and see the patient (Mrs Singhi). When he came out of OT, he enquired, "What happened?" I told him that everything inside the abdomen is totally plastered and full of ascitic. But Desai asked only to close the case. He did not come to see Mrs Singhi. His response was poor.

I had no option but to close the abdomen and did needful and informed you outside the OT itself on 5th floor.

I am sorry, Mrs Singhi had to suffer unnecessary torture for so long. However, I am trying my best to look after her and God will help all of us.

I am sorry I have to state the facts in writing because you have asked me to do so on the basis of P B Desai's letter dated 12th February 12, 1988. I hope this will clarify the matter and satisfy you.

Leela was discharged from Bombay Hospital on April 4, 1988. Mukherjee accompanied her to Jaipur and handed her over to Dr P K Wanchoo, the oncologist and head of the department in Government Hospital, Jaipur. Wanchoo had been looking after Leela in Jaipur since 1978 and had become a great family friend. He examined Leela and her entire medical record. He felt very sorry for her because in his opinion also, this operation was absolutely uncalled for. However, he started attending to Leela regularly. The intestinal fistula continued oozing liquids at least 10-12 times a day. Two private nurses had to be engaged to attend to Leela day and night. Leela's condition did not show any improvement. Her continuous cries made everyone miserable, including the neighbours. She was cursing loudly Desai and also Mukherjee.

I retired on February 28, 1988 from government service. Although I had a number of attractive offers to join private organisations, the very idea of earning while having Leela on death-bed was anathema to me. I sat 24 hours beside Leela. Her pain was intense now. Leela's intake of food had almost stopped. She had completely shrivelled up. A friend suggested homeopathy to relieve her pain. I had no objection. Wanchoo, who had already expressed his helplessness in this regard, also approved. That friend brought a homeopath, Raj Mehra. He examined Leela and said that homeopathy could reduce her pain and, perhaps, also help in closing the fistula. The treatment was started in September 1988, and what a miracle. In a week's time the oozing diminished. The number of dressings came down to three or four a day. Leela started taking some wheat porridge with green vegetables. The juice of a pomegranate everyday was also given. She was now feeling a little better and was also looking better. We were all very happy. Leela began to move about a little in the room and came out on the lawns also. Our hopes rose. Even Mehra felt the fistula may possibly completely close. If this happened, Leela would be all right for some time at least. However, God willed differently.

I had filed a FIR with the Director General of Police in Bombay against Desai for his criminal negligence. I was constantly thinking of filing a civil suit also in the Bombay high court for damages. I consulted a lawyer, Girdhari Singh Bafna, in Jaipur. He examined the papers and advised me to issue a legal notice to Desai, Mukherjee, (Ms) Talwar and to the Trustees of Bombay Hospital. Accordingly, a notice dated June 1, 1988 was sent to them all, asking them to send their replies within a month.

A reply came only from the doctors. It was dated June 22, 1988, and signed by an advocate, C K Jaisinghani, on behalf of all the three. I was surprised to find that this reply while defending Desai was putting all the blame on Mukherjee. I could not believe, this reply to be genuine. So I wrote a letter to Mukherjee sending him a copy of the reply. Soon came a letter from Mukherjee saying he had not sent any reply to my legal notice. He did not even know Jaisinghani leave alone his



authorising him to send any reply on his behalf. It became clear to me and my lawyer that it was a conspiracy to implicate Mukherjee and to save Desai. Mukherjee said he was taking action against Jaisinghani for cheating.

Meanwhile Leela had been getting weaker everyday. She knew that her end was approaching fast. She was worried not about herself but about me. She felt, Desai's injustice would never allow me to live in peace. Eventually Leela persuaded me to go to Bombay to file the suit. She promised to talk to me everyday at 8 am in Bombay. So I came to Bombay with a personal letter for A G Noorani, the renowned lawyer and writer. I met Noorani at his residence. He had already seen my case file and had found the case quite maintainable. He suggested the name of a good senior advocate, J B Chinai, whom I met in the high court the following day. He heard me out and said while the case was sound, it would take at least 10 to 15 years to be decided and, secondly, it would be expensive. "I feel there is no point in filing a suit."

But I wanted to file the suit before the limitation period was over, i.e. before December 21. Chinai took three days to draft the plaint. M/s Satpute and Company, were appointed as the solicitors. Once the plaint was ready, I was told to get it signed by Leela also. I reached Jaipur on December 18. It was a Sunday and I had to send the plaint back duly signed the following day. The collector and the district magistrate of Jaipur, Rakesh Hooza, a friend, attested our signatures. On December 21, the case against Desai, A K Mukherjee, Inder Talwar and all the trustees of Bombay Hospital was filed in the Bombay High Court vide No 1101 of 1989.

### Leela's Last Moments

Leela's agony was hard to see now. The homeopathic treatment which was providing some relief earlier was no longer effective. Against the odds created by the ill-advised operation, Raj Mehra's valiant homeopathic efforts were not successful. Leela saw her inevitable end approaching. She dictated the following sentences for Desai:

On account of your inhuman and dishonest behaviour, I have been confined to bed for the last one year and crying and shouting all the time. Now, in next two-three days, of course, I will go away to God. In every breath of mine, I have cursed you. God will make them come true and you and your wife will suffer in the same way as my husband and I have suffered. You have murdered me altogether. God will never pardon you.

Just four days after dictating this letter Leela passed away. It was 12 o'clock midnight. Raj Mehra, her homeopathic doctor, was there and holding her hand. His eyes were wet, face grim. In the last so many months, Leela had taken him as her brother and reposed more faith in him than in anyone else. Our two daughters, our permanent and constant care takers, Ram Bharos and Ajit Singh, and I were standing around the bed. Two or three heavy breathes, a few jerks, she opened her eyes only once, looked around and bade her final good bye to all. The nurse, Urmila, who had been attending her for the last 10 months and whom Leela had treated as her third daughter, was there, too.

Leela had really gone, forever. While silently crying at the greatest personal loss in my life, I felt confused. Was it an end of my loving companion or an end to the intolerable torture that she had been suffering from? Should I be crying or thanking God for relieving her from the pain imposed upon her? She was great, a generous soul, full of compassion for others, sacrificing and above all, sweet. I can never forget the remaining hours of that fateful night of February 25-26, 1989. We carried Leela's body on our shoulders to the *shamshan* ghat. More than 1,000 persons had accompanied us. A gathering that made us proud of Leela in spite of the grief of her passing away.

A very strange thing happened on that day. After coming back from the funeral, I went to take a bath in the open lawn of our house. I had placed my spectacles nearby and after the bath I was shocked to find that they were not there. All efforts to trace them failed. I remained without glasses for a full week before the new ones were made. Missing my glasses made me realise that Leela was my eyes and with her gone, the old specs also left me. This forced me to see for a week the world with naked eyes. This state reminded me that as soon as my new glasses were procured, I



was to work for the fulfilment of Leela's last wish, to ensure that her tormentor, a naked murderer in the guise of doctor, was duly punished.

Suddenly I found that I was no longer confused. The listlessness and lifelessness brought about by Leela's departure was gone. I was still sad, but I knew what I was supposed to do. It dawned upon me that Leela had not taken a selfish promise from me to get vengeance. Her curses were in order to steel me for a fight, and she wanted me to take up this fight not simply for her suffering but to ensure that others were not made to suffer like her by unscrupulous, irresponsible and arrogant doctors. I knew that the best tribute that I could pay to her soul was by relentlessly pursuing her last wish in such a way that not only her tormentor doctor was punished but also the patients/people were empowered to fight against such doctors.

While Leela was fighting pain and at the same time giving me courage to fight, Desai was making frantic efforts to 'kill' the case before the MMC during the preliminary hearing. The Medical Council holds preliminary hearing in order to decide the existence of *prima facie* substance in the allegations made by the complainant. Interestingly, he had told Sudhakar Sane, president of the council, not to take cognisance of my complaint, rather reject it, in the first instance. However, Sane could not help because it was not possible to do so legally. Then, Desai had refused to appear before the Council simply because he considered it below his dignity. On December 23, 1988 he had written to Sane:

I sincerely hope that as the president of the esteemed Maharashtra Medical Council, you will please take a stand and realise that my presence for the said inquiry, is, in fact, quite unnecessary. In my 30 years of professional life, I have not committed any breach of professional ethics and very candidly speaking I shall be thankful to you if you could please understand the situation and help to avoid my presence at the Maharashtra Medical Council.

In another letter dated May 25, 1988, he further wrote in a threatening language to the Registrar of the Council:

If, however, any action of the council goes to sully and tarnish my professional reputation and prestige, and toil of 30 years, you will

appreciate that I will seek every legal help to protect my most privileged cherished possession which is my professional standing and prestige. After holding out this threat, he exhorted the council to act as a protector of the profession by saying that, I know that the Maharashtra Medical Council has a moral obligation to the community but I also know that the Council, more importantly, has to protect and safeguard the interests of the medical professionals who are now a days being increasingly subjected to unnecessary innuendoes and false charges, which are merely expressions of an anguished and troubled mind due to prolonged illness beyond anyone's control.

The matter before the MMC was taken up for preliminary inquiry after Leela's death. I was still in Jaipur, and was informed by a friend that the Council had called Sachdeo, medical director, and C G Joshi for their statements on oath and that the MMC was likely to reject the complaint. I was upset. I decided to send a copy of the letter which Mukherjee had given to me about the entire episode. I posted it under registered AD. It reached the Council in time. At their next meeting, they called Mukherjee to give his statement and to corroborate the contents of his letter. Mukherjee did so. The MMC was *prima facie* convinced of the charges I had levelled against Desai and issued a notice dated May 14, 1989 to him along with a statement of allegations.

It was really a great victory, particularly because the Council consists of only doctors. In the Medical Council normally the case is rejected in the preliminary inquiry as the patient is not allowed to be represented by a lawyer and the doctors consciously or unconsciously show bias in favour of their professional colleague. Thus even a preliminary *prima facie* recognition of violation of ethics by a professional body is significant. The press took it up and the news created some stir in the medical community. No one had thought that a doctor of the eminence of Prafulla Desai could ever be even charge-sheeted. Desai also went to the press with his version. His plea was that Leela was never his patient although she was admitted under his name and care. According to him, it was the policy of the hospital to admit patients only in the name of senior surgeons.

### MMC Inquiry

The regular case hearing into the charge-sheet/notice started from July 1, 1989. I engaged S Radhakrishnan as my advocate,



God-fearing, very polite and intelligent. His name had been recommended to me by Kisan Mehta. The proceedings went on for more than 30 months a very long period, easy to exhaust anyone's patience. I had but to bear it. It was a huge expenditure too. Several people from Bombay Hospital were called as witnesses. I had to produce a large number of documents as did Desai. He was always present during the inquiry.

During the course of the inquiry, Mukherjee revealed two facts which shocked all the members of the MMC. One was that Desai had shown utter negligence towards patients even in other case earlier. Mukherjee named these patients and Desai did not deny this. Another was that Bombay Hospital admitted patients in the names of such doctors who had either retired or had expired long ago. Such as Paymaster who had retired and Arthur DeSa who had expired nearly five years ago. The cases of such doctors were operated upon by the juniors who sometimes got their fees and sometimes did not.

Once all the witnesses were examined and evidence recorded, Desai was asked to give his statement of defense. He maintained that Leela was not his patient although Bombay Hospital admitted her under his name and care. He said it was the policy of Bombay Hospital and he could not be held responsible. And that although the bill for Rs 5,000 as operation fees in his name was made by the hospital staff, he could not be held responsible. He, however, had not taken any fees. Then at the end of his statement on oath on March 31, 1990, Desai produced 'original' operation register of Bombay Hospital in support of his contention that Leela was not his patient and that he did not operate on her. In this register, only Mukherjee's name was mentioned as the operating surgeon.

Sane asked my lawyer to begin his arguments on the same day but Radhakrishnan prayed that he wanted to study the register which Desai had presented before the MMC. Next day, we produced xerox copies of another register of operation maintained by Bombay Hospital. All the members in the presence of Desai and his counsel, T Andhyarujuna, examined this and after comparing it with the register presented by Desai, were shocked

to find the discrepancies in the two registers of operations. Both appeared to have been maintained by Bombay Hospital.

A detailed comparison was made of the two registers. It was clear that in the register presented by Desai, (i) several columns were left blank, (ii) the entire register had been written in one person's hand, (iii) there was no signature of the sister-in-charge of the OT on that day as the normal practice is, (iv) the register had nobody's signature anywhere and (v) the information entered in the various columns of this register was materially different from facts, for example see the Table.

**Table**

Col No	Original register of Bombay Hospital presented by Desai	Xerox copy presented by Singhi of Register of Operations
1 (SL No)	Nil	294
7 (Surgeon)	Mukherjee	P B Desai
9 (2nd Asst)	Nil	Illegible
11 (Anaesthesia)	GA	Epidural
12 (Duration)	Nil	10.15 a.m. to ..
13 Class	AC II	Ist.
14 Major/minor	Nil	Carcinoma Cervix
15 Nomenclature of disease	Nil	CA of Cervix
16 Remarks	T/C Rs 1500	Nil

The members of the MMC at this stage asked me as well as Desai to go out of the meeting hall along with our advocates for some time. The members discussed the matter among themselves and finally decided to ask Bombay Hospital authorities to explain the various anomalies found in the registers.

A reply dated April 16, 1990 was received by the MMC from the Bombay Hospital where it was stated that, "The operation register produced by the Hospital is Register-I, which gives the full details of the operating surgeons and their assistants, besides all other relevant details. This register gives the consolidated information regarding the operations performed in the operation theatre. The xerox copy referred to by your letter is register IV, ..... the said register is found missing from hospital records. We have every reason to believe that this



register has been unauthorisedly and illegally removed by an interested party."

The MMC at its meeting held on April 21, 1990, examined on oath Joshi and Amar Bahadur Singh, in respect of these registers and their maintenance. The members asked why a police complaint was not made about the missing register and why the MMC was not informed in the beginning about the four registers maintained by the hospital. The hiding of this fact by the hospital created doubts in the minds of many a member. The statements on oath made by the officials were also found to be ridiculous. For instance C G Joshi said, "The clerk changes his clothes and goes inside the theatre to ascertain the facts regarding entries in the register of operations." Practically, all the members of the MMC had a hearty laugh at this 'revelation' made by the senior most executive of the hospital.

Finally on October 27, 1990, the two advocates, Radhakrishnan and Andhyarujana, argued their respective cases. It was decided that both the sides would submit their written statements of arguments so that the members of the MMC were able to apply their minds properly and draw conclusions to pronounce their judgment.

The Council gave its historical judgment on January 13, 1991 and pronounced it in the presence of Desai, myself and both counsels. Mukherjee was held to be innocent in the whole episode. He had merely followed Desai's instructions. The Council declared Desai to have been found guilty of "professional misconduct" but by way of punishment issued only a "very strict warning".

I must mention the contribution of two doctors in making my efforts with the MMC successful. A K Mukherjee was always helpful. His courage to stand up against his own boss and one time teacher, Desai and against his employer, the Bombay Hospital, was really admirable. He staked his career for ethical values and the truth. It is correct to say that, unlike many cases, my case was taken up for a full-fledged inquiry and a bold judgment given by the MMC was to an extent due to the truthful

testimony given by another doctor. Perhaps without his support I would not have succeeded in my complaint before the MMC. Another doctor who stood by was J C Paymaster. This former director of Tata Memorial Hospital and later head of the oncology department at the Bombay Hospital, constantly guided me in preparing my case.

In fact the MMC had given two judgments on that day and in both, Desai was found guilty but in effect let off with only a warning. The second judgment was in another complaint against Desai filed by me and another person. It was about his allowing the *Illustrated Weekly of India* to publish his photograph on the cover page and his article in that magazine. It was Paymaster who gave me a copy of the *Weekly* of April 20, 1989. The article dealt with the activities and achievements of Tata Memorial Hospital over last so many years. I was shocked to find that even the name of Paymaster, let alone his contribution to the Hospital and humanity's fight against cancer, was not mentioned. While the Government of India conferred upon him the title of Padma Vibhushan for his services, Desai, his own student and successor to the post of director, did not deem it necessary to mention, even once, Paymaster's name in the entire length of the article.

Paymaster when questioned by me on this point, only shrugged his shoulders and gave me a group photograph with Desai standing just behind him and Borges. When I filed a complaint of professional misconduct dated April 28, 1989 against Desai before the MMC, I also presented a photocopy of this group photograph. The MMC found Desai guilty of professional misconduct. The MMC also declared Desai guilty of violating the code of medical ethics in respect of his photograph published in the magazine. He was thus issued additional written warnings in response to this complaint.

The medical world in India was shaken. It was, perhaps, unbelievable for many that Desai might have behaved like this or that doctors could really conduct themselves in this manner. The MMC inquiry took more than two years. This period was too long for me, for my daughters, sons (sons-in-law), relatives



and friends. Unfortunately, not one of my friends had supported me. They all had sympathy, but no spirit for action. None of them thought that it would be possible to take action against Desai, who holds such a powerful position on the one hand and has the support of politicians as well as the capitalists lobby in Bombay Hospital. Truly, I myself had grave doubts about the impartiality of the Council given the background. I only hope that the council members will continue their good work and in other cases give stringent and thus real punishment to the guilty doctors. Given the state of the medical profession today, only by doing such work will the Council be able to salvage the prestige of the profession.

During the period of MMC inquiry and thereafter, the press all over the country, particularly in Bombay, had really shown great interest and given it wide coverage. The Bombay group of Medico Friend Circle, a national level registered group working on health issues also took up this case and created awareness among the people at large by organising two press conferences on my case alone, by publishing articles on the subject and by raising the issues of medical malpractice and unethical conducts of doctors at the national level. Several correspondents representing important daily papers such as *The Times of India*, *The Daily*, *Gujarat Samachar*, *Navbharat Times*, *Mahanagar*, *Jansatta* (Bombay) and *Sandesh* (Ahmedabad) and *Rajasthan Patrika* (Jaipur) gave wide coverage to this case. The correspondents of various magazines such as *Island*, *Bombay* (Bombay) and *The Sunday* (Calcutta) also published elaborate reports after personal interviews with me and Desai.

People in general and the press in particular have been asking why only a warning was given to Desai considering the gravity of the offense. Definitely, it warranted cancellation of his license, if not permanently, at least for a short period. I have no answer to this question, but, perhaps, because Desai wields enormous power he could get away with such a light punishment for a proven grave misconduct. It is also interesting to note that the members of the MMC did not write their judgment in detail - specific to each of the charges levelled in the notice of inquiry. I requested the president of the MMC through my counsel to

give detailed judgment vis a vis each charge. After great persuasion, the MMC sent me a letter dated April 7, 1992. This letter states that, "The MMC arrived at the verdict that P B Desai was guilty of allegations made against him in the charge-sheet of inquiry presented to him." In other words, it could be interpreted that all charges made against him were found to be true. Thus, if this letter is taken as a part of the verdict given earlier by the MMC, then it is clear that he was found guilty not only of professional misconduct but also of other charges, namely cheating, forgery and criminal negligence. The members of the MMC, who are all senior doctors, could not dare to antagonise their own fellow doctor who enjoyed prestige, power and money, and therefore could not mention them openly in the judgment. In any case, had they mentioned that he was found guilty of so many grave charges, they would have found it impossible to justify such a light punishment pronounced by them.

Although many may feel that a warning is no punishment of any consequence to a doctor who committed such unethical acts, the context in which it was given made it a historical event. The Medical Council has punished many doctors in the past in more severe way. But invariably such punishment came either after the courts had found the doctor guilty or on some other actions of doctor like giving undue publicity to oneself or for advertising. But for the first time, in response to a complaint filed by a patient's relative about the doctor's conduct during treatment was a doctor of international repute found guilty and punished.

After the victory in the MMC, in 1992, there was an unexpected turn of events. It shows how people are vulnerable to the power of the medical profession, and thus merits a mention. I am told that in 1992 Mrs Paymaster fell ill and was taken to Tata Memorial Hospital for treatment. She remained there for about a month and Desai looked after her well. After this incident, Paymaster tried to persuade me to withdraw the civil suit against Desai. Through Kavarana of Tata Memorial Hospital and A K Mukherjee I was told that in return, Desai would offer a verbal apology and a few lakhs of rupees as compensation. Kavarana even called me to Willingdon Club and discussed the whole



matter for more than four hours. The late Jeevaraj Mehta of Bombay Hospital Trust also tried to arbitrate in the matter.

I was both surprised and hurt. All my sympathisers knew very well that I wasn't fighting for prestige or monetary gain for myself. Whatever I have done so far is open to public knowledge. The people and the press have sympathised with the cause. It would be a betrayal of their trust if I withdrew my case without making it publicly known. How could anybody think that I would accept a verbal apology in private? I refused. I said that apology must be in writing. Money was not an issue. I told them that the amount paid as compensation would go for charity. My point was, and will remain so, that I am accountable to people, the deal must come before them. This was not possible unless the apology was in writing.

### **Criminal Case**

Till the case was before the MMC, I did not have enough time to regularly pursue my FIR lodged with the Maharashtra police on September 9, 1988. But I had managed to have a few meetings with Sattegiri, the chief police prosecutor, S Ram Murthy, the police commissioner of Bombay and the concerned Deputy Police Commissioner. Unfortunately, the police failed to even register my complaint and at one point, wrote to me that it would wait for the judgment of the MMC before filing a criminal case in the court. In fact, the police also did not investigate the matter with necessary sincerity. As soon as the MMC gave its 'judgment', I sent a copy of it to the police expecting that now as promised, they would act systematically. But that was not to happen. For about five months after, for some mysterious reason, the police did not take any action in the matter. Finally, it was only on the orders of the police commissioner that on May 14, 1991 that the police filed a criminal case in the Esplanade Court, Bombay under Section 338 read with Sections 109 and 114 of the IPC. But they did not do this without playing their customary mischief. In this case, to my utter surprise, the police had also made Mukherjee an accused! In my FIR to the police, Mukherjee's name wasn't even mentioned.

Anyway, the court fixed January 8, 1992 for the hearing of the case. But before the date of the hearing, he filed a writ petition before the high court to obtain a temporary stay on the hearing of the criminal case. Here the public prosecutor (PP) played his game. One would normally expect him to oppose such a plea for the stay. But he did not and the high court granted the stay.

I am a retired IAS officer. Such a gross failure in duty by a public servant perturbed me a lot. I met the police commissioner who advised me to meet Moray, the law secretary of the government of Maharashtra under whose jurisdiction the work of the PP comes. I met him and appraised him of the full details of the case. He very kindly, issued an order to change the PP and asked Pege, the chief public prosecutor, to attend to this case and to get the stay order vacated. Pege entrusted the case to his deputy, Lambay, who really took keen interest and moved an application followed by an affidavit of the police before the high court in order to expedite final disposal of the writ petition filed by Desai. Eventually, the stay was vacated on March 31, 1995.

As mentioned earlier, a civil suit was filed by Leela and me on December 20, 1988, the last day of the limitation period, in the Bombay High Court against Desai, Mukherjee, Inder Talwar and the trustees of Bombay Hospital. I had claimed an amount of Rs 23.75 lakh as damages and as a result, I had paid Rs 15,000 as court fee at the time of filing the suit. I haven't filed this case to get money for myself. If the compensation is ever granted by the high court, the entire amount would go to charity. For this case is not against a doctor named P B Desai, but against the whole gamut of medical malpractice and the commercialisation of this noble profession.

\* \* \*

Five years have elapsed since I filed this case. My experience of the judicial system has convinced me that no citizen in our country should ever dare to approach any court for seeking justice unless he has lost his senses. A meagre number of courts on one hand and a large number of posts of judges lying vacant



on the other, have seriously hampered administration of justice. Further, what will invariably shock you is the all pervading corruption, nepotism and politicisation of the judicial system. The legal profession has also degenerated in its ethical character. The poor litigant may momentarily feel happy to see his or her case on the board before a judge and keep sitting in the courtroom for hours with a hope that the matter will be heard. But alas, such hopes are soon belied when in the middle of the day the board is discharged or even at the end of the day the matter does not come up for the hearing. In some cases the plaintiffs have grown so old that they are not able to present themselves in the court or some have even died. The higher judiciary is today more busy with commissions of inquiry, election petitions, scams and scandals (even these cases are not completed on time) that it has hardly any time to listen to the cases from general masses.

Way back in 1955 while joining Civil Services I had taken a vow that after my retirement I would not earn a single penny and devote my retired life reading, writing, teaching or fighting for social causes. I had also decided that I would live only on my pension. Leela had always supported me on this issue. Since my retirement I have not earned anything but Leela is not around to be with me. However, before going she gave me a social cause to fight for.

While visiting the court I have met some litigants whose cases are pending for the last 15-20 years. I am therefore not so sure about my suit which is only five years old. My advanced age (65 years) with a cancer in the urinary bladder and retinal problems in the eye make me highly vulnerable and insecure. In this state I have petitioned the court persistently to expedite my case. This has given me some hope as so far for three times different judges, including the Chief Justice, have passed orders for the expeditious hearing of my case. Such an order was given by Justice Suresh (1990), Justice A Sawant (1991) and Justice Sujata Manohar (1992). It has so far appeared on the board of the Court about 200 times. It has travelled to judges such as Justices Variava, I G Shah, Dhanuka, Rane, Cazi, Jhunjunwala and to Variava again. Of them only Justice Cazi could hold a few

hearings and framed the issues in 1992 but could not commence final hearing. Like judges, my advocates also went on changing. J B Chinai, S Radhakrishnan, P L Nain, Vasant Kotwal, Girish Desai, Aspee Chinai, Deepak Merchant, C A Kaveria, etc provided very useful services from time to time. The changes primarily came about due to procedural delays.

In 1993 it came before Justice Jhunjunwala and the hearing in the case could have started but for an unexpected development. Two days before the scheduled date of hearing on July 23, 1993, an unidentified person claiming to be my well wisher telephoned me. He asked me to withdraw the case and accept Rs 5 lakh as compensation from Desai and the Bombay Hospital. He further said that if I failed to accept this offer I would lose my case as Justice Jhunjunwala was recently operated upon in Bombay Hospital. I tried to contact my solicitor but could not do so. I was desperate. I knew that I had to do something. Hence I decided to write a letter to the Chief Justice. I simply narrated the incident and requested him that the case might be transferred to some other judge so as to avoid any embarrassment to Justice Jhunjunwala.

The following day, July 22, Justice Jhunjunwala objected to my writing the letter directly and for not submitting it through my lawyer. I could not understand the logic of his argument. After all I am the plaintiff and not my lawyer! The lawyer is engaged by me and is supposed to work according to my instructions. In the event of his non availability what was wrong if I wrote the letter myself? He asked me to get my advocate next day. So on July 23, my advocate came and as was expected pleaded that he did not know about the letter at all. The judge then asked me to withdraw the letter and that the hearing would start only after withdrawal. I was firm. I told him that I had only put on record the contents of a telephone conversation I had. I also assured him that I had not expressed lack of faith in him. So I suggested that the letter should stay on record and the hearing should proceed. But this was not acceptable to him. I did not relent either. So he dropped my case from his board once and forever. The order to this effect passed by him runs into several pages and makes interesting reading.



The case now went back to Justice Variava. He passed an order on August, 1992 to start the hearing but he was suddenly assigned special cases of election petitions and the security scam involving Harshad Mehta. So it was only in 1993 the arguments started.

Desai's advocate Sale Doctor and Bombay Hospital's advocate strongly argued to get the case dismissed on the ground that the plaint was based on the Law of Tort and so it dies naturally after the death of plaintiff, my wife Leela. My advocate S Radhakrishnan argued that the case was also under the Law of Contract and thus, could not die on account of the death of Leela Singhi. On September 3, 1993 Justice Variava accepted that the plaint also contained issues which were contractual in nature and in any case I was still around, the second plaintiff and heir to my wife.

I thought that this order had set the controversy at rest. But Desai has filed an appeal in the Bombay High Court against Justice Variava's judgment. This is what happens when somebody powerful wants to delay justice. Whereas the issues related to facts of the case are not even heard by the court, lengthy arguments and appeals eat away precious time only in interpreting the law. Fortunately for me, the appeal was eventually dismissed, and on our consent, Desai was allowed by the court to withdraw it.

It is difficult to predict the final outcome of these two cases in the courts but one thing is certain that this case has drawn the attention of the entire country and has exposed the medical profession which, of late, has become horribly corrupt and has lost its nobility.

Leela has gone, she had to go, but the way of her going has left deep scars on my mind and wounds in my heart. These scars and wounds cannot be healed by anything except by people's collective fight against the total commercialisation of medical care. I am, therefore, now more concerned with the 'fight' than the final outcome of my cases. I have declared more than once that the entire amount that I may get as compensation will go to

charity. One such charity Leela had suggested in her last days was to establish a Free Cancer Relief Centre for Terminal Cases in Rajasthan. I have no personal animosity with Desai. Thus, a cancer specialist like Desai upholding the ethics and the nobility of the medical profession is precious to suffering humanity. That is why my honest gesture to a reformed Desai would be to take over as director of the cancer hospital in Rajasthan, as and when I am able to fulfil this dream of Leela's. I will always pray that God bless him with sensitivity to human miseries and me with sufficient strength to fulfil Leela's dream.



## Medical Brotherhood

### Raghunath Raheja

My wife Bhagwati had been suffering from diabetes for over 20 years and was on oral medication. In mid-1989, she developed high blood pressure and was treated for it. Her condition improved. But in October, her health suddenly took a turn for the worse.

It was October 18 and the time was around 10 pm. We had just finished dinner and were watching TV when suddenly my wife complained of nausea and rushed to the wash basin. She threw up and had an attack of breathlessness with a bout of coughing which went on for quite sometime. When her condition did not improve we called a near-by doctor who gave her an injection and told us to admit her to Nanavati hospital immediately. The doctor was kind enough to take us to the hospital in his car. Bhagwati was admitted to the ICCU and remained there for a week. As her condition became stable, on October 26, she was discharged from the hospital. At the time of discharge we were advised to see the cardiologist attached to the hospital, Dr D B Pahlajani, at his private clinic after a week.

A week later, on November 2, 1989, we saw Pahlajani at his clinic at Santacruz a western suburb of Mumbai. He took an electrocardiogram (ECG) which indicated inferior wall ischaemia. He recommended an angiography. When I discussed this with my friends, they told me that if we agreed to the angiography, the doctors would next recommend bypass surgery. It all happened so suddenly and being lay people we needed time to think. I told Pahlajani that we would think it over. But before any action could be taken, my wife had a second attack of breathlessness, similar to the previous one, on November 22, 1989, at 11 in the night. We called the same doctor who had attended on her earlier. This time, too, he gave her an injection and told us to admit her to a hospital. And so at 11.30 pm, she was admitted to Nanavati from where she had been discharged barely a month ago.

The next day Pahlajani examined her and told us that we had taken a great risk by not going in for angiography. He warned that something worse could happen if we delayed it any further. We immediately agreed and the angiography was done on December 1. After seeing the angiogram, Pahlajani informed us that an angioplasty would have to be done and in the event that it failed, we would have to go in for a bypass. He suggested the name of Dr Sharad Pandey for the surgery.

The same day Sharad Pandey, one of the surgeons at Nanavati Hospital visited her and after leafing through her papers said that in her case angioplasty would not help, so it was better to go in for bypass directly. He assured us that there was nothing to worry about. It took him only five minutes to take this decision which was to affect our lives in a big way. Surprisingly, Pandey did not consider it necessary to examine her again any time before the operation.

December 7, 1989 was the date fixed for surgery and she was operated upon by Pandey. She was taken into the operation theatre at 9.30 am and around 5.30 pm the doctors informed us that the operation was a success. We were elated, unaware of the events that would follow.

### Doctors' Profound Silence

After the operation the doctors told us that her condition was improving satisfactorily. However, she continued to experience chest pain. Two of her left hand fingers (the ring finger and the little finger) became numb. The wound on her thigh from where a vein had been taken for surgery showed no sign of healing though the wound on the leg from where also a vein had been taken had healed within a few days. We informed the two doctors, Pahlajani and Pandey, as well as the doctor on duty about this and continued to do so till the day of her discharge, but all three of them said there was nothing to worry about, and her condition would improve.

On December 17, two days before her discharge, my wife had severe pain in the chest. We informed the doctor on duty who



took an emergency ECG and told us nothing about it. On December 19, 1989, at the time of discharge, we were given a discharge card and were told that we should see Pahlajani at his clinic after a week. No instructions either written or oral were given about check-up or after care. All the doctors advised that she should get regular exercise by walking. When we inquired about the repeated occurrence of chest pain, the doctors said that this was a common complaint in postoperative cases and there was nothing to worry about.

As part of the followup we visited Pahlajani a week later, ie on December 26. After examining her, he took an ECG and for the first time wrote that she had "old antero septal infarction". We did not understand the term. He did not tell us that it meant heart attack. Nor did we know or were told when it actually took place. He should have known it as she was under treatment at the Nanavati Hospital from the beginning. We learnt about the heart attack only after her death. Pahlajani had been treating her since October 18, despite that he never once told us if and when she suffered a heart attack. He did not tell us on that day too. On the contrary, he said everything was all right and even advised the patient to get regular exercise by walking to ensure circulation of blood.

Ironically, that day he suggested that we take her to the nearby temple. He also advised us against carrying her up the three floors to our flat in a chair and insisted she should be made to walk up the three flights and also take a walk in the compound. Fully trusting him, we took her to the temple that evening and made her climb the three floors. Her breathlessness increased thereafter.

On January 1, 1990, she again had an attack of breathlessness though less severe than the previous ones. Also, the stitches on the wound on her thigh which had still not healed, opened up. So we took her to the OPD of Nanavati hospital to consult Pahlajani. However, on reaching the hospital around 10 am we learnt that he would not be attending the OPD that day. We spotted Pandey and told him about the problem. He said he had a bypass surgery to perform and told us to come back at 5 pm. We told him that since she could not climb three floors, we

would not be able to go home and come, so we would wait in the hospital itself.

From 10 am we waited till 6 pm for him. She was lying on a bench and I sat beside her. At about 6 pm we saw Pandey leaving the hospital. I rushed to him and reminded him of his promise to see her. He said he had some appointments and hence could not see her, but his assistant, Dr G Kubal, would examine her after sometime. Kubal examined her at 8.30 pm after a wait of 10 hours. Perhaps a healthy person could have withstood the strain of this long wait, but for a person under postoperative care it was just killing. Both my wife and I put up with this torment as we were helpless. Finally, at 8.30 pm when Kubal examined her, he did not suggest any treatment for breathlessness, but said to 'wait and watch'. He however, called her on January 5, for restitching the wound, and did it.

On January 9, she again experienced severe chest pain four times in the morning. After our last long wait and suffering at the OPD of Nanavati Hospital, a private hospital, we thought that it would be better to take her to doctor's private clinic. So we took her to Pahlajani's clinic. He took an ECG and told us there was nothing wrong. It was after her death that we learnt that the ECG had shown an old infarction but he did not tell us about it. He told us nothing was wrong and advised her to take 'sorbitrate' when needed. When we asked him about the attacks of breathlessness, he prescribed 'angispen'. He neither suggested hospitalisation nor any precautions to be taken.

However, Bhagwati continued to suffer. Pahlajani's medicine had neither stopped her chest pain nor her breathlessness. Yet we decided to give his treatment a try. But with each passing day, no improvement was observed. We got terribly worried. We were not able to understand why she was suffering in spite of the surgeon telling us that the operation was successful and the physician constantly reassuring us that there was nothing wrong with her.

Ten days after meeting Pahlajani we lost patience. But where to go? We knew it was no use going to any new doctor. Our best



chance was with doctors who had been attending her. Since Pahlajani had repeatedly said that there was nothing wrong with her and since Bhagwati's suffering was so acute that we were prepared for her possible hospitalisation we decided to try our luck with the Nanavati Hospital. Fortunately January 19 was Pandey's OPD day in the Nanavati Hospital. We thought that on OPD day he would not be operating and would be seeing patients.

So in spite of our last long wait for Pandey at the Nanavati Hospital, we went there at 2 pm in order to have her examined by him. He was not there. Again we sat there on the bench waiting for him to arrive. After waiting for two hours, Bhagwati was feeling very tired. She was also having pain. I was exasperated. I mustered strength and again approached the junior doctor at the OPD. The doctor told us that Pandey would not be attending the OPD that day. It was a big shock. This should have been announced beforehand. How could the doctor and the hospital be so callous that nobody bothered about the waiting patient? We were now left with no choice. I asked the junior doctor to examine Bhagwati. The junior doctor on duty examined her and advised continuation of treatment as prescribed by Pahlajani. I was disturbed. I asked him that if the treatment prescribed was all right why was she still suffering. We insisted that he must do something. So he prescribed her one more tablet, but when we enquired with him we found that it was to treat her gas trouble.

### **Patient Abandoned**

Of course we were not satisfied. We thought that given the serious condition of Bhagwati, if it was not possible for the junior doctor to suggest a new line of treatment, at least he should have admitted her in the hospital. Our last chance perhaps was with Pahlajani. So we took her to his clinic. But Bhagwati's luck was running out. We were told by his typist that he had gone out of station for a week and had not returned. There was no stand-by doctor in his absence.

This was another shock. One eminent doctor had no time to attend OPD, another was out of station without appointing a

competent doctor to look after his patients. Our anger and frustrations had by now completely tired us out. Bhagwati said that she would prefer to suffer at home rather than on the bench of the OPD or in the autorickshaw. In any case we did not have much choice. So we came back home and I prayed to god to take care of Bhagwati.

Now we had no other choice but to wait for Pahlajani to come back. But fate had decided otherwise. After two days, on January 23, at around 7 pm I entered the house as usual. The door was open. I saw panic in the house. I rushed to our room. Bhagwati was seated on the bed. She was having trouble breathing. My children were standing around the bed. They were giving her some medicine. I inquired from them about what had happened. They told me that immediately after she had come out of the bathroom, she was having difficulty in breathing and severe chest pain. They had given her sorbitrate but it was not having any effect. They also told me that they had gone to call a lady doctor from the nearby building but she had refused to come. She had told them to go to our regular doctor. So my other daughter has gone to find another doctor.

Meanwhile my wife saw me in panic and told me not to worry as she was feeling better and asked me to lay her down. As I was lowering her in the bed she closed her eyes and I felt her breathing heavily. But while she was in my arms I suddenly found that her breathlessness had stopped. Looking at her closed eyes I thought that she had gone to sleep. But she was inert and the expression of pain on her face was replaced by calm. Was she in coma? I did not suspect anything more serious as all her doctors had repeatedly said that there was nothing wrong with her.

As I sat down beside her on the bed, my daughter came rushing inside the room. She was followed by a doctor. But he was breathing fast as he had come almost running inside the building with my daughter. He had come for the first time to attend to Bhagwati. He was not known to us as we had never gone to him for treatment. Yet at that time he looked like God to me. He examined Bhagwati. In my anxiety I had started



asking him about Bhagwati's condition before he had completed examination. I also asked him whether she was in coma. He gave me a patient hearing. But then he told all of us that Bhagwati was no more and he was extremely sorry for that. We were shocked. How could she be dead when there was nothing wrong with her? My world suddenly shattered.

How could she die so soon when she was being treated by eminent doctors? And they had assured us that she was doing well. The doctor again listened to my outburst silently. I looked at his face and realised that what he was saying was true, the operation and treatment by eminent doctors notwithstanding. I tried to control myself. I remember my next act was to offer the doctor money. For the last so many months I had got so used to offering money for even 'nothing wrong with Bhagwati' kind of consultations with big doctors that this was almost a reflex action. I was also used to doctors accepting the money. But not this one. I was so surprised that for a second I forgot that Bhagwati was dead. How can there be a doctor who refuses to take money? But it was as true as Bhagwati's death. With money in my hand I kept on looking at the doctor. This one had come almost running to attend to a patient who was not known to him. He was feeling sorry that he could not reach a little earlier to save her life. And now after sympathising with us he had proceeded back without accepting any fee from us. A really good human being, or should I say a really good doctor?

As I looked at the serene face of now departed Bhagwati with tearful eyes, I saw faces of Sharad Pandey, Pahlajani and the lady doctor next door who refused to attend to Bhagwati. I felt revolted. Were they responsible for Bhagwati's death? What helped to control my anger was the behaviour of the last doctor who saw Bhagwati and pronounced her dead.

Bhagwati expired with the same symptoms for which she had been operated. Being lay persons we did not immediately realise the enormity of the negligence and the suppression of facts on the part of the doctors who were very well aware of the true state of her health. We had no knowledge about all this and our suspicions were first aroused when, a month later,

we by chance met one of the assistants of Sharad Pandey attached to Nanavati Hospital. He said he was present in the operation theatre and the doctors had failed to locate the vein for bypass. This was confirmed by another employee, a nurse working in ICCU of the hospital and who had attended her. We happened to meet her coincidentally, sometime later on a bus. This nurse told us that everyone in the ICCU ward knew that the operation was unsuccessful and that the patient would die soon.

At this stage we tried to piece together the real events that took place on the basis of available records and the information given by Pandey's assistant and the ICCU nurse. I will not name the doctor and the nurse as I know fully well that none of them will now be ready to testify. I also do not have any bad feelings on their behaving like this as they also have to protect their jobs in the present medical care market which is tightly controlled by big hospitals and their big doctors.

After I was reasonably satisfied that Bhagwati had died due to medical negligence, I decided to proceed against them. I wrote to the Indian Medical Association and the Medical Council of India as I did not know whom to approach. When I did not get a reply, I called the IMA office and was informed that I should write to the Maharashtra Medical Council (MMC).

On May 3, 1990, I sent a complaint to the MMC. I received no reply, so I sent them a detailed letter again on the May 26 but even then I did not receive any reply. On the May 25, I also wrote a letter to the medical superintendent of Nanavati Hospital asking him to keep all the papers pertaining to the operation in safe custody. On the June 26, I wrote to him again, this time requesting him for xerox copies of all the reports. I personally went to deliver this letter to him. At that time he was not present in his room. His peon asked me to deliver the letter to the clerk in the office. But I insisted that I wanted to see the medical superintendent himself. As we were arguing with each other Dr Shah, the medical superintendent, walked in. As I approached him to deliver the letter, he refused to talk to me. I stood my ground and kept requesting him to take the letter and sign on the



copy. But he just kept going through some papers and did not bother to even look up at me. I then left the letter in his office and left. The medical superintendent informed me by a letter dated June 27 that records would be produced in the court as and when required. On the other hand, I personally approached the MMC many times, but the standard reply was, "It takes time". They also said it was their practice not to reply to letters.

I approached a prominent criminal lawyer for filing a case as the MMC was not giving a reply. The lawyer was nice to me. He listened to my story and promised that he would take my case. Coincidentally, a cardiologist friend of that lawyer was sitting in his office when I went to meet him and was listening to what I said. The cardiologist agreed to go through the medical papers and give his opinion. The lawyer also liked the idea of getting his opinion.

After a few days the advocate told me that he would not take my case as his doctor friend did not want to get involved. I explained to him that I was not interested in getting his cardiologist friend involved in the case. The papers were given to him to get his opinion on the medical facts of the case so that he (the lawyer) could properly prepare the case against the negligent doctors. The answer to this given by the lawyer upset me the most at that time. He told me that both the accused doctors (Pandey and Pahlajani) were known to his cardiologist friend personally and he would not like to take a case against his friend's friends. Ironically, though the lawyer backed out, he charged Rs 500 for the 'trouble' he had taken to go through the papers for me.

Then, I approached another advocate who agreed to take my case. I thank him for it. I filed a complaint through my advocate, against the three doctors (D B Pahlajani, Sharad Pandey and N N Shah, medical superintendent of Nanavati Hospital) in the MMC on August 4. I kept on writing to the MMC, reminding them of the delay, but they did not care to reply.

On October 11, I filed a civil suit in Bombay against the three doctors. My complaint was that these doctors acted in collusion,

deliberately suppressed information regarding the outcome of the operation and the subsequent state of the patient's health. We were at all times told not to worry as everything was all right. Pahlajani at all times advised us that she should get exercise by walking, knowing full well that she had suffered a heart attack. Pandey failed to examine her in spite of making her wait for over eight hours. Further by suppression of facts these doctors prevented us from seeking any further or alternative treatment.

### MMC's Reluctance

My advocate again wrote to the MMC on January 27, 1991 for their inaction, to which we received a bland reply that the complaint was being processed as per the procedure laid down in the rules 62 to 75 of the MMC. I had to go to the MMC and ask for the rules 62 to 75 which pertain to the procedure for proving and disciplining doctor who has committed misconduct. I met the president of the MMC along with my advocate in February 1991 and urged him to conduct the inquiry expeditiously, but he did not do anything in spite of his assurance to do the needful. Again my advocate wrote on March 13, for which no reply was received. It was clear now that the MMC, for some dubious reasons, was dragging its feet. For six months after the complaint was filed the MMC had not even started any proceedings. I was facing a real dilemma.

My lawyer told me that the only thing that could be done in such circumstances was to file a petition against the MMC in the Bombay High Court to get an order directing the MMC to commence hearing in the complaint. I got worried. The MMC is a doctors' court. I had approached it to get justice. If I were to file a case against this court to consider my complaint, I would be antagonising this court. Even if I were to get an order from the high court asking the MMC to hear my complaint, would the judges of the MMC (MMC members, most of them doctors) take it kindly and give me justice? In the meanwhile I had come in contact with P C Singhi whose complaint against a doctor was being heard by the MMC. He was also very critical of the MMC's functioning but he had very carefully avoided making any statement on it in the public. And it is true that normally one



tries to maintain good relations with the agency providing justice so that on technical grounds the case is not put in cold storage or even dismissed. But what was I to do when my case was not coming up for even the first and preliminary hearing? This was the most difficult decision to take. I had realised that I did not have many options. It was perhaps better to fight all the way rather than just wait and wait. Moreover, with the passage of time I was worried about possibility of the doctors and the hospital tampering with Bhagwati's medical record which was still in the possession of the hospital. So I decided to take on the MMC.

On March 22, 1991 I filed a writ petition against the MMC in the high court for their inaction and for immediately summoning all the relevant medical records and documents relating to my wife from the hospital. The petition came up for hearing before admission on April 9, before Justice Bharucha and Justice Sawant. The Registrar of the MMC assured the court that the case would be taken up and expedited by April. On this assurance the petition came to be withdrawn.

Thereafter in an empty and formal compliance with the assurance given to the court and by way of pretence, the MMC addressed a letter dated April 10 calling me for a meeting on April 26. But when I went there to attend the meeting I was casually informed that the meeting had been postponed and no further date had been fixed. I again wrote to the MMC on May 21. Thereafter, I received a letter dated June 7 asking me to come for the inquiry on June 28 before the executive committee of MMC consisting of five doctors.

The inquiry started at about 11 am. I was waiting for my advocate to arrive and so informed the MMC. But to my utter surprise, I was told by the MMC members that advocates were not allowed at that stage of inquiry. I felt as if I was sinking. How could I argue against these doctors? What do I know about medicine and law? If the complainant could not have any assistance of medical or legal expert during the inquiry in the den of doctors, the MMC, how would he or she ever succeed in getting a doctor punished by the doctor members of the MMC?

While I was worried about the fate of my case I was informed that on that day they had summoned Pahlajani and Sharad Pandey. However, on making inquiries I found that the third respondent, N N Shah, the medical superintendent of the Nanavati Hospital, was neither sent letter/summons nor otherwise asked to appear for the inquiry.

I was told by my advocate that the MMC was some kind of court. I therefore expected the scene of inquiry to resemble that of the court. But to my initial pleasant surprise, I found two tables joined together and laid out for the inquiry. I thought at least here I would not be as afraid as in a court. But in no time after the inquiry started, my happiness gave way to the depressing realisation that the informal non-court atmosphere created at the scene of the inquiry was not for the benefit of the complainant. I found that informality was treated as an excuse for not keeping proper record of the proceedings of the inquiry and it was primarily to help the doctor. I was told that I would not be allowed to cross examine the accused doctors as it was only a 'preliminary' inquiry. Only the five executive committee members of the MMC would ask questions and nobody else. Such a procedure and the seating arrangements (I and the accused doctors on one side of the table facing five MMC doctors) made the inquiry resemble an interview in which I and the accused were queried by the interviewers in order to 'select' a 'truthful' candidate. Thus, in essence, the inquiry replaced search for justice by competition and selection. Needless to add, in the interview for selection, more often than not, it is the candidates who are friendly with the interviewers who succeed.

During the inquiry they first took my statement and cross-examined me for about two hours. Thereafter they asked Pahlajani to speak. He spoke for about 20 minutes. The MMC executive committee members asked him a few questions. Then Pandey spoke for about half an hour. He was also asked only a few questions by them. At this I felt agitated. Pandey had made grossly false allegations and given some outrageous explanations for his otherwise unethical conduct. When I could not control myself I stood up and told the MMC that Pandey was making false statements. In response I was curtly reminded that



in that inquiry only the MMC would ask questions and nobody else.

I submitted a medical opinion which was prepared by an eminent cardiologist after going through Bhagwati's medical papers in my possession, but was not signed as the doctor did not wish to be identified. The MMC president accepted it, but changed his mind when two doctors of the executive committee (EC), and not the accused doctors objected on the ground that it was unsigned. I explained them that no doctor was ready to give an opinion in writing as they considered it to be professional suicide. The young doctors feel they would be black-listed in future for jobs if they were identified. "You are a fact finding body, in the circumstances, you consider the points mentioned in it. Or send the opinion to some other impartial cardiologist for verification", I pleaded. But they did not accept my contention.

At the MMC, one has to fight with hands tied behind one's back. How can a complainant present or argue a case in the absence of written medical opinion as no doctor is ready to be identified? They gave no reply. Apart from that, isn't it a cardinal duty of the MMC to form a medical opinion by calling an impartial expert? Are all specialities of medical science already represented in the EC of the MMC that the EC members do not feel the need to take the opinion of relevant medical specialists? If the opinion of a general practitioner or an unsigned opinion of a cardiologist on the medical facts of a cardiac case is inadmissible in the MMC inquiry or considered inappropriate, how can the opinion of non-cardiologist EC doctors of the MMC be relevant? But the MMC is not bothered by such issues. They refused to take the medical opinion on record as evidence. Perhaps it is more interested in saving its doctor colleagues than in finding truth or dispensing justice.

At this stage another mistake of the MMC was discovered. I was all along under the impression that the MMC had summoned all the doctors against whom I had complained. But during the cross-examination the president of the MMC realised that they had not sent summons to the third respondent, the

medical superintendent of Nanavati Hospital. To cover up the mistake he said to me, "I think your complaint was only against two doctors ie Pandey and Pahlajani". I told him that my complaint was against all the three doctors including Shah. To this, he kept quiet.

Funnily while abrogating all powers to cross-examine the accused, the MMC members did not think it necessary to bring on evidence the medical records of Bhagwati. In medical cases it is common sense to know that the most important documentary evidence available are the medical records. But the MMC appeared to be totally ignorant of that. Would such doctors of the MMC sitting to give judgment on unethical and negligent behaviour of their professional colleague ever give justice to the victim patient or his/her relative? I felt frustrated and disillusioned. Although I was stripped of all basic and natural right to speak and cross-examine the accused, I still decided to fight on. I thought I owed much more than that to Bhagwati who died due to the dishonesty and negligence of these doctors. So at the end of the hearing on June 28, I pointed out to the MMC that they were conducting the inquiry without providing me with a copy of the medical record. But they seemed to be least bothered about the medical records. So I gave them a letter requesting them to call for the medical records from Nanavati Hospital and making it clear that in the absence of the records it would not be possible for me to fully sustain the case. As it often happens on such occasions the letter had an effect. They asked me to collect the medical records on the next day and fixed the next hearing a day after ie, on June 30, 1991.

The MMC charged me Rs 493 for the photocopy of 493 pages of the medical record at the rate of Re 1 per page, while the normal market rate for photocopying in that area is 50 paise per page. Afterwards when I went through the record I found that out of 493 pages about 200 were in duplicate.

On June 30, 1991 I gave the MMC a letter requesting for time as I was given a copy of the hospital medical records only at 3.10 pm the previous day. I asked for two weeks' time to go through medical records, get medical opinion on their content and to



make my presentation to establish a *prima facie* case. I must mention here that the unsigned medical opinion procured by me earlier was based on Bhagwati's medical papers available with me. Now with full hospital record available I wanted a cardiologist to examine them and give a fresh opinion. I also asked the EC members of the MMC in writing to give due consideration to the fact that I was not at all conversant with medical matters and so unless I took the advice of a medical expert it was not possible for me to understand and interpret the medical records. Two weeks time though not sufficient given the non-cooperative attitude of most specialist doctors, at least gave me a reasonable chance to make an effort. I pleaded with them, with my hands folded in front of me, not to proceed with the hearing on that day, ie June 30, 1993. But my pleading was in vain. They knew how to defeat the patients and their relatives. They went ahead with the hearing on that day. It lasted for about two hours.

As both the doctors had made some wrong and misleading statements on June 28 and also, we were not allowed to cross-examine each other, I gave them a letter at the start of the hearing. The EC members of the MMC insisted that I should read out the letter first and then submit it. In the letter I wrote that Pandey had said the operation was of a very serious kind and they needed six bottles of blood for the operation. But Nanavati Hospital took 11 bottles of blood from us, donated by our friends and relatives. We were charged Rs 1,600 for the same. Regarding the seriousness of the operation he had told us that it was a routine operation which he performed four to five times a week. Pandey told the MMC that I neglected my wife and did not take her to him in spite of his being the most available person in the hospital. To this, I wrote that he had admitted earlier that in spite of his promise to see her, he did not do so after making her wait for eight hours. Also, he was not present at his OPD on January 19. How then could he blame me for neglecting my wife? I said he was the most available person for fresh operations and not for old cases ie he was 'most available' only for his own benefit. Regarding Pahlajani, I wrote that MMC doctors on the panel had not asked him the most vital question regarding his claim that the operation was a very serious one. How then would he

suggest that the patient exercise regularly and climb three floors immediately after the operation?

The president said they would certainly ask the question but changed his mind when two members of EC objected to allowing the complainant to ask questions of the accused doctors. They claimed that to do so was against the rules of the MMC Act. Then they went even further, they argued that my suggesting questions to be asked to the accused doctors was contempt of the Council. Who was I to tell them what to ask and what not to? I told them that in my letter I had not mentioned what should not be asked as they were at liberty to ask whatever they liked. But by omitting certain crucial questions absolutely essential to bringing out the truth from the accused doctors they were not doing the right thing. This angered them a lot. They became very offensive and demanded that I should be asked to apologise for submitting such a letter.

In the inquiry room of the MMC there was nobody to defend me or even to provide some moral support. The accused doctors were enjoying my discomfort. I was really scared. So many big doctors were sitting there and telling me that I had absolutely no right in the inquiry and some of the members of the EC were vociferously acting almost like advocates of the accused doctors. I got a feeling that my case was sinking. I realised that the MMC was neither sensitive nor sympathetic to the complainant. It was acting more like a forum to help the accused doctors. In that desperate position in order to salvage my case and in spite of knowing fully well that I had committed no contempt of the Council, I decided to apologise. I apologised and changed the statement to read that Pahlajani had evaded the question about how he advised her to climb three floors knowing that the operation was a very serious one.

After tormenting me in such a way for a long time, the MMC announced adjournment of the inquiry. To my surprise the MMC did not give me a copy of the proceedings for both the days. I enquired about the record of the proceedings and as to why neither accused doctors nor I were asked to sign each page of the record. The members of EC who had been taking objec-



tion to whatever I had tried to say during the inquiry and who were instrumental in making me apologise brushed aside my inquiry about the record of the proceeding by saying that the rule did not permit such a thing and who was I to tell them how to conduct an inquiry. Frustrated and tired after the ordeal of three days I had to leave the MMC office without getting any record on what transpired at the inquiry.

When my advocate came to know about how the inquiry was conducted by the MMC he was very upset. So on July 5, I requested the MMC to allow my advocate to represent and argue my case and also asked for copies of the statements of the proceedings held on June 28 and 30. But there was no reply. On July 27, I submitted my letter based on medical opinion given to me by a prominent cardiovascular surgeon who had also in the end refused to sign it claiming it was 'professional suicide'.

As there was no reply from the MMC till October, I filed a second writ petition against them. When the petition came up for admission before Justice S P Kardukar and Justice S H Kapadia, the MMC representative was absent. The court ordered that summons be issued again to the MMC and also to the government of Maharashtra, the second respondent. When the petition again came up for admission on December 4, the MMC did not attend but the advocate for the Government of Maharashtra did.

The judges felt that the writ petition need not be admitted at that stage and disposed of it by giving directions to the MMC. The MMC was asked to dispose of the case as expeditiously as possible and preferably within six months in accordance with law. In view of the above direction, the writ petition was allowed to be withdrawn. The court's order was served on the MMC on December 6.

The third petition became necessary due to a letter dated December 5, received by us on December 11, from the MMC. The date of the letter was cleverly put. The high court had given direction to MMC on December 4 and the said high court order was served to the MMC on December 6. Apart from the date, the contents of the letter was shocking. I was under the impression

that the inquiry was incomplete and that the new date would be communicated to me. The MMC was yet to record evidence of the third accused Shah. I had given several letters requesting the MMC to complete the inquiry quickly and to allow my lawyer to remain present. I had also given them a letter interpreting the medical records given to me during the last sitting of the inquiry. And above all, I had also filed a writ petition in the high court for the early completion of inquiry. In spite of all these, the letter said that the inquiry had been completed on June 30. Not only that, on that day itself the EC had prepared its 'findings'. To top this, the letter said that the 'findings' of the EC were discussed by the meeting of the MMC on September 20 and all members present had unanimously accepted them. And what were these findings so unanimously accepted by the members of the MMC? That Pahlajani and Pandey were not guilty of any medical negligence or suppression of facts? The letter said that there was no *prima facie* case against the two doctors and asked me to collect the copies of the inquiry of proceedings held on June 28 and 30, 1991.

It took some time and lots of effort on my part to overcome my disappointment and anger against the MMC. On December 19 I collected my copy of the inquiry proceedings for which they charged me Rs 50 for 10 pages. But my cup-of sorrows was still not full. When I read the proceedings I was shocked. Pandey's statement taken on June 28, 1991 in which he had admitted that he did not see Bhagwati after making her wait for eight hours was completely missing and only some questions put to him by the EC members were there. Also in my statement they had twisted or added some words in favour of the doctors. For N N Shah's absence during the proceedings, they had blamed me and tried to cover up their mistake. Overall, the recording was wrong and contained statements never made by me.

There was no doubt in my mind that MMC was not interested in respecting due process of law and natural justice. Apart from the way they conducted inquiry and recorded its proceedings, there was other evidence for coming to this conclusion. I had filed a second petition in the high court in October 1991. Two hearings of this petition took place, the last on December 4. It



was a case for speedy conduct of inquiry. Although the MMC claimed later that the EC had passed its judgment on June 30 and the MMC had accepted it on September 20, on both the dates of the high court case MMC did not think it fit to communicate its position to the court and remained absent. Only when the high court gave them a directive to complete the inquiry fast that on the following day they sent me a letter saying the inquiry was not only over but the complaint was also dismissed. This way, in order to save their doctor colleagues the MMC perpetrated fraud not only on me but also on the high court. This shows the extent to which a quasi judicial professional body can go to protect the interests of its members. Clearly this is the reason why a big section of doctors want the Medical Council and not the consumer court to try the cases of medical malpractice.

So in my third petition before the high court I asked for a direction that the MMC should conduct a proper inquiry. Later on at the direction of the court when we took inspection of the MMC documents referred to in their affidavit in reply, they revealed that in the meeting of the Council that took place on June 28, 1991, only five persons were present, and on June 30, 1991 when the order was passed only four persons were present!

In the private hospitals the OPD is conducted by junior doctors only. The senior doctors rarely attend it as they are so busy that they have no time to do so. The name plates showing their times at the OPD only mislead the patients. The only place you can see these seniors is in their private clinics and consulting rooms.

I had noticed that during tea time some of the Council members participating in the enquiry were chatting with one of the accused doctor in the room of the assistant registrar. Can anyone justify such conduct of a person conducting an enquiry of a judicial nature? Going through the records and proceedings before the MMC, I found to my surprise that the doctors had filed a reply/explanation dated March 21 which was never shown to me or given to me at any time before or during the inquiry. I was even never told by anyone nor was told by the Council that such a reply had been filed before the Council.

The Medical Council is a partisan body. The composition of the Council itself is unjustified, as its panel of judges as well as the accused belong to the same profession. In the Council nominated members and government representatives rarely attend meetings, leaving the field clear for doctors who have got elected by using dubious means and huge funds. And even if by chance there is a rift between doctors, and the patient happens to win the case, as Singhi could, they merely issue a warning letter to the doctor. And this they do even in a blatant case of negligence in which the patient had died. What use it is to the patient?

I wrote to the IMA and the MMC, neither replied for months. Finally, I had to move the court to force the MMC to take up my case. I had to go to the court again and again to get them to give their decision. In my opinion, if somebody wants to loose the case, wants to get intimidated and humiliated then only should he or she go to a Medical Council.

Finally I write a para to caution persons who desire to file a complaint against the doctors in the MMC or in the court. It is not an easy job. What happens in the MMC I have already written about. And in the court it takes a number of years for the case to come up. The delay in the court is also very frustrating. In spite of my best efforts to get it expedited, my petition against the MMC filed in December 1991 is still pending. The delay is a deadly poison in our judicial system. The civil suit filed against the three doctors in 1990 will still take five years to come on board. Also it is costly.

Further as time passes you will find the number of your supporters declining. Initially they will support you out of sympathy. But then one after another they will start saying, "What will you get now from the case? The patient is already dead, she will not come back. Also it will be very difficult for you to get doctors convicted. You are unnecessarily wasting time and money." This type of talk will demoralise you. And some may also consider you a crazy person or a trouble maker. Initially many will sympathise with you, but subsequently when you go to meet them in need of time or when you are depressed, as it invariably happens, some of them will listen to you in such a way that you will get the message that he



thinks you are wasting his time. He will not say anything to you, but you will not feel like visiting him again. Only some with a dedicated mind for social causes will remain with you and the rest will go one by one.

The complainant should think twice before filing a complaint. In the prevailing circumstances you will find a lot of difficulties in proving the case. Also you will find hardly any doctor coming to assist you in the case. In spite of the above if you still have a will to file a case, do so. After all somebody, someday has to find a way to break the stone walls.

## **Who Regulates Hospitals?**

### **Who Suffers?**

**Yasmin Tavaría**

Saturday, June 24, 1989, is an unforgettable day in the lives of our family in particular and for many others involved in the issue of medical negligence in general. It was a rainy day and my father as usual left home at 11 am to get his copy of *Blitz* and deposit a cheque in the bank, little knowing that he would never return home. As he was crossing the road to go to the bank on a pedestrian crossing, a speeding motorcyclist knocked him down. My father sustained a head injury and was bleeding profusely and was taken to St George's Hospital nearby. When I got home from work at 1 pm, I inquired with my mother where father had gone and why he had not returned as yet. Mother was already very worried and said he should hopefully return any moment. We waited for him to get back so we could have lunch together but up to 2 pm he did not return.

Worried sick by then and suspecting something untoward had happened, my uncle went to the bank to enquire about Dad only to be told that he had not gone there at all. Apprehending trouble my uncle and my neighbour then went to St George's Hospital to find out if any accident case had been brought in for treatment. Right enough, Dad had been admitted in the casualty ward with his head wound sutured up. On inquiring, the doctor on duty said that it was a minor wound. He was under observation and we could take him home the next day.

Soon after, Dad asked for some water. I gave him some. Immediately on drinking it, he vomited a dark brownish red liquid which looked like blood. I got scared and insisted that the doctor discharge him, so we could shift him to a private hospital for observation and thorough check-up. We took his discharge the same evening against medical advice and we shifted him to the Parsee General Hospital. The next morning, various detailed investigations were done, including a CT scan, which revealed the formation of blood clots in the brain (haematomas).



Due to this brain haemorrhage, he started having breathing problems and had to be put on oxygen. Two days later (June 27) when his breathing became very heavy, he was put on a respirator and shifted to the ICCU. He also became semi conscious and continued to remain so and on the respirator for a week, while he was being treated for the dissolution of the clots. Gradually, his condition started improving and he was taken off the respirator. A repeat CT scan was done which showed that the haematomas had dissolved. A month after he was admitted to the ICCU, ie on July 27 Dad was shifted out to a private room for further recuperative care and treatment.

### **Beginning of Problems**

Dad had become very weak and was drowsy most of the time. Dr F E Udwadia, his consulting physician, recommended that a complete blood count be done. The blood count showed that dad's haemoglobin count had dropped very low. Hence Udwadia asked the doctor incharge to arrange for a 100 cc packed cell blood transfusion. This transfusion was ordered on the morning of August 2. However, for reasons best known to the hospital staff and despite repeated pleas to hurry up, the transfusion was started only at 5 pm.

Immediately after the transfusion was started, the doctor left the ward, saying his duty time was over. In spite of my request to wait for sometime to ensure that there was no problem, he left. Within 10 minutes of starting the transfusion, Dad started complaining of breathlessness and started shivering. I ran and fetched the doctor on emergency duty. He said this was the normal reaction to blood transfusion and would subside soon. However, when the rigors and breathlessness continued, I again summoned this doctor and insisted that he stop the transfusion, which he did. By then 30 cc of blood had already been given. Emergency treatment was also given. But by then Dad had developed fever, which began rising rapidly. Throughout the night Mum and I sat by his bedside applying eau de cologne and ice packs to his forehead. Some injections were also given to bring down the fever. But nothing helped.

The following morning, August 3, about 8 am, the day nurse brought Dad's medicine reports and charts to the room in preparation for the visit of the honorary doctor. Out of sheer curiosity, to find out Dad's haemoglobin count at the time of admission and to what level it had dropped now, I started going through the papers. In the process, I came upon Dad's blood group. I discovered that while his blood group card showed him to be A +ve, the label on the bottle, which had been discarded the previous day and which was still hanging besides his bed, showed that the blood which was transfused to him was B +ve.

Immediately, I realised the colossal mistake made by the hospital staff and the reason for Dad's discomfort and high fever. I also found among the papers the blood cross-matching report which showed that the donor and recipient (ie my Dad) had the same blood group, ie B +ve, and that the two samples of the blood were found to be matching. I immediately took out the original blood group card and the cross-matching report from the file and took them to the doctor in charge of the ward. He was the same doctor who had given the transfusion and walked away the previous evening. He was surprised to note this discrepancy and admitted the mistake that a wrong blood group had been transfused. He, however, blamed it all on the lab technician and attributed it to carelessness on her part.

When the honorary doctor Udwadia came for his rounds sometime later, I informed him of this. He was very angry with the hospital staff and ordered an inquiry into the matter. Understanding the gravity of the situation, I immediately made a written complaint to the administrator of the hospital, demanding an explanation for this serious lapse and asking for stern action to be taken against the erring staff. A meeting was called by the chief administrator. The chief honorary pathologist, the RMO, the honorary medical superintendent, a committee member and the lab technician who had cross-matched Dad's blood sample with the donor's and reported them to be compatible attended it. They all admitted that a serious mistake had occurred and the technician was verbally admonished for her negligence.



When I asked the pathologist about the likely reaction of the wrong transfusion, I was told that there could be a further drop in Dad's haemoglobin level or he could develop jaundice or could suffer a renal failure. I was asked to keep a close watch on his urine output.

The same day, ie, August 3, around 4 pm I noticed that though Dad's intake of liquid till then had been 1,500 ml, he had passed only 350 ml of urine. I immediately informed Udwadia's houseman and requested him to contact Udwadia. But unfortunately, Udwadia was not available till almost 8 pm. Around 8.30 pm, when I had gone down to get some food, the houseman came to the room with a surgical trolley and asked my mother to leave the room. When she inquired what they were doing he was evasive. Scared, she told them to wait till I returned in a few minutes, but was rudely told that there was not time to waste and that he was acting on Udwadia's instructions.

Just then I reached the room and they told me that they wanted to do a central venous puncture (CVP) to measure the blood pressure. This procedure took 40 to 45 minutes. No sooner was it over and we were allowed inside the room, I noticed that Dad was very uneasy and gasping for breath. I prevailed upon the doctors to shift him back to ICCU where he would get better attention and care. This they did. Again an endotracheal tube was inserted in his mouth and oxygen pumped into his lungs. Meanwhile, I phoned Udwadia at his residence to request him to come and see Dad. He said to tell the registrar to contact him.

Soon after, a nephrologist, Dr Bhupendra Gandhi, from Breach Candy hospital was summoned to perform peritoneal dialysis to drain out the excess fluid which had accumulated in his body. This fluid was applying pressure on his heart and thereby had led to the failure of the left ventricle, which in turn, had caused the blood pressure to fall. The dialysis did not work and had to be abandoned after one cycle. By this time it was midnight. Gandhi then left instructing the ICCU registrar to administer diuretic injection, ie Lasix, to drain out the excess fluid from the body. After Lasix was administered, Dad started

passing urine and the functioning of his kidneys improved to some extent.

A couple of hours later, ie on August 4 morning, Gandhi, Udwadia and the honorary pathologist examined Dad and assured us that Dad's condition had improved. Throughout that day he was given heavy dosages of Lasix and other drugs. Around 8 pm, after a telephonic conversation between Udwadia and the ICCU registrar, the endotracheal tube which had been inserted the previous night in Dad's mouth was removed and I was told that his condition was stable. Feeling relieved at this, I had dinner and went to sleep on the sofa outside the ICCU.

Around 4 am on August 5, I was awakened by the ward boy and asked to go to the ICCU as the doctor wanted to see me. Suspecting that something was seriously wrong, I rushed inside only to find Dad gasping for breath. His life seemed to be fast ebbing out. The nurses and the doctor were trying desperately to revive him but failed. Sadly, at 5.55 am he breathed his last.

### **Cover-Up Operation**

Since Dad had met with an accident, this was a medicolegal case and had to be reported to the coroner's court and the facts leading to his death. No sooner did the news of Dad's death become known, the hospital officials, like the honorary medical superintendent and the RMO, descended on the ICCU to doctor the report and ensure their safety.

The first version was prepared and given to us by 9.30 am. This version did not mention anything about the left ventricular failure due to the kidney failure, both resulting from the mismatched blood transfusion. It gave the cause of death as "an old case of myocardial infarction and general debility due to prolonged illness and hospitalisation leading to cardiorespiratory arrest". This was obviously unacceptable to us and we insisted that the authorities not waste any more time and give us a true report of the facts.



After many heated exchanges and intervention of Udwadia, a somewhat factual report was prepared and given to us. However, in this too, the cause of death was put merely as "cardio respiratory arrest". According to a medicolegal opinion, the correct way to state the cause of death is to first write the original cause which led to the cardiorespiratory arrest because cardiorespiratory arrest is always caused by some factor or the other. So the circumstances leading to cardiorespiratory arrest should be mentioned.

Armed with this certificate, I went to the police station under whose jurisdiction the accident had occurred. Along with a constable and their report, I went to the coroner's court to get the disposal certificate which enables us to claim the body and perform the last rites. This was given to us without any delay. At 2 pm, we took possession of Dad's body from the hospital – eight hours after he had breathed his last – thanks to the harassment and falsification of documents by the hospital.

Thus, on August 5, 1989, a resolve was born in me to fight against the demigods of the 'noble' profession – medicine – and their highhanded and autocratic way of dealing with seriously ill patients, who were the mute recipients of negligent treatment, often by unqualified doctors employed on low salaries by hospitals, which are out to fill their coffers regardless of the risk of life and limbs to unsuspecting patients who come to these institutions in the hope of getting cured of their ailments.

The day after Dad's death ie on August 7, I approached the Gamdevi police station and asked the sub-inspector on duty to register my complaint against the doctors of Parsee General Hospital (PGH). After listening to the whole sordid story, he said since the doctor had written in the report to the coroner that Dad had died of heart failure and since nothing was mentioned clearly that he had died as a result of negligence, he could not register my complaint.

After a heated argument during which I forcefully put my point across that no criminal would openly admit to a crime, he finally told me to give him a written complaint. Fearing further

resistance to registering my complaint, the next day I requested a senior police inspector known to me to accompany me to hand over the complaint. It was accepted by the officer on duty.

I also made a written complaint to the administrator of the PGH and the managing trustees asking them to let me know what action had been taken by them against the negligent staff. They did not reply. So I followed this up with a reminder giving them a time limit for a reply, failing which further action as deemed fit would be taken by me against the hospital authorities. During this period, I made it a point to meet the honoraries who had treated my father. While all of them were very sympathetic and admitted the negligence leading to his death in the privacy of their consulting rooms, at a later stage, when it became a legal and public issue, all of them gave varied and biased statements.

Meanwhile, with a view to mount pressure on the hospital authorities and the police to take action, I approached some newspapers which lapped up the story. Right enough, this put some pressure on the hospital authorities who suspended the lab technician and issued a chargesheet to her and subsequently commenced an internal inquiry. Dr A R Gharatkar, who had administered mismatched blood and was suspended for two weeks, was taken back on the job till the expiry of his contract of one year with the hospital.

During this time, I also filed a complaint with the Maharashtra Medical Council against Gharatkar and followed up with regular personal visits to the MMC office to have my complaint looked into expeditiously. During the course of their investigations, it came to be known that Gharatkar was not registered with the MMC and hence they were unable to take action against him. This revelation itself took six months from the date of the complaint.

The MMC informed me by its letter dated February 15, 1990, that Gharatkar was a homeopath registered with the Maharashtra Council of Homeopathy (registration no 16225) and holding the qualification of GCEH from the Karnataka court of examiners,



Bangalore (1987 batch). I was astonished as to how a person who was neither qualified to give allopathic treatment nor registered with the MMC was in the first place employed by this hospital to dispense allopathic medicine and treatment.

Concurrently, I was doggedly pursuing the complaint filed with the police. I am sure that due to pressure put on the police by a retired deputy commissioner of police who had been hired by the PGH as an honorary security adviser, the Gamdevi police invariably fobbed me off with their stock reply that investigations were still going on and only after the recording of statements was over would they decide upon a course of action.

Upset by this dragging of feet, I approached the secretary, department of home, who, in turn, rang up the inspector at Gamdevi and asked for a detailed report on the case within a month. This galvanised the police into action and soon a FIR was filed by the sub-inspector investigating the case. He found Gharatkar, the staff nurse in charge of the ward and the lab technician guilty of negligence leading to the death of my father.

The three accused were charged through CR no 376/90 dated May 11, 1990, filed by Yashwant Dhoble, the SI of Gamdevi police station, under sections 338 and 109 of the Indian Penal Code which read as follows: "Causing grievous hurt by act endangering life or personal safety of others - whoever causes grievous hurt to any person by doing any act rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years or with a fine which may extend to Rs 1,000 or both."

After the filing the FIR, arrest warrants were issued for all the three accused and they were arrested in May 1990 and released on a personal bail of Rs 950 each. Subsequently, a criminal suit was filed by the police and state government against the three accused (case no 3113/P of 90) on July 3, 1990. The hearing in this case is yet to begin in the Girgaum police court.

Meanwhile, during November/December 1989, I also filed a civil suit jointly with my mother in the Bombay High Court

suing the hospital authorities for damages since this was the only way in which the management could be made to realise their fault and the disastrous consequences on an innocent patient, so that at least in the future they imposed stringent measures to ensure efficient working of the staff.

In February 1990, when I came to know that Gharatkar was a homeopath, I filed a complaint with the Maharashtra Council of Homeopathy asking them to initiate immediate action against Gharatkar for negligence and also for practising allopathy when the Bombay Homeopathic Practitioners Act, 1959, clearly forbade homeopaths from practising allopathic system of medicine. On August 3, after regular follow-up by with the registrar of the Homeopathic Council, I received a letter saying that a detailed report from the police commissioner had been called for and on hearing from him, further action would be initiated.

After this, the Council refused to move in the matter though the police had charged the doctor of negligence causing death. However, after a written reminder from my advocate on September 27, 1991, demanding that the Council look into the matter immediately as per the authority vested in it and inform us of the date of inquiry (as we had waited for over a year), we received a written reply from the administrator on October 8, which stated: "We have to state that for the above offense, the Inspector of Police has filed a case vide no 3113/P/90 in the Girgaum police court. After the result of the court case this council will take action as per the direction of the court. This may please be noted".

Appalled by this irresponsible attitude, I then approached the secretary of the medical education and drugs department on December 3. The secretary, J Shankaran, heard me patiently and promised to do the needful. The section officer concerned, at her behest, started following up the case. An explanation was called for from the administrator of the Homeopathic Council as to why no action had been taken against the negligent doctor, so far. The next day the administrator turned up at Mantralaya with his files and convinced the section officer that since the police were now handling the case, it would not be correct on the part



of the Council to take any punitive action against the doctor which may turn out to be contradictory to the court verdict. No amount of reasoning by me had any effect on the section officer, who kept repeating the administrator's argument, thoroughly convinced by it.

Then one day, taking time off from work, I went to meet her, armed with a copy of the Bombay Homeopathic Act. I showed her the relevant sections and made her understand that the Council was an autonomous quasijudicial body empowered to take action against doctors registered with it and found to be guilty of acts considered as misconduct by the Council. Unfortunately, before I met her, she had already put her 'misguided' comments on my file and forwarded it to the deputy secretary seeking further directions in the matter. She was honest enough to admit this, but promised to withdraw the file from the deputy secretary and put the correct facts to him. However, to this date nothing has been given to me in writing as to the action recommended or taken by them.

### **Who Regulates Hospitals?**

During my fact-finding for this case, when it came to light that the PGH had employed a non-allopath to administer allopathic medicine, the fundamental question that arose was: who was the hospital answerable to and which was the governing authority for private hospitals to monitor their working and lay down basic norms. I approached various governing bodies in this regard, like the director of health services who evinced keen interest in the case but expressed inability to do anything in the matter since the PGH was a private hospital, so not under the authority of Director General of Health Services (DGHS), which controlled only the public hospitals.

Finding this door closed, I approached the public health department of the state government and there, too, drew a blank. I was told that there was no monitoring authority for private hospitals to take disciplinary action for the serious breach of employing unqualified medical staff. I was also informed at this stage by the medical education and drugs department that there

were two volumes of hospital administration manuals framed as guidelines for the working of public hospitals. One important information I learnt was that all hospitals within the Bombay Municipal Corporation (BMC) limits were required to register themselves with the BMC.

On hearing this, I went to meet the executive health officer of the BMC. She flatly said that the BMC was responsible for the working of the municipal hospitals only and beyond the mechanical formality of registration of private hospitals, the public health department of the BMC was in no way responsible for their working. However, on persistent questioning that since the BMC was the registering authority, there should definitely be some conditions for registration, I was told that it was a mere formality – the hospital filled the required form and paid the requisite fees and it was then issued a registration certificate.

It was an old clerk who had been with the BMC for a long time who, after hearing my struggle for justice, expressed his desire to help me and showed me an old brown copy of the Bombay Nursing Home Registration Act, 1949, which gave the various details of statutory requirements of private hospitals and nursing homes and the basis for their registration.

Armed with a xerox copy of this, again my rounds to various authorities started and after much discussion with the authorities in Mantralaya and the BMC as well as some medical/health activists, I decided to file a writ petition in the Bombay High Court. This was a public interest litigation (PIL) which raised the issue of accountability of private hospitals and the standards of treatment, equipment, beds and staff.

The BMC had also claimed that beyond the mechanical formality of registration, it had no regulatory powers. I, however, discovered that the BMC had sufficient regulatory powers as well as the mechanism to ensure compliance of minimum standards by the private hospitals. But for reasons best known to them the BMC authorities had not exercised them. It was, therefore, in the interests of patients and the public at large that



there be certain minimum standards provided to private hospitals just as there are minimum standards required to be maintained by private educational institutions, hotels, etc.

It was under these circumstances that a PIL was filed in July 1990. It came up for admission in the court of Justice M L Pendse on August 7, 1990. The judge rejected it on the ground that since I had already filed a suit for damages against the PGH, PIL was to boost the claim for damages. He even declined to entertain the petition for issuing general guidelines to all private hospitals in Bombay.

Being aggrieved by the order, I filed an appeal in January 1991. It came up for hearing in the court of the Chief Justice P D Desai and Justice D R Dhanurea on February 1, 1991, when notice was issued to the respondents, returnable on February ie, 1991. The municipal commissioner and executive health officer were asked to file before the next date of hearing an affidavit with regard to the enforcement and implementation of the provisions of the Bombay Nursing Homes Registration Act (BNHRA) in the areas falling within the jurisdiction of the BMC and the machinery and the modalities which have been devised for compliance.

The BMC duly filed the affidavit on February 18, 1991, and stated that the respondent no 4, ie the PGH was registered under the act till 1987 after which it had not renewed its registration. On July 27, 1990, the PGH had tendered its application in the prescribed form for registration for the years 1987-88, 1988-89, 1989-90 and 1990-91. The BMC further affirmed that it was not aware of the employment of Gharatkar as his name was not mentioned in the list of doctors submitted by the hospital.

At the next hearing on February 25, the judges observed that the affidavit filed by the BMC did not fully and adequately comply with the directions issued in the interim order passed on February 1. Considering the shabby manner in which the order had been complied with, it now seemed proper to direct the municipal commissioner to file detailed affidavit on compliance

of the aforesaid order on or before May 6, 1991. The BMC stated in its affidavit that on receipt of applications for registration by the respective wards, the sanitary inspector scrutinised the documents. She then visited the hospital premises for a spot check. She then submitted a scrutiny report along with her remarks to the ward medical officer (health) who again verified the information given in the application. If satisfied, she passed an order for registration of the nursing home or hospital and after a payment of fees, the registration certificate was issued.

The next hearing of the petition was held on March 11. Consequent to the averments by the municipal commissioner in the affidavit, the judges directed the BMC to place the following information on record through an affidavit by April 16 after proper verification.

1) Whether during the last five years, the medical officers had visited any of the nursing homes/hospitals (NHs/Hs) to whom registration granted for the first time, to verify whether all the statutory requirements were fulfilled. If so, to give particulars and state the instructions, if any, issued or the observations, if any, made on such occasions and the followup action taken thereon.

2) Whether any periodical visits, other than those, if any, paid at the time of initial or renewal or registration, were paid by the sanitary inspectors and/or medical officers to NHs/Hs within their wards during the last five years. If so, to furnish particulars and state the report, if any, made and follow-up action, if any, taken.

3) Whether any NH/H has been refused initial registration or renewal of registration during the last five years on the ground of it having not satisfied the statutory conditions prescribed in clause 5(1) of the BNHRA. If so, to give particulars.

4) Whether any cancellation of registration of any NH/H has been made during the last five years under section 7 of the BNHRA.



5) Whether any penalty has been levied or prosecution launched against any NH/Hospital for contravention of the provisions of the BNHRA during the last five years.

6) Whether the BMC would consider the setting up of a committee consisting of the elected representatives of the people from different wards and other prominent citizens / medical personnel / social workers to supervise the functioning of the machinery concerned with the registration and/or renewal of registration and functioning of the NH/H in accordance with law and, if so, to formulate a precise proposal in that regard and place it for the consideration of the court.

### Historic Order

An affidavit giving exhaustive details of all the NHs/Hs visited and action taken was filed by the BMC. It came up for hearing on April 26, before the Chief Justice P D Desai and Justice P S Patankar who passed the following orders:

The writ petition has served the purpose of activating the authorities concerned who seem to have woken up and taken certain steps in the direction of the implementation of the various provisions of the law. It is expedient and in the interest of justice to direct that a progress report about further action taken in the next two months for the implementation of various provisions of law be submitted to the court. The court directs that all the registered NHs/Hs be visited during this period and that the progress report should contain the findings in respect of the breaches, if any, of the provisions of law on their part and the action taken or proposed to be taken against those of the NHs/Hs which are found to have violated the provisions of law.

The matter was adjourned to June 24. The affidavit was filed on July 11, giving the municipal wardwise details of NHs/Hs found guilty in respect of breaches of provisions of law and action taken or proposed to be taken against them by the BMC. Meanwhile, an interim order was also passed on July 16, stating that

... the appellants would be at liberty to seek and be given inspection of the inspection reports mentioned in the affidavit dated July 12, 1991, of the BMC and after inspection the appellants would be at liberty to file a further affidavit.

The respondent, the BMC, should consider setting up division wise committees to supervise the implementation of the act instead of a single committee. An affidavit was filed by us on July 16, 1991, as an affidavit in rejoinder giving details of the lacunae in the public health care, its administration and the steps which could be initiated for proper control of the working of these health centres.

After this, a final hearing of the petition took place on December 4, 1991, wherein the following order was passed.

The case has been heard at length at the admission stage and interim directions have been issued from time to time. The court noticed that the implementation of the BNHR Act in Greater Bombay has not been satisfactory. Since the proper implementation of the Act is a matter of vital concern, as far as the inhabitants of this premiere city are concerned, it is just and expedient to direct the respondents, the BMC, to set up a permanent machinery with a view to overseeing and supervising the due implementation of its various provisions. Under the circumstances, the court issues the following directions.

- (1) The Municipal Commissioner is directed to constitute an apex committee and three zonal committees with the power to oversee and supervise the implementation of the Act and to make appropriate suggestions and recommendations in that regard to the competent authority.
- (2) (A) Constitution of the apex committee to be appointed by the Municipal Commissioner shall be as under:
  - 1) Deputy Municipal Commissioner (Health) as the Chairperson.
  - 2) Executive health officer of the BMC as the member secretary.
  - 3) A Deputy Director of Health Services, Government of Maharashtra, to be nominated by the state government.
  - 4) An eminent honorary doctor attached to any municipal or government hospital in Bombay who is not concerned with the management of any hospital or nursing home.
  - 5) The President of the Maharashtra Medical Council or any member of the said Council as may be nominated in that regard by the Council, preferably from Bombay.
  - 6) A fulltime professor or reader teaching in any hospital in Bombay and who is not concerned with the management of any hospital or nursing home.
  - 7) A prominent social worker, working in the field of public health in Bombay.
  - 8) An assistant health officer of the BMC.
- (B) Constitution of the three committees for the city, western suburbs and eastern suburbs, respectively, shall be as under:
  - 1) A full-time professor or reader in any public hospital in Bombay who is not concerned with the management of any hospital or nursing home in



the city to be the chairperson.

2) An assistant health officer of the BMC as the member secretary.

3) A medical practitioner to be nominated by the Medico Friends Circle (Bombay Group).

4) A prominent social worker in the city of Bombay.

(C) The initial constitution of the above committees would be for a term of two years.

The court also nominated the members for each committee for the first two years and recorded the names in the order. The liberty to apply was also given in this order so that, at a future date, if we were not satisfied with the working of the committees we could again approach the court. One has to wait and watch how effective the working of the committees will be towards tightening of controls to improve the standards of health care in our city.

It may be asked that though more than three years have elapsed since my father's death little has been done to bring to book the erring hospital for being negligent and employing an unqualified doctor. But it should be remembered that medical negligence cases have still not come of age in our country and an unbelievable amount of spade work has to be done first to find out the legal implications and the acts and rules as well as the bye-laws governing the medical practice in our land. Some of the acts were framed as early as 1949 and no copies were available at the government press. It was extremely difficult even to locate old copies from clerical staff and persuade them to allow me to take xerox copies of these.

I must also add that though I appointed a lawyer as a retainer as early as November 1989, all the follow-up with various government bodies, the Medical Council and the police was done exclusively by me. I am sure that without the daily follow-ups, literally pestering various people for information, nothing would have moved even to this extent. After my fact-finding missions during the day, I would go to my lawyer in the evening to discuss the facts discovered and their legal implications. We would also discuss further plan of action and our chances of success.

Lawyers have hundreds of cases and unless one is constantly after them they will conveniently forget the case. Left to the

lawyer alone nothing or a maximum to 5 to 10 per cent followup would have been done, in spite of paying heavy retainer's fee at the time of entrusting the matter to him. This is not totally due to lack of interest but because their priorities are different from ours – unlike them, we are the direct sufferers of negligence and hence are more determined in our efforts to get justice for ourselves and punishment for the wrong doers.



## Comatose Medicine

Saroj Iyer

Habib Terrace stands bang on the main road of Lal Baug in the heart of the city. An old stone and concrete building, it has a typical working class ambience. Parab's house on the first floor faces the main road, the noise and the busy life outside in total contrast to the cold reality inside where life has come to a standstill for a young woman since 1988.

As I enter the small room, the sight of 30-year-old Deepa lying almost lifeless on a bed wrenches my heart. Sitting on the couch nearby is her father, watching television with a distant look in his eyes. Her mother is in the kitchen cooking the afternoon meal, with a toddler tugging at her saree. There is a lump in my throat and I'm unable to speak. How do I ask an aging father about his daughter's tragedy, which has reduced her to a vegetable? Seeing the motionless body, it is impossible to believe that a young woman could be so reduced to such a pathetic state due to the callousness of doctors. The lump in my throat grows as the hapless father looks at me with desperate hope. I sit mutely staring at the floor unable to face him or look at Deepa.

Deepa lies almost lifeless on the bed. She has been lying that way for the last three years. Except for her feeble breathing, there is no sign of life. There is a plastic tube with a stopper at its end inserted through her nose into her stomach. She is fed liquid through it at regular intervals. Besides feeding everyday, Deepa has to be sponged, cleaned a few times a day, turned from side to side so she does not develop bed sores and given massage with oil to keep her muscles supple. Her daily dose of medicines costs a small fortune. Apart from money, a heavy investment of time and energy is needed, which her aging parents are running out of.

Parab painfully recounts the entire events, beginning from Deepa's marriage to her three conceptions and unfortunate abortions, her fourth pregnancy and the complications she developed which culminated in this tragedy. The hopelessness he feels is mingled

with flashes of anger and a strong urge to fight those who brought this cruel fate on his daughter, wrecking her life. Deepa is alive, yet dead for the last three years and perhaps will remain so till 'full' death. She has never seen her child nor will her little son know the love of his mother, grieves Parab.

An economically self-sufficient Parab, who had a shop in the busy Lal Baug market, is steeped in debt and reduced to near penury. The medical expenses have crossed Rs 2 lakh, he says and to meet it he has had to sell off his shop and borrow a total of Rs 80,000 from friends and relatives, which he is having difficulty repaying. "This is my fate because I trusted the doctors blindly", he says bitterly.

It is obvious from his narration that Parab had complete faith in the doctors and for a long time never once suspected that they could have done anything wrong. He merely cursed his fate and that of his daughter's in the beginning. His blind trust was shattered only when he was rudely shaken by the reality of the doctor's negligence. Today, he is a cynical man and is also angry at the fact that doctors are ready to dish out their views on what could have gone wrong with Deepa for a price but unwilling to put their signature to them simply because they do not want to antagonise their fellow professionals. What kind of ethics is this, he asks bemused.

After groping in the dark for close to two years about taking action against the doctors, Parab finally filed a complaint with the Consumer Forum. From a defeatist attitude, he has gradually but definitely moved to embark on a determined fight to get justice for his daughter. He is no longer a spent force but a determined man.

### Deepa's Tragedy

The story of Deepa's tragedy in the hands of doctors was narrated by him as follows:

My daughter Deepalakshmi was married to Ashok Jagannath Rane in March 1985. After marriage her name was changed to



Ashwini. Deepa was a pleasant, likable and friendly person, who would easily leave an impression on anyone. Soon after marriage, Deepa became pregnant but unfortunately had an abortion. Thereafter, she conceived twice, but both times suffered an abortion. During this period, ie, between 1985 and 1989, when she had three spontaneous abortions, we consulted many noted gynaecologists, but not to much avail.

In mid-1989, when she became pregnant for the fourth time, our family doctor, S G Parab, advised us to consult Dr Kalpana Desai, who, he said, was known for handling complicated cases. Accordingly, we fixed an appointment to see Desai and saw her at her private clinic at Matunga. After we told her Deepa's history detail, she agreed to take on the case and began treatment.

In the sixth month of her pregnancy, ie in January 1990, Deepa began bleeding. To stop the bleeding, Desai stitched up the mouth of the uterus the following month, ie in February. She then did a scan and gave the date of delivery as May 12, 1990, and added that she would remove the stitches on May 2. However, on April 11, the movement of the foetus stopped. Our neighbour was a retired matron of Bhabha Municipal Hospital. So we requested her to come and check Deepa. She did so and advised that we take her to the doctor immediately and have the stitches removed. She also spoke to Desai on the phone and apprised her of Deepa's condition and told her that the stitches should be removed immediately. Desai, however, brushed her off saying Deepa could see her at her clinic the following day.

The following morning (ie, April 12) at nine, we reached Matunga Clinic and gave a full account of Deepa's condition to Desai. To our surprise, she refused to remove the stitches saying she would do so only on May 2. We felt helpless, not knowing what to do.

Luck was against us. Deepa began having several problems again. Trouble started barely 10 days later when on April 21 she started having pain. The movement of the foetus also stopped. It was 11 in the night and we didn't know what to do. Unfortunately, the following day was Sunday, so we could not consult Desai. Deepa passed the day restlessly and in great pain.

On Monday, ie, April 23, at 8.30 am I phoned Desai and said we were bringing Deepa to her clinic. On reaching, she examined Deepa and announced that an emergency caesarean would have to be done. She called a nurse and asked her to make preparations and took Deepa in immediately.

An hour later, she came out of the operation theatre and said Deepa had given birth to a boy and that both mother and child were fine. But Deepa was not brought out of the theatre even after an hour. Anxious about her condition, we enquired again how she was as also the child. But to our dismay, no one would say anything.

Even as we were making frantic enquiries, the owner of the nursing home who also was a doctor and her two sons, also doctors, accompanied by a fourth doctor, rushed into the operation theatre. Seeing so many doctors rushing in, we panicked and attempted to go in to see what had happened. We suspected that something had gone wrong as Deepa still hadn't been brought out. It was almost two hours now. But the nurses would not allow us to go in nor would they say anything.

Finally, in desperation, I threatened a nurse that I would implicate her too in my complaint if she did not immediately tell us what had happened. It was then that she revealed that as a result of the doctor's mistake, Deepa's pulse had stopped. Her blood pressure had fallen and the doctors were now trying desperately to shift her to another hospital.

A little past noon, Desai came out and said Deepa had panicked and consequently become unconscious. They were now trying to shift her to a good hospital. She assured us that Deepa would regain consciousness within a few hours and there was nothing to worry about. She asked us if we would like her to be shifted to any particular hospital. As we did not know of any, we left the choice to her. Since she had said it was a matter of few hours, we thought we could always decide later.

Deepa was shifted to Matalakshmi Nursing Home at Sion where an ECG was taken out and Dr Ravi Shankar Shetty, a



cardiologist, began treatment. Deepa continued to remain unconscious though her condition showed a marginal improvement a few days later. For 18 days, she remained in coma after which the doctors discharged her only to shift her to a public hospital, Tarachand Bappa Nursing Home behind Sion Hospital. Deepa remained there for another 10 days.

We do not know what treatment was given at these hospitals as they did not reveal anything to us. Whenever we questioned about Deepa's condition, they just said she was improving even though there were no such signs. On the 11th day, Desai consulted Dr Ramani, of Sion Hospital. Though we don't know what transpired between them, preparations were being made to shift Deepa to Sion Hospital, where she was finally admitted.

After a few days at Sion Hospital, Agarwal said Deepa did not need any medical care but merely efficient nursing and would improve faster at home. So, he advised, it would be better if we took her home and nursed her back to 'normalcy'. According to his advice, we brought Deepa home on May 29. Deepa continued to be in coma.

While at Matalakshmi and Sion Hospitals, scanning of her brain was done at Hinduja and another private clinic at Walkeshwar and at Nair Hospital, respectively. Desai kept all these reports with her and didn't let us see any. We repeatedly asked for them till the last day of her last discharge, but she just refused to give them to us. She also did not give us any of the case papers or record sheets.

From the day she was brought home in May 1990, till July, we gave Deepa medicines prescribed by Ramani. In August 1990, we consulted neurosurgeons at the J J Hospital, Dr Yogesh Parekh and Dr B S Paudval, both of whom advised to continue Ramani's treatment. Both of them said that oxygen supply had been cut off for about three to five minutes, causing damage to the brain. We don't know anything about medicine, so we don't understand exactly what 'blocked' means or how it happens: what we do know is that our daughter's brain has been damaged because of the doctors' negligence, reducing her to a vegetable

in which state she has been for the last three years. We don't know whose fault it is. Only those present at the time of the (caesarean) operation can say that.

Though several doctors who examined her, like a homeopath, Dr Faroukh Master of Bombay Hospital and KEM hospital's Dr Chiklikar and Jaslok Hospital's Dr Vaidya, a neurosurgeon, categorically said that her brain had been damaged because oxygen supply has been cut off during the caesarean, however, none would give it in writing.

In the last three years, my wife and I have suffered untold hardships and agony in taking care of Deepa. Our daughter is bedridden, so everything has to be done for her, right from sponging, cleaning, changing, feeding to turning her from time to time so she doesn't develop bed sores. How long will she live like this? We can't bear to see her in this state. We also don't know how long we can look after her as both of us are getting old. Both of us have already undergone operations in the intermittent period, my wife in February 1990 and I in December 1989. So physically, it is getting increasingly difficult for us to take care of her. We have also incurred an expense of over Rs 2 lakh in providing medical and day-to-day care and are over burdened by debt. Every month, we have to spend Rs 7,000 to Rs 8,000 on medicine, massage and other things. Where do we bring that sort of money from?

We also have to take care of her son, who is now three years old. Her husband visits her now and then. We are worried what will happen if he seeks to remarry.

I wrote to the MMC three times, but they did not bother to reply even once. I wrote to all the top police officials, chief ministers, ministers and leaders of political parties and sent reminders two to three times. None has replied.

Will we get justice in this country? Or will we continue to pay for the doctor's mistake? We have filed a complaint with the state Consumer Grievance Redressal Commission and are still waiting for the hearing in the case to begin.