



## THE NATIONAL UNIVERSITY OF ADVANCED LEGAL STUDIES

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### CENTRE FOR CONSUMER PROTECTION LAW AND POLICY

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#### SPECIAL LECTURE ON “LAW AND ECONOMICS” OF MEDICAL MALPRACTICE

##### Medical Professional Ethics and Consumer Protection Law

04/04/2016

The special lecture on “LAW AND ECONOMICS” OF MEDICAL MALPRACTICE Medical Professional Ethics and Consumer Protection Law was delivered by learned speaker and Supreme Court advocate, Mr. Sunil Bedekar. He started by explaining the two aspects of implementing the medical laws in the country; the governance of the practice of the medical practitioners by medical councils, along with implementing the Code of Conduct prescribed for them and the courts of law bringing civil or penal action against those engaging in medical malpractice. He then emphasized that the Code of Conduct for the medical practitioners necessitate them to significantly dedicate themselves to serve their patients and to keep the details of their patient’s health as confidential. Moreover, they are required to fully disclose all the details of the diagnosis conducted, to the patient. Additionally, he threw light on the aspects relating to informed consent by the patient to a medical procedure to be conducted on him and the issue of ‘sanctity of life’, by mentioning the case of Aruna Shaunbaug. These essentially constitute the medical ethics of today, which was originally given by the Hippocratic Oath. The medical councils require today’s doctors to live by these ethics.

Mr. Bedekar subsequently presented the legal dimensions of the problem of violation of medical professional ethics that included the dimensions of the type of wrong committed, the duty of care on part of the practitioner, the causality, the foreseeability , culpability , criminality and fixation of liability. He emphasized on the remedies available through the forms of civil recourse and criminal recourse and the capping on compensation and basis for deciding its grant. Delving into the detail of criminality, he explained that sections of the Indian Penal Code, 1860 relating to

offences such as simple and grievous hurt, murder, culpable homicide not amounting to murder, negligence, etc., will apply in the concerned medical malpractice. He moved on to the Economic dimensions and through the course of the lecture, he explained how the misfeasance in the medical profession arises from the fact that the doctor is fully in control of the situation, as explained by the concept of Information Symmetry, whereby the doctor has all the information, and the patient being ignorant, is led to believe all that the doctor says. Hence the doctor takes advantage of such a situation.

Furthermore, he covered the applicable substantive and procedural laws in the country dealing with medical wrongs and offences. Substantive laws included Contract law, tort law, criminal law, consumer protection laws, professional regulatory laws, constitutional law and licensing law and also professional qualifications. Finally, he also stated the significant procedural laws in the country applicable to medical malpractice, which included the Civil Procedure Code, Criminal Procedure Code, Consumer protection laws prescribing specific procedures, evidence law and professional regulatory laws dealing with the procedural aspects.

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