



## **TACKLING KICKBACKS AND BRIBERY IN THE HEALTHCARE SECTOR**

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### **ABSTRACT**

This article highlights the issue of the increasing rate of corruption in the healthcare sector in India. This paper mainly emphasises on how India needs to tackle this problem and what steps have been taken by the Indian government to deal with this situation and evaluates the need to come up with strict laws to tackle corruption in this sector.

### **INTRODUCTION**

The healthcare sector is considered as one of the most corrupt services in India<sup>1</sup>. Accepting kickbacks and bribes in the healthcare sector is one of the major forms of corruption. The term 'kickback' refers to the money or gifts in lieu of any recommendations or purchase of any particular product or services. In Kickback, the individual is paid in the form of a reward after the completion of the work. Whereas in bribery, the individual is paid in advance to get the unethical job done. Preventing corruption in the healthcare sector is a challenging task and requires an effective system to expose corruption and strictly implement anti-corruption laws. Due to the kickbacks and bribery in this sector, the trust of the public majorly declines, inequality increases, the population becomes insolvent and deteriorates the health status of the most vulnerable people. The present laws of

kickbacks and bribery are inadequate and need a few amendments. Thus, the kickbacks and bribery in this sector should be tackled with more stringent laws and serious punishments.

### **CORRUPT PRACTICES PREVAILING IN THIS SECTOR**

Doctors are bribed in various ways, one of them being by the pharmaceutical companies. The companies and their employees in order to increase sales and maximise profits resort to unethical practices. Unfortunately, these unethical practices are becoming common in India.

Doctors are bribed by the pharmaceutical companies to **prescribe a particular medicine** that are manufactured by them. This strategy gets the company new for making profits. The Anti- Kickback statute specifies that kickbacks are not only in the form of cash; they can also be given in kind to doctors or the hospitals. The doctors are rewarded with gifts or holidays sponsored by the pharmaceutical companies.

There have been various instances where certain bodies or activities have provided enough proofs that the malpractices of bribing or inducing have been given. These were in the form of benefits given to participate in conferences, paid travel, accommodation and other related expenses, stated by a Delhi based civil society group called **All India Drug Action Network (AIDAN)** on 7<sup>th</sup> December, 2019.<sup>2</sup> These all

<sup>1</sup> Healthcare is among the most corrupt services in India, Sanjay Kumar <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1168938/>

<sup>2</sup> Joe C Mathew, *Pharma companies giving payouts to doctors, claims All India Drug Action Network*, 10<sup>th</sup> December, 2019, <https://www.businesstoday.in/sectors/pharma/aidan->



are strictly prohibited under the **Uniform Code of Pharmaceutical Marketing Practices (UCPMP)** as well as the Indian Medical Council Regulations, 2002 for registered medical practitioners. There has been a growing demand to frame a statutory body and code for pharmaceutical and medical equipment industry. Terming UCPMP as a failure, AIDAN wanted the government to frame a statutory marketing and ethical promotion code for pharmaceuticals and medical device industry<sup>3</sup>.

The medical representatives are the ones who feel unprotected due to the absence of laws. They get everyday targets to give pre-planned packages to doctors.<sup>4</sup> Santanu Chatterjee, secretary of Federation of Medical and Sales Representatives Associations of India (FRMRI) said:<sup>5</sup>

“If a doctor avails privileges from a pharma firm, but does not prescribe its drug, the firm catches hold of us. We are forced to go to the doctor again so that the commitment is fulfilled. If we don't meet targets and assure profits, our salaries can be withheld. We can be even sacked.”<sup>6</sup>

- The labs conducting radiology tests also tend to gain profits by bribing or giving a

kickback to the doctors. The **physicians are asked to refer a few tests to the patients even when they are not required.** This is usually done by manipulating and falsifying their medical reports.

**Puneet Bedi, a senior gynaecologist from private-run Apollo Hospital, said:**

“Drug companies are traditional villains, then come the equipment manufacturers, then are corporate hospitals for incentives, and the latest in the line are corporate labs who are major players luring doctors to prescribe unrelated tests.”<sup>7</sup>

Bedi recounted a case of a pharma company CEO who told him, “Everyone has their price - just name yours.”<sup>8</sup> He further added that he signed as many as 40,000 cheques per month allegedly in bribes to doctors.<sup>9</sup> Therefore, bribery is becoming a common practice in India.

Dr. Jayaprakash, an associate professor, Paediatrician and Child Psychologist, SAT, Government Medical College, Thiruvananthapuram, quotes from his own experience that he was offered a commission of Rs. 3,000 for an MRI costing Rs. 6,000 and Rs. 200 for each EEG costing Rs. 600<sup>10</sup>.

[seeks-regulation-of-inducements-to-doctors/story/391815.html](https://www.downtoearth.org.in/news/health/there-s-an-unhealthy-alliance-between-doctors-and-pharma-firms-64230)

<sup>3</sup> Joe C Mathew, *Id*

<sup>4</sup> Banjot Kaur, *There's an unhealthy alliance between doctors and pharma firms*, 15<sup>th</sup> May, 2019, <https://www.downtoearth.org.in/news/health/there-s-an-unhealthy-alliance-between-doctors-and-pharma-firms-64230>

<sup>5</sup> Banjot Kaur, *Id*

<sup>6</sup> Banjot Kaur, *Id*

<sup>7</sup> Our bureau, *Rise in unethical practices a concern for pharma sector*, The Hindu, 25<sup>th</sup>

November, 2019 <https://www.thehindubusinessline.com/companies/rise-in-unethical-practices-a-concern-for-pharma-sector/article30078440.ece#>

<sup>8</sup> Our bureau, *Id*

<sup>9</sup> Our bureau, *Id*

<sup>10</sup> Shyama Rajagopal, *Doctors continue to be fed and bred by pharma firms*, The Hindu, 29<sup>th</sup> May, 2013,



“They offered to open an account in my name. Medical ethics bound us not to even accept the prescription pad of the laboratory. My standard norm is to write in my prescription pad to please conduct the test with maximum reduced rate for the patient. The laboratories provide half of the cost of the diagnostic test like a CT or MRI to the doctor,” said Dr Jayaprakash.<sup>11</sup>

The patients tend to do everything the doctor asks them to, thus, the doctors take an undue advantage of this and use it as a mean to endure their business. It is a moral duty of a physician to act in the best interest of their patients and make them their priority. These misleading prescriptions and manipulated medical reports breach the trust of the patients on the doctors or the hospitals. Therefore, such instances, make the healthcare sector as one of the most corrupted and highly expensive profession.

### **CURRENT REGULATIONS GOVERNING THE HEALTHCARE SECTOR IN INDIA**

The **Indian Medical Council (Professional Conduct, Etiquettes and Ethics) Regulations, 2002** laid down a few guidelines for the medical practitioners. The **chapter 1** lays down the Code of Medical Ethics for the physicians. Clause 1.5 of the Code of Medical Ethics states that:

“Every physician should prescribe the drugs using their generic names and he or she shall ensure that there is a

rational prescription and use of drugs.”<sup>12</sup>

Whereas, clause 1.8 of the same code states that:

“the payment of the professional services should be done in the medical interest of the patients and not in the personal financial interest of the physician.”

The **chapter 6** of the same IMC Regulations, lists down the acts performed by the physicians that are unethical in nature. The clause 6.4 of the Regulations talks about the rebates and commissions.<sup>13</sup> It states that:

“A physician shall not give, solicit, or receive nor shall he offer to give solicit or receive, any gift, gratuity, commission or bonus in consideration of or return for the referring, recommending or procuring of any patient for medical, surgical or other treatment. A physician shall not directly or indirectly, participate in or be a party to act of division, transference, assignment, subordination, rebating, splitting or refunding of any fee for medical, surgical or other treatment.”

**Chapter 7** of the IMC Regulations, 2002 deals with the misconduct of the physicians. The clause 7.7 states that:

“Any registered practitioner who is shown to have signed or given under his name and authority any such certificate,

<https://www.thehindu.com/news/cities/Kochi/doctors-continue-to-be-fed-and-bred-by-pharma-firms/article4760424.ece>

<sup>11</sup> Shyama Rajagopal, *Id*

<sup>12</sup> The Indian Medical Council (Professional Conduct, Etiquettes and Ethics) Regulations, 2002

<sup>13</sup> *Id*



notification, report or document of a similar character which is untrue, misleading or improper, is liable to have his name deleted from the Register.”

Clause 7.8 states:

“A registered medical practitioner shall not contravene the provisions of the Drugs and Cosmetics Act and regulations made there under. Accordingly,<sup>14</sup> prescribing steroids/ psychotropic drugs when there is no absolute medical indication; Selling Schedule ‘H’ & ‘L’ drugs and poisons to the public except to his patient; in contravention of the above provisions shall constitute gross professional misconduct on the part of the physician.”

**Chapter 8** of the IMC Regulations,2002 discusses about the punishments and disciplinary actions. The clause 8.2 states, U P I R E M O A M I C U S that:

“If the medical practitioner is found to be guilty of committing professional misconduct, the appropriate Medical Council may award such punishment as deemed necessary or may direct the removal altogether or for a specified period, from the register of the name of the delinquent registered practitioner. Deletion from the Register shall be widely publicized in local press as well as in the publications of different Medical Associations/ Societies/Bodies.”

Despite of having these provisions, people are not well aware of the seriousness of the crime. *It can also be noted in the IMC Regulations,2002, that the punishment for accepting bribes or kickbacks is not that severe and lets the physician get back to practice after a stipulated amount of time. Thus, these laws are inadequate in regard to the offence committed and needs serious amendments.*

### LEGAL PROVISIONS IN OTHER COUNTRIES

Various countries have enacted suitable laws to handle malpractices in healthcare sector. India in draw references from these countries to enact a law to tackle this problem.

For instance, the **Anti-Kickback Statute, 1972** was passed in the US which banned the bribe or kickbacks in the federal healthcare sector. The punishment of violating the law is imprisonment upto five years and a fine of \$25000. The violation of the Starks law, which prohibits the referrals from a physician for certain healthcare services gets fine upto \$15000.<sup>15</sup> In Canada, these ‘cut’ practices are referred to as the violation of human rights. Whereas, in UK, the doctor loses its license or gets barred from practicing medicine. India as a country, should refer to these international laws to understand how serious the issue is and implement on it.

### AMMENDED OR STUCK REGULATORY FRAMEWORK

Maharashtra has planned to ban the kickbacks to doctors for referring patients by

<sup>14</sup> *Id*

<sup>15</sup> Anti-kickback statute  
<https://barrettsingal.com/services/the-anti-kickback->

statute#:~:text=The%20federal%20Anti%2DKickback%20Statute,of%20healthcare%20providers%2C%20is%20Medicare.



releasing a draft bill. The government after considering it decided to call it ‘cut practices’ and the law was called the **Prevention of Cut Practices in Healthcare Services Act, 2017**. This act proposed five years of punishment or fine of Rs 50,000 if a doctor, hospital, clinic, nursing home or any medical professional is found involved in getting commissions by referring patients.<sup>16</sup> The Bill also allows the government to initiate *suo motu inquiry* (when the high court or the supreme court takes the matter into their own hands) against doctors. With the evidence of “cut practice”, the individuals can also file a complaint against the doctor or a hospital<sup>17</sup>. The bill also allows the police to conduct searches, seizures and arrest in such complaints under the **Code of Criminal Procedure, 1973**<sup>18</sup>

This draft of the Act was **denied approval** as there was an objection related to the imprisonment clause. The state law rejected the draft and sent it back to the medical education ministry without its nod.<sup>19</sup> The reason why the Indian Medical Association was opposing the clause of imprisonment was because they feared the harassment of medical practitioners due to fake cases. The Prevention of Corruption Act, 1988 was later amended in 2018 as the previous act lacked clarity based on the laws related to laws against the commercial organisations

bribing the public servants. In the amended act, section 7 dealt with the offences related to the public servants that were bribed. The public servant who bribed an another individual or got bribed would be punished with the imprisonment of not less than three years which could later be extended to seven years and shall also be liable to fine<sup>20</sup>. Whereas section 8 and 9 of the Prevention of Corruption Act, 2018 (Amendment) talks about the offence relating to a bribing of a public servant and offence relating to bribing a public servant by a commercial organisation and they seemed to insinuate that Indian companies must start including anti-bribery in their commercial agreements<sup>21</sup> respectively. There is a need to have serious implications of the provisions in order to control corruption in the healthcare sector.

### CONCLUSION

Corruption as discussed above leads to financial loss and mental agony to patients. It only benefits the corporate while degenerating the fabric of the society by encouraging corrupt and unethical practices. India needs strong regulations and stricter implementation in the healthcare sector. To reduce the corruption rate in the healthcare sector, India needs new laws and they need to

<sup>16</sup>Tabassum Barnagarwala, ‘Cut Practice’: Maharashtra releases draft Bill to curb commissions among doctors,

The Indian Express, 27<sup>th</sup> September, 2017  
<https://indianexpress.com/article/cities/mumbai/cut-practice-maharashtra-releases-draft-bill-to-curb-commissions-among-doctors-4862950/>

<sup>17</sup> Tabassum Barnagarwala, *Id*

<sup>18</sup> Tabassum Barnagarwala, *Id*

<sup>19</sup> Vicky Pathare, *Draft of Act preventing cut practices denied approval*, Pune Mirror, 28<sup>th</sup> July, 2018  
<https://punemirror.indiatimes.com/pune/civic/draft->

<of-act-preventing-cut-practices-denied-approval/articleshow/65169833.cms>

<sup>20</sup> Prevention of Corruption Act- before and after the amendment

<https://www.scconline.com/blog/post/2018/07/27/prevention-of-corruption-act-before-and-after-amendment-a-comparison/>

<sup>21</sup> The Prevention of Corruption ( Amendment) Act, 2018

<http://www.manupatrafast.in/NewsletterArchives/listing/Induslaw/2018/August-2018%20--%20THE%20PREVENTION%20OF%20CORRUPTION%20AMENDMENT%20ACT%202018.pdf>



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be implemented effectively. Implementing the laws in India could be challenging.

The few suggestions that should be considered are:

- It should be made compulsory for the physicians to sign a contract which states that if they are caught indulging in any activities that are in disregard of the law, they would have to face serious consequences.
- In case of a breach, the medical practitioner would lose his license to practice along with a minimum imprisonment of three years and would be charged with a fine.

Therefore, to improve the healthcare sector and to earn back the trust of the patients, there should be proper and stricter implementation of these laws.

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