

# Editorial

Imphal, Monday June 19, 2017

## June 18 effect

Like every year the people of the state observed The Great June Uprising Day and Unity Day on June 18, and the massive turnout at Kekrupat attending the memorial service and paying floral tributes by people from different walks of life from various communities reinforced the fact that the people of Manipur, with its diverse inhabitants and cultural mix, still believes in the spirit of unity, and despite setbacks and disappointments, are ready to go to lengths to preserve and protect its unique identity as portrayed by the variety of cultures, traditions, customs and beliefs. But then again, this intrinsic protective feeling is certainly not something unique to the people of this state. It is rather the universal feeling and one that has caused many a great epic battles and induced acts of heroism and sacrifices. The threat to one's own space and liberty, whether personal or social, has always evoked reactions ranging from the passively defensive to the more aggressive and violent.

The spontaneous reaction of the collective society on that eventful day in 2001 which saw the unrestrained outpouring of the frustrations of the Manipuris is no different. It would be prudent for us all to ponder over the issue without preconceived notions or personal feelings, and to try and understand the facts as they are. The aspirations of the different communities to better their own kinds is understandable, but if and when that aspiration starts to infringe on the right and liberty of another community or the rest of the communities as the case may be, then differences and suspicions are bound to develop amongst the communities.

There is also the bigger threat of the political system feeding on the concerns of these different groups to its advantage, and what was at first a credible issue, even if only from the point of view of a particular community without delving further into the legality or the practical aspect and its impact on the entire social setup, such genuine concerns almost always gets tainted with political overtures, making the whole process a farce and drama, played out to the interest of the very few who are orchestrating such social disruptions. Ultimately, the issue gets sidelined, or more seriously, gets diverted, eventually betraying the hopes and support of the very people who are made to suffer the consequences.

The final step-resorting to brute force and irrational violence to subdue and suffocate the rational curiosity and dissenting voice of the society. The only way out of such undesirable situations, and indeed the most effective means of preventing the very fomentation of such divisive ideas is for the people to put a decisive, just and impartial Government which have the political will and the guts to implement even the most unpopular and drastic measures for the good of the society, state or the country-an impossible expectation?

# Medical Negligence and the Rise of Mob Rule in Manipur

By: Damudor Arambam

Over few years, attackson medical practitioners and damaging hospital properties thereby disrupting the health services by mob consisting of relatives after the death of a patient are becoming normal trends in Manipur. Few years back, in the course of agitation by mob of relatives and locality, a body of a woman who died after giving birth to a baby girl was placed at the courtyard of a medical practitioner accusing formal medical negligence. Such is the horrifying case of mob rule in the state. Recently there is an ongoing case where family members and relatives of a 34-year-old woman Thokchom Kheroda Devi of Khurai Kongpal in Imphal East, who died due to profuse bleeding after giving birth to a baby at RIMS hospital, tried to storm and pelted stones at the Administrative block of the hospital, alleging the doctors responsible for the death. The Department of Obstetrics and Gynaecology, RIMS, has clarified that the patient Thokchom Kheroda Devi, who died from complications after giving birth, was given the best treatment and examination procedure by the doctors and tried their level best to save her life. However the Joint Action Committee (JAC) formed against the death of Thokchom Kheroda Devi, who died from complications after giving birth, was given the best treatment and examination procedure by the doctors and tried their level best to save her life. However the Joint Action Committee (JAC) formed against the death of Thokchom Kheroda Devi, who died from complications after giving birth, was given the best treatment and examination procedure by the doctors and tried their level best to save her life. However the Joint Action Committee (JAC) formed against the death of Thokchom Kheroda Devi, who died from complications after giving birth, was given the best treatment and examination procedure by the doctors and tried their level best to save her life.

negligence. And even if negligence did occur, mob rule and damaging hospital is not the remedy. Hospital in India may be held liable for their services individually or vicariously can be charged with negligence. Every patient has a right to expect a certain standard care when he admits in the hands of the hospital authority. On one hand the persons who offer medical advice and treatment implicitly state that they have the skill to decide whether to take a case, to decide the treatment, and to administer that treatment. This is known as an "implied undertaking" on the part of health care providers. After the Consumer Protection Act, 1986, came into force, one can approach consumer court in order to claim for compensation and the liability in civil law is based upon the amount of damages incurred. In the criminal courts, doctors can be prosecuted under section 304A of Indian Penal Code, 1860 for causing death of any person by doing any rash or negligent act which does not amount to culpable homicide which is punishable for a term which may extend to two years. Furthermore, doctors can be held for criminal liability under section 336, 337 and 338 of IPC. As a result, a number of legal decisions have been made on what constitutes negligence and what is required to prove it.

Though it is very difficult to define negligence in jurisprudence, Salmond's Law of Torts defined it as "an omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do". The term negligence is used for the purpose of fastening the defendant with liability under the Civil law and, at times, under the Criminal Law. The Supreme Court of India in the judgement of *Jacob Mathew v. State of Punjab* held that negligence by medical professionals necessarily calls for a treatment with a difference and, the difference between occupational negligence and professional negligence has to be

properly understood. The judgement further said that in order to prosecute a medical professional for negligence under criminal law "it must be shown that the accused did something or failed to do something which in the given facts and circumstances no medical professional in his ordinary senses and prudence would have done or failed to do". According to the judgement, for an act to amount to criminal negligence, the degree of negligence should be much higher i.e. gross or of a very high degree and negligence which is neither gross nor of a higher degree may provide a ground for action in civil law but cannot form the basis for prosecution. The Supreme Court while giving certain directions in the judgement held that indiscriminate prosecution of medical professionals for criminal negligence is counter-productive and does no service or good to the society. The present decisions of medical negligence by Supreme Court leave a lot of room for discretion, which at times may be exercised by doctors and judicial officers, in an undesirable manner. This is a challenge to the public as there is very less chance of prosecution of medical practitioners in the criminal court. And it is still difficult to prove medical negligence under the present judicial system as the burden rests solely with the claimant.

A bench of Justices Markandey Katju and Gyan Sudha Misra in a Supreme Court case held that departmental action can be taken against governmental doctor indulging in private practice but cannot be construed as a criminal offence. The common citizens of the state believe that many doctors working in public hospitals have been indulging in private practice thereby showing indifference to their patients' care which in fact remained an important cause of medical negligence. In fact in absence of strict implementation of rules and any monitoring mechanisms from the health department, many doctors indulge in private practice in Manipur. These

practices further enhance the existing gap between medical practitioners and patients and families which has been a long standing problem in the health sector. Impliedly, the medical practitioners in the state does not owe a duty and now not necessarily liable in almost all circumstances. A patient centred initiative of rights protection is required to be appreciated in the present economic sphere where there is a rapid privatization of health care system and with the increasing efforts of Supreme Court to constitutionalize a right to health as a fundamental right. So a review of Supreme Court decisions on medical negligence would be relevant in this regard. And when there are such precedents where doctors are penalised or punished for the "negligence" in the state then, the image of the Judiciary and other redressal mechanism become so bad that people are losing faith completely. Now, people think if judiciary can't deliver justice then it's better to take into their hands. While mob justice has become an everyday practice in Manipur where suspected criminals are beaten and many a times being killed, ostracized and destroyed properties. In fact there is an overwhelming public acceptance of mob justice in the state. This is how mob rule is taking over in the state where medical practitioners are attacked by mob of relatives and family of a deceased patient.

There is a very less possibility to develop a health care system without error and negligence. However, at present, it is required to develop a health care system where negligence and error can be recognized and the accused whether doctor or other staff or whole department could be identified, accounted for and penalized so that justice should be given to the victims of medical negligence. Also the liability of medical professionals must be clearly defined so that they can perform their kind duties without any fear. This is so because most precious right to life in our state is at stake.

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## National and International News

### CBI team at house of Delhi Health Minister Satyendra Jain, who is facing corruption charge

New Delhi, June 19: The Central Bureau of Investigation (CBI) team visited Delhi Health Minister Satyendra Jain's house today in connection with probe related to a money laundering case. According to reports, the CBI team sought clarifications from

Satyendra Jain's wife regarding allegations of money laundering against the minister. The CBI had registered a preliminary enquiry against Satyendra Jain in April to inquire into allegations of money laundering against him. It is alleged that Jain was

involved in money laundering to the tune of Rs 4.63 crore while being a public servant during 2015-16 through Prayas Info Solutions private limited, Akinchand developers private limited and Managalyatan projects private limited. The allegations against Jain also

include purported money laundering to the tune of Rs 11.78 crore during 2010-12 through these companies and Indometal Impex pvt limited. The matter was referred to the CBI by Income Tax Department against the new Benami Transactions Prohibitions Act

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### Iran launches missile strike targeting ISIS militants in Syria for Tehran attacks

Tehran, June 19: Iran's Revolutionary Guard launched missiles into eastern Syria targeting Islamic State militants in response to an attack on Iran's parliament and a shrine in Tehran, warning that it would similarly retaliate on anyone else carrying out attacks in Iran. The launch of surface-to-surface, medium-range missiles into Syria's Deir el-Zour province comes as Islamic State militants fleeing a US-led coalition onslaught increasingly try to fortify their positions there. Activists in Syria said they had no immediate information on damage or casualties from the strikes, launched from Iran's Kurdistan and Kermanshah provinces. Social media was awash in shaky mobile phone footage from those areas, allegedly showing the missiles rise in an orange glow before heading toward their targets. Yesterday's assault marked an extremely rare direct attack from

inside the Islamic Republic amid its support for embattled Syrian President Bashar Assad. Iran's Revolutionary Guard, a hard-line paramilitary force, has seen advisers and fighters killed in the conflict. A Guard statement carried on its website said many "terrorists" were killed and their weapons had been destroyed in the strike. It described targeting a command center and an area used to build suicide car bombs in the provincial capital, also named Deir el-Zour. "The message of the revolutionary and punishing move is totally clear," the Guard said in its statement, carried by the state-run IRNA news agency. "If the evil and satanic measures against the Iranian nation are repeated, the revolutionary anger and flames of (the Guard's) revenge will engulf the perpetrators and lead the criminals to hell." Iran's semi-official Fars news agency, believed to be close to the Guard, said the

paramilitary force launched a total of six missiles that flew over Iraqi airspace before striking Syria. Deir el-Zour is home to both Islamic State militants and civilians. The extremists increasingly have fled to Deir el-Zour as the Islamic State group's de facto capital of Raqqa has come under punishing US-led airstrikes. Five Islamic State-linked attackers stormed Iran's parliament and a shrine to revolutionary leader Ayatollah Ruhollah Khomeini on June 7, killing at least 18 people and wounding more than 50. That attack marked the first to hit Iran, shocking its residents who believed the chaos engulfing the rest of the Middle East would not find them in the Shiite-majority nation. Iran has described the attackers as being "long affiliated with the Wahhabi," an ultraconservative form of Sunni Islam practiced in Saudi Arabia.

### CBI team goes to JNU to probe Najeeb's disappearance

New Delhi, June 19: A CBI team today visited Jawaharlal Nehru University (JNU) to probe the mysterious disappearance of Najeeb Ahmed, a student who had gone missing from his hostel on October 16, 2016. The team is looking into allegations of a scuffle between Ahmed and ABVP students in JNU's Mahi-Mandvi hostel and the circumstances that may have led to it as well as other events that preceded his disappearance. It is likely to meet the suspects and people whose names have cropped up in the matter, sources said. Najeeb's mother Fatima Nafees recently met CBI officers who are investigating the case.