

CONFERENCE REPORT

Medico-legal concerns in dementia

C J VAS

Dr. C. J. Vas, Goa Medical College, Goa. Email: cjvas@vsnl.com

The 8th Annual Conference of the Alzheimer's Disease and Related Disorders Society of India (ARDSI) was held in Goa from October 4 to 6, 2002. The theme was timely: "Improving the Quality of Care" for the demented in this country, a number estimated by some at 26.6 lakh people over the age of 65 years. The meeting was attended by about 180 persons from India and abroad. At the inaugural session, Dr K Jacob Roy, President of ARDSI, detailed what his Society had done and what remained to be achieved. Dr C J Vas, Vice-President of the Goa Chapter, talked of the Alzheimer's home - India's first - to be established by the Goa group and the need to raise Rs. 1.5 crore for the restoration and renovation of a 400-year-old house donated by a well wisher, the Gonsalves family of Brittonna, Goa, and Bombay.

Among the many sessions of interest to physicians, carers, social workers and others was a medico-legal session attended by experts in medicine and the law including many judges, lawyers, social workers and activists in the field. This was in continuation of the medico-legal sessions held in Mumbai during 1997 and 1998 organised by the Holy Family Hospital, the FIAMC Bio-Medical Ethics Centre [FBMEC] and the ARDSI which concentrated on the problems of the aged and demented. On this occasion, the session was sponsored by the Dementia Society of Goa, the FBMEC and the ARDSI and concentrated on the problems faced by family members of the demented and the carers.

During the earlier medico-legal conferences, the term 'dementia' was medically and legally defined, the diagnosis and grading of dementia considered, the legal expression 'competence' carefully thought about and the medical aspects of the decision making capacity studied. Other topics such as proxy-decision making, advance directives and informed consent were examined. It was realised that in the presence of dementia a person may be rendered incompetent and, therefore, incapable of making decisions and taking executive actions. This placed tremendous responsibilities on relatives and carers of the demented as well as restricted trusted friends and relatives from exercising a power of attorney if such had been executed by affected individuals while they were competent.

This raised the question as to what society could do to help the relatives of the demented in cases of nuclear families where both parents had invested their life's earnings jointly in their names and that of their son or daughter. It would appear that these savings had to be frozen for a few years until the end of life of the demented. Such happenings were not rare. The medico-legal session was, therefore, organised to enable consideration of legal and medical remedies available to India's ageing population which is increasing, as is dementia among them.

The session began with a statement of the problem by Ms Serena Jacob who had nursed her mother through a long and tedious Alzheimer's illness during which her family's joint funds were frozen. This was followed by a report by Dr C J Vas dealing with the prevailing medical situation concerning the definition and problems raised by dementia. Adv J F Reis then outlined the legal status and enumerated the precedents in law relevant to dementia. He was followed by Mr Justice P B Sawant who discussed the possible solutions in law. Mr Justice S N Variava then concluded with a discourse on the legal status and what needed to be done. A general discussion then ensued under the able guidance of Dr Wilfred de Souza and Sen Adv M S Usgaonkar. It appeared that legal opinion was divided and needed to be studied in greater detail.

While there was no great difficulty in respect to competence and the medical aspects of 'decision making capacity', topics such as proxy-decision making, advance directives and informed consent were controversial even though it was generally agreed that individuals had the right to make up their own minds. It was accepted that in the presence of dementia a person may be rendered incompetent and, therefore, incapable of making decisions and taking executive actions.

Mr Justice Sawant advocated the view that a new comprehensive law was needed to deal with all the issues consequent on advancing age and Mr Justice Variava concurred. The learned judges agreed, however, that this would take some considerable time and it was for this reason that Adv J Reis suggested that judicial activism might help in prodding legislators to do their utmost for the aged. Justice Variava responded that judges could not create new laws but could only give liberal interpretations to existing laws. Some argued that this was precisely what was required as many international precedents existed and even in India the basic issues had been accepted some time ago.

Reference was made by many to the Mental Health Act 1987 which defines a mentally ill person as one who is in need of treatment by reason of any mental disorder other than mental retardation. It was asked if a person with dementia or Alzheimer's disease could be considered as being mentally ill. To this, Dr Vas retorted that dementia could not be considered by any stretch of the imagination to be either a gynaecological or a dermatological illness but, indeed, a disorder of the mind. Nevertheless, all agreed that the Mental Health Act was in need of amendment.

In respect to the specific problem which was the subject of the seminar, Sen Adv Mr Usgaonkar reminded the participants that the pre-liberation law, i.e. the Portuguese Civil Procedure Code, was the procedural law in Goa meant for the administration of the substantive law. He also

C O N F E R E N C E R E P O R T

outlined the procedure that was permissible under Article 944 in regard to interdiction on account of dementia: a) the opinion of the council of the family; b) examination of the defendant by medical experts; and c) interrogatory of the defendant by the Court.

The assembled group then agreed to a suggestion from the floor that a core group be established for a detailed study of

the subject and the drafting of a new law which would take into considerations all the advantages and disadvantages of the law as seen in India, in Goa and abroad. The functioning of this Group was left in the hands of Mr Usgaonkar and Dr Vas with Justice Sawant prepared to help. This development hopefully augurs well for the future.

WHEN YOU GET THAT RENEWAL NOTICE...

We hope you find the journal interesting enough that when you receive our renewal reminder you will rush to renew your subscription by the next post.

Please remember to **add Rs 25** to the subscription amount for out-station cheques. We have been told that we pay an unreasonably high amount for bank charges for out-of-town cheques.

Please mention the subscription number (it's on the address label), your complete postal address and your email address if you have one.

Do you subscribe to *Issues in Medical Ethics*?

Published every quarter, *IME* carries original articles, reports, comments, conference reports and case studies on a range of issues close to the hearts of concerned people in the Indian health system. Some of the subjects covered in recent issues:

- 'Cross-practice' • Medical education • Questions facing specialists in various fields
- Research ethics • Contraceptive research and population policies • Ethics of HIV, TB, vaccines...

IME has encouraged comments from all points of view. Some debates in recent issues:

- Are tuition classes ethical? • Is it right to perform pre-implantational genetic diagnosis for sex selection? • Should doctors advertise?

Subscribe to *IME*. If you're already a subscriber, gift a subscription to a friend. Your subscription to *IME* is an expression of support for ethical values in the practice of medicine in India.

I'd like to subscribe to *Issues in Medical Ethics*. Here is my cheque / demand draft for Rs / \$ _____, towards a one-year / two-year/ life subscription to the journal. (Please tick whichever is applicable, referring to the subscription information alongside), including Rs 20/\$2 for out-of-Mumbai cheques. I have also added INR -- for postage costs.

Name:

Email address:

Postal address:

I am already a subscriber to *IME*. Please send my gift subscription to my friend at the following address:

Name:

Email address:

Postal address:

IME subscription rates

Inland			
Individual		Institutional	
1 yr.	Rs. 150	1 yr.	Rs. 200
2 yrs.	Rs. 250	2 yrs.	Rs. 350
Life	Rs.3000	Life	Rs. 5000

International			
Individual		Institutional	
1 yr.	US\$ 50	1 yr.	US\$ 100
2 yrs.	US\$ 80	2 yrs.	US\$ 160
Life	US\$800	Life	US\$ 1600

Fill in the form and send with your cheque to *Issues in Medical Ethics*, 0-18, "Bhavna", Veer Savarkar Marg, Prabhadevi, Mumbai 400025.

Email: fme@vsnl.net