



*MEDic LAWgic Series*

## Workplace insubordination is misconduct – gross subordination can lead to restraining order under section 144 of Indian criminal procedure code

P. M. Parikh

Department of Oncology, Shalby Cancer and Research Institute, Ahmedabad, Gujarat, India.



**\*Corresponding author:**

Dr. P. M. Parikh,  
Department of Oncology,  
Shalby Cancer and Research  
Institute, SG Highway,  
Ahmedabad, Gujarat, India.

[purvish1@gmail.com](mailto:purvish1@gmail.com)

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### ABSTRACT

This article in the MEDic LAWgic series focussed on the meaning and implications of workplace insubordination. It describes why it is considered as misconduct. It also explains how gross subordination can lead to restraining order under section 144 of Indian criminal procedure code and can become a permanent part of service records of the perpetrator, affecting their career.

**Keywords:** Criminal intimidation, Unethical behavior, Women protection, Legal recourse, Physician burnout

### INTRODUCTION

All “civilized” individuals are expected to behave in a polite and ethical manner. “Right to dignity” is also enshrined in our constitution under article 21.<sup>[1]</sup> In addition, doctors are expected to abide by the Hippocratic Oath.<sup>[2]</sup> The Medical Council of India has specific guidelines called the Indian Medical Council (IMC) regulations of 1957, as amended in 2002 and 2016. These regulations for registered medical practitioners are called the IMC (professional conduct, etiquette, and ethics) regulations, 2002.<sup>[3]</sup>

### FACTS OF A CASE<sup>[4,5]</sup>

In 2016, a doctor was appointed assistant professor (AP) in the Department of Rheumatology at All India Institute of Medical Sciences (AIIMS), New Delhi.

In March 2017, two incidents occurred, wherein he shouted and misbehaved with his Head of Department (HOD), who incidentally was a lady. The AP created a ruckus and even threatened his HOD, making insinuations about her competence and questioning her qualifications to be HOD.

The HOD complained to the hospital administration. The hospital authorities conducted an inquiry through a competent committee, confirmed the misbehavior of the junior doctor, and even issued him a show cause notice as well as extended his probation period by 1 year. The mental harassment of the HOD continued unabated forcing hospital authorities to provide security to HOD while she was working inside the institute.

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Finally, fed up with the mental harassment, HOD was forced to approach police for protection and safety. The matter went to the courts.

In August 2018, the special executive magistrate (SEM) concluded that the AP used to talk to his HOD in a loud voice and disrespectful tone. Specifically, on two occasions (in the OPD in front of waiting patients and in the doctor's chambers), his behavior was undesirable, uncalled for and disrespectful to his senior. The SEM, therefore, passed an order finding the AP guilty of insubordination and misconduct. The AP was ordered to maintain peace in the jurisdiction of South Delhi for 1 year under a surety of Rs. 10,000/-. This was also confirmed in the court of additional session's judge.

The AP subsequently appealed to the High Court against the order of the SEM. This was in the court of Justice Suresh Kumar Kait of Delhi High Court.

In 2019, by the time the appeal could be heard, the 1-year period for maintaining peace was already completed.

Delhi High Court refused to give any relief to the complainant (AP of AIIMS, New Delhi). In his order, Hon'ble Justice Suresh Kumar Kait also stated that, being a qualified MBBS doctor, the petitioner could not claim ignorance of the law.

## DISCUSSION

This case has undergone rigorous and robust evaluation at all stages from the internal inquiry by the institution right up to the High Court.<sup>[4,5]</sup> Hence, our discussion will take the above details as accepted fact and focus only on its legal aspects and implications.

### Subordination is misconduct<sup>[6,7]</sup>

Insubordination is willfully failing to obey instructions of seniors. The condition being that the act required to be performed both ethical and legal. It should also be within the scope of the concerned person or authority that is giving the instructions. If the conduct of any employee is found to deliberately challenge the authority of a senior or employer, it is also considered as insubordination.

Insubordination (more serious and deliberate offense) is different from mere insolence or rudeness. In the simplest form, insubordination means failure to follow lawful and reasonable instructions by a superior or employer – directly or indirectly. To qualify as insubordination, the act should be one or more of the following – direct, willful, deliberate, and/or calculated challenge to authority.

To prove insubordination, evidence has to be provided for the following aspects:

i. A direct order was given

- ii. That order was not unlawful or unreasonable
- iii. The reasonableness of that order was clear and matched the job description (documented scope and course of employee's duties) unambiguously. However, it must be clarified that if any instruction/order is not directly related to an employee's duties, but is ancillary and necessary for the employer's operational requirements, the employee cannot refuse to carry them out.

The job description and employment contract are important documents on the basis on which the validity of such legal options will rest.

The first offense or mild forms are usually ignored or the response is a verbal reprimand/cautionary advice. Any provocation also needs to be taken into consideration when the competent authorities decide on the appropriate course of action. If the insubordination is persistent, deliberate, gross, and/or serious (even the first offense), it will lead to more serious action. The bottom line is whether the act of insubordination has resulted in deterioration of the employment relationship, puts other coworkers at risk, or prevents the normal smooth functioning of the department – all of which can result in action, leading to outright dismissal of the concerned employee. This is also applicable when juniors disrupt normal functioning and lower the esteem of colleagues, department, or institution. If the ultimate step of dismissal is not taken, insubordination can also lead to strictures officially incorporated in the service record of an employee, which can have long-term consequences.

Every human being has the right to live with dignity and respect. When it involves highly qualified health-care professional, we are expected to meet higher standards of professionalism, especially with colleagues. In spite of differences of any nature, behavior must be polite. Anything to the contrary will unnecessarily increase stress among colleagues and can also lead to burnout.<sup>[2]</sup>

When academic qualifications are weighed against seniority and experience, the latter deserves respect even if less qualified. Anything contrary to this amount to insubordination and misconduct. A superior attitude in behavior and conduct merely on the basis of higher qualifications is not acceptable – morally, ethically, or legally.

The story of Jeffrey Wigand is an example of whistleblower who divulged unethical practices by the tobacco industry leadership and hence does not qualify as insubordination – even though he disclosed confidential information contrary to the orders of his superiors.<sup>[8]</sup> In February 1996, he was interviewed on the famous 60 min program on CBS news TV channel. Here, he gave the details of how the tobacco company Brown and Williamson deliberately manipulated its tobacco products by adding carcinogenic chemicals and addictive substances. The company retaliated by

appointing private investigators to dig up dirt on Jeffrey and subsequently published a document of 500 pages regarding his alleged misconduct – both as company employee and in public life. This included calling him a liar, shoplifter, fudger of company expense accounts, and wife beater. His life story became immortal in the movie “The Insider” starring Russell Crowe, Christopher Plummer, and Al Pacino.

**Gross subordination is taken seriously can lead to restraining order under section 144 of the Indian criminal procedure code (CrPC)<sup>[9,10]</sup>**

Gross and/or unabated insubordination, as in this case, has serious criminal implications.

Under section 144 of CrPC, an Executive Magistrate who is subjectively satisfied has the powers for immediate prevention or speedy remedy, based on the material facts of a case, as provided for by section 134 of CrPC.<sup>[9,11]</sup> Action under this section is anticipatory, allowing the renouncement of individual rights of a person for the greater benefit of society. This is usually applied when there is a reasonable apprehension of danger involving human life, health or safety, annoyance, and disturbance of public tranquility. Orders under section 144 cannot be permanent or semi-permanent and hence cannot be renewed indefinitely. Usually, such orders are passed for 2 months and can be reviewed up to a maximum of 6 months. In the case above, the order was for 1 year.

Any persons aggrieved by such an order have a right to challenge it under the principles of natural justice. The appropriate High Court, under section 435 and 439 of the code also has the power to make the order under section 144 non-appealable. On a number of occasions, the Supreme Court has upheld the constitutional validity of section 144.<sup>[12,13]</sup>

Such court orders under section 144 of CrPC must be in writing, must be specific and definite in terms, and must include material facts taken into consideration, and the prohibition ordered must be clearly stated.

Under section 134, such orders must be served on the person against whom it is made or a copy-pasted at such place(s) deemed fit as per subsection 2. Rarely, the persons against whom the order is passed are so large that distinction between them versus members of the general public are not possible. In such cases, the order can be enforced after its publication in the local daily newspaper.

**Other provisions and reliefs available to victims beyond insubordination<sup>[14-21]</sup>**

Keeping in mind the number of women-related incidents and crimes, the Indian government has provided crucial rights to Indian women. For instance, section 354D of the Indian

Penal Code (IPC) outlines legal action against offenders following any woman. Unfortunately, most women are not even aware of their rights.

- (i) Women’s rights in India [Table 1]: Under the provisions of the Equal Remuneration Act, women are entitled to same salary, pay, or wages as their male counterparts.<sup>[16]</sup> If any harassment is faced at workplace by a woman, she can file a complaint with the Internal Complaints Committee under the workplace act. Under section 498, women are protected from verbal, economic, emotional, and sexual violence by any male in the household. Depiction of a woman’s body (whole or part) in an indecent manner, derogatory manner, or any manner that will offend her morality is punishable under law. In addition, section 354D of IPC outlines stalking (physically, electronically, or on social media) women as a criminal offense. Any female victim of sexual assault has the right to remain anonymous. She can record her statement in privacy directly with the district magistrate. In case, a woman victim is not able to go to the police station due to physical disability, she has the right to file a complaint through email or by registered post. In such cases, the police station must send a police constable to her residence to record her complaint. Legal Services Authorities Act makes provision for free legal aid to women. Women can also file a zero first information report (FIR) at any police station, without looking into jurisdiction. Later, it is the job of the concerned police officer to transfer the FIR to the concerned police station. An accused woman can be interrogated by the police at her residence only in the presence of family members plus a woman constable. A woman cannot be arrested before sunrise or after sunset unless there is a specific written order from a first-class magistrate. If a woman is accused of breaking the law and requires a medical examination, it can only be done by another woman
- (ii) Workplace harassment includes sexual harassment, bullying, shaming, insulting, discrimination, and mental abuse. All acts that discriminate on the basis of race, religion, caste, hometown, age, marital status,

**Table 1:** Important women’s rights in India.

1. Right to equal pay
2. Right to dignity and decency
3. Right against workplace harassment
4. Right against domestic violence
5. Right to free legal aid
6. Right to not to be arrested at night
7. Right against being stalked
8. Right against indecent representation
9. Right to register virtual complaints
10. Right to zero first information report
11. Right to keep their identity anonymous in case of sexual assault

gender, physical and/or mental attribute, and/or sexual orientation are wrong. The Indian Supreme Court has given a broad meaning of “Sexual Harassment” – including sexually tinted behavior, sexually colored remarks, physical contact, demands for sexual favors, showing pornography, staring for more than 10 s, as well as any verbal or non-verbal sexual conduct

One workplace-related website outlines the following as apparently documented real-life comments overhead/witnessed at Indian workplaces:<sup>[14]</sup>

1. You are so tall, are you sure you need those heels? (commenting on physical attribute with sexual overtones)
  2. Walk slowly; I can feel the ground shaking when you are around. (body shaming a fat person)
  3. Ms. XXX can afford to buy that expensive car as her income is her pocket money, whereas I am the sole breadwinner and that is why I deserve the promotion more than her (gender discrimination)
  4. Hey XXX (derogatory slang), how are you doing today? (mental harassment)
  5. Let’s look at promoting XXX first that YYY can wait. (preferential treatment based on any of the above-mentioned factors)
  6. We men can talk about cup sizes, so why cannot you women talk about car brands? (gender discrimination with sexual overtones).
- (iii) Mental cruelty: Section 498-A of IPC came into existence in 1983 with the primary objective of addressing the mental cruelty faced by married women, particularly with respect to dowry. It has subsequently been revisited by the Supreme Court and sometimes is also applied against mental cruelty of other nature<sup>[17]</sup>
- (iv) India’s National Human Rights Commission was constituted in October 1993 and given a statutory basis by Protection of Human Rights Act, 1993 (TPHRA). It can and does look into all issues related to life, liberty, equality, and dignity of people in India as guaranteed by our constitution as well as international covenants<sup>[18,19]</sup>
- (v) If any employee is under the age of 18 years, it is possible to apply the Protection of Children from Sexual Offenses Act, 2012 – which is one of the Indian government’s most progressive laws
- (vi) If the offense is against a person from notified scheduled castes or scheduled tribes, the scheduled castes and tribes (Prevention of Atrocities) Act, 1989, can also be applicable. This is an Act of the Parliament of India enacted to prevent atrocities against scheduled castes and scheduled tribes. In October 2019, the Supreme Court of India reversed an earlier ruling that required a mandatory inquiry before any arrests were made under this act.<sup>[20,21]</sup> The logic was that caste discrimination and untouchability still persist in the country – as

demonstrated in the recent movie Article 15 written by Gaurav Solanki and Anubhav Sinha, starring Ayushmann Khurrana. The Supreme Court said, “protective umbrella guaranteed to them cannot be taken away by the courts on the presumption that the law was being misused”

- (vii) IPC 323 deals with voluntarily causing hurt with full knowledge and intention
- (viii) IPC 504 deals with intentional insult and/or provocation that can lead to breaking of public peace
- (ix) IPC 506 deals with criminal intimidation with a threat to cause death.

## CONCLUSION

Workplace misconduct and insubordination exist globally. Mild forms and initial instances are usually ignored. It is only when the offense is committed repeatedly, the offender shows no respect to authority or the incident is of a serious nature that the victim files a complaint. There are sufficient provisions in the law for appropriate remedy. Women are often now aware of their rights and tolerate workplace misconduct as well as more serious harassment. This manuscript is a handy reference for all women to understand their rights and the various legal provisions under which they are protected.

## Declaration of patient consent

Patient’s consent not required as patient’s identity is not disclosed or compromised.

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## Conflicts of interest

There are no conflicts of interest.

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