

Ayushman Bharat Pradhan Mantri
Jan Arogya Yojana (AB PM-JAY)
**Anti-Fraud Framework
Practitioners' Guidebook**



September
2020

**Ayushman Bharat Pradhan Mantri
Jan Arogya Yojana (AB PM-JAY)**
Anti-Fraud Framework
Practitioners' Guidebook

September 2020





CONTENTS

Glossary	viii
Foreword by CEO	ix
Acknowledgements	x
About Practitioners' Guidebook	xi
PART 1: NATIONAL ANTI-FRAUD FRAMEWORK	1
Overview of AB PM-JAY Anti-Fraud Framework and its components	1
1. Anti-Fraud Guidelines and institutional mechanisms	2
2. Key responsibilities of SAFU	2
a) Fraud prevention measures	2
b) Fraud detection measures	3
c) Fraud deterrence	3
d) Monitoring effectiveness of anti-fraud measures	3
e) Managing fraud complaints	3
3. Anti-Fraud Advisories	4
4. Fraud Control – technology and tools	4
a) Monitoring tool RADAR (Risk Assessment, Detection and Analytical Reporting)	4
b) FACTS (Fraud Analytics Control and Tracking System)	5
c) Fraud incident reporting page and tracker	6
d) SAFU portal - TMS audit module and field investigation through mobile app	6
e) SAFU portal - BIS audit module	8
f) Beneficiary Empowerment Guidelines	9
5. Fraud control – Key processes	9
a) Medical Audit	9
b) Reporting & Compliance	11

6. Action upon confirmation under provisions of Guidelines, Advisories and violation of contracts	11
a) For confirmed fraudulent cases and entities	11
i. Confirmed fraud case	11
ii. Against EHCP found engaged in fraudulent activities	12
iii. Against Fraud e-card	14
iv. Against PMAM/CSC VLE/approver/beneficiary found engaged in fraudulent e-cards	14
PART 2: HEALTH INSURANCE FRAUD AND INDIAN LAWS	15
1. Understanding First Information Report	15
1.1 Understanding FIR	15
1.2 Writing complaints for an FIR	19
1.3 Case Studies – writing a complaint	21
2. Mapping types of insurance frauds with existing legal provisions	31
a. Reader’s guide to the mapping	32
b. Note on applicable legal provisions	46
c. Time is the essence – the law of limitation	47
ANNEXURES	
Annexure 1: List of Guidelines, Advisories and Manuals	49
1. List of Guidelines	49
2. List of Advisories	49
3. List of Manuals	50
4. Reporting Formats	51
Annexure 2: Trigger Specific Guidance Note	54
Annexure 3: Checklists and Reporting Formats	61
1. Desk Audit Checklist	61
2. Desk Audit Report Format	62
3. Fact Sheet	62
4. Medical Audit Form	64
5. Medical Audit Report Format	69
6. Field Investigation Format	70
7. Home Visit Format	73
8. Mortality Report	74
9. Mortality Audit Report (By SHA)	77
10. BIS Investigation Form	81
11. Beneficiary Audit Form	82
Annexure 4: Sample Templates of Letters	84
1. Letter for Show Case Notice	84
2. Suspension Letter	86
3. Penalty Letter	87
4. De-empanelment Letter	88

Annexure 5: Important definitions under the Indian Penal Code	90
Annexure 6: Links to Access the Bare Acts	92
Annexure 7: Clauses under agreements with Insurance Company or ISA	93
Annexure 8: Relevant Legal Provisions	95
1. The Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016	95
2. The Companies Act, 2013: Section 213– Investigation into company’s affairs in other cases	96
3. The Companies Act, 2013: Section 447 – Punishment for Fraud	97
4. The Companies Act, 2013: Section 449 – Punishment for False Evidence	97
5. The Companies Act, 2013: Section 450 – Punishment where no specific penalty or punishment is provided	98
6. The Companies Act, 2013: Section 451 – Punishment in case of Repeated Default	98
7. The Drugs and Cosmetic Act, 1940- Section 18: Prohibition of manufacture and sale of certain drugs and cosmetics	98
8. The Drugs and Cosmetic Act, 1940- Section 27: Penalty for manufacture, sale, etc., of drugs in contravention of this Chapter	99
9. The Indian Contract Act, 1872: Section 17 – Fraud Defined	101
10. The Indian Contract Act, 1872: Section 73 – Compensation for loss or damage caused by the breach of contract	103
11. The Indian Contract Act, 1872: Section 74 – Compensation for breach of contract where penalty stipulated for	104
12. The Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002: Section 1.3: Maintenance of Medical Records	105
13. The Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002: Section 7.6 Sex Determination Tests	106
14. The Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002: Section 7.7 Signing professional certificates, reports and other documents	106
15. The Indian Penal Code 1860, Section 34: Act done by several persons in furtherance of common intention	107
16. The Indian Penal Code 1860, Section 35: When such an act is criminal by reason of its being done with a criminal knowledge or intention	108
17. The Indian Penal Code 1860, Section 36: Effect caused partly by act and partly by omission	109
18. The Indian Penal Code 1860, Section 107: Abetment of a thing	110
19. Indian Penal Code 1860, Section 120A: Definition of Criminal Conspiracy	111
20. The Indian Penal Code 1860, Section 120B: Punishment of Criminal Conspiracy	112
21. The Indian Penal Code 1860, Section 170: Personating a public servant	113
22. The Indian Penal Code 1860, Section 415: Cheating	113
23. The Indian Penal Code 1860, Section 416: Cheating by impersonation	116
24. The Indian Penal Code 1860, Section 417: Punishment for cheating	117
25. The Indian Penal Code 1860, Section 418: Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect	117
26. The Indian Penal Code 1860, Section 419: Punishment for cheating by personation	118
27. The Indian Penal Code, Section 420: Cheating and dishonestly inducing delivery of property	118

28.	The Indian Penal Code, Section 425: Mischief	119
29.	The Indian Penal Code, Section 426: Punishment for mischief	120
30.	The Indian Penal Code, Section 463: Forgery	120
31.	The Indian Penal Code, Section 464: Making a false document	121
32.	The Indian Penal Code, Section 465: Punishment for forgery	124
33.	The Indian Penal Code, Section 467: Forgery of valuable security, will, etc.	124
34.	The Indian Penal Code, Section 468: Forgery for the purpose of cheating	125
35.	The Indian Penal Code, Section 471: Using as genuine a forged ⁴¹ [document or electronic record]	125
36.	The Indian Penal Code, Section 474: Having possession of document described in Sec. 466 or 467, knowing it to be forged and intending to use it as genuine	125
37.	The Indian Penal Code, Section 477A: Falsification of Accounts	126
38.	The Information Technology Act, 2000, Section 43: Penalty and compensation for damage to computer, computer system, etc.	127
39.	The Information Technology Act, 2000, Section 65: Tampering with computer source documents	131
40.	The Information Technology Act, 2000, Section 66: Computer related offences	132
41.	The Information Technology Act, 2000, Section 66B: Punishment for dishonestly receiving stolen computer resource or communication device	132
42.	The Information Technology Act, 2000, Section 66C: Punishment for identity theft	133
43.	The Information Technology Act, 2000, Section 66D: Punishment for cheating by personation by using computer resource	133
44.	The Information Technology Act, 2000, Section 72A: Punishment for disclosure of information in breach of lawful contract	133
45.	The Information Technology Act, 2000, Section 84B: Punishment for abetment of offences	134
46.	The Information Technology Act, 2000, Section 84C: Punishment for attempt to commit offences	134
47.	The Information Technology Act, 2000, Section 85: Offence by companies	135
48.	The Mental Health Care Act, 2017, Section 107: Penalties for establishing or maintaining mental health establishment in contravention of provisions of this Act	135
49.	The Mental Health Care Act, 2017, Section 108: Punishment for contravention of provisions of the Act or rules or regulations made thereunder	136
50.	The Mental Health Care Act, 2017, Section 109: Offence by Companies	136
51.	The National Medical Commission Act, 2019: Section 34: Bar to practice	136
52.	The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994: Section 22: Prohibition of advertisement relating to pre-natal determination of sex and punishment for contravention	137
53.	The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994: Section 23 – Offences and Penalties	138
54.	The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994: Section 25 – Penalty for contravention of the provisions of the Act or rules for which no specific punishment is provided	138
55.	The PC-PNDT Act, 1994: Section 26 – Offences by companies	139
56.	The Prevention of Corruption Act, 1988, Section 7: Offence related to public servant being bribed	139

57.	The Prevention of Corruption Act, 1988, Section 7A: Taking undue advantage to influence public servant by corrupt or illegal means or by exercise of personal influence	141
58.	The Prevention of Corruption Act, 1988, Section 8: Offence related to bribing of a public servant	141
59.	The Prevention of Corruption Act, 1988, Section 9: Offence relating to bribing a public servant by a commercial organisation	143
60.	The Prevention of Corruption Act, 1988, Section 10: Person in charge of commercial organisation to be guilty of offence	143
61.	The Prevention of Corruption Act, 1988, Section 11: Public servant obtaining undue advantage, without consideration from person concerned in proceeding or business transacted by such public servant	144
62.	The Prevention of Corruption Act, 1988, Section 12: Punishment for abetment of offences	144
63.	The Prevention of Corruption Act, 1988, Section 13: Criminal misconduct by a public servant	145
64.	The Prevention of Corruption Act, 1988, Section 14: Habitual committing of offence under sections 8, 9, 10	145
65.	The Prevention of Corruption Act, 1988, Section 15: Punishment for attempt	145
	Annexure 9: Notes on specific Acts	146
1.	The Information Technology Act, 2000	146
2.	The Prevention of Corruption Act, 1988	146
3.	The Clinical Establishments (Registration and Regulation) Act, 2010	147



GLOSSARY

AB PM-JAY	Ayushman Bharat Pradhan Mantri Jan Arogya Yojana
AI	Artificial Intelligence
BEG	Beneficiary Empowerment Guidelines
BIS	Beneficiary Identification System
CSC	Common Service Centre
CPD	Claim Processing Doctor
EDC	Empanelment Disciplinary Committee
EHCP	Empanelled Healthcare Provider
FACTS	Fraud Analytics Control and Tracking System
FIR	First Information Report
IC	Insurance Company
IPC	Indian Penal Code
ISA	Implementation Support Agency
LOS	Length of Stay
ML	Machine Learning
MOU	Memorandum of Understanding
NAFU	National Anti-Fraud Unit
NHA	National Health Authority
PMAM	Pradhan Mantri Arogya Mitra
PPD	Pre-auth Processing Doctor
RADAR	Risk Assessment, Detection and Analytical Reporting
SAFU	State Anti-Fraud Unit
SHA	State Health Agency
SHA-AFO	State Health Agency – Anti-Fraud Officer
SLA	Service Level Agreement
TMS	Transaction Management System
TPA	Third Party Administrator
VLE	Village Level Entrepreneur



FOREWORD BY CEO

AB PM-JAY has scaled great heights since its launch in September 2018, with 12.57 crore e-cards having been issued and more than 1.25 crore hospitalisations having been covered under the scheme across India. At the time of launch of scheme, NHA released Anti-Fraud Guidelines for providing overall direction to the efforts of State Health Agencies as regards crucial task of controlling fraud in their respective State/UT.

NHA strongly believes that any form of fraud under AB PM-JAY is a violation of beneficiary rights under the scheme and misappropriation of public resources. NHA has adopted a zero-tolerance policy towards fraud in AB PM-JAY/NHA eco-system. National Anti-Fraud Unit (NAFU) has thus been at the forefront of operationalizing various aspects of the guidelines at National level and in providing technical support to the State Anti-Fraud Units (SAFU), in building their technical capacities.

As the initiatives and actions have expanded in response to emerging scenarios, NHA IT platform has also been strengthened with advanced analytical tools. Dashboards are deployed, manuals for medical audit and investigation are developed, advisories and recovery guidelines have been provided and capacity building workshops, field trainings for SAFUs are regularly held.

This Guidebook is initiative by NAFU to create a Compendium of all the anti-fraud guidelines, techniques, advisories etc. in one document for ease of reference guide for all implementing States/UTs. This Guidebook also outlines the legal remedies/course of action presently available under applicable Indian laws.

I am confident that the Guidebook shall serve as a great instrument for capacity building of SAFU and shall help State Health Agencies to take effective measures for prevention, detection and deterrence of fraud under AB PM-JAY. We look forward for vigilant support of SHAs in our fight against fraud and mitigating the risks associated.

Let us work together to keep AB PM-JAY free of fraud and abuse.

Dr. Indu Bhushan

Chief Executive Officer

Ayushman Bharat Pradhan Mantri Jan Arogya Yojana

National Health Authority

September 2020



ACKNOWLEDGEMENTS

The Practitioners' Guidebook is a collective effort of NHA and World Bank. We would like to thank Ms. Sheena Chhabra and Ms. Malti Jaswal for their continuous support and supervision. We acknowledge with gratitude the contribution and support of Mr. Rajesh Jha, Dr. Sudha Chandrashekar, Ms. Parul Naib, Dr. Ankita Chobisa, Ms. Harbani Gill, Mr. Abhishek Bhardwaj, Dr. Pradeep Maurya, Ms. Perna Saluja and the entire NAFU team in conceptualizing, designing and development. We would also like to mention Ms. Priyanka Walesha and Ms. Kashmira Chadha for their review and valuable feedback. Special thanks to Dr. Indu Bhushan- CEO, Dr. Praveen Gedam- Additional CEO and Dr. Vipul Aggarwal- Deputy CEO at NHA for their overall strategic guidance and encouragement.



ABOUT PRACTITIONERS' GUIDEBOOK

Ayushman Bharat Pradhan Mantri Jan Arogya Yojana (AB PM-JAY) offers annual hospitalization cover of INR 5,00,000 per family to more than 10 crore beneficiary families, that is approximately more than 40 percent of the country's population. This unprecedented effort of the Government of India is likely to have a significant impact on the poor and vulnerable population's access to secondary and tertiary hospital care.

The National Health Authority (NHA) has developed a robust national anti-fraud framework to prevent integrity violations within AB PM-JAY. This **Anti-Fraud Management Practitioners' Guidebook** has been designed as a comprehensive reference Guidebook for of all such efforts and a ready reckoner for AB PM-JAY practitioners in their efforts to prevent, detect, mitigate associated risks and deter fraud.

The purpose of Guidebook is to help State Anti-Fraud Unit (SAFU) team plan, implement and prioritize operational level actions required to be taken at their end for effective fraud control in their respective State/UT. However, its purpose is not to substitute thorough knowledge and understanding of original guidelines, manuals and dashboards etc. in their entirety, reference links for which are also provided in the Guidebook.

This Guidebook does not aim to provide all the information each State Health Agency (SHA) may require. This Guidebook may also not be applicable to all SHAs uniformly in all aspects and it is not possible for National Health Authority to understand the applicability and particular

needs of each State and/or user which utilises the understated guidelines.

Each SHA should conduct its own assessment and analysis and should check the applicability of guidelines as compiled under this Guidebook for its reference and where necessary add/obtain independent advice from Competent Authorities.

A word of caution to be exercised - as Guidelines, IT systems and processes are modified/added to address emerging fraud scenarios, and also that legal provisions are evolving and will become applicable as per the applicable laws. SHA should also ensure the applicability of laws, statutes and/or precedence as may be applicable at State level in addition to the ones listed. It is important for SAFU members to keep themselves abreast of latest guidelines and applicable laws as and when introduced and also take into consideration their State specific circumstances and corresponding response mechanisms, regulations, legal provisions etc.

Applicable laws shall mean applicable laws of India including any statute, law, ordinance, notification, rule, regulation, judgment, order, decree, bye-law, approval, directive, guideline, policy, requirement or other governmental restriction or any similar form of decision by Central and/or State Government applicable to the AB PM-JAY scheme.

Currently, healthcare regulation in India varies from State to State which makes compliance and

implementation complex. Thus, it is to be noted that the provisions stated in this document are not absolute and relevant Acts as referenced, read with Rules and Regulations may be further referenced subject to applicability to a particular case keeping in view the precedence's laid by the Supreme Court of India and further amendments as may be applicable.

National Health Authority makes no representation or warranty and shall incur no liability as to the applicability of the guidelines for each case and the SHA may use its own expertise and prudence in regard to the applicability of the same after evaluating the issue, statutory/State laws applicable if any, as amended from time to time and/or guidelines or order specific to such SHA. National Health Authority though, will provide all assistance in regard to any queries pertaining to the guidelines as referenced under this Guidebook as may be required. National Health Authority accepts no liability of any nature, whether resulting from negligence or otherwise howsoever caused, arising from reliance of any SHA upon the statements contained in this Guidebook.

The Guidebook is structured in 2 parts:

Part 1: National Anti-Fraud framework:

Part 1 encapsulates all guidelines, advisories, system level enhancements, tools, techniques, dashboards, standard processes, documents etc. developed by National Anti-Fraud Unit (NAFU) to strengthen Anti-Fraud Framework under AB PM-JAY from inception of the scheme till date. It also lists the responsibility of SHAs as regards setting up of SAFU, implementation actions to be taken and reporting compliances etc.

Part 2: Health insurance fraud and Indian laws:

Part 2 provides an overview of legal provisions, actions to be undertaken by SHAs after detecting a case or entity suspected to be fraudulent, including mapping of laws to different types of fraudulent acts under AB PM-JAY, with relevant examples and demonstrating how and when such legal provisions may become applicable.

Note: For accessing any document through links provided in the guidebook, please copy and paste the url in browser or click on the link.



NATIONAL ANTI-FRAUD FRAMEWORK

Overview of AB PM-JAY Anti-Fraud Framework and its components

1. Fraud under the AB PM-JAY has been defined as - any intentional deception, manipulation of facts and/or documents or misrepresentation made by a person or organization with the knowledge that the deception could result in unauthorized financial or other benefit to herself/himself or some other person or organization. It includes any act that may constitute fraud under any applicable law in India.
2. In addition to the above, abuse or any act that is recognized by different provisions of the Indian Penal Code as *fraud* shall be deemed to be *fraud* under the AB PM-JAY;
3. Fraud can be committed by any stakeholder/ entity involved in implementation of AB PM-JAY, with or without collusion of others – beneficiary, healthcare provider, Village Level Executives (VLE)/Pradhan Mantri Arogya Mitra (PMAM), staff of insurance company, third party Administrator, Implementation Support Agency or NHA or SHA including their contracted parties.
4. Anti-Fraud Framework covers entire gamut of activities for prevention, detection, and deterrence of different kinds of fraud that could occur in AB PM-JAY at different stages of its implementation by any of above entities.

for e.g. wilful negligence, impersonation, counterfeiting, misappropriation, criminal breach of trust, cheating, forgery, falsification and concealment etc.

FIGURE 1: 3 PILLARS OF ANTI-FRAUD SYSTEM

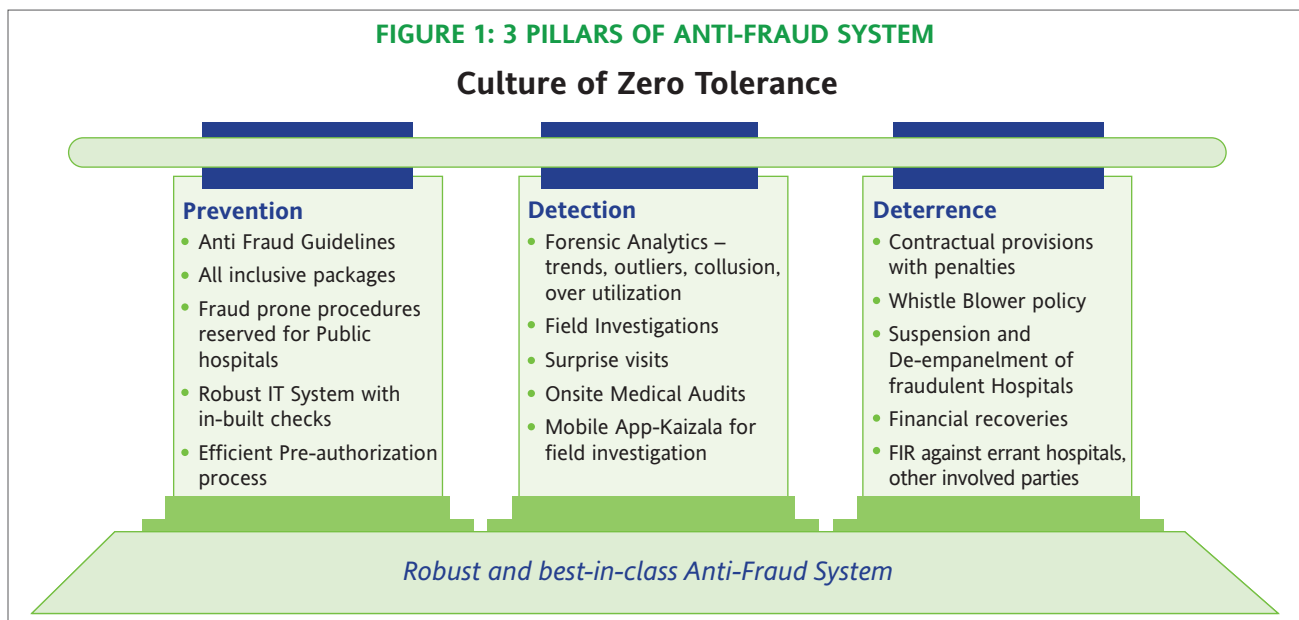


Table 1: NAFU and SAFU Roles and Responsibilities

NHA's Role	SHA's Role
<ul style="list-style-type: none"> ❖ Lay down Anti-fraud Guidelines & Standard Operating Procedures ❖ Set up Anti-fraud Cell - NAFU ❖ Develop legal and regulatory framework ❖ Develop model contracts, anti-fraud clauses in contracts, claw back provisions ❖ Provide IT system with built in checks and controls ❖ Develop triggers list, tools and technology ❖ Carry out/enable advanced analytics, data standards, mining, forensic inputs, fraud profiling ❖ Develop clinical protocols, medical audit and investigation tools/mobile applications ❖ Oversight & monitoring, trends & profiling, comparative analysis ❖ Capacity building, technical assistance, knowledge sharing of best practices ❖ Course correction and policy decisions ❖ Establish whistle blower mechanisms, <i>suo moto</i> action where necessary 	<ul style="list-style-type: none"> ❖ Lay down institutional mechanisms, dedicated Anti-fraud Cell - SAFU ❖ Operational implementation and compliant action best suited to local environment ❖ Oversight & monitoring, set up Claims Review Committee, Mortality and Morbidity Review committee ❖ Localized transactional triggers list, state level fraud profiling and data analysis ❖ Effective beneficiary identification & audits ❖ Claims/medical audits, field investigations ❖ Adherence to clinical protocols ❖ Contract monitoring & enforcement, punitive action, recoveries ❖ State level whistle blower mechanism redressal of complaints, action against fraudsters ❖ Build anti-fraud awareness, public messaging

1. Anti-Fraud Guidelines and institutional mechanisms

The Anti-Fraud Guidelines set out the mechanisms for fraud management and lay down the legal framework, institutional arrangements, and capacity that is necessary for implementing effective anti-fraud efforts. Anti-Fraud Guidelines are aimed at assisting state governments in developing and managing a robust anti-fraud system in PM-JAY. These guidelines deal with setting up of SAFU and define composition and key responsibilities of both NAFU and SAFU.

Institutional mechanism – SAFU composition and minimum requirement

- i. SAFU Head - 1
- ii. Medical Officer/auditor – 1 in case of insurance mode and 1 for every 10 districts in case of assurance/mixed mode
- iii. Analytics Officer -1

- iv. District Vigilance officer & Investigation Officer – 1 for each district (for all modes of implementation)

Institutional mechanism: Claims Review Committee to review rejected claims, audit 2-3% claims from each provider and Mortality and Morbidity Review Committee to check line of treatment, clinical practices, audit mortality claims, complex or high value procedures etc.

SHA needs to set up above institutional mechanisms of its own while its contracted agencies like ISA, insurance company etc. are expected to have their own fraud management systems and processes, and deploy staff as per their contractual obligations.

2. Key responsibilities of SAFU

a) Fraud prevention measures

1. Develop anti-fraud policies and guidelines (aligned to NHA Anti-Fraud Guidelines)

accounting for the implementation-specificities of its respective State/UT.

2. Procedures that are more prone to fraud should be either reserved only for public providers or can be availed at any empanelled private provider only on referral from a public provider.
3. Ensure that all contracts signed by the SHA with any party (Insurer, ISA, TPA, provider, IT agency, etc.) include adequate anti-fraud provisions, safeguards, disincentives and penalties that are enforceable. All references for this should be drawn from model contracts developed by the NHA.
4. Prevent provider empanelment fraud by following laid down guidelines and procedures in transparent and efficient manner.
5. Ensure compliance to beneficiary identification/verification guidelines, pre-authorization and claims adjudication, audit and payment guidelines.
6. Implement bio-metric authentication of beneficiary at the time of admission and discharge.
7. Limit/restrict the use of 'unspecified' packages.
8. Implement system built controls and checks in IT system, generate real time alerts to stakeholders.
9. Implement Beneficiary Empowerment Guidelines, auto message to beneficiary at each stage of e-card creation and during utilization of benefits from registration to collection of feedback post discharge etc.

b) Fraud detection measures

1. Monitor e-cards and utilization data, identify anomalies and aberrant trends on real time basis making use of tools, technology, dashboards etc.
2. Establish advanced analytics and algorithms for fraud detection, carry out timely due-diligence of system triggered suspect cases and entities.
3. Carry out investigations, medical audits, surprise visits, beneficiary interviews and surveys, gather field intelligence/inputs.

4. Set up whistle blower mechanism and take prompt action on complaints.
5. Share reports with NHA through system, through compliance reports.

c) Fraud deterrence

1. Implement strong contract management, prompt action, strict enforcement of penalties and contractual and legal provisions. Refer to Annexure 7 for clauses which may be included in the agreements.
2. Take stringent and timely action against fraudsters as per guidelines and legal provisions.
3. If feasible, keep a panel of providers shortlisted and wait listed for empanelment to enable firm action against fraudulent providers without causing inconvenience to beneficiaries in accessing care.
4. Naming and shaming of providers who have engaged in fraudulent activities following due legal process.
5. Issuing warnings and show cause notices to treating doctors found indulging in unethical practices under the provisions of the National Medical Commission Act, 2019 (erstwhile MCI Act).

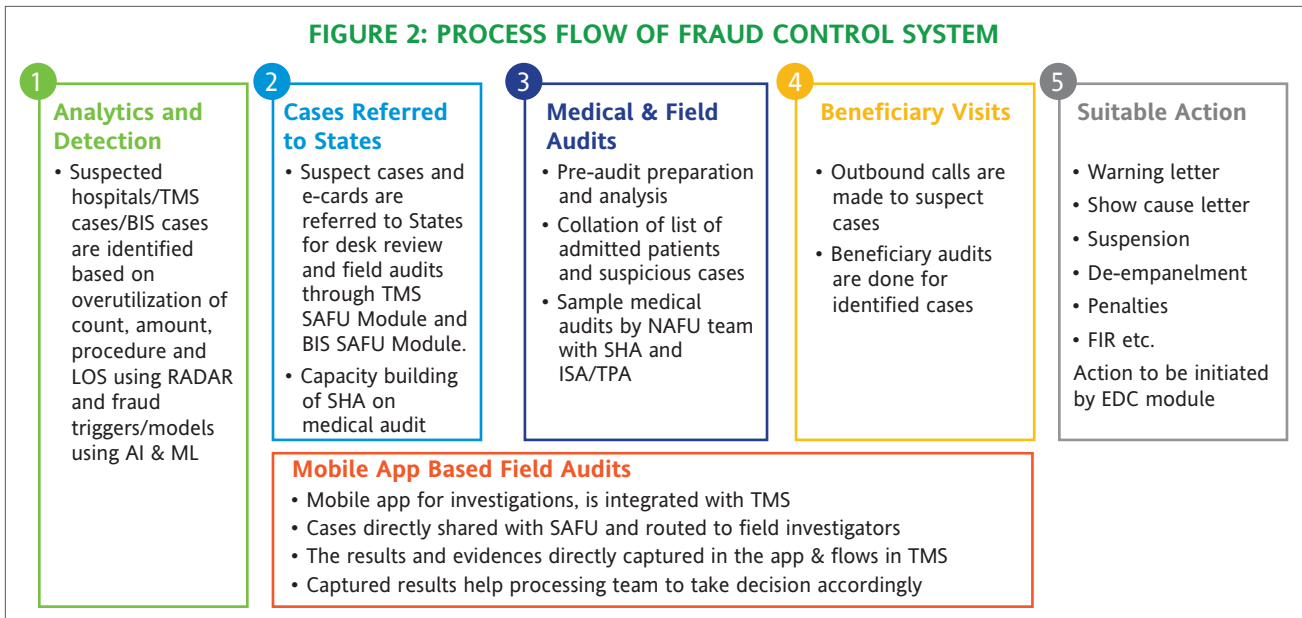
d) Monitoring effectiveness of anti-fraud measures

Periodic review of anti-fraud measures is required to improve the quality of the measures and to ensure that the anti-fraud efforts remain responsive and robust. A set of illustrative indicators for measuring the effectiveness of anti-fraud measures is provided in Anti-Fraud Guidelines.

e) Managing fraud complaints

Fraud under AB PM-JAY may either be detected internally by the staff, be externally reported, gathered through feedback mechanism or grievances etc. SHA should be vigilant and take cognizance of suspicious activities reported in media to have been carried out in the name of AB PM-JAY and carry out investigation of such incidents, take appropriate action without delay.

FIGURE 2: PROCESS FLOW OF FRAUD CONTROL SYSTEM



Subject to provisions under law, the SHA shall ensure that the identities of those filing grievances related to suspected fraud are kept confidential as far as possible and all efforts are ensured to protect the identity of the informer until the investigation is completed, and it is ascertained that fraud has been committed.

Detailed Anti-Fraud guidelines can be accessed at: https://www.pmjay.gov.in/sites/default/files/2019-04/Anti-fraud-PMJAY-Guidelines_1_2_removed.pdf.

3. Anti-Fraud Advisories

In order to provide guidance to SHAs to stay abreast of new modus operandi, emerging scenarios or for communicating new guidelines etc., from time to time, the NHA issues Anti-Fraud Advisories for compliance and implementation by States. Till 31/08/20, 17 Advisories have been issued. Refer Annexure 1 for summary list of Advisories.

4. Fraud Control – technology and tools

The end to end cycle of fraud control as related to system generated transactions and alerts can be explained in following steps at macro level, explained in detail in later sections. Different tools and technology have been developed by NHA to support different activities/processes for effective fraud control.

NHA has developed following technology tools and processes to be used by SHAs.

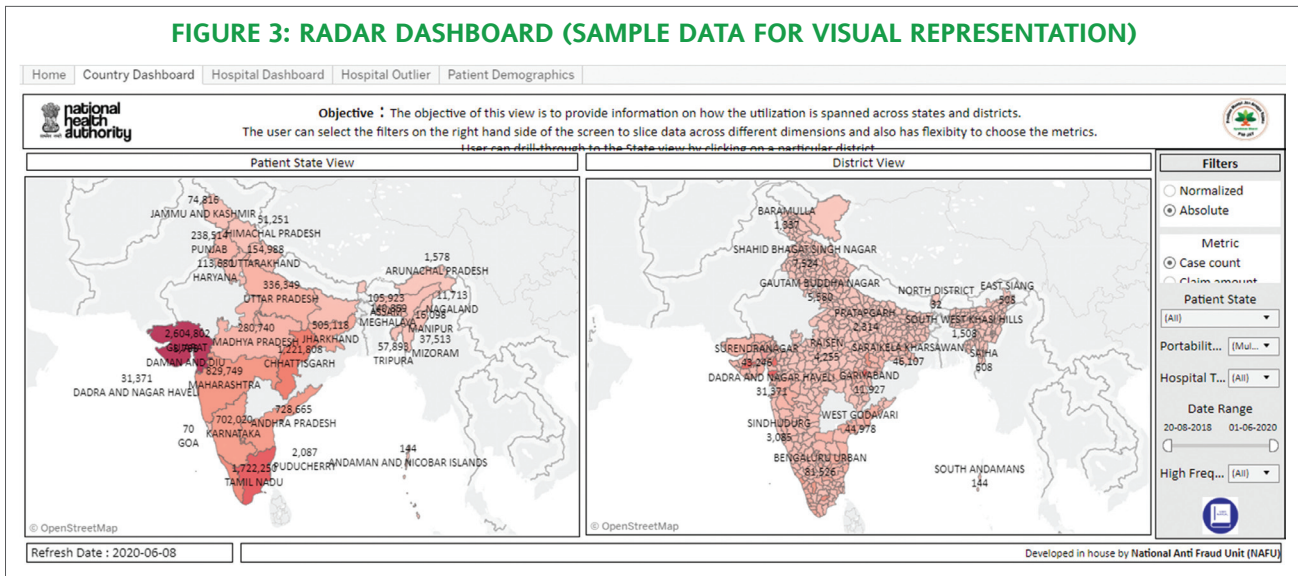
a) Monitoring tool RADAR (Risk Assessment, Detection and Analytical Reporting)

RADAR is an in-house developed solution by NAFU which focuses on monitoring utilization of scheme across States/Districts and has the capability to drill down to procedure level and hospital level. RADAR has a series of dashboards for anomaly and outlier detection, related to utilization and e-card generation under AB PM-JAY. The solution provides insights both from an absolute and normalized view. Upon clicking on a particular State, the user can view data drilled down to the relevant district across procedures and hospitals.

RADAR is being refreshed on a daily basis and can be accessed at <https://radar.pmjay.gov.in/>. The detailed user manual is also available on the same link. The login credentials can be obtained from State Coordinators, if not received by any SHA already.

In order to ensure a proactive approach for fraud detection, it is advised that SHA and district officials should use this portal on daily basis for identifying outlier hospitals and conducting prompt medical audit, due diligence on the same. A sample view of the Dashboard at National level is copied below.

FIGURE 3: RADAR DASHBOARD (SAMPLE DATA FOR VISUAL REPRESENTATION)



b) FACTS (Fraud Analytics Control and Tracking System)

NHA has selected renowned analytics company - for fraud analytics and to develop a comprehensive Fraud Analytics Control and Tracking System (FACTS) to detect fraud proactively, develop algorithms that can use big data to identify suspect transactions, entities and e-cards. This involves extensive use of Rule Engines, Artificial Intelligence and Machine Learning techniques, Risk Scoring of entities/transactions, Image Analytics etc.

All the suspect transactions, entities and e-cards are then shared with respective SHAs in SAFU bucket for conducting due diligence and investigation.

The SAFUs are expected to conduct prompt due diligence, including desk audit and field audit, take action and share the outcomes with NHA within defined timelines. There shall be no other process for sharing of suspect transactions and completing action on the same. Two sample views of the portal are copied below:

Going forward, FACTS portal will be the single source of access point for all NAFU/SAFU users and States are mandated to update information/status for end to end tracking:

- ▶ The list of cases being referred to the States would be available on the portal as also the risk scores pertaining to different entities.

FIGURE 4: FACTS LANDING PAGE (SAMPLE DATA FOR VISUAL REPRESENTATION)

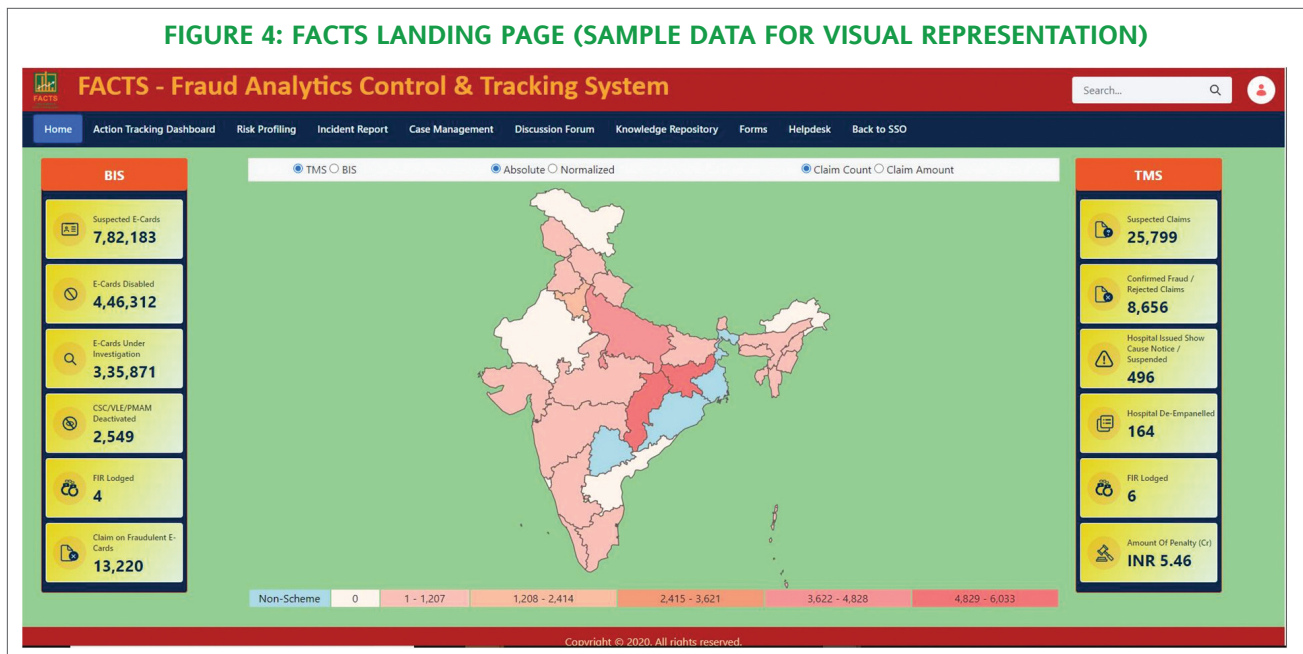
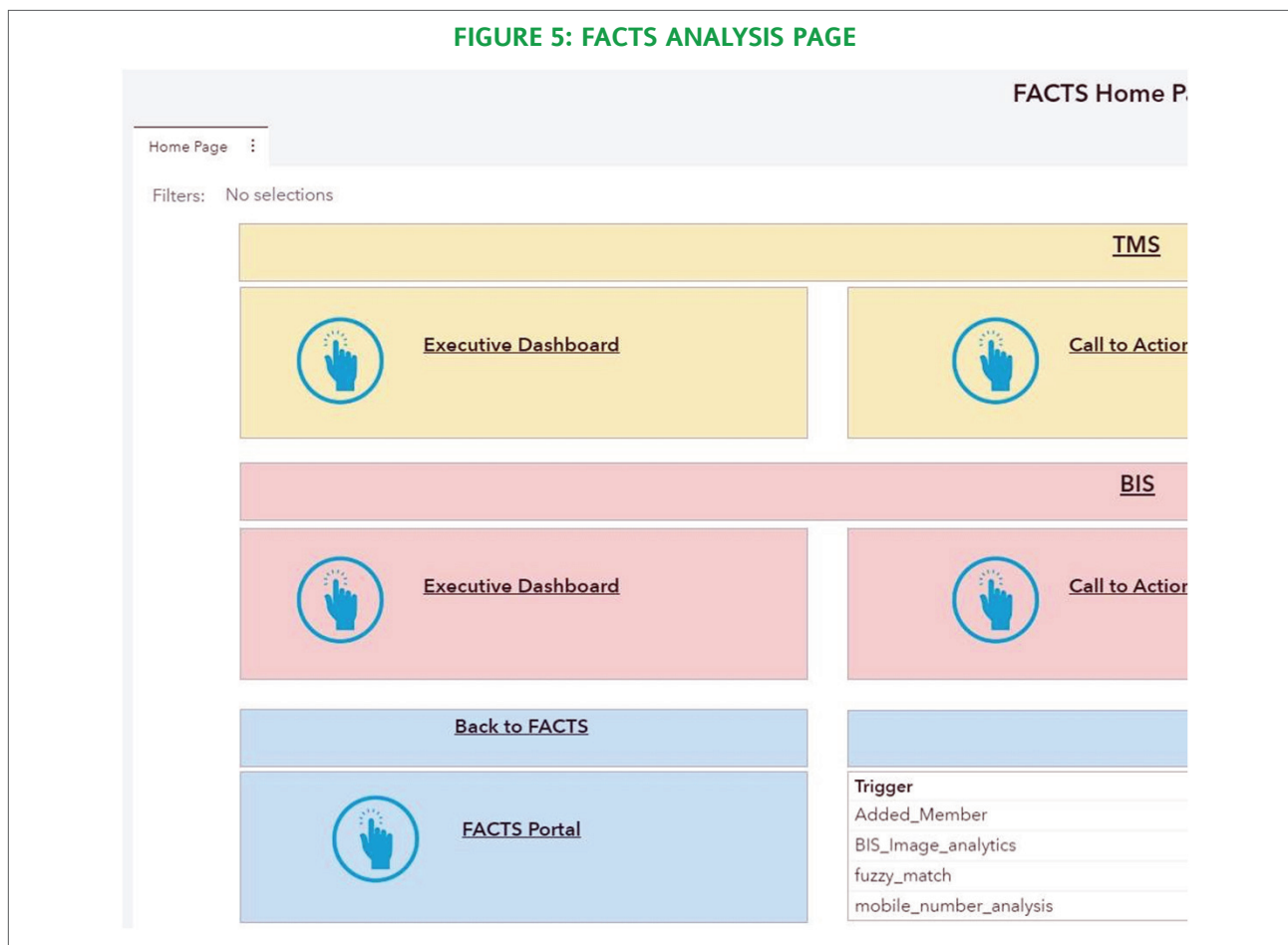


FIGURE 5: FACTS ANALYSIS PAGE



- ▶ Status action taken by the SHA on these cases would be available on the dashboard along with aging of the cases.
- ▶ The portal is integrated with TMS, BIS and SAFU audit modules, further integration with investigation mobile app and other workflows will also be enabled soon.
- ▶ The reporting formats including 7, 7A and 7B would be available on the portal and the States would be able to update the information as and when need be. (Refer to Annexure 1 part 3)

The portal can be accessed at <https://sso.pmjay.gov.in/>, for user credentials the SHAs should contact their State Coordinator.

NAFU has developed a 'Guidance Document' (Refer to Annexure 2) which details the triggers presently in production and actions to be taken on each of such triggered case. The Guidance Document can also be obtained from respective State Coordinators.

c) Fraud incident reporting page and tracker

An incident reporting page and tracker is hosted on the FACTS portal. The webpage would help maintain record on various media reports with regards to fraud, whistle blower complaints, complaints against EHCPs, officials, PMAMs/CSC VLE; incidents of fake AB PM-JAY employment rackets, unauthorized websites related to AB PM-JAY, unauthorized use of NHA/AB PM-JAY logos and stationary etc. and actions taken on such cases. The tracker would be accessible on FACTS portal. The SHAs are expected to update the page as and when any such incident comes to their knowledge or is reported and update information on action till closure.

d) SAFU portal - TMS audit module and field investigation through mobile app

SAFU portal has been built in the TMS for enabling seamless due diligence on suspect triggered cases, which can be accessed at <https://tms.pmjay.gov.in/OneTMS/loginnew.htm>.

The login credentials can be obtained from State coordinators.

The triggers are run on the transactions in TMS (under NHA IT system) and the suspicious cases are identified which are shared with State Anti-Fraud Unit via AB PM-JAY TMS portal for due diligence. These cases are removed from the normal TMS workflow to prevent claim payment accidentally before due diligence.

SHA-Anti Fraud Officers are expected to conduct the due diligence/investigation. Following actions are available to SHA-AFO in the portal:

- Confirm fraud:** Confirm the suspicious case as fraudulent and provide detailed remarks.

The case moves back to relevant approver login and is to be rejected.

- Dismiss the case:** Close the case as non-fraudulent and provide detailed remarks. The case moves to the relevant approver login and follows its normal course for further processing.
- Process with partial amount:** SHA-AFO has an option to process the claim by approving partial amount and provide a Recommended Approval Amount. The case moves back to TMS workflow and claim approver can process the claim by approving the maximum amount recommended.

FIGURE 6: SAMPLE VIEW OF SAFU PORTAL

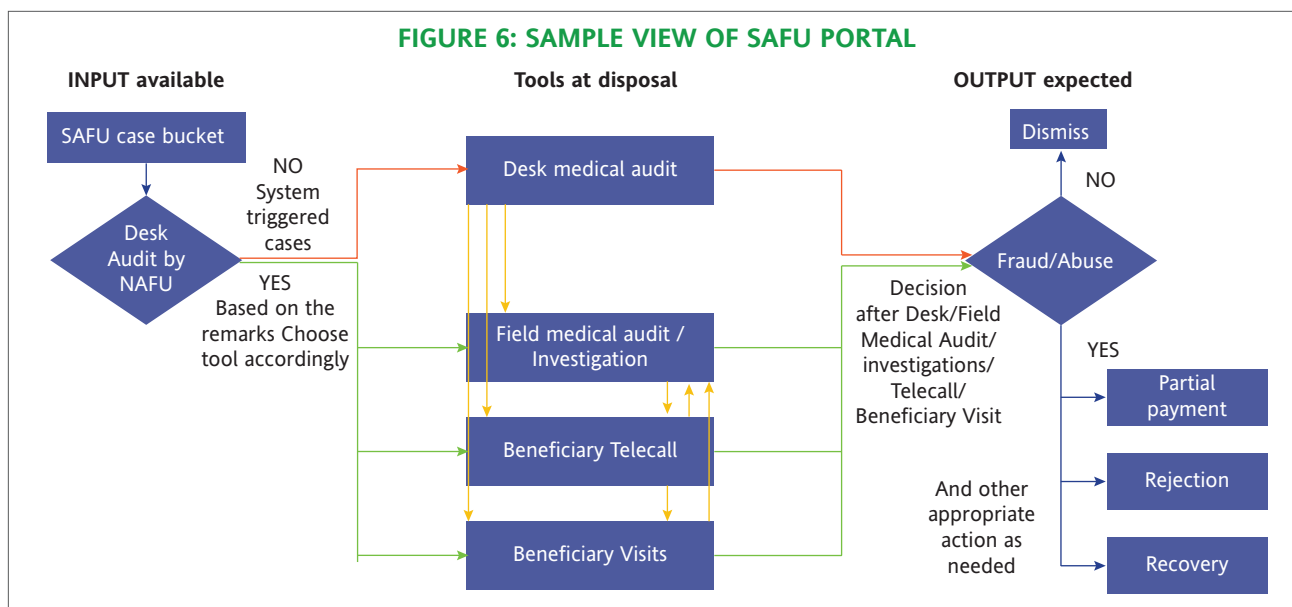
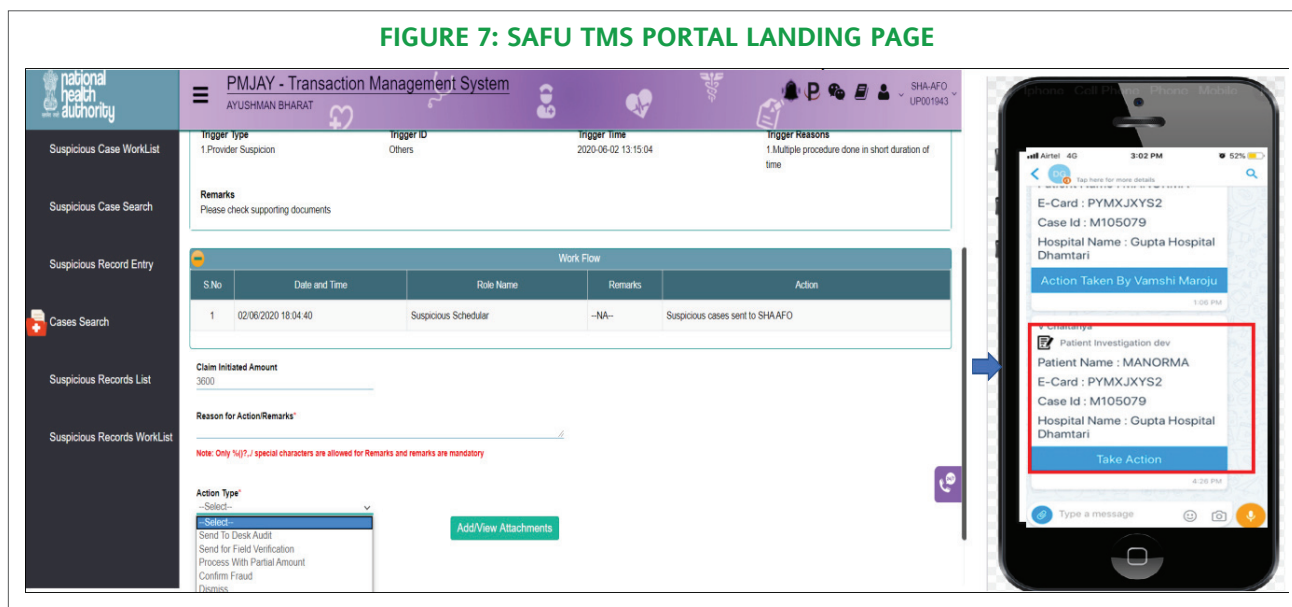


FIGURE 7: SAFU TMS PORTAL LANDING PAGE



- Desk Audit:** A role called SAFU Doctor has been created that allows SHA-AFO to send the suspicious cases for desk audit. A list of package wise questionnaire is enabled which are answered by SAFU Doctor. SAFU Doctor also provides detailed remarks and observations regarding the suspicious case. SHA-AFO can take decision based on the questions answered by SHA-AFO doctor and remarks provided.
- Send for field verification:** SHA-AFO can request field investigation on a suspicious case to take an informed decision. Once the case is sent for Field investigation, the case is available in the Field Investigation Mobile App, where the case is picked up by a field investigation officer. He/She investigates the case and furnishes the field verification report and sends back to SHA-AFO for action.

Action on the case shared with SHA-AFO through this portal must be initiated and closed at the earliest possible. If the action is not initiated even after 60 days of receipt of such cases, then such cases would be auto terminated. *The user manual of SAFU portal is available under Anti Fraud functionality at <https://support.pmjay.gov.in/kb/faq.php?id=63> and user manual of Field*

Investigation Mobile App will be available at AB PM-JAY support portal <https://support.pmjay.gov.in/>.

e) SAFU portal - BIS audit module

BIS has a built-in SAFU portal to enable seamless due diligence on suspect triggered e-cards. Same can be accessed at <https://bis.pmjay.gov.in/BIS/mobileverify>.

The login credentials can be obtained from respective State coordinators.

The triggers developed by NAFU analytics team are run on the AB PM-JAY e-cards in BIS. The identified suspicious cards are shared with State Anti-Fraud Unit via AB PM-JAY BIS portal for due diligence. SHA- Anti Fraud Officer is expected to conduct the due diligence/investigation. In the portal, SAFO can view the details regarding the Approver (PMAM, ISA etc.) and the details of the card (beneficiary & family details). Once State Anti-Fraud Officer performs his due diligence, further action can be taken.

- Dismiss the suspicion:** If the analysis leads to the fact that it was a false positive and no fraud is suspected then State Anti-Fraud

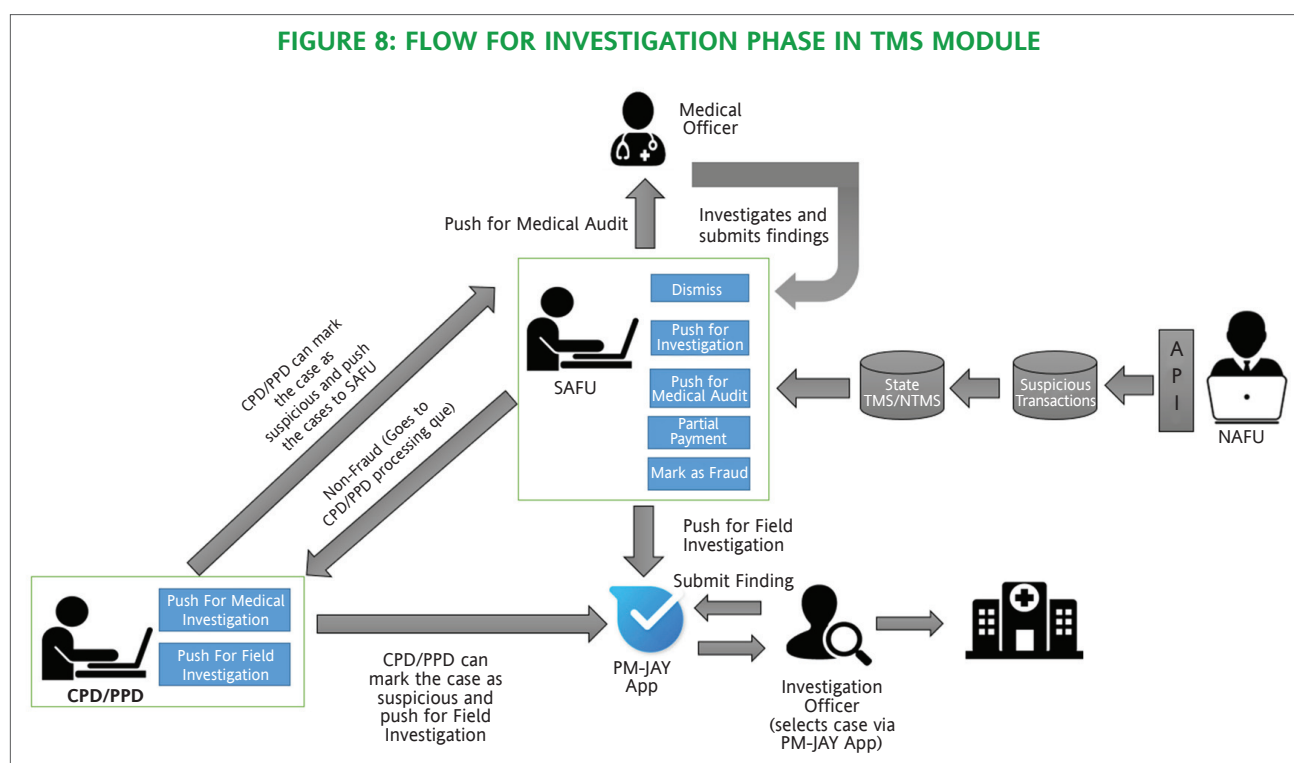


FIGURE 9: SAMPLE VIEW: LIST OF SUSPICIOUS CARDS

Suspicious Card List

Ministry of Health & Family Welfare
Government of India

List of Suspicious Card * You've 6 number of eCards pending for action.

Show 10 entries Search:

S.No	Suspicious ID	PMJAY ID	Suspicious Entity	Trigger Type	Trigger Reason	Trigger Description	Risk Score	
1	NAFU_BIS_101	PSSEW6NB	PMAM	BT1	Fuzzy Analysis	BIS and SECC name is matching less than 30%	60	View
2	NAFU_BIS_102	PISN1XBK	PMAM	BT1	Fuzzy Analysis	BIS and SECC name is matching less than 50%	40	View
3	NAFU_BIS_108	PNTNKY7W	VLE	BT1	Fuzzy Analysis	BIS and SECC name is matching less than 50%	40	View
4	NAFU_BIS_107	P3OZXLVG	VLE	BT1	Fuzzy Analysis	BIS and SECC name is matching less than 10%	90	View

Showing 1 to 6 of 6 entries Previous 1 Next

Officer can dismiss the suspicion and no further action will be taken in this case.

- Recommend for disabling the card to SHA:** If the SHA-AFO finds that the cards were created fraudulently and have to be disabled, he would have to enter his remarks and upon successful submission, the record will be sent to SHA for the final action – disablement of fake/fraudulent e-cards, following due procedure as per BIS Guidelines.
- BIS and TMS systems are now integrated to notify the approvers (PPD and CPD) in TMS during patient registration or the claim initiation on a suspicious card to help them take informed decision during transaction approvals. It is also planned to push claims pertaining to suspicious cards to SAFU bucket for due-diligence and appropriate action.

Detailed user manual is available at <https://support.pmjay.gov.in/kb/faq.php?id=69>.

f) Beneficiary Empowerment Guidelines

The purpose of BEG is to educate and make beneficiary aware of his/her rights, and raise concern in case of any issue. It is also an important

tool for detecting fraud committed in creation of fake e-cards or fraudulent transactions. SHAs are advised to implement the guidelines and keep watch on cases of denial of treatment, charging of money or fake cards/transactions being carried out in the name of genuine beneficiary. Link for complete Guidelines <https://ayushmanuttarakhand.org/document/beneficiary-empowerment-guidebook-2-8-2019.pdf>.

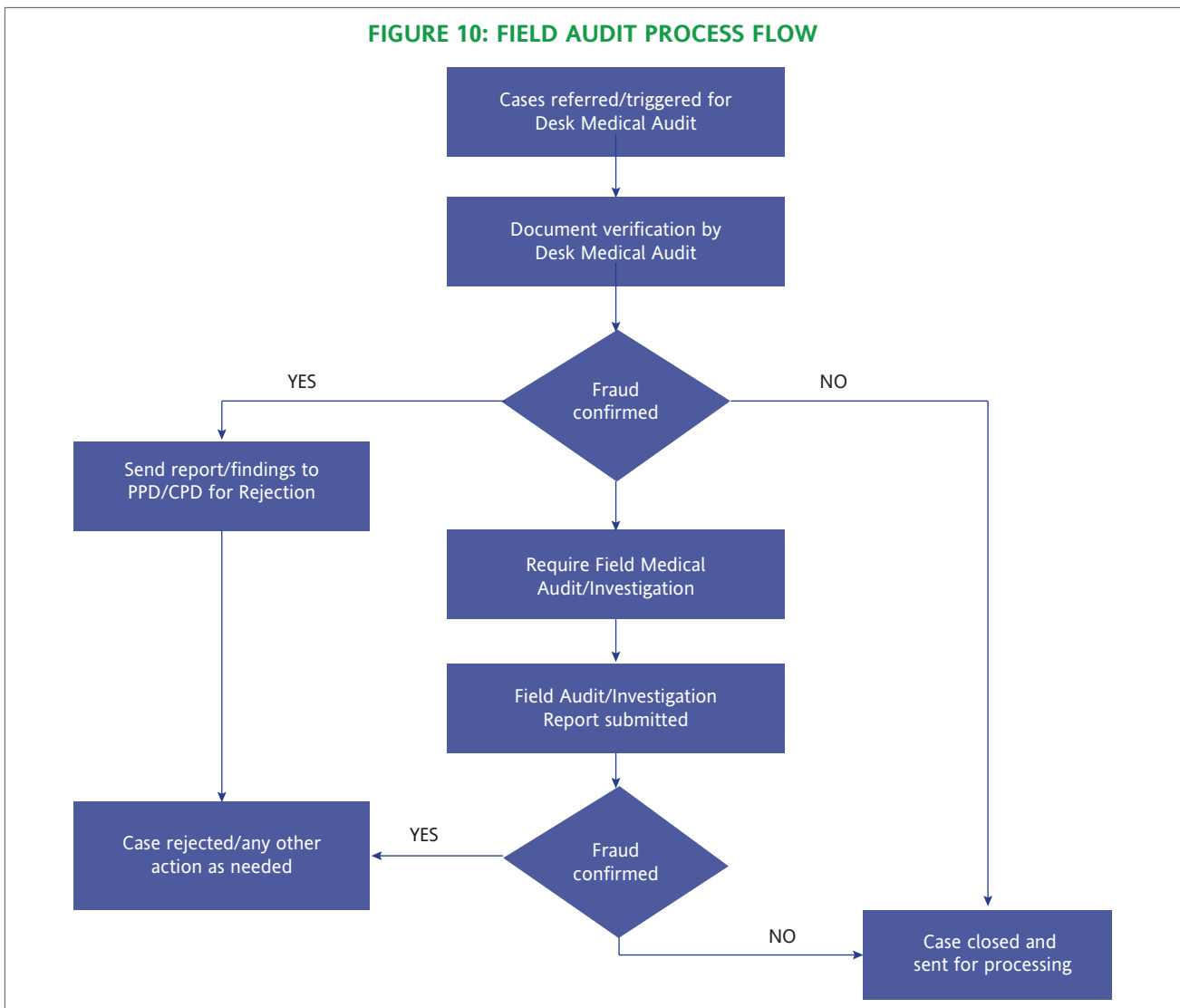
5. Fraud control – Key processes

a) Medical Audit

During the process of Medical Audit, a systematic review of an episode of medical care (transaction) is done. This involves a step-by-step analysis of the medical procedure performed by the treating doctor of EHCP against the explicit criteria of necessity, quality of care and cost. It also includes verification of associated clinical notes, diagnostics, and documentation to validate if:

- Was the procedure actually carried out?
- If carried out, was it medically justified or necessary?
- Could the case have been treated more conservatively?

FIGURE 10: FIELD AUDIT PROCESS FLOW



- Does the hospital have necessary infrastructure, facilities and manpower including specialists for carrying out said procedure?
- Whether the quality of care and cost of care is as per the scheme guidelines?

Medical audit is of two types – Desk Audit and Field Audit (hospital audit and beneficiary audit)

The Field Investigation and Medical Audit manual has been developed by NHA to assist SHAs to conduct medical audit (desk and field audit). The manual details on different kinds of audit, steps to be taken and protocols to be followed during the audit, checklists and forms to be used during desk audit, field audit and mortality audit, format for reporting the outcomes etc.

NAFU team has also developed package specific medical audit questionnaire for supporting

SAFU teams and ensuring quality medical audit consistently. The same is enabled in the Medical Audit module under TMS.

The SHAs are expected to adopt standard practices and formats for data capture and meaningful reporting, as mentioned in the manual. *For more details Field Investigation and Medical Audit manual and package specific questionnaires available at https://pmjay.gov.in/sites/default/files/2020-04/Field%20Investigation%20and%20Medical%20Audit%20Manual_April-2020.pdf and https://pmjay.gov.in/sites/default/files/2018-12/Fraud_Investigation_and_Medical_Audit_Manual.pdf.*

The SHAs are required to conduct Medical Audit on 100% suspect cases shared by NHA, as well as meet the below mentioned minimum audit criteria.

Table 2: Types of Medical Audits and their objectives

Sl No	Audit Type	Sample for Insurer/TPA/ISA/SHA Trust (without TPA) Audit*	Sample for SHA Audit (only in case of States with Insurer/TPA)*	Objective
1	Medical Audit (desk audit/field audit)	5% of total cases hospitalized	2% direct audit +2% of audit done by the Insurer/TPA/ISA	Establish medical necessity and do an objective review of the medical facts related to claim to ascertain the quality of care given.
2	Beneficiary Audit (at hospital/at home)	3% of total cases hospitalized	2% direct audit +2% of audit done by the Insurer/TPA/ISA	Establish eligibility, identity of the beneficiary to detect any cases of impersonation, ascertain if claimed procedure was actually performed and level of satisfaction.
3	Mortality Audit	100%	100%	Identify and verify any gaps in clinical care & patient safety impacting morbidity and mortality of the beneficiary.

* Note: For the purpose of computing above audit percentages, cases from public hospitals shall be excluded. SHA may give directions regarding inclusion of cases from public hospitals for the audit.

b) Reporting & Compliance

SHAs are supposed to report actions taken to detect and control fraud and abuse e.g. Number of cases investigated, number of cases found fraud, number of hospitals against which show-cause notice was issued or penalty was levied, amount of penalties recovered etc. to NHA. As discussed in previous section reporting can be done on formats 7, 7A, 7B (the forms are attached in Annexure 1 part 3). The aforesaid reporting module of FACTS portal can be accessed on FACTS portal Knowledge repository. The portal can be accessed at <https://sso.pmjay.gov.in/>, for user credentials the SHAs should contact their State Coordinator. A user Guidebook for reporting formats have been prepared and is available on the same link.

The States are expected to provide complete details on reporting portal on monthly basis.

6. Action upon confirmation under provisions of Guidelines, Advisories and violation of contracts

a) For confirmed fraudulent cases and entities

If after audit/investigation it is confirmed that the suspect case or e-card was fraud or suspect entity was involved in fraudulent activity, below mentioned steps need to be taken.

i. Confirmed fraud case

- ▶ If the pre-auth is not approved, then it should be rejected.

- ▶ If the case is not paid, it should be immediately rejected.
- ▶ If the case is already paid, recovery should be initiated from the EHCP.

The recovery can be done by any of the following means:

- Adjusting the excess amount paid against amount due to the EHCP arising out of unpaid claims.
- Recourse available under MoU/contractual provision.
- Recovery of the amount dues as if it is a sum recoverable as an arrear of land revenue under provision of the Revenue Recovery Act 1890 and/or other relevant act(s).

Detailed Guidelines for Recoveries is available at <https://pmjay.gov.in/sites/default/files/2019-09/Guidelines%20for%20Actions%20post%20Fraud%20Detecion.pdf>.

ii. Against EHCP found engaged in fraudulent activities

If after medical audit and/or field investigation, it is confirmed that the EHCP was involved in fraudulent activity below mentioned actions may be taken:

- ▶ Issuance of Show Cause Notice
- ▶ Suspension of services under AB PM-JAY
- ▶ Levy penalties
- ▶ De-empanelment
- ▶ FIR in case of criminal offense
- ▶ Naming and shaming by informing in the local media and displaying the list of de-empanelled hospitals on NHA and SHA website
- ▶ Deregistration, cancellation of license of EHCP under provisions and acts of State Govt. or any other relevant act of the Central Govt. such as the Clinical Establishment (Registration and Regulation) Act 2010 etc.
- ▶ If a particular doctor is found to be in connivance, notification to National Medical Commission and relevant State council to be sent.

The templates for letters for show cause notice, suspension notice and de-empanelment are enclosed in Annexure 4.

Penalties shall be levied as per the mentioned Table 3.

FIGURE 11: DISCIPLINARY ACTIONS

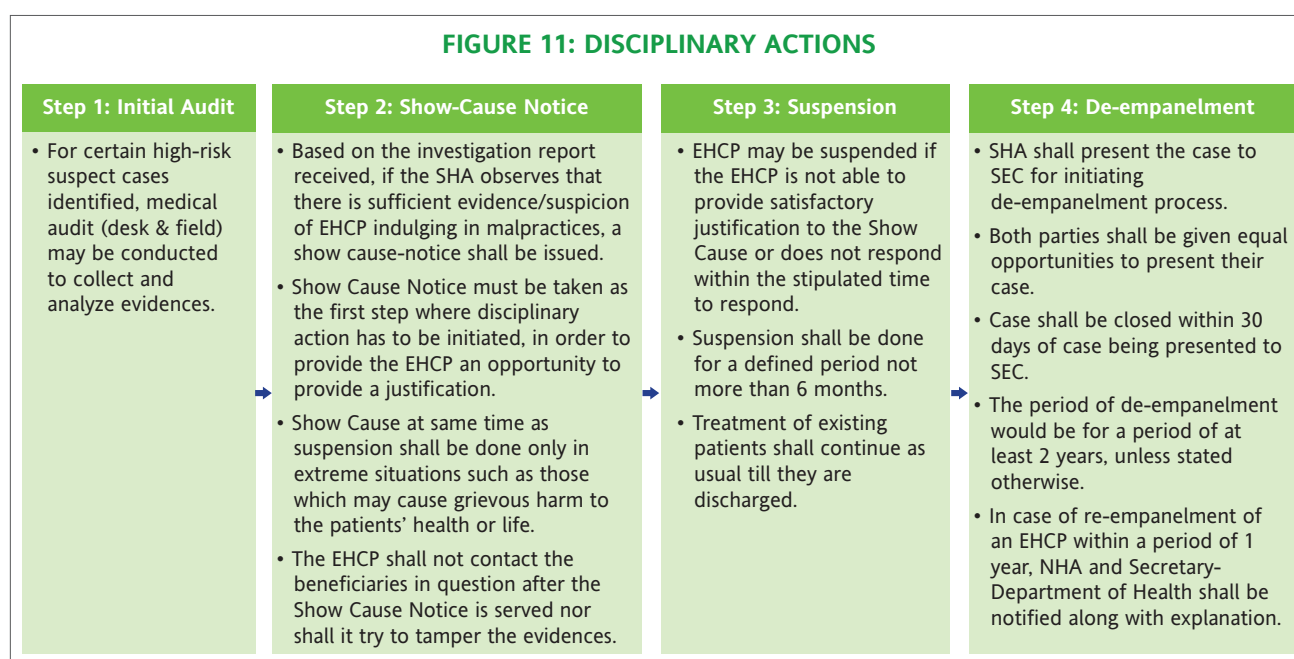


Table 3: Penalties to be levied

Penalties for Offences by the Hospital			
Case Issue	First Offence	Second Offence	Third Offence
Illegal cash payments by beneficiary	Full Refund and penalty up to 5 times of illegal payment to be paid to the SHA by the hospital within 7 days of the receipt of Notice. SHA shall thereafter transfer money to the beneficiary, charged in actual, within 7 days.	In addition to actions as mentioned for first offence, rejection of claim for the case	De-empanelment/blacklisting
Billing for services not provided	Rejection of claim and penalty of up to 5 times the amount claimed for services not provided, to Insurance Company/State Health Agency	Rejection of claim and penalty of up to 10 times the amount claimed for services not provided, to Insurance Company/State Health Agency	De-empanelment
Up coding/ Unbundling/ Unnecessary Procedures	Rejection of claim and penalty of up to 10 times the excess amount claimed due to up coding/unbundling/unnecessary procedures, to Insurance Company/State Health Agency	Rejection of claim and penalty of up to 20 times the excess amount claimed due to up coding/unbundling/unnecessary procedures, to Insurance Company/State Health Agency	De-empanelment
Wrongful beneficiary Identification	Rejection of claim and penalty of up to 5 times the amount claimed for wrongful beneficiary identification to Insurance Company/State Health Agency	Rejection of claim and penalty of up to 10 times the amount claimed for wrongful beneficiary identification to Insurance Company/State Health Agency	De-empanelment
Non-adherence to minimum criteria for empanelment, quality and service standards as laid under AB PM-JAY.	<p>A) In case of minor gaps</p> <ul style="list-style-type: none"> ❖ Show Cause notice with compliance period of 2 weeks for rectification ❖ And rejection of claims related to gaps <p>B) In case major gaps and wilful suppression/misrepresentation of facts.</p> <ul style="list-style-type: none"> ❖ Show Cause notice with compliance period of 2 weeks for rectification ❖ And rejection of claims related to gaps and penalty of up to 3 times of all cases related to gaps observed 	<p>Penalty of up to 5 times of all the approved claims related to the gaps observed</p> <p>And suspension until rectification of gaps and validation by SEC/DEC</p>	<p>De-empanelment</p> <p>And Penalty of up to 5 times of all the approved claims related to the gaps observed</p>

Detailed process of disciplinary actions which can be taken against the errant EHCPs is mentioned under De-empanelment guidelines available at <https://pmjay.gov.in/sites/default/files/2020-06/Empanelment-and-De-empanelment-guidelines.pdf>.

iii. Against Fraud e-card

If an e-card is confirmed as wrongly made or fake/fraud, the same shall be immediately disabled and detailed investigation on card creator and approver shall be initiated. If any

treatment has been performed on the e-card and it is not established that the EHCP is in connivance in the generation of false e-card, then payment would be made as per process. The recovery for such claims would be made from the approver.

iv. Against PMAM/CSC VLE/approver/beneficiary found engaged in fraudulent e-cards

If of the aforesaid entity is found in connivance below mentioned actions shall be taken:

Table 4: Entity-wise fraud and penalties

Entity	Penalty	Action
PMAM	Penalty of INR 1000/- for every fake card generated Recovery of 300% of amount utilized (In case PMAM is employed by EHCP and EHCP's connivance is confirmed then EHCP must pay)	Suspension, Deactivation, FIR against the PMAM/EHCP or De-empanelment of EHCP is to be determined by State as per the severity of the offence (Action against EHCP to be undertaken only if the EHCP is found to be in connivance)
VLE CSC or Any other e-card generating agency	Penalty of INR 1000/- for every fake card Recovery of 300% of amount utilized	Suspension, Deactivation, Lodging FIR against the CSC/VLE or any other e-card generating agency is to be determined by State as per the severity of the offence
ISA/Insurer	Penalty of INR 500/- for every fake card Recovery of 300% amount utilized	Suspension, Termination of contract, Lodging FIR against the TPA or blacklisting the same is to be determined by State as per the severity of the offence
Beneficiary – Collusion	Warning	Disabling the card is to be determined by State as per the severity of the offence
Impersonator	Recovery of Amount Utilized	FIR against the impersonator

Detailed guidelines on actions to be taken against entities found involved in BIS fraud is mentioned under Addendum to Anti-Fraud

Guidelines – BIS available at <https://pmjay.gov.in/sites/default/files/2020-06/Addendum-to-Anti-Fraud-Guidelines-%28BIS%29.pdf>.



HEALTH INSURANCE FRAUD AND INDIAN LAWS

1. Understanding First Information Report

1.1 Understanding FIR

This section provides a simplified overview and basic literacy on First Information Report (FIR) only to the extent that administrators of AB PM-JAY may need to know in the context of cognizable offences that may be committed under the Scheme.

a) What is a First Information Report?

First Information Report means an information recorded by a police officer on duty, given either by the aggrieved person or any other person regarding the commission of an alleged offence. On the basis of FIR, the police commence its investigation. Section 154 of the Code of Criminal Procedure, 1973 defines as to what amounts to first information.

In order to constitute an FIR in terms of section 154 of the Code of Criminal Procedure, 1973 two conditions are to be fulfilled:

- (a) what is conveyed must be an information; and
 - (b) that information should prima facie relate to the commission of a cognizable offence.
1. Police records it, based on verbal complaint-reduced to written compliant or by submission of a written complaint by informant. The provision in section 154 regarding the reduction of oral statement to writing and obtaining signature of the informant on it, is

for the purpose of discouraging irresponsible statement about criminal offences by fixing the informant with the responsibility for the statement he makes.

In the context of AB PM-JAY, written complaints by the SHA to the concerned police station shall become the basis for the police to record a FIR.

b) What is a cognizable offence?

Section 2(c) of the Code of Criminal Procedure defines Cognizable Offence. **Cognizable Offence** is an offence in which the **police may arrest a person without warrant**. They are **authorised to start an investigation into a cognizable case on their own and they do not require any order from the court** to do so. A police officer is **bound to register the FIR in such cases** and can even start an investigation without any FIR. Generally these are heinous crimes and non-bailable offences.

c) How to know whether an offence is cognizable or non-cognizable?

The First Schedule to the Code of Criminal Procedure, 1973 provides the Classification of Offences wherein the fourth column indicates whether the offence under the Indian Penal Code is Cognizable or non-cognizable.

The First Schedule has a table that has the following:

- ▶ Sections of the IPC, 1860
- ▶ Offence
- ▶ Punishment prescribed for that offence

- ▶ Is the offence Cognizable or Non-Cognizable?
- ▶ Is the offence Bailable or Non-Bailable?
- ▶ Which court has the jurisdiction – “By what court triable”.

The important definitions under The Indian Penal Code have been referred to in Annexure 5.

The Code of Criminal Procedure, 1973 can be accessed at: <http://legislative.gov.in/sites/default/files/A1974-02.pdf>

d) What are the legal provisions for filing information in cognizable cases?

Provision related to information in cognizable cases is stated in:

The Code of Criminal Procedure, 1973, Section 154: Information in cognizable cases

(1) Information in cognizable cases. — Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

(Note: two provisions of Section 154(1) have not been included here as they deal with offences against women and not relevant to AB PM-JAY)

- (2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant.*
- (3) Any person, aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer*

subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.

e) What is the importance of an FIR?

FIR is the beginning of the process of criminal justice the recording/registration of which empowers the officer-in-charge of a police station to commence investigation with respect to the crime reported to him.

f) Who files/records an FIR?

FIR is an information about commission of cognizable crime/offence to be recorded by the police/Officer-in-Charge. Police records it based on verbal complaint or a written complaint which becomes the basis of such information.

In the context of AB PM-JAY, written complaints by the SHA to concerned police station shall become the basis for the police to record a FIR, provided:

- a. The complaint is for an offence that is cognizable under the IPC.
- b. The complaint clearly indicates that the complainant intends that this complaint be converted/recorded into/as an FIR.

When SHA informs the officer in charge of about commission of a cognizable offence, the officer in charge must reduce that information to writing. Irrespective of the fact whether the information is written or is reduced to writing, the informant is required to put his signature on it. The police officer should read that information to the informant. The substance of the information should be recorded in the book where entry of the FIR is made.

g) Who can be a complainant for lodging an FIR?

Anyone falling in one or more of the categories mentioned below can lodge an FIR:

- a. The aggrieved party – the party against whom the offence has been committed.
- b. Anyone having information that a cognizable offence has been committed.

c. Anyone who is a witness to the cognizable offence.

h) Can the complainant get a copy of the FIR?

As per the provisions of sub section (2) of Section 154 of the Code of Criminal Procedure, the officer in charge should provide a copy to the SHA free of cost.

i) What are legal provisions related to police's powers to investigate a cognizable offence?

In all cognizable cases, police can start an investigation on their own and do not need orders from any court to do so.

However, the police may choose not to investigate a complaint even if it is registered as an FIR, if the police thinks that the complaint is not serious in nature and that there are no adequate reasons to investigate. In all such cases the police is bound to inform the complainant of the reasons for not conducting the investigation. This provision is set forth in Section 157, Criminal Procedure Code, 1973.

j) What can a complainant do if the police refuses to register an FIR?

This is a very unlikely situation if SHA is the complainant. However, if an officer in charge of a police station refuses to register an FIR, the informant/aggrieved person may send

the complaint in writing to the concerned Superintendent of Police, who upon being satisfied about commission of a cognizable offence shall either himself investigate the case or shall depute any officer subordinate to him to investigate the case. This provision is contained in Section 154(3) of the Code of Criminal Procedure, 1973.

k) What can a complainant do if the Superintendent of Police also refuses to act against the complaint that a police station is not registering an FIR?

Again, this is a very unlikely situation if SHA is the complainant. However, despite communication to the Superintendent of Police, if no step is taken to register an FIR, the informant/complainant has the right to apply under Section 156(3) Code of Criminal Procedure to the Magistrate within whose jurisdiction such offence has been committed.

l) What are the consequences of filing a false FIR?

Filing a false complaint/lodging a false FIR is a punishable offence under Indian laws. Any person or an agency doing so may be booked under the legal provisions mentioned in Table 5 below.

m) When should a FIR be filed?

The law does not provide any time frame within which FIR has to be filed, though by intent it should be done at the earliest possible time from the

Table 5: Legal provisions for filing a false FIR

Provision under IPC 1860	Provision title	Punishment
Section 177	Furnishing false information	Imprisonment of either description for a term which may extend to two years, or with fine, or with both.
Section 182	False information, with intent to cause public servant to use his lawful power to the injury of another person	Imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.
Section 203	Giving false information regarding an offence committed	Imprisonment of either description for a term which may extend to two years, or with fine, or with both.
Section 211	False charge of offence made with intent to injure	Imprisonment of either description for a term which may extend to two years, or with fine, or with both.

occurrence of the offence. Adequate justifications have to be provided for delays in lodging an FIR.

Moreover, the intent and purpose for lodging an FIR is to commence investigation into commission of cognizable cases for a criminal trial to be set into motion. Accordingly, Chapter XXXVI of the Code of Criminal Procedure, 1973 has to be taken into consideration wherein Section 468

deals with “*Bar to take cognizance after lapse of the period of limitation*”, Section 469 deals with “*Commencement of the period of Limitation*”, and Section 470 deals with “*Exclusion of time in certain cases*”. For conceptual understanding of this provision under law, text of Sections 468 and 469 have been furnished in Table 6 below, along with explanatory notes in the context of AB PM-JAY.

Table 6: Code of Criminal Procedure

Code of Criminal Procedure, 1973	Notes
<p>Section 468 - Bar to taking cognizance after lapse of the period of limitation</p> <p>(1) Except as otherwise provided elsewhere in this Code, no Court, shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.</p> <p>(2) The period of limitation shall be-</p> <p>(a) six months, if the offence is punishable with fine only;</p> <p>(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;</p> <p>(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.</p> <p>(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with more severe punishment or, as the case may be, the most severe punishment.</p>	<p>Check Annexure 8 for the penalty/punishment prescribed in the relevant section.</p> <p>Refer to 2(a), 2(b) and 2(c) in column 1 of this table to determine the limitation period.</p>
<p>Section 469 - Commencement of the period of limitation</p> <p>(1) The period of limitation, in relation to an offence, shall commence:</p> <p>(a) on the date of the offence; or</p> <p>(b) where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier; or</p> <p>(c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.</p> <p>(2) In computing the said period, the day from which such period is to be computed shall be excluded.</p>	<p>Say, an offence of forged claim document comes to the notice of the SHA on 1 June 2020 during audit.</p> <p>The claim was submitted by the hospital on 5 May 2019.</p> <p>Assume this is a case punishable under Section 417 (Punishment for Cheating) of the IPC, 860. The punishment here is imprisonment up to 1 year or fine or both.</p> <p>Since the punishment is up to 1 year, the limitation period will be 1 year as per the provision of Section 468 (2)(b) of Cr P C (see column 1 of the above row in this table).</p> <p>One year from the date of claim submission ends on 4 May 2020. SHA can still file the complaint as it came to know of the offence only on 1 June 2020, and hence the limitation period will begin only from this date.</p>

n) What is the jurisdiction of filing an FIR?

Usually, a complaint for FIR has to be lodged before the concerned police station under whose jurisdiction the crime has been committed. There is a provision of Zero FIR as well. Any police station can register Zero FIR and forward it to the concerned police station for taking necessary steps.

o) Can a FIR be quashed?

The accused can file an application to the High Court under Section 482 of the Code of Criminal Procedure for quashing the FIR and criminal proceedings against it. The High Court is invested with the powers to quash criminal proceedings where it appears that allegations of complaint do not constitute a cognizable offence. It is therefore important for the SHA to ensure that the complaint is robust.

1.2 Writing complaints for an FIR

1. There is no strict format for filing a complaint.
2. Characteristics of a well drafted complaint:
 - a. **Precise and unambiguous language:** the language used should be direct and unambiguous - it should not be subject to multiple interpretations.
 - b. **All contents should be fact-based:** The entire complaint should be factual, without any opinion or perception about the incident/offence or the accused. Opinions and perceptions cannot be substantiated. Hence, it is important to stick to specific transactions or events that have caused the occurrence of an offence.
 - c. **Provide all identification details known to the complainant:** Provide all available and specific details related to actors (who committed the offence, who were involved, against whom was the fraud committed, etc.), and actions (all details of the offence, details of the harm/loss caused, date, time, place, etc.).

Contents of a police complaint

3. Any complaint to the police should necessarily include:
 - a. *Name and particulars of the informant/complainant*
 - i. Provide full name as recorded in any government identification document like Aadhaar card, ration card, passport, etc.
 - ii. Include other identification details like: father's name, age, address
 - iii. If complainant is the SHA, name the person who will represent the SHA and sign the complaint. Provide all the above particulars of the person representing the complaint.
 - b. *Name and particulars of the person(s) committing the cognizable offence:* Particulars should include:
 - i. Full name
 - ii. Father's name (if known)
 - iii. Age – include approximate age if exact age is not known
 - iv. If applicable: name of the hospital, with registered address, hospital address (if different from the registered address, registration number of the hospital.
 - v. Relationship with the complainant (SHA in this case)
 - c. *Details of the incident mentioning each and every particular including statement, if any, made by the person committing such offence.*

Provide all details of the incident. For example: if the incident is related to fraudulent claims, provide details like:

- i. Patient ID, name, age, sex whose claim document has been forged
- ii. Procedure for which the patient was admitted – date of admission
- iii. Date of submitting the claim
- iv. Specifically, list (with name and other relevant identification details) the documents which have been allegedly forged.

- v. Date and time of the incident, if known: It is extremely important to record the date and time of the incident. If exact date and time is unknown, provide realistic estimates.

For example, if it is a complaint is for a forged claim, provide patient details as mentioned above, state the date and time at which the hospital submitted the claim, name and details of the patient for whom the claim was submitted, which documents have been forged – attach copies of such document(s).

- d. *Disclosure of evidence, if any, known or in hand:*
 - i. Provide reasons why the SHA considers the act to be an offence.
 - ii. Provide evidences, if already available, to substantiate that an offense has been committed.

Continuing with the above example of a fraudulent claim, if available, provide reasons as to why the SHA considers the claim to be forged –

provide evidence based on which such a conclusion has been arrived at. The evidence could include print outs of the forged claim document, pointing out specifically which document, and what part of the document has been forged.

Also provide reasons why the SHA considers the document to be forged and provide evidence for the same.

- e. *One need not quote the sections in the complaint but as far as possible it should be borne in mind that the narration of commission of offense should contain the manner in which the offense has been committed in order to clearly establish the ingredients of the section under which the offender has to be booked.*
- f. *The written complaint should clearly indicate that the complaint should be treated as an FIR.*
- g. *The complainant or the informant has to put his or her signature at the bottom of the complaint with date.*

FIR READY RECKONER

What is an FIR? It's a written document prepared and filed by the police when the police receive complaint about a cognizable offense.

When to file an FIR? As soon as a cognizable offense occurs – for delays, adequate justification may have to be provided.

Who can file an FIR? Victim or a witness or anyone who has information about a crime including the police.

What do you need to know before filing an FIR?

What information needs to be conveyed?

Who committed the crime? In what capacity?

Against whom was the crime committed?

What are the particulars of the victim?

When was the crime initiated?

Where did the crime take place?

What was the motive behind the crime?

How did the crime occur?

Witnesses (if any)

What is loss? What was taken away (if any)?

Evidences (if any)

Writing the complaint for FIR

Address to the local police station

Answer all the above questions

1.3 Case Studies – writing a complaint

Case 1. Hospital as the fraudulent entity: Ghost billing

1. An empanelled hospital 'H' submitted a claim for a procedure called Prostectomy.
2. The claim was for treatment for a male patient with name 'P', aged 52 years.
3. As per the claim documents: P was admitted in hospital H on 10 June 2020. Surgery was conducted on June 11, 2020 and the patient was discharged on June 13, 2020 at 1.30 pm.
4. The claim was submitted on the TMS on 13 June 2020 at 11.45 pm.
5. On 14 June 2020 at around 11 am, the Claims Executive (CE) of SHA reviewed the claim. As a part of the routine pre-payment audit, the CE conducted a beneficiary audit, and called up the beneficiary who reportedly underwent the procedure. The beneficiary reported that he did not undergo any treatment on those dates at the said hospital.
6. District team of the SHA tracked the beneficiary and took a written statement from the beneficiary attesting that he never underwent that procedure.

Draft compliant for Case 1

Date:...

To

The SHO/Officer-in-Charge

..... Police Station

..... (name of the city)

Subject: Complaint about a forged medical claim document submitted by Hospital H for the purpose of lodging an FIR.

Madam/Sir,

I, (insert name of the SHA employee who will represent the SHA and sign this complain – the “Complainant”), son of(insert father’s name of the complainant), working with the State Health Agency (full legal name of the SHA) having its address as (insert address of the SHA), and working in the capacity of (insert designation of the complainant), hereby file this complaint against hospital H (insert name of the accused – the hospital against whom the complaint is being filed)

Hospital H, having its registered address at (insert registered address of the hospital), is empanelled with the State Health Agency (full legal name of the SHA) for offering clinical services under the Pradhan Mantri Jan Arogya Yojana (hereinafter referred to as the Scheme). A contract to this effect was signed between the SHA and the Hospital H on(insert date on which SHA signed the contract with H).

On 13 June 2020 at 11.45 pm, the hospital H. submitted a claim for reimbursement to the SHA. The claim was submitted in the name of Mr P, aged 36 years, residing at(insert address of the patient). P is a bonafide beneficiary of the Scheme. Details of the medical claim is furnished below:

Patient P was admitted in hospital H on 10 June 2020. A procedure called *Prostectomy* was conducted on P on June 11, 2020. P was discharged on June 13, 2020 at 1.30 pm. Hospital H submitted the claim on 13 June 2020 as already indicated above. The name of the doctor signing the discharge certificate is Dr(full name and designation of the doctor signing the medical records/discharge certificate)

On 14 June 2020 at around 11 am, the Claims Executive (CE) of SHA reviewed the claim and as a part of the routine pre-payment audit, called up P to confirm the treatment. P informed CE that he was never admitted to the said hospital H and has not undergone any procedure on those dates. It is evident that hospital H has submitted forged documents with the intention of causing wrongful gain to itself. We make the following submissions in this regard:

1. Patient P’s written and signed statement that he was not admitted on those dates to the hospital H and did not undergo the procedure. Attachment 1.
2. Patient photograph attached along with the claim document is morphed. *Attachment page 2.*
3. The discharge paper indicates date of admission as June 9, 2020 (Attachment page 3), whereas the transaction portal of the scheme shows patient admission date as June 10, 2020 (Attachment page 3).
4. Copy of Contract dated _____ (Attachment page 4)

We request you to kindly treat this complaint for filling and registering First Information Report (FIR) and carry out investigation as you may deem appropriate and take appropriate actions under relevant and applicable laws against Hospital and others involved.

You may please contact undersigned for any further information as may be required in the matter.

Thanking you.

Yours Sincerely,

Name...

Designation....

Mobile No.

Enclosed: List all enclosures with appropriate number and title that is self-explanatory.

Commentary on the draft of complaint for Case no. 1

Table 7: Important elements of complaint 1

Important elements of the complaint	How does this help?	What is this detail is missing in the complaint?
There is a reference to the contract signed between the SHA and H.	This helps the police understand the background, the relationship of the hospital with SHA and the capacity in which H allegedly committed the offense.	It will be time consuming for the police to understand who committed the offense and why is SHA complaining. This may delay investigation.
Specific details of the patient, including name, date and time of claim submission, name of the procedure are included.	It provides the entire sequence of events to the police. It also helps to understand the offense better.	It will assist in visualizing the offense and sequence of events that led to commission of the offence. Again, this will not only result in delayed investigation, it will also mean longer questioning of SHA officials by the police to understand the offense and the actors involved.

Important elements of the complaint	How does this help?	What is this detail missing in the complaint?
All major evidences based on which the SHA has arrived at a conclusion that fraud has been committed is referred to and attached along with the complaint.	Communicates to the police that the SHA has done its due diligence, and has prima facie reasons for making the complaint. This not only makes the complaint more robust but will also speed up police investigation.	The Investigating Officer- Police may require one or more interactions with SHA officials. So, SHA officials will have to spend greater time responding to the police and ultimately sharing the evidences.
All attachments/pages attached are serial numbered and cross referenced in the text of the complaint.	Improves readability of the complaint and allows for better comprehension of the offense. If any of these documents is a conclusive evidence, the same may be taken by the police/ investigating officer.	Since attachments may be medical/ treatment records, not highlighting them and cross referencing them adequately may make it difficult for the police to comprehend. Remember, the police is unlikely to have the expertise to read and interpret medical records, unless the complaint explains all necessary details. Avoid writing “Enclosures: As above”

Case 2: PMAM, Hospital and ISA as the fraudulent entity

1. On 10 July 2020, SHA detected that an Arogya Mitra ‘A’ working with Hospital ‘H’ added 10 individuals not eligible for benefits of the Scheme to an eligible family headed by X.
2. Such addition of name and generating e-cards for the Scheme was done fraudulently.
3. Inclusion of such ineligible persons in the eligible family of X was done by uploading concocted identification documents by A. All such request for addition of members was approved by the ISA.
4. 7 members out of such 10 wrong enrolment utilized the scheme benefits at the same hospital H, thereby causing wrongful loss to the SHA to the extent of INR 3 lakhs.
5. In course of internal fact-finding completed on 13 July 2020 it was further revealed that A, H and ISA formed a racket where ineligible persons were added to 10 more families.
6. Benefit of scheme was advanced to such ineligible persons to the tune of INR 50 lakhs.
7. H was using A who colluded with the ISA for approval of the BIS request after uploading concocted documents of ineligible persons and adding it to families who were entitled without their knowledge for personal gain.
8. ISA had colluded with several other empanelled hospitals and generated e-cards for ineligible persons.

Draft compliant for Case 2

Date:.....

To

The SHO/Officer-in-Charge

..... Police Station

..... (name of the city)

Subject: Complaint about enrolment of ineligible persons in list of eligible family and utilizing scheme benefits fraudulently on forged and concocted documents

Madam/Sir,

I, (insert name of the SHA employee who will represent the SHA and sign this complain – the “Complainant”), son of(insert father’s name of the complainant), working with the State Health Agency (full legal name of the SHA) having its address as (insert address of the SHA), and working in the capacity of (insert designation of the complainant), hereby file this complaint against

- a. Hospital H (insert name of the accused – the hospital against whom the complaint is being filed),
- b. Person A employed by hospital H and working as Arogyamitra for the scheme titled “Pradhan Mantri Jan Arogya Yojana” (hereinafter referred to as the “Scheme”), and
- c. 10 individuals named hereunder who have fraudulently enrolled themselves under the Scheme in collusion with A.

Hospital H, having its registered address at (insert registered address of the hospital), is empanelled with the State Health Agency (full legal name of the SHA) for offering clinical services under the Scheme. A contract to this effect was signed between the SHA and the Hospital H on(insert date on which SHA signed the contract with H).

A, Arogya Mitra, is an employee of the Hospital, H has the following key functions under the Scheme: (a) act as the focal person to oversee and co-ordinate the implementation of the Scheme in the hospital; (b) contact point for the Scheme beneficiaries for all services that the beneficiaries receives under the Scheme; (c) responsible for adding/enrolling beneficiaries under the Scheme and submitting such requests to the SHA for approval. The approval for such beneficiaries is done after due diligence and verification by either the SHA or the ISA/agency acting on behalf of the SHA. For this purpose, the SHA has separately contracted the ISA/agency through a tendering process.

On 13 July 2020 upon perusal and scrutiny of the claims submitted by H some anomalies were detected in the documentation. It was deciphered that 10 persons, whose names are mentioned hereunder have enrolled themselves under the Scheme as members of the family of X, who is an eligible beneficiary (e-cards of each beneficiary along with documents submitted for enrolment are enclosed along with this complain) – in each enclosure we have identified and highlighted the false/forged record that was submitted.

1. Person 1: Name....., sex....., age....., father’s name....., address.... (Enclo.1)
2. Person 2: Name....., sex....., age....., father’s name....., address.... (Enclo.2)
3. Person 3: Name....., sex....., age....., father’s name....., address.... (Enclo.3)
4. Person 4; Name....., sex....., age....., father’s name....., address.... (Enclo.4)
5. Person 5; Name....., sex....., age....., father’s name....., address.... (Enclo.5)

6. Person 6: Name....., sex....., age....., father's name....., address.... (Enclo.6)
7. Person 7: Name....., sex....., age....., father's name....., address.... (Enclo.7)
8. Person 8: Name....., sex....., age....., father's name....., address.... (Enclo.8)
9. Person 9: Name....., sex....., age....., father's name....., address.... (Enclo.9)
10. Person 10: Name....., sex....., age....., father's name....., address.... (Enclo.10)

All the 10 persons named above are not eligible to be enrolled under the scheme. E-cards for all the 10 persons named above have been generated fraudulently. Copies of the e-cards are also enclosed herewith.

Upon detection of what has been narrated above our internal fraud investigation team conducted a preliminary enquiry and found that 7 (seven) such persons have been treated and claims to the extent of INR 3 lakhs have been raised by H and reimbursed by the SHA. Details of the medical claim is furnished below and the claim documents are enclosed along with this complain:

Table 8: Details of the medical claim for Complaint 1

Person	Date of admission	Date of discharge	Procedure/ treatment taken	Claims submitted by the hospital on	Claims amount	Details of payment made by the SHA (amount & date)	Attachment no.
Person 2							Enclo.11
Person 3							Enclo.12
Person 4							Enclo.13
Person 6							Enclo.14
Person 7							Enclo.15
Person 9							Enclo.16
Person 10							Enclo.17

It has further been found that A, Arogya Mitra, has on a mass scale included name of persons who are not eligible, and the benefits of the scheme has been extended to such ineligible persons thereby causing a loss to the SHA to the tune of INR 50 lakhs on account of claims of individuals who were otherwise not entitled to receive such benefits. As and when required, we can furnish evidences related to all such cases.

It is apparent that fraudulent act of this scale cannot be done without collusion and connivance between the A, H and the ISA. In view of the facts and circumstances narrated above, I request you to kindly take necessary steps in order to book A, H and ISA and all other individuals/agencies who are the perpetrators of crime for whom the government has suffered immense financial and reputational loss.

We request you to kindly treat this complaint for filling and registering First Information Report (FIR) and carry out investigation as may be deemed appropriate, and take appropriate actions under relevant and applicable laws against those involved.

You may please contact undersigned for any further information as may be required in the matter.

Thanking you.

Yours Sincerely,

Name...

Designation....

Mobile No.

Enclosed: List all enclosures with appropriate number and title that is self-explanatory

Commentary on the draft of complaint for Case no. 2

Table 9: Important elements of complaint 2

Important elements of the complaint	How does this help?	What is this detail is missing in the complaint?
There is a reference to the contract signed between the SHA and H.	This helps the police understand the background, the relationship of the hospital with SHA and the capacity in which H allegedly committed the offense.	It will be time consuming for the police to understand who committed the offence and why is SHA complaining. This may delay investigation.
Para 3 of the complaint describes different actors, their roles under the Scheme and their relationships.	Given the multiplicity of actors, this para will help the police clearly visualise different actors, the capacity in which they conducted the offence, the authorities entrusted to them by the SHA to do certain tasks, and the limitation of the person to do a particular act. This will further help the police quickly grasp who has misused/ breached what authority. Writing about the duties of respective persons committing the crime will help the investigating agency understand the limitation of the person to do a particular act. Whether a person is empowered to do a particular act or not? These specific details shall make the complaint lucid and on preliminary reading the illegal act committed shall be self-evident.	It will be time consuming for the police to understand who committed the offence, and in what capacity. This may delay investigation.

Important elements of the complaint	How does this help?	What is this detail is missing in the complaint?
Specific details of all 10 beneficiaries are included.	It provides the entire sequence of events to the police. It also helps to understand the offense better. Tabular form of presenting the details will ensure quick comprehension of the case.	It will assist in visualizing the offense and sequence of events that led to commission of the offense. Again, this will not only result in delayed investigation, it will also mean longer questioning of SHA officials by the police to understand the offense and the actors involved.
Specific details of all 7 claims through which benefits have been illegally secured are provided.		
There is a reference to scale of offence by quantifying the INR 50 lakh amount.		
All major evidences based on which the SHA has arrived at a conclusion that fraud has been committed is referred to and attached along with the complaint.	Communicates to the police that the SHA has done its due diligence, and has prima facie reasons for making the complaint. This not only makes the complaint more robust but will also speed up police investigation. If any of these documents is a conclusive evidence, the same may be taken by the police/investigating officer.	The Investigating Officer _Police may will require one or more interactions with SHA officials. So, SHA officials will have to spend greater time responding to the police and ultimately sharing the evidences. Avoid writing “Enclosures: As above”
All attachments/pages attached are serial numbered and cross referenced in the text of the complaint.	Improves readability of the complaint and allows for better comprehension of the offence.	Since attachments may be medical/ treatment records, not highlighting them and cross referencing them adequately may make it difficult for the police to comprehend. Remember, the police is unlikely to have the expertise to read and interpret medical records, unless the complaint explains all necessary details.

Case 3. Treating doctor as the fraudulent entity

1. One doctor D reportedly conducts 120 cataract surgeries on 30 April 2020.
2. The doctor D reportedly resides in the State capital SC.
3. The claims for these surgeries are submitted by three hospitals: H1, H2 and H3 in 3 different districts of a State. Their locations are L1, L2 and L3 respectively.
4. AB PM-JAY transaction portal reveals D has conducted cataract surgeries in three different districts in Bihar on the same day.
5. Medical audit revealed that D was in collusion and connivance with different hospitals and his name and certificate was being used by these hospitals to generate fake claims.
6. H1, H2 and H3 generate fake claims using the name of D with the consent of D.
7. None of these 120 surgeries were conducted. All of them were ghost billing.

Note on Case 3:

1. In this case there are multiple actors involved in the offence. Not all of them are in the same location.
2. Hospitals H1, H2 and H3 are in three different locations. Therefore, the commission of offence is taking place in three different jurisdictions.
3. Further, doctor D resides in SC, which is again a different jurisdiction.
4. Under these circumstances, the complaint may be filed as follows:
 - ▶ Against H1 in the jurisdiction of the concerned police station in L1.
 - ▶ Against H2 in the jurisdiction of the concerned police station in L2.
 - ▶ Against H3 in the jurisdiction of the concerned police station in L3.
 - ▶ Against D in the jurisdiction of the concerned police station in SC.
5. Each of the complaints shall present the entire scenario. The draft complaint below for the sake of illustration is against H1.

Draft complaint for Case 3

Date:.....

To

The SHO/Officer-in-Charge

..... Police Station

..... (name of the city)

Subject: Complaint against Hospital H1 for wrongfully earning money against reimbursement of forged medical claims for cataract surgeries that were never conducted.

Madam/Sir,

I, (insert name of the SHA employee who will represent the SHA and sign this complaint – the “Complainant”), son of(insert father’s name of the complainant), working with the State Health Agency (full legal name of the SHA) having its address as (insert address of the SHA), and working in the capacity of (insert designation of the complainant), hereby file this complaint against Hospital H1 (insert name of the accused – the hospital against whom the complaint is being filed).

Hospital H1, having its registered address at (insert registered address of the hospital), is empanelled with the State Health Agency (full legal name of the SHA) for offering clinical services under the Pradhan Mantri Jan Arogya Yojana (hereinafter referred to as the ‘Scheme’). A contract to this effect was signed between the SHA and the Hospital H1 on(insert date on which SHA signed the contract with H). Under this contract H1 is obliged to render cashless treatment to Scheme beneficiaries. All medical claims of H1 shall be reimbursed by the SHA after verification and. Due diligence as per the guidelines of the Scheme.

On 1 July 2020 between 10.30 pm and 11.15 pm hospital H1 submitted 7 claims for reimbursement to the SHA. All procedures were done on 30 June. 2020. All 10 cases were for the procedure “Cataract with foldable hydrophobic acrylic phaco emulsification technique”. Details of each claim are as follows:

Table 10: Details of the medical claim for Complaint 3

Person	Patient name, age, sex	Patient ID	Admission Number	Date of admission	Date of procedure	Claims submitted by the hospital on (date & time)	Claims amount	Enclosure no.
Person 1	<i>insert</i>	<i>Insert</i>	<i>Insert</i>	<i>insert</i>	30/6/2020	<i>insert</i>	<i>insert</i>	Enclo.1
Person 2	<i>insert</i>	<i>Insert</i>	<i>Insert</i>	<i>insert</i>	30/6/2020	<i>insert</i>	<i>insert</i>	Enclo.2
Person 3	<i>insert</i>	<i>Insert</i>	<i>Insert</i>	<i>insert</i>	30/6/2020	<i>insert</i>	<i>insert</i>	Enclo.3
Person 4	<i>insert</i>	<i>Insert</i>	<i>Insert</i>	<i>insert</i>	30/6/2020	<i>insert</i>	<i>insert</i>	Enclo.4
Person 5	<i>insert</i>	<i>Insert</i>	<i>Insert</i>	<i>insert</i>	30/6/2020	<i>insert</i>	<i>insert</i>	Enclo.5
Person 6	<i>insert</i>	<i>Insert</i>	<i>Insert</i>	<i>insert</i>	30/6/2020	<i>insert</i>	<i>insert</i>	Enclo.6
Person 7	<i>insert</i>	<i>Insert</i>	<i>Insert</i>	<i>insert</i>	30/6/2020	<i>insert</i>	<i>insert</i>	Enclo.7

Upon scrutiny of the claim documents, it was revealed that:

- a. All the 7 claim documents contained the name of doctor D as the eye specialist conducting cataract surgeries.
- b. Further, 6 of the 7 claim documents submitted by H. have same medical records without any change of contents, except change in patient names and details. Refer to enclosures 1 to 7.

This triggered our internal audit team to conduct further investigation. It came to fore that D has performed 120 cataract surgeries on 30 June 2020 in two more hospitals in two other districts: Hospital H2 in L2, Hospital H3 in L3. Copy of the transaction showing number of procedures conducted by 1 doctor in a day printed from the IT-based data analytics platform of the Scheme is attached (**Enclosure 8**).

We tried to contact D for 2 continuous days (July 1 and 2, 2020), but he was not reachable, and we could not gather the statement of D to ascertain as to whether he was aware of such fact or his name was being used and discharge certificates with fake signature were being issued. Full particulars of D are as follows:

Name:

Address:

Medical Registration Number:

Contact number:

Non-response of D may very well be considered to be his involvement in such large scale offences where it is evident that:

- ▶ Medical records have been falsified
- ▶ Signature of the surgeon is either forged without his consent or used with his consent
- ▶ Attempt has been made to cheat the SHA and therefore the Government of public funds available under the scheme.

Thus, D has allowed his name to be used and has empowered the hospitals to generate fake signatures in order that the hospitals can raise fake claims.

Claims to the extent of INR/- have been raised by H1 which we have put on hold. The act and conduct of H1 and D has been in collusion and connivance and they have together sought to render a loss to the tune of INR/- to the government, and severely comprise the credibility of this important scheme run by the government for the poor and the under privileged.

Such act of the hospital and H1 and D is entirely against the spirit of the scheme and illegal for which we beseech you to take appropriate steps forthwith in order to book the erring persons involved in the commission of crime.

We request you to kindly treat this complaint for filling and registering first information report (FIR) and carry out investigation as you may deem appropriate and take appropriate actions under relevant and applicable laws against those involved.

You may please contact the undersigned for any further information as may be required in the matter.

Thanking you

Yours Sincerely,

Name...

Designation....

Mobile No.

Enclosed: List all enclosures with appropriate number and title that is self-explanatory.

Commentary on the draft of complaint for Case no. 3

Table 11: Important elements of complaint 3

Important elements of the complaint	How does this help?
Even though this specific complaint is against H1 to a police station in L1, details of the overall case, including other hospitals involved have also been mentioned.	This provides the investigation officer - police information about the scale, seriousness and immensity of the offence.
Refer to all elements already referred to and discussed in Case 1 and Case 2 earlier.	

2. Mapping types of insurance frauds with existing legal provisions

This section maps various types of frauds under AB PM-JAY to different provisions with existing laws in India. **This is purely for the purpose of illustration and understanding how provisions under different laws could be used to seek remedies, despite no unique legislation to deal with health insurance fraud. It is further suggested to always refer to latest amendments and bare Acts for referring to specific sections of the Acts as may be mentioned here in these guidelines.**

In reality, the application of different provisions, depend on the circumstances and the factual matrix of the case. In all criminal offences, the charges under which an offender will be prosecuted solely depends on how the complaint to the police is made and how the police reads and interprets the complaint while converting it into a FIR. In all civil matters, it will depend on how the counsel of the complainant presents the case given its circumstances in its original written petition/plaint to the relevant court(s) under jurisdiction.

Ultimately, in both civil and criminal matters, whether the prosecution can sustain the charges and ultimately lead to establishing the charges, will depend on the factual matrix of the case, nature of evidence, quality of arguments and the

judicial interpretation of the case by the bench. For criminal trials, the standard of proof becomes more stringent:

“The standard of proof in a criminal trial is proof beyond reasonable doubt because the right to personal liberty of a citizen can never be taken away by the standard of preponderance of probability.”

Supreme Court e@Journal, (2018)1 SCeJ 1105

It is in this context that the mapping of legal provisions and AB PM-JAY frauds should be read. Further, it may be noted that:

- a. This section is aimed at increasing the legal literacy of AB PM-JAY practitioners.
- b. The list of legal provisions mentioned here is **indicative**.
- c. There may be State specific legislations.
- d. There may be State specific variations regarding applicability of laws/sections of certain laws.
- e. There may be State specific rules pursuant to the central legislations
- f. There may be further provisions to be read in reference to mentioned provisions of a certain Act.

It is important that SHAs should take into account all the above in consultation with their legal department/legal officer for determining their legal action plan.

Table 12: Guide to document mapping

Reference	Contents
Section 2.1 Types of fraudulent acts	This is an indicative list and refers to types of frauds that may take place under AB PM-JAY. Under each type, there may be various fraud scenarios in AB PM-JAY transactions.
Section 2.2 List of applicable laws	This provides the list of laws that may be used to deal with fraud under AB PM-JAY.
Section 2.3 Mapping fraudulent acts to laws	In this section for each fraudulent act listed in section 2.1, we provide a summary of different sections of laws listed in Section 2.2 that may be applicable. There are 32 sub-sections here for 32 fraud types listed in Section 2.1. To allow quick referencing, this section uses same serial numbers used for numbering

Reference	Contents
	the fraudulent acts in section 2.1. While reading this wherever sections of different Acts are mentioned, refer to Annexure 8 for a detailed understanding of the applicability of the Act. <i>Attempt to map here is illustrative only.</i> Actual applicability will depend on specific circumstances of each case.
Annexure 6	List of weblinks to access copies of the different Acts that have been referred to in Annexure 8.
Annexure 7	Clauses under agreement with ISA.
Annexure 8	Annexure 8 includes applicable legal provisions. The Acts are listed alphabetically, and the Sections under the Acts are listed sequentially to aid searching. For each section of the listed Acts, brief notes on the interpretation and application has been provided to contextualize the provision with possible frauds under AB PM-JAY. Wherever required, illustrative examples have been provided from AB PM-JAY experience (see note below this table).
Annexure 9	Notes on specific Acts referred to in Annexure 8.

a. Reader's guide to the mapping

Note: Illustrative scenarios have not been provided in Annexure 8 where the title of a Section of any particular Act is self-explanatory and the text of the statute does not need any explanation, interpretation or illustration to contextualize it to AB PM-JAY. For example:

The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994: Section 22: Prohibition of advertisement relating to pre-natal determination of sex and punishment for contravention.

Here it is evident that this section of the Act prevents any form of advertising related to pre-natal determination of sex.

QUICK REFERENCING GUIDE

1. What type of fraud is reported? Check table 13 in section 2.1 below.
2. Say, hospital has submitted forged claim documents. Check table 13 in section 2.1 below. This case will fall under fraudulent type no. 15 *Falsification of medical records/investigation reports: for treating ineligible patients, for justifying pre-authorization or enhancement requests, claims, or for any other purpose with the intention of wrongful gain. These include phantom billing, upcoding, unbundling, any all other acts leading to wrongful gains.*
3. What laws will be applicable? Go to section 2.3 below and check for the text under serial no. 15. This will indicate all laws that may be applicable for this type of fraud.
4. For each law applicable (as found through step 3 above), go to relevant law in Annexure 8. Read the text of the section, its interpretation and application in the context of the fraud you have detected. There are illustrative scenarios provided there for better understanding of the application of these laws.
5. Consult your legal advisor for final plan of action.

ADVANTAGES

1. You become more informed to intelligently engage with your legal advisor and ask relevant questions.
2. You will also be able to better understand and interpret the responses from your legal advisor.

2.1 List of fraud types: The 32 most common types of fraud that may occur under AB PM-JAY are furnished in the Table 13 below:

Table 13: Matrix of AB PM-JAY frauds

S.No.	Types of fraudulent acts (illustrative)
Beneficiary Identification and Enrolment	
1.	Enrolment using fake/forged documents and false representation
2.	Enrolment through identity theft
3.	Enrolment through impersonation
4.	Enrolment through bribing a public servant
5.	Enrolment by charging more than the prescribed fee from beneficiaries for enrolment
6.	Collusion for securing e-cards
Empanelment	
7.	Falsifying/forging hospital and staff records to claim eligibility
8.	Falsifying statutory records (like licenses) to claim eligibility
9.	Misrepresentation of facts by hospital including those related to hospital capacity to claim eligibility
10.	Misrepresentation/falsification of hospital verification reports by DEC, SEC to empanel hospital with or without direct financial gains
11.	Collusion for empanelment
12.	Securing or attempting to secure empanelment through bribery
Patient registration, hospital admission, pre-authorization and treatment, claims management	
13.	Pre-authorization request for ghost patients, impersonation, raising false claims
14.	Treating patients not eligible under the Scheme through identity theft
15.	Falsification of medical records/investigation reports: for treating ineligible patients, for justifying pre-authorization or enhancement requests, claims, or for any other purpose with the intention of wrongful gain. These include phantom billing, upcoding, unbundling, any all other acts leading to wrongful gains
16.	Hospitals charging money for cashless benefits
17.	Providing treatment which is different than the authorized treatment package
18.	Pilferage of medical devices/implants/medications allotted for scheme beneficiaries to sell to other "privately funded" patients
19.	Refusing to treat eligible patients – denial of service
20.	Hospital holding patient hostage if not paid/cash not deposited by patients
21.	Bribery: for seeking services, referrals, preferential treatment or for securing any other benefit under the Scheme.
22.	Collusion between beneficiary and hospitals for generating fraudulent claims

S.No.	Types of fraudulent acts (illustrative)
23.	Treatment by medical/paramedical personnel by unqualified or underqualified staff with or without fake degrees, may be leading to death of a patient.
24.	Collusion in processing and settlement of claims including raising unwarranted queries during claims processing to harass hospitals and coercing them to pay money or bribe
25.	Hospital undertaking any fraudulent act for certain clinical procedures which violates legal provisions that guide such procedures (like organ transplant, mental health packages, etc.)
26.	Hospitals administering spurious, expired, adulterated, etc. drugs for saving costs
Procurement and general administration frauds	
27.	Fraud during tendering process for AB PM-JAY related hiring services from agencies/individuals by NHA, SHA or any other government agency: collusion, bribery – also during contract management
Other frauds by external parties that may have an impact on administration of AB PM-JAY	
28.	Forging documents, logos, office stationery of authorities like the NHA/SHA and other organizations for misleading, defrauding and securing illegitimate gains.
29.	Individuals/agencies charging money from beneficiaries or hospitals claiming to represent government authorities and in lieu of false assurances
30.	Agencies defrauding individuals by issuing fake appointment letters for PMAM and charging money from applicants
31.	Forming fake websites/emails/WhatsApp messages/mobile apps/blogs and video channels in the name of/showing affiliation to AB PM-JAY
32.	Any transaction related to the Scheme through illegal access to IT-based transaction system or any other unauthorized breach into the IT architecture of the scheme

While this list is not comprehensive, it covers the most commonly occurring fraudulent acts. However, each case is unique in terms of its circumstances leading to fraud, actors involved, and evidences available, and the final mix of remedies for each case will vary accordingly.

2.2 List of Acts/laws: This matrix covers 32 different types of frauds that may occur under AB PM-JAY and maps them to more than 70 different provisions under 11 central laws and the Indian Medical Council Professional Code of Conduct. They laws are:

1. The Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016
2. The Companies Act, 2013: Section 213– Investigation into company’s affairs in other cases
3. The Drugs and Cosmetic Act, 1940 (D&C Act 1940)
4. The Indian Contract Act, 1872 (IC Act 1872)
5. Indian Penal Code 1860 (IPC 1860)
6. The Information Technology Act, 2000 (IT Act 2000)
7. The Mental HealthCare Act, 2017 (MHC Act 2017)
8. The National Medical Commission Act, 2019 (NMC Act 2019)
9. The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (PCPNDT Act 1994)
10. The Prevention of Corruption Act, 1988 (POCA, 1988)

11. The Transplantation of Human Organs and Tissues Act, 1994 (THOAT Act 1994)
12. Professional Conduct, Etiquette and Ethics Regulations, 2002, Medical Council of India

Note:

1. The list of laws above is not comprehensive. It is merely an indicative list that covers major types of fraud that may occur under AB PM-JAY.
2. Note on Clinical Establishments (Registration and Regulation) Act, 2010 has been included in Annexure 8.
3. All India Service Rules and State service rules have been referred to under different sections where relevant in Annexure 8.
4. Acts which empower end users (AB PM-JAY beneficiaries) to seek compensation and SHA cannot be the complainant have not been included.

2.3 Mapping of fraudulent acts to laws

Applicable laws for each of the 32 fraudulent acts are presented below:

Beneficiary Identification and Enrolment

1. Enrolment using fake/forged documents and false representation

Applicable provisions to be chosen based on the circumstances of the case:

- a. Sections 463, 464, 465, 468, 471 of the IPC 1860 for forgery and offences related to documents and using forged documents as genuine.
- b. Sections 415, 417, 418, 420 of the IPC 1860 for offences related to cheating.
- c. Sections 34, 35, 107, 114 of the IPC 1860 in case there is more than one party acting in furtherance of a common intention and abetment is taking place.
- d. Sections 120A, 120B of the IPC 1860 if there is a criminal conspiracy between two or more parties.
- e. Section 511 of the IPC 1860 for punishment for attempting to commit offences (if

applicable) if the offence is not completed but merely attempted.

- f. Sections 43, 66 of the IT Act, 2000 for penalty and compensation for damage to computer and computer related offences if transactions are taking place through the IT portal.
- g. Sections 84B of the IT Act, 2000 in case there is any abetment.
- h. Sections 84C of the IT Act, 2000 for punishment for attempt to commit an offence.
- i. Section 447 read with section 213 of the Indian Companies Act, 2013 for investigation and punishment for fraud if an enrolment agency is involved and the agency is registered under this Act.

2. Enrolment through identity theft

Applicable provisions to be chosen based on the circumstances of the case:

- a. Section 66C of the IT Act, 2000 for punishment for identity theft if there is theft of electronic identity like passwords or any other unique identification feature.
- b. Section 72A of the IT Act, 2000 in case there is an individual or an agency involved who was bound by a lawful contract to not disclose any information and there is a breach.
- c. Sections 84B of the IT Act, 2000 in case there is any abetment.
- d. Sections 84C of the IT Act, 2000 for punishment for attempt to commit an offence.
- e. Sections 463, 464, 465, 468 of the IPC 1860 in case there is forgery of documents.
- f. Sections 120A, 120B of the IPC 1860 if there is criminal conspiracy between two or more parties.
- g. Section 511 of the IPC 1860 for punishment for attempting to commit offences (if applicable) if the offence is not completed but merely attempted.

3. Enrolment through impersonation

Applicable provisions to be chosen based on the circumstances of the case:

- a. Section 66C, 66D of the IT Act, 2000 for punishment for identity theft and 'punishment for cheating by personating by using computer resource'.
- b. Sections 84B of the IT Act, 2000 in case there is any abetment.
- c. Sections 84C of the IT Act, 2000 for punishment for attempt to commit an offence.
- d. Sections 463, 464, 465, 468 of the IPC 1860 for forgery and offences related to documents if the case involves falsification of any record or document in the process of committing fraud.

4. Enrolment through bribing a public servant

Applicable provisions to be chosen based on the circumstances of the case:

- a. Section 7 of the POCA, 1988 against public servants who obtains, attempts or attempts to obtain bribe.
- b. Section 8 of the POCA, 1988 against the person who gives or promises to give public servants any bribe.
- c. Section 12 of the POCA, 1988 against anyone who abets the giving or taking of a bribe.
- d. Sections 415 to 420 of the IPC related to cheating, if applicable.
- e. All India Service Rules and State service rules wherever relevant for such public servant.

5. Enrolment by charging more than the prescribed fee from beneficiaries for enrolment

Applicable provisions to be chosen based on the circumstances of the case:

- a. Section 73 or 74 of the Indian Contract Act 1972 for breach of contract by the

person or the agency on whose behalf the person is acting has a direct contract with SHA to undertake enrolment.

Note:

1. Here beneficiary is being cheated, not the SHA. So, SHA may not be able to initiate proceedings for cheating, only the beneficiary can.
2. SHA may consider including in the contract that it can assume the responsibility of being a complainant on behalf of a bonafide beneficiary of the scheme as if SHA is being cheated. This, however, may be subject to judicial interpretation.

6. Collusion for securing e-cards

Applicable provisions to be chosen based on the circumstances of the case:

- a. Section 84B of the IT Act, 2000 in case there is any abetment.
- b. Section 66C of the IT Act, 2000 if there is identity theft through collusion.
- c. Section 72A of the IT Act, 2000 in case there is an individual or an agency involved in collusion was bound by a lawful contract to not disclose any information and there is a breach.
- d. Section 73 or 74 of the Indian Contract Act 1972 for breach of contract by the person or the agency on whose behalf the person is acting has a direct contract with SHA to undertake enrolment.
- e. Sections 84C of the IT Act, 2000 for punishment for attempt to commit an offence.
- f. Sections 120A, 120B of the IPC 1860 if there is criminal conspiracy between two or more parties.

Empanelment

7. Falsifying/forging hospital and staff records to claim eligibility

Applicable provisions to be chosen based on the circumstances of the case:

- a. Sections 463, 464, 465, 468, 471 of the IPC 1860 for forgery and offences related to documents and using forged documents as genuine.
- b. Sections 415, 417, 418, 420 of the IPC 1860 for offences related to cheating.
- c. Sections 34, 35, 107, 114 of the IPC 1860 in case there is more than one party acting in furtherance of a common intention and abetment is taking place.
- d. Sections 120A, 120B of the IPC 1860 if there is criminal conspiracy between two or more parties.
- e. Section 511 of the IPC 1860 for punishment for attempting to commit offences (if applicable) if the offence is not completed but merely attempted.
- f. Section 447 read with section 213 of the Indian Companies Act, 2013 for investigation and punishment for fraud if the hospital involved in the act is registered under this Act.

8. Falsifying statutory records (like licenses) to claim eligibility

Applicable provisions to be chosen based on the circumstances of the case:

- a. Complaint to the relevant authority, like the Income Tax office if PAN card is forged, State Pollution Control Board if the registration related to medical waste management is forged, MCI if false medical qualification documents are submitted, etc.
- b. Sections 463, 464, 465, 468, 471 of the IPC 1860 for forgery and offences related to documents and using forged documents as genuine.
- c. Sections 415, 417, 418, 420 of the IPC 1860 for offences related to cheating.
- d. Sections 34, 35, 107, 114 of the IPC 1860 in case there is more than one party acting in furtherance of a common intention and abetment is taking place.
- e. Sections 120A, 120B of the IPC 1860 if there is criminal conspiracy between two or more parties.

9. Misrepresentation of facts by hospital including those related to hospital capacity to claim eligibility

Applicable provisions to be chosen based on the circumstances of the case:

- a. Sections 463, 464, 465, 468, 471 of the IPC 1860 for forgery and offences related to documents and using forged documents as genuine.
- b. Sections 415, 417, 418, 420 of the IPC 1860 for offences related to cheating.
- c. Sections 34, 35, 107, 114 of the IPC 1860 in case there is more than one party acting in furtherance of a common intention and abetment is taking place.
- d. Sections 120A, 120B of the IPC 1860 if there is criminal conspiracy between two or more parties.
- e. Section 511 of the IPC 1860 for punishment for attempting to commit offences (if applicable) if the offence is not completed but merely attempted.
- f. Section 447 read with section 213 of the Indian Companies Act, 2013 for investigation and punishment for fraud if the hospital involved is registered under this Act.

10. Misrepresentation/falsification of hospital verification reports by DEC, SEC to empanel hospital with or without direct financial gains

Applicable provisions to be chosen based on the circumstances of the case:

- a. Section 7 of the POCA, 1988 against public servants who obtains, attempts or attempts to obtain bribe.

- b. Section 11 of the POCA, 1988 against public servants if the public servant obtains 'undue advantage without consideration'.
 - c. Section 8 of the POCA, 1988 against the person who gives or promises to give public servants any bribe.
 - d. Section 12 of the POCA, 1988 against anyone who abets the giving or taking of a bribe where a public servant is involved.
 - e. Section 9, 10 of the POCA, 1988 against the hospital and those in-charge of the hospital for bribing public servants.
 - f. Sections 34, 35 of the IPC 1860 in case there is more than one party acting in furtherance of a common intention.
 - g. Sections 120A, 120B of the IPC 1860 if there is criminal conspiracy between two or more parties.
 - h. Sections 463, 464, 465, 468, 471 of the IPC 1860 for forgery and offences related to documents and using forged documents as genuine.
 - i. Sections 415, 417, 418, 420 of the IPC 1860 for offences related to cheating.
 - j. All India Service Rules and State service rules wherever relevant for such public servant.
- ii. Sections 120A, 120B of the IPC 1860 if there is criminal conspiracy between two or more parties.
 - c. In case a public servant is colluding, one or more of the Sections 7, 8, 9, 10, 11, 12 of POCA, 1988 may be applicable depending on the circumstances of the case. For further details also refer to fraudulent act no. 10 above.
 - d. All India Service Rules and State service rules wherever relevant for such public servant.

12. Securing or attempting to secure empanelment through bribery

Bribery in this case refers to a means employed by a public servant through which fraudulent empanelment may take place. Therefore, in addition to other provisions related to fraudulent empanelment described above, add:

- a. Section 7 of the POCA, 1988 against public servants who obtains, attempts or attempts to obtain bribe.
- b. Section 11 of the POCA, 1988 against public servants if the public servant obtains 'undue advantage without consideration'.
- c. Section 8 of the POCA, 1988 against the person who gives or promises to give public servants any bribe.
- d. Section 12 of the POCA, 1988 against anyone who abets the giving or taking of a bribe where a public servant is involved.
- e. Section 9, 10 of the POCA, 1988 against the hospital and those in-charge of the hospital for bribing public servants.
- f. Sections 34, 35 of the IPC 1860 in case there is more than one party acting in furtherance of a common intention.
- g. Sections 120A, 120B of the IPC 1860 if there is criminal conspiracy between two or more parties.
- h. All India Service Rules and State service rules wherever relevant for such public servant.

11. Collusion for empanelment

Applicable provisions to be chosen based on the circumstances of the case:

- a. Collusion in this case refers to a process or means through which fraudulent empanelment may take place.
- b. Therefore, in addition to other provisions related to fraudulent empanelment described above, add:
 - i. Sections 34, 35, 107, 114 of the IPC 1860 in case there is more than one party acting in furtherance of a common intention and abetment is taking place.

Patient registration, hospital admission, pre-authorization and treatment, claims management

13. Pre-authorization request for ghost patients, impersonation, raising false claims

Applicable provisions to be chosen based on the circumstances of the case:

- a. Sections 463, 464, 465, 468, 471 of the IPC 1860 for forgery and offences related to documents and using forged documents as genuine.
- b. Sections 415, 417, 418, 420 of the IPC 1860 for offences related to cheating.
- c. Sections 416, 419 of the IPC 1860 for offences related to cheating through impersonation.
- d. Sections 34, 35, 107, 114 of the IPC 1860 in case there is more than one party acting in furtherance of a common intention and abetment is taking place.
- e. Sections 120A, 120B of the IPC 1860 if there is criminal conspiracy between two or more parties.
- f. Section 511 of the IPC 1860 for punishment for attempting to commit offences (if applicable) if the offence is not completed but merely attempted, that is SHA has not yet paid the claim.
- g. Section 447 read with section 213 of the Indian Companies Act, 2013 for investigation and punishment for fraud if an enrolment agency is involved and the agency is registered under this Act.
- h. Section 66C, 66D of the IT Act, 2000 for punishment for identity theft and 'punishment for cheating by personating by using computer resource'.
- i. Sections 84C of the IT Act, 2000 for punishment for attempt to commit an offence.
- j. Sections 7, 7.7 and 8 of the MCI Guidelines if falsification of records include misleading,

untrue or improper signing or certification by any registered medical practitioner on any medical record of a ghost patient. The relevant guidelines under the National Medical Council Act which replaced MCI Act may be referred in this regard once the same are notified.

- k. Section 73 or 74 of the Indian Contract Act 1972 for breach of contract by the hospital.

14. Treating patients not eligible under the Scheme through identity theft

Applicable provisions to be chosen based on the circumstances of the case:

- a. Section 66C, 66D of the IT Act, 2000 for punishment for identity theft and 'punishment for cheating by personating by using computer resource'.
- b. Sections 84C of the IT Act, 2000 for punishment for attempt to commit an offence.
- c. Sections 463, 464, 465, 468, 471 of the IPC 1860 for forgery and offences related to documents and using forged documents as genuine.
- d. Sections 34, 35, 107, 114 of the IPC 1860 in case there is more than one party acting in furtherance of a common intention and abetment is taking place, which may include ISA/TPA staff.
- e. Sections 120A, 120B of the IPC 1860 if there is criminal conspiracy between two or more parties.
- f. Section 511 of the IPC 1860 for punishment for attempting to commit offences (if applicable) if the offence is not completed but merely attempted.
- g. Section 447 read with section 213 of the Indian Companies Act, 2013 for investigation and punishment for fraud if an enrolment agency is involved and the agency is registered under this Act.
- h. 7, 7.7 and 8 of the MCI guidelines if falsification of records include misleading,

untrue or improper signing or certification by any registered medical practitioner on any medical record of a ghost patient. The relevant guidelines under the National Medical Council Act which replaced MCI Act may be referred in this regard once the same are notified.

- i. Section 73 or 74 of the Indian Contract Act 1972 for breach of contract by the hospital.

15. Falsification of medical records/ investigation reports: for treating ineligible patients, for justifying pre-authorization or enhancement requests, claims, or for any other purpose with the intention of wrongful gain. These include phantom billing, upcoding, unbundling, any all other acts leading to wrongful gains

Applicable provisions to be chosen based on the circumstances of the case:

- a. Sections 463, 464, 465, 468, 471 of the IPC 1860 for forgery and offences related to documents and using forged documents as genuine.
- b. Sections 415, 417, 418, 420 of the IPC 1860 for offences related to cheating.
- c. Sections 416, 419 of the IPC 1860 for offences related to cheating through impersonation.
- d. Sections 34, 35, 107, 114 of the IPC 1860 in case there is more than one party acting in furtherance of a common intention and abetment is taking place.
- e. Sections 120A, 120B of the IPC 1860 if there is criminal conspiracy between two or more parties.
- f. Section 511 of the IPC 1860 for punishment for attempting to commit offences (if applicable) if the offence is not completed but merely attempted.
- g. Section 447 read with section 213 of the Indian Companies Act, 2013 for investigation and punishment for fraud If an enrolment agency is involved and the agency is registered under this Act.

- h. Section 66C, 66D of the IT Act, 2000 for punishment for identity theft and 'punishment for cheating by personating by using computer resource'.
- i. Sections 84C of the IT Act, 2000 for punishment for attempt to commit an offence.
- j. 7, 7.7 and 8 of the MCI guidelines if falsification of records include misleading, untrue or improper signing or certification by any registered medical practitioner on any medical record of a ghost patient. The relevant guidelines under the National Medical Council Act which replaced MCI Act may be referred in this regard once the same are notified.
- k. Section 73 or 74 of the IC Act 1972 for breach of contract by the hospital.

16. Hospitals charging money for cashless benefits

Applicable provisions to be chosen based on the circumstances of the case:

- a. Section 73 or 74 of the Indian Contract Act 1972 for breach of contract by the hospital.

Note:

- Here beneficiary is being cheated, not the SHA. So, SHA may not be able to initiate proceedings for cheating, only the beneficiary can.
- SHA may consider including in the contract that it can assume the responsibility of being a complainant on behalf of a bona fide beneficiary of the scheme as if SHA is being cheated. This, however, may be subject to judicial interpretation.

17. Providing treatment which is different than the authorized treatment package

Applicable provisions to be chosen based on the circumstances of the case:

- a. Sections 463, 464, 465, 468, 471 of the IPC 1860 for forgery and offences related to documents and using forged documents as genuine.

- b. Sections 415, 417, 418, 420 of the IPC 1860 for offences related to cheating.
- c. Sections 34, 35, 107, 114 of the IPC 1860 in case there is more than one party acting in furtherance of a common intention and abetment is taking place.
- d. Sections 120A, 120B of the IPC 1860 if there is criminal conspiracy between two or more parties.
- e. Section 511 of the IPC 1860 for punishment for attempting to commit offences (if applicable) if the offence is not completed but merely attempted. Applicable when the attempt was made, claims was submitted by the hospital, and the SHA has not yet made the payment.
- f. Section 447 read with section 213 of the Indian Companies Act, 2013 for investigation and punishment for fraud If an enrolment agency is involved and the agency is registered under this Act.
- g. Sections 7, 7.7 and 8 of the MCI guidelines if falsification of records include misleading, untrue or improper signing or certification by any registered medical practitioner on any medical record of a ghost patient. The relevant guidelines under the National Medical Council Act which replaced MCI Act may be referred in this regard once the same are notified.
- h. Section 73 or 74 of the IC Act 1972 for breach of contract by the hospital.

Note:

Hospital may also be guilty of offence u/s 304 IPC (culpable homicide not amounting to murder) and 304A (causing death by negligence) of the IPC, if in the process of undertaking unauthorized treatment package, the patient dies. It may be noted that sections 304 and 304A IPC do not deal with fraud, but the fraudulent intent and act of submitting a forged claim read with section 36 IPC (act of omission if there was any) led to patient's death, thereby making the hospital liable for prosecution also u/s 304 and 304A IPC. Refer to scenario no. 2 for IPC section 36 described in Annexure 8.

18. Pilferage of medical devices/implants/medications allotted for scheme beneficiaries to sell to other “privately funded” patients

Applicable provisions to be chosen based on the circumstances of the case:

- a. Sections 463, 464, 465, 468, 471 of the IPC 1860 for forgery and offences related to documents and using forged documents as genuine.
- b. Sections 415, 417, 418, 420 of the IPC 1860 for offences related to cheating.
- c. Sections 34, 35, 107, 114 of the IPC 1860 in case there is more than one party acting in furtherance of a common intention and abetment is taking place.
- d. Sections 120A, 120B of the IPC 1860 if there is criminal conspiracy between two or more parties.
- e. Section 477A of the IPC 1860 if hospital accounts are falsified to justify and cover up such pilferage.
- f. Section 447 read with section 213 of the Indian Companies Act, 2013 for investigation and punishment for fraud If an enrolment agency is involved and the agency is registered under this Act.
- g. In case a public servant in a government hospital is involved in such pilferage, one or more of the Sections 7, 8, 9, 10, 11, 12 of POCA, 1988 may be applicable depending on the circumstances of the case. For further details also refer to fraudulent Act no. 10 above.
- h. Section 73 or 74 of the Indian Contract Act 1972 for breach of contract by the private hospital.

19. Refusing to treat eligible patients – denial of service

Applicable provisions to be chosen based on the circumstances of the case:

- a. Section 73 or 74 of the Indian Contract Act 1972 for breach of contract by the hospital.

Note:

- Here beneficiary is being denied service, not the SHA. So, SHA may not be able to initiate proceedings for cheating, only the beneficiary can.
- SHA may consider including in the contract that it can assume the responsibility of being a complainant on behalf of a bona fide beneficiary of the scheme as if SHA is being cheated. This, however, may be subject to judicial interpretation.

20. Hospital holding a patient hostage if not paid/cash not deposited by the patient

Applicable provisions to be chosen based on the circumstances of the case:

- a. Section 73 or 74 of the Indian Contract Act 1972 for breach of contract by the hospital.

Note:

- Here the beneficiary is being held hostage, not the SHA. So, SHA may not be able to initiate criminal proceedings, only the beneficiary can.
- Applicable provision:
 - i. Section 339 IPC: “**Wrongful Restraint**”
 - ii. Section 339 IPC: “**Wrongful Confinement**”.
 - iii. Sections 341, 342: punishment for wrongful restraint and wrongful confinement.
 - iv. Section 343: wrongful confinement for 3 or more days.
 - v. Section 344: wrongful confinement for 10 or more days.
- SHA may consider including in the contract that it can assume the responsibility of being a complainant on behalf of a bona fide beneficiary of the scheme as if SHA is being hostage. This, however, may be subject to judicial interpretation.
- Sections 339 to 344 have not been dealt with in Annexure 8 because this is a remote possibility and also not a direct fraud but a situation that may precipitate while attempting to defraud/cheat.

21. Bribery: for seeking services, referrals, preferential treatment or for securing any other benefit under the Scheme

Applicable provisions to be chosen based on the circumstances of the case:

- a. Section 7 of the POCA, 1988 against public servants who obtain, attempt or attempt to obtain bribe.
- b. Section 11 of the POCA, 1988 against public servants if the public servant obtains ‘undue advantage without consideration’.
- c. Section 8 of the POCA, 1988 against the person who gives or promises to give public servants any bribe.
- d. Section 12 of the POCA, 1988 against anyone who abets the giving or taking of a bribe where a public servant is involved.
- e. Sections 34, 35 of the IPC 1860 in case there is more than one party acting in furtherance of a common intention.
- f. Sections 120A, 120B of the IPC 1860 if there is criminal conspiracy between two or more parties.
- g. All India Service Rules and State service rules wherever relevant for such public servant.

22. Collusion between beneficiary and hospitals for generating fraudulent claims

Applicable provisions to be chosen based on the circumstances of the case:

- a. Sections 34, 35, 107, 114 of the IPC 1860 in case there is more than one party acting in furtherance of a common intention and abetment is taking place.
- b. Sections 120A, 120B of the IPC 1860 if there is criminal conspiracy between two or more parties.
- c. Sections 415, 417, 418, 420 of the IPC 1860 for offences related to cheating.
- d. Sections 463, 464, 465, 468, 471 of the IPC 1860 for forgery and offences related to documents and using forged documents as genuine.

- e. Section 511 of the IPC 1860 for punishment for attempting to commit offences (if applicable) if the offence is not completed but merely attempted. Applicable when the attempt was made, claim was submitted by the hospital, and the SHA has not yet made the payment.
 - f. Section 447 read with section 213 of the Indian Companies Act, 2013 for investigation and punishment for fraud if the hospital is registered under this Act.
 - g. Sections 7, 7.7 and 8 of the MCI guidelines if falsification of records include misleading, untrue or improper signing or certification by any registered medical practitioner on any medical record of a ghost patient. The relevant guidelines under the National Medical Council Act which replaced MCI Act may be referred in this regard once the same are notified.
 - h. Section 73 or 74 of the IC Act 1972 for breach of contract by the hospital.
- when the attempt was made, claim was submitted by the hospital, and the SHA has not yet made the payment.
 - f. Section 447 read with section 213 of the Indian Companies Act, 2013 for investigation and punishment for fraud if the hospital is registered under this Act.
 - g. Sections 7, 7.7 and 8 of the MCI guidelines if falsification of records include misleading, untrue or improper signing or certification by any registered medical practitioner on any medical record of a ghost patient. The relevant guidelines under the National Medical Council Act which replaced MCI Act may be referred in this regard once the same are notified.
 - h. Relevant provisions under professional code of conduct of such professional bodies like nursing council, dental council, etc.
 - i. Section 73 or 74 of the IC Act 1972 for breach of contract by the hospital.

23. Treatment by medical/paramedical personnel by unqualified or underqualified staff with or without fake degrees, may be leading to death of a patient

Applicable provisions to be chosen based on the circumstances of the case:

- a. Sections 34, 35, 107, 114 of the IPC 1860 in case there is more than one party acting in furtherance of a common intention and abetment is taking place.
- b. Sections 120A, 120B of the IPC 1860 if there is criminal conspiracy between two or more parties.
- c. Sections 415, 417, 418, 420 of the IPC 1860 for offences related to cheating.
- d. Sections 463, 464, 465, 468, 471 of the IPC 1860 for forgery and offences related to documents and using forged documents as genuine.
- e. Section 511 of the IPC 1860 for punishment for attempting to commit offences (if applicable) if the offence is not completed but merely attempted. This is applicable

Note:

Hospital and such staff with fake degrees may also be guilty of offence u/s 304 IPC (culpable homicide not amounting to murder) and 304A (causing death by negligence) of the IPC, if in the process of unqualified people undertaking procedures, the patient dies. It may be noted that sections 304 and 304A IPC do not deal with fraud, but the fraudulent intent and act of submitting a forged claim read with section 36 IPC (act of omission if there was any) led to patient's death, thereby making the hospital and such staff liable for prosecution also u/s 304 and 304A IPC. Refer to scenario no. 2 for IPC section 36 described in Annexure 8.

24. Collusion in processing and settlement of claims including raising unwarranted queries during claims processing to harass hospitals and coercing them to pay money or bribe

Applicable provisions to be chosen based on the circumstances of the case:

- a. Sections 34, 35, 107, 114 of the IPC 1860 in case there is more than one party acting in furtherance of a common intention and abetment is taking place.

- b. Sections 120A, 120B of the IPC 1860 if there is criminal conspiracy between two or more parties.
- c. Sections 415, 417, 418, 420 of the IPC 1860 for offences related to cheating.
- d. Section 73 or 74 of the IC Act 1972 for breach of contract by the hospital.
- e. If any public servant is colluding:
 - i. Section 7 of the POCA, 1988 against public servants who obtain, attempt or attempt to obtain bribe.
 - ii. Section 11 of the POCA, 1988 against public servants if the public servant obtains 'undue advantage without consideration'.
 - iii. Section 8 of the POCA, 1988 against the person who gives or promises to give public servants any bribe.
 - iv. Section 9, 10 of the POCA, 1988 against the hospital and those in-charge of the hospital for bribing public servants.
 - v. Section 12 of the POCA, 1988 against anyone who abets the giving or taking of a bribe where a public servant is involved.
 - vi. All India Service Rules and State service rules wherever relevant for such public servant.
- f. If any ISA/TPA is involved, in addition to the above:
 - i. Section 73 or 74 of the IC Act 1972 for breach of contract by the ISA/TPA.
 - ii. Section 447 read with section 213 of the Indian Companies Act, 2013 for investigation and punishment for fraud If the ISA/TPA is involved and the agency is registered under this Act.
 - i. For commercial trading or other fraudulent activities related to organ transplant: THOT Act 1994
 - ii. For acts related to mental health packages; MHC Act 2017
 - iii. For acts related to sex selection: PC-PNDT Act 1994
- b. In addition, all other provisions related to fraudulent practices as applicable:
 - i. For cheating: Sections 415-420 IPC
 - ii. For forgery: Sections 463-468, 471 IPC
 - iii. For acting together, omission and abetment: Sections 34-36, 107, 114 IPC
 - iv. For criminal conspiracy: Sections 120A, 120B

26. Hospitals administering spurious, expired, adulterated, etc. drugs for saving costs

- a. Sections 18, 27 of the Drugs and Cosmetic Act, 1940.
- b. In addition, all other provisions related to fraudulent practices as applicable:
 - i. For cheating: Sections 415-420 IPC
 - ii. For forgery: Sections 463-468, 471 IPC
 - iii. For acting together, omission and abetment: Sections 34-36, 107, 114 IPC
 - iv. For criminal conspiracy: Sections 120A, 120B

Procurement and general administration frauds

27. Fraud during tendering process for AB PM-JAY related hiring services from agencies/individuals by NHA, SHA or any other government agency: collusion, bribery – also during contract management

Applicable provisions to be chosen based on the circumstances of the case:

- a. Section 7 of the POCA, 1988 against public servants who obtains, attempts or attempts to obtain bribe.

25. Hospital undertaking any fraudulent act for certain clinical procedures which violates legal provisions that guide such procedures (like organ transplant, mental health packages, etc.)

Applicable provisions to be chosen based on the circumstances of the case:

- a. Procedure specific legislations:

- b. Section 11 of the POCA, 1988 against public servants of the public servant obtains 'undue advantage without consideration'.
- c. Section 8 of the POCA, 1988 against the person who gives or promises to give public servants any bribe.
- d. Section 12 of the POCA, 1988 against anyone who abets the giving or taking of a bribe where a public servant is involved.
- e. Sections 34, 35 of the IPC 1860 in case there is more than one party acting in furtherance of a common intention.
- f. Sections 120A, 120B of the IPC 1860 if there is criminal conspiracy between two or more parties.
- g. All India Service Rules and State service rules wherever relevant for such public servant.
- e. Section 511 of the IPC 1860 for punishment for attempting to commit offences (if applicable) if the offence is not completed but merely attempted.
- f. Sections 43, 66 of the IT Act, 2000 for penalty and compensation for damage to computer and computer related offences if transactions are taking place through the IT portal.
- g. Sections 84B of the IT Act, 2000 in case there is any abetment.
- h. Sections 84C of the IT Act, 2000 for punishment for attempt to commit an offence.
- i. Section 447 read with section 213 of the Indian Companies Act, 2013 for investigation and punishment for fraud if the entity committing fraud is registered under this Act.

Other frauds by external parties that may have an impact on administration of AB PM-JAY

28. Forging documents, logos, office stationery of authorities like the NHA/SHA and other organizations for misleading, defrauding and securing illegitimate gains

Applicable provisions to be chosen based on the circumstances of the case:

- a. Sections 463, 464, 465, 468, 471 of the IPC 1860 for forgery and offences related to documents and using forged documents as genuine.
- b. Sections 415, 417, 418, 420 of the IPC 1860 for offences related to cheating.
- c. Sections 34, 35, 107, 114 of the IPC 1860 in case there is more than one party acting in furtherance of a common intention and abetment is taking place.
- d. Sections 120A, 120B of the IPC 1860 if there is criminal conspiracy between two or more parties.

29. Individuals/agencies charging money from beneficiaries or hospitals claiming to represent government authorities and in lieu of false assurances

Note:

- a. This will be a case of cheating by the individual or the agency misrepresenting or personating a government employee or authority. But government is not directly affected.
- b. However, the individual/agency commits and offence under Section 170 of the IPC for personating a public servant.
- c. A beneficiary can directly file a complaint proceeding under relevant sections for cheating under the IPC 1860 (Sections 415-420) and Section 170 IPC.
- d. The NHA/SHA can file a complaint provided:
NHA/SHA includes in the scheme design that it can assume the responsibility of a complainant on behalf of a bonafide beneficiary of the scheme as if NHA/SHA is the aggrieved. This, however, may be subject to judicial interpretation.

30. Agencies defrauding individuals by issuing fake appointment letters for PMAM and charging money from applicants

Note:

- a. This will be a case of cheating by the individual or the agency misrepresenting or defrauding. But government is not directly affected.
- b. However, those defrauded can directly file a complaint for proceedings under relevant sections as follows:
 - i. Sections 415-420 IPC for cheating
 - ii. Sections 463-465, 468 IPC for forgery
 - iii. Sections 34, 35, 107, 114 of the IPC 1860 in case there is more than one party acting in furtherance of a common intention and abetment is taking place.
- c. NHA/SHA may initiate proceedings if it includes in the scheme design that it can assume the role of a complainant on behalf of anyone defrauded through such acts, as if NHA/SHA is the aggrieved. This, however, may be subject to judicial interpretation.

31. Forming fake websites/emails/WhatsApp messages/mobile apps/blogs and video channels in the name of/ showing affiliation to AB PM-JAY

Applicable provisions to be chosen based on the circumstances of the case:

- a. Sections 43, 65, 66 of the IT Act, 2000 for penalty and compensation for damage to computer and computer related offences if transactions are taking place through the IT portal.
- b. Sections 84B of the IT Act, 2000 in case there is any abetment.
- c. Sections 84C of the IT Act, 2000 for punishment for attempt to commit an offence.
- d. Section 447 read with section 213 of the Indian Companies Act, 2013 for

investigation and punishment for fraud if the entity committing fraud is registered under this Act.

32. Any transaction related to the Scheme through illegal access to IT-based transaction system or any other unauthorized breach into the IT architecture of the scheme

Applicable provisions to be chosen based on the circumstances of the case:

- a. Sections 43, 65, 66, 66B, 66C, 66D of the IT Act, 2000.
- b. Sections 84B of the IT Act, 2000 in case there is any abetment.
- c. Sections 84C of the IT Act, 2000 for punishment for attempt to commit an offence.
- d. Section 85 of the IT Act, 2000 if the entity committing fraud is a company as defined under the IT Act, 2000.

b. Note on applicable legal provisions

This section highlights characteristics of certain legal provisions, whose application may vary depending on the circumstances, the actors involved and how the actors engage with each other in the commission of the offence.

Abetment as a crime

Chapter 5 of The Indian Penal Code (IPC) penalises all acts of abetment. Sections 107 to 120 of the IPC define and delineate different situations and circumstances under which abetment can take place. Not all these situations may be relevant for AB PM-JAY. As per IPC, abetting can be done through instigation, conspiracy and aiding. IPC Chapter 5 begins with section 107 that define 'abetment of a thing'. We have referred to only this section 107 (abetment of a thing) in Annexure 8 to explain the concept and its application to different fraudulent circumstances. For each act of fraud depending on the actors involved and their role in the offence, the charge of abetment would get added to other substantive charges. All such

permutations and combination of actors for each type of fraudulent act have not been listed in Table 13 above.

Acts specific to certain actors

There are two Acts that will be applicable depending on the actor involved. See Table 14 below:

Attempting to commit offence

Under the IPC, attempt to commit an offence, that is, actions falling short of completion of a crime, is also a punishable offence. These are called ‘inchoate’ crimes. Section 511 of the IPC with such crimes:

Section 511 - Punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment.

Whoever attempts to commit an offence punishable by this Code with 1[imprisonment for life] or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with 2[imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence], or with such fine as is provided for the offence, or with both.

Illustrations

a. *A makes an attempt to steal some jewels by breaking open a box, and finds after so opening*

the box, that there is no jewel in it. He has done an act towards the commission of theft, and therefore is guilty under this section.

b. *A makes an attempt to pick the pocket of Z by thrusting his hand into Z's pocket. A fails in the attempt in consequence of Z's having nothing in his pocket. A is guilty under this section.*

To illustrate in the context of AB PM-JAY, empanelled hospital H submits a fraudulent claim for reimbursement. The fraud is detected during claims review and the payment is withheld. This case cannot be tried for cheating u/s 420 IPC because the money was not reimbursed, and hence cheating is not complete. But the attempt to cheat is clearly there. Hence the hospital can be prosecuted u/s 420/511 (attempt to cheat).

In all types of fraudulent acts listed in the Table 13 and the illustrative scenarios presented in Annexure 8, wherever an attempt has been made to commit a criminal offence under the IPC, the charge of attempt to commit an offence u/s 511 may be added.

c. Time is the essence – the law of limitation

Limitation refers to the time limit within which legal remedies under different laws could be sought. It is fixing of time period for barring legal actions. Time is therefore of a great essence and SHAs should bear this in mind, especially for those actions where it may intend to seek legal recourse.

Table 14: Acts and their applicability

Acts	Applicability
The Company's Act, 2013	Applicable only where the actor committing fraud is either an organization (hospital, vendor, etc.) or an individual working with such an organization and the SHA intends to fix liability on the organization.
The Prevention of Corruption Act, 1988	Applicable only where the actor committing fraud is a ‘public servant’ under the Act.

1 Substituted by Act 26 of 1955, Section 117 and Schedule, for "transportation for life" (w.e.f. 1-1-1956).

2 Substituted by Act 26 of 1955, Section 117 and Schedule, for certain original words (w.e.f. 1-1-1956).

Limitation in criminal offences

Limitation period for different criminal offences are laid down based on the severity of punishment:

CODE OF CRIMINAL PROCEDURE, 1973 Section 468 - Bar to taking cognizance after lapse of the period of limitation

1. *Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.*
2. *The period of limitation shall be:*
 - a. *six months, if the offence is punishable with fine only;*

- b. *one year, if the offence is punishable with imprisonment for a term not exceeding one year;*
- c. *three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.*

3. ³*[For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence, which is punishable with the more severe punishment or, as the case may be, the most severe punishment.]*

Limitation in civil matters

Schedule of The Limitation Act, 1963 lays down the period of limitation for all civil matters/suits.

³ Inserted by Act 45 of 1978, Section 33 (w.e.f. 18-12-1978).

ANNEXURE 1

List of Guidelines, Advisories and Manuals

1. List of Guidelines

- ▶ Addendum to Anti-Fraud Guidelines: <https://pmjay.gov.in/sites/default/files/2020-06/Addendum-to-Anti-Fraud-Guidelines-%28BIS%29.pdf>
- ▶ Anti-Fraud Guidelines: https://pmjay.gov.in/sites/default/files/2019-04/Anti-fraud-PMJAY-Guidelines_1_2_removed.pdf
- ▶ Beneficiary Empowerment Guidelines: <https://ayushmanuttarakhand.org/document/beneficiary-empowerment-guidebook-2-8-2019.pdf>
- ▶ De-empanelment Guidelines: <https://pmjay.gov.in/sites/default/files/2020-06/Empanelment-and-De-empanelment-guidelines.pdf>

2. List of Advisories

Sl.No.	Date of Issue	Key Points
1	04-Oct-18	Regarding setting up of Anti-Fraud Cells in each State with required composition, skillset and processes.
2	20-Dec-18	Public advisory on unauthorized websites regarding AB PM-JAY and penal action against the same.
3	28-Dec-18	Regarding launch of Medical Audit mobile app, release of Medical Audit Manual and whistle blower policy.
4	21-Feb-19	Regarding sharing of suspect cases by NAFU to SAFU and actions to be taken.
5	28-Feb-19	Regarding implementation of Beneficiary Identification and investigation of suspect cases shared by NHA and action to be taken against hospitals found collecting money from beneficiaries.
6	01-Apr-19	Regarding use of biometric verification for utilization of benefits including biometric verification of PMAMs.
7	03-Apr-19	Regarding implementation of Beneficiary Identification with utmost due diligence and being cautious of impersonators. Actions to be taken against impersonators.

Sl.No.	Date of Issue	Key Points
8	07-Jun-19	Inviting information on SAFU details, feedback on suspect cases, action on medical audit reports, compliance with minimum audit, monthly fraud reporting.
9	11-Jul-19	Regarding anti-fraud measures and penal provisions for inaccurate processing by TPA. Mandatory pre-auth for abuse prone packages was also requested.
10	19-Aug-19	Regarding guidelines for hysterectomy, add-members, de-empaneled hospital list, due-diligence of triggered cases, RADAR monitoring of dashboard, protocols for filed investigation and medical audit.
11	17-Sep-19	Guidelines for recoveries and other actions post confirmation of fraud.
12	31-Oct-19	Regarding reporting of actions on anti-fraud initiatives.
13	14-Jan-20	Regarding compliance on Anti-Fraud Initiatives and action.
14	07-Feb-20	Regarding sensitizing States on new incidents of fraudulent cases encountered.
15	13-Apr-20	Regarding Anti-Fraud Guidelines with respect to BIS.
16	19-May-20	Regarding RADR going live, SAFU module for BIS, Pre-auth update functionality, Launch of Medical Audit Module in AB PM-JAY App.
17	29-June-20	Recommended measures to control abuse of Cholecystectomy and Appendicectomy packages in States.

3. List of Manuals

- Field Investigation and Medical Audit Manual_April-2020: https://pmjay.gov.in/sites/default/files/2020-04/Field%20Investigation%20and%20Medical%20Audit%20Manual_April-2020.pdf
- RADAR User Manual: <https://radar.pmjay.gov.in/>

Total number of mortality audits	Hospital												
	Total number of mortalities	Hospital											
Total number of doctors blacklisted	IC												
	ISA												
	Hospital												
Total number of FIRs filed	Insurer												
	ISA												
	CSC/VLE												
	Beneficiary												
	Hospital												
Total number of de-empalement/blacklisting	Insurer												
	ISA												
	CSC/VLE												
	Beneficiary												
	Hospital												
Total amount of recoveries	Insurer												
	ISA												
	CSC/VLE												
	Beneficiary												
	Hospital												
Total number of recoveries	Insurer												
	ISA												
	CSC/VLE												
	Beneficiary												
	Hospital												
Total amount of penalty imposed	Insurer												
	ISA												
	CSC/VLE												
	Beneficiary												
	Hospital												

b) Form 7A Format

Sl.No.	State	Entity Type 1. Hospital 2. Beneficiary 3. CSC/VLE 4. ISA Insurer	Entity ID	If the entity is a Hospital Hospital Type (Public/Private)	Name of the Entity	District	Audit Date	Findings	Show Cause Notice Date	Suspension date	De-empamentment Date	Penalty Date	Penalty Amt.	Recoveries of Claims (Amount)	FIR (Yes/No)	Revoke of Action Taken (Suspension/ De-empamentment)	Revoke/Reinstated Date	Revoke Cause	Current Status
1																			
2																			
3																			
4																			
5																			
6																			
7																			
8																			
9																			
10																			

c) Form 7B Format

Sl.No.	Name of State	Case Number	Hospital Name	Hospital District	Claim Amount	Anomaly Detected	Fraud/ Abuse/Not Fraud
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							

ANNEXURE 2

Trigger Specific Guidance Note

Sl. No.	Triggers	Documents to be verified during desk audit	Facts/documents to be verified during hospital visit	Facts to be verified during beneficiary call	Facts/documents to be verified during beneficiary visit	Other Mandatory aspects to be considered
1	More than 10% of unspecified procedures for a particular hospital	<ol style="list-style-type: none"> Verify whether another package available as per package master/ Public Hospital Reserved Packages/Exclusion List Check Descriptive OT notes to see if it is unspecified package Investigation reports supporting diagnosis for which procedure has been carried out Verify the specialty related data with respect to capacity in HEM 	<ol style="list-style-type: none"> Cross Check OT Register record (Surgeon Name, specialization, duration of surgery, mode of anaesthesia, sign and seal of treating doctor, Implant record if applicable) with procedure performed Cross check procedure name as mentioned in OT register with all hospital entry registers (OPD, IPD, Patient shifting record, Lab, Radiology, Pharmacy and Implant register if applicable) Cross check Nursing staff Roster with nursing notes found on IPD files Cross Check Treating doctor availability with HR Summary <p>* Detailed check for quality of care given may also be done</p>	<ol style="list-style-type: none"> Did the patient visit hospital in emergency or OPD for treatment? Was the patient hospitalized or not? Was any surgery done or not? Ask details in simpler language Was the patient conscious during surgery? Did the patient feel better at the time of discharge? 	<ol style="list-style-type: none"> Verify the facts provided on call (Do voice/video recording/written signed statement with permission of beneficiary) Ask for Discharge Summary and take a can copy Check for scar mark (Visual/Photograph capture) 	<ol style="list-style-type: none"> Follow general guidelines/steps in all process as mentioned in Medical Audit Manual Check Procedure performed as per Guidance Documents if available

Sl. No.	Triggers	Documents to be verified during desk audit	Facts/documents to be verified during hospital visit	Facts to be verified during beneficiary call	Facts/documents to be verified during beneficiary visit	Other Mandatory aspects to be considered
2	High number of cases for zero Length of Stay (LOS) for major surgical procedure code	<ol style="list-style-type: none"> 1. Cross Match the procedure performed with day care procedure list in reference of package master 2. Verify LOS as per surgical package blocked in reference to standard guidelines 3. Verify mandatory documents for blocked procedure 4. Cross Check whether patient has been released on DOR or LAMA or DAMA? 	<ol style="list-style-type: none"> 1. Cross check details from OT Register record with procedure performed (Surgeon Name, specialization, duration of surgery, mode of anaesthesia, sign and seal of treating doctor. Implant record if applicable) 2. Cross match the procedure in OT register with all hospital entry registers (OPD, IPD, Lab, Radiology, Pharmacy and Implant also if applicable) * Detailed check for quality of care given may also be done 	<ol style="list-style-type: none"> 1. Did the patient visit hospital in emergency or OPD for treatment? 2. Was the patient hospitalized or not? 3. Was any surgery done or not? Ask details in simpler language 4. Was the patient conscious during surgery? 5. Did the patient feel better at the time of discharge? 	<ol style="list-style-type: none"> 1. Verify the facts provided on call (Do voice/video recording/written signed statement with permission of beneficiary) 2. Ask for Discharge Summary and take a can copy 3. Check for scar mark (Visual/Photograph capture) 	<ol style="list-style-type: none"> 1. Follow general guidelines/steps in all process as mentioned in Medical Audit Manual 2. Check procedure performed as per Guidance Documents if available
3	High number of cases for zero Length of Stay (LOS) for Non Day Care Medical Packages (M1 and M2)	<ol style="list-style-type: none"> 1. Verify the indication for need of hospitalization in reference to supportive documents submitted (OPD/initial assessment notes. Investigation reports, line of treatment and vitals chart) 2. Cross Check whether patient has been released on DOR or LAMA or DAMA? 	<ol style="list-style-type: none"> 1. Cross check OPD with IPD entry records and find proportion of OPD to IPD conversion ratio 2. Verify whether the diagnosis were in sync with supportive investigation reports, treatment and vitals with progress notes * Detailed check for quality of care given may also be done 	<ol style="list-style-type: none"> 1. Did the patient visit hospital in emergency or OPD for treatment? 2. Was the patient hospitalized or not? 3. Did you stay in the hospital for more than 24 hours or were only given medication in OPD/ Emergency and released from the hospital? 4. Did the patient feel better at the time of discharge? 	<ol style="list-style-type: none"> 1. Verify the facts provided on call (Do voice/video recording/written signed statement with permission of beneficiary) 2. Ask for Discharge Summary and take a copy 	<ol style="list-style-type: none"> 1. Follow general guidelines/steps in all process as mentioned in Medical Audit Manual 2. Check Indication for need of admission/ as per Guidance Documents if available 3. Compare capacity of hospital staff with patient admitted 4. Evaluate bed turn over of the Hospital

Sl. No.	Triggers	Documents to be verified during desk audit	Facts/documents to be verified during hospital visit	Facts to be verified during beneficiary call	Facts/documents to be verified during beneficiary visit	Other Mandatory aspects to be considered
4	Cases where medical management exceeds more than 10 days in non-critical cases	<ol style="list-style-type: none"> 1. Cross check all day wise indoor case papers (Repeated Lab investigation, progress notes, vitals chart and treatment chart) to justify the prolonged LOS 2. Verify whether the line of treatment for prolonged days was required/in sync with improvement of patient condition, Vitals stabilization and response reflecting in repeated investigation reports 3. Verify the above with progress notes by treating doctor, nursing notes for the successive days of admission 	<ol style="list-style-type: none"> 1. Cross check the patient shifting register and Discharge Register with actual number of days admitted in ICU/general ward 2. Verify whether the LOS were in sync with all hospital entry register (IPD, Patient shifting record, Lab, Radiology, Pharmacy and Discharge register) 3. Cross check the entries of repeated investigation done in respective departments of the hospital and verify the dates as well as frequency of investigation done <p>* Detailed check for quality of care given may also be done</p>	<ol style="list-style-type: none"> 1. Did the patient visit hospital in emergency or OPD for treatment? 2. Was the patient hospitalized or not? 3. For How many days were you admitted in the hospital? Days in ICU/ Days in general ward? (Ask in local and simpler language) 4. Did the patient feel better at the time of discharge? 	<ol style="list-style-type: none"> 1. Verify the facts provided on call (Do voice/video recording/written signed statement with permission of beneficiary) 2. Ask for Discharge Summary and take a copy 	<ol style="list-style-type: none"> 1. Follow general guidelines/steps in all process as mentioned in Medical Audit Manual 2. Check Indication for need of admission as per Guidance Documents if available 3. Verify laboratory records of the same day and check the trend or pattern of CBC report or Radiology record (X-ray Film/Report with same findings or Comments) for a particular
5	Highlight cases where a same doctor is performing surgery/ treatment in the far-away districts	<ol style="list-style-type: none"> 1. Pull out the data related to doctor who has performed surgeries in different hospitals on same day 	<ol style="list-style-type: none"> 1. Ask for registration certificate of Treating Doctor and cross match with HR records also 	<ol style="list-style-type: none"> 1. Did the patient visit hospital in emergency or OPD for treatment? 2. Was the patient hospitalized or not? 3. Was any kind of surgery done or not? Ask details in simpler language 	<ol style="list-style-type: none"> 1. Verify the facts provided on call (Do voice/video recording/written signed statement with permission of beneficiary) 2. Ask for Discharge Summary and take a scan copy 	<ol style="list-style-type: none"> 1. Cross check registration of doctor on MCI website and call doctor (if contact number found available) to verify whether they are visiting the hospital for performing surgeries or advising treatment or not?

Sl. No.	Triggers	Documents to be verified during desk audit	Facts/documents to be verified during hospital visit	Facts to be verified during beneficiary call	Facts/documents to be verified during beneficiary visit	Other Mandatory aspects to be considered
		<ol style="list-style-type: none"> 2. Cross check registration as well as date and time of admission of all admitted patient on the same day 3. Verify whether OT notes timings. Anaesthesia timings of the same day (start time and end time) of one hospital is matching with another hospital or not? 4. Cross check the similarities in signature and hand writing of the same treating doctor with highlighted hospitals 5. Verify whether the signature and hand writing of treating 	<ol style="list-style-type: none"> 2. Cross check OT register (Date, Start time and end time of each surgery performed) and anaesthesia records from all suspected hospitals and verify the visit time of Doctor in the respective hospitals 3. Request declaration by the hospital and doctor that he has performed all the surgeries/Given medical treatment to all the said patients under his care in this hospital 4. Cross check Nursing staff Roster with nursing notes found on IPD files 5. Cross Check Treating doctor availability with HR 6. Verify Hand writing and signature of doctor on IPD files with OPD 	<ol style="list-style-type: none"> 4. Were you conscious during surgery? 5. Was doctor available in the hospital all the time or visited only for surgery? 6. Ask about appearance of doctor 7. Did the patient feel better at the time of discharge? 	<ol style="list-style-type: none"> 3. Check for scar mark (Visual/Photograph capture) 	<ol style="list-style-type: none"> 2. Follow general guidelines/steps in all process as mentioned in Medical Audit Manual 3. Cross check Indication for need of admission/ Procedure performed as per Guidance Documents if available
6	Same document/ images used in more than one case	<ol style="list-style-type: none"> 1. Verify the claims set where same document/ image has been used (with special emphasis on DOA, Same Family, Same First Name, Same member) 	<ol style="list-style-type: none"> 1. Verify whether the undertaken treatment was in sync with all hospital entry registers (OPD, IPD, Patient shifting record, Lab, Radiology and Pharmacy) 	<ol style="list-style-type: none"> 1. Did the patient visit hospital in emergency or OPD for treatment? 2. Was the patient hospitalized or not? 3. Were you admitted for medical management or surgical? 	<ol style="list-style-type: none"> 1. Verify the facts provided on call (Do voice/video recording/written signed statement with permission of beneficiary) 	<ol style="list-style-type: none"> 1. Follow general guidelines/steps in all process as mentioned in Medical Audit Manual 2. Cross check Indication for need of admission/ Procedure performed as per Guidance Documents if available

Sl. No.	Triggers	Documents to be verified during desk audit	Facts/documents to be verified during hospital visit	Facts to be verified during beneficiary call	Facts/documents to be verified during beneficiary visit	Other Mandatory aspects to be considered
		2. Cross check the similarities in other supportive documents also across all the set of claims with OPD prescription/Initial assessment sheet/value of entities mentioned in investigation reports/Bed number in pre, bed side, post treatment photos/Vitals chart pattern/line of treatment/progress notes	2. Ask for implant register of particular trendy cases and match their BAR CODE or PRODUCT CODE to one another (in case of surgery) 3. Compare IPD records across the suspected claims set where same documents/images were used * Detailed check for quality of care given may also be done	4. How many days did you stay in the hospital? 5. Were you feeling better at the time of discharge? 6. How many times did you get admitted in this hospital?	2. Ask for Discharge Summary and take a copy 3. Check for scar mark (Visual/Photograph capture) - In surgical case only	3. Check trend of similar documents submitted to suspected claims
7	Multiple cases for acute medical illness for same patient	1. Verify the indication for hospitalization on each admission with reference to supportive mandatory documents submitted 2. Cross check the similarities in other supportive documents across all set of claims of same member with OPD prescription/Initial assessment sheet/value of entities mentioned in investigation reports/Bed number in pre, bed side, post treatment photos/Vitals chart pattern/line of treatment/progress notes	1. Verify whether the undertaken treatment was in sync with all hospital entry registers (OPD, IPD, Patient shifting record, Lab, Radiology and Pharmacy) 2. Compare IPD records across all suspected set of claims where same member was hospitalized 3. Cross check Nursing staff Roster with nursing notes found on IPD files 4. Cross Check Treating doctor availability with HR	1. Did you visit hospital in emergency or OPD for treatment? 2. Were you admitted in the hospital or not? 3. How many days did you stay in the hospital? 4. How many times did you get admitted in this hospital? 5. Ask for details of each admission (Complaints, DOA, DOD, Ward Type)	1. Verify the facts provided on call (Do voice/video recording/written signed statement with permission of beneficiary) 2. Ask for Discharge Summary and take a scan copy 3. Ask for all OPD records from the patient with respect to each hospitalization as well as follow up prescriptions if available	1. Follow general guidelines/steps in all process as mentioned in Medical Audit Manual 2. Check Indication for admission as per Guidance Documents if available 3. Check the disease pattern of the diagnosis made in each hospitalization 4. Find out the documentation trends in all the case files submitted by hospital

Sl. No.	Triggers	Documents to be verified during desk audit	Facts/documents to be verified during hospital visit	Facts to be verified during beneficiary call	Facts/documents to be verified during beneficiary visit	Other Mandatory aspects to be considered		
8	High utilization of a procedure/specialty by hospital Identify instances of high number of claims (more than 60%) by a hospital for Implants procedure	<ol style="list-style-type: none"> 1. Verify the indication for procedure in reference to submitted mandatory documents including supporting investigation reports 2. Cross check Implant stickers in all cases for same procedure (Unique number/Lot number/ Batch number) with OT/ Procedure notes of one patient to another with same procedure 3. Verify the specialty related data with respect to capacity in HEM 	<ol style="list-style-type: none"> 5. Verify Hand writing and signature of doctor on IPD files with OPD prescription and Discharge Summary * Detailed check for quality of care given may also be done 	<ol style="list-style-type: none"> 6. Were you feeling better at the time of discharge? (Apply for each hospitalization and try to find a link between multiple hospitalization) 	<ol style="list-style-type: none"> 5. Verify whether the undertaken treatment was in sync with all hospital entry registers (OPD record, IPD record, laboratory record. Radiology record. Pharmacy record, implant stock register and cath Lab register record if applicable, Patient shifting register and Discharge register.) 2. Cross check availability of implant stock sticker in all hospital documents (OT or Procedure register/ IPD records/Discharge Summary) 3. Verify Implant Purchase/ Stock Register and issuance register 	<ol style="list-style-type: none"> 1. Did you visit hospital in emergency or OPD for treatment? 2. Were you admitted in the hospital or not? 3. Was any kind of surgery done or not? (Ask details in simpler language) 4. Were you conscious during surgery? 5. Which doctor has performed the surgery (name)? 6. Was doctor available in the hospital all the time or visited only for surgery? 7. Ask about appearance of doctor 	<ol style="list-style-type: none"> 1. Verify the facts provided on call (Do voice/video recording/written signed statement with permission of beneficiary) 2. Ask for Discharge Summary and take a scan copy 3. Check for scar mark (Visual/Photograph capture) 	<ol style="list-style-type: none"> 1. Follow general guidelines/steps in all process as mentioned in Medical Audit Manual 2. Check procedure performed as per Guidance Documents if available 3. Cross Check incidence of same procedure with respect to another same bed hospital and same location
			<ol style="list-style-type: none"> 5. What are their LOS trend for each hospitalization? 					

Sl. No.	Triggers	Documents to be verified during desk audit	Facts/documents to be verified during hospital visit	Facts to be verified during beneficiary call	Facts/documents to be verified during beneficiary visit	Other Mandatory aspects to be considered
9	Highlight cases of pre-auth or enhancement after death of the patient	<ol style="list-style-type: none"> 1. Cross match DOA and Date of death on TMS 2. Was patient hospitalized before death in hospital, if yes review documents in line with mortality audit 	<ol style="list-style-type: none"> 4. Cross check Nursing staff Roster with nursing notes found on IPD files 5. Cross Check Treating doctor availability with HR 6. Verify Hand writing and signature of doctor on IPD files with OPD prescription and Discharge Summary <p>* Detailed check for quality of care given may also be done</p>	8. Were you feeling better at the time of discharge?	<ol style="list-style-type: none"> 1. Ask for Death certificate and Death Summary provided by Hospital 2. Ask for the status of the AB PM-JAY card. 	<ol style="list-style-type: none"> 1. Follow general guidelines/steps in all process as mentioned in Medical Audit Manual 2. Check procedure performed as per Guidance Documents if available
10	Highlight cases of admission/ discharge/ surgery after death of the patient	<ol style="list-style-type: none"> 1. Cross match DOA and Date of death on TMS 	<ol style="list-style-type: none"> 1. Cross check date of admission and date of death in all hospital entry records 2. Mortality report from the hospital <p>* Detailed check for quality of care given may also be done</p>	1. Ask for exact date, time and place of death from the relative of patient	<ol style="list-style-type: none"> 1. Ask for Death certificate and Death Summary provided by Hospital 2. Ask for the status of the AB PM-JAY card. 	<ol style="list-style-type: none"> 1. Follow general guidelines/steps in all process as mentioned in Medical Audit Manual 2. Check procedure performed as per Guidance Documents if available

ANNEXURE 3

Checklists and Reporting Formats

1. Desk Audit Checklist

Case number				
Name of patient				
Hospital Name & District				
Package booked				
Package Amount				
Admission Date				
Discharge Date				
		Yes	No	Remarks
1	Are all mandatory documents required at the time of pre-auth uploaded?			
2	If uploaded, do these documents justify hospitalization?			
3	Are symptoms and diagnosis in sync?			
4	Do diagnostic reports conclude diagnosis?			
5	Is the package booked in sync with diagnosis?			
6	Are admission notes and detailed findings at admission notes available?			
7	Are requisite post-treatment evidentiary documents available to confirm complete appropriate treatment?			
8	Do the post-treatment evidentiary documents confirm that treatment was given?			
9	Was Length of Stay as per package specification?			
10	Is a Discharge summary available?			
11	Does the discharge summary capture all details of presenting features, investigations, line of treatment given during stay line of treatment advised at discharge and (Select <No> if investigations and all treatment details, missing as follow up will be not be rational)			

2. Desk Audit Report Format

Beneficiary State	Beneficiary District	Card ID	Case ID	Hospital Name	Hospital Code	Hospital State	Hospital District	Package Name	Package Cost	Date of admission	Date of discharge	Observation	Conclusion (Genuine/ Non-Genuine/ Suspicious)

3. Fact Sheet

Name of the hospital	
Location (State, District, Block and Village/Ward)	
Hospital ID	
Type of hospital (public/private)	
Date of investigation	
Number of AB PM-JAY beneficiaries admitted in the hospital	

Infrastructure	Y/N	Remarks
Is there any signboard outside hospital showing that it is empanelled in scheme (Y/N)		
Availability PMAM kiosk (Y/N)		
PMAM kiosk located at the entrance (Y/N)		
Availability of AB PM-JAY promotional boards (Y/N)		
Availability of registration certificate of the hospital (Y/N)		
Availability of ICU		
Availability of HDU		
No of beds available in:		
General Ward		
ICU		
HDU		
Distance is maintained between two beds		
No. of OTs		
No. of OT tables		
If OT sterilization facility is functional? (Y/N)		
Is Adequate lights and Air conditioning provided in each OT (Y/N)		
Provision of biomedical wastes (Y/N)		
Human Resource		
Resident Medical Officer (RMO)/duty doctor available at the time of visit (Y/N)		
Availability of qualified nursing staff at the time of visit (Y/N)		
Availability of technicians and pharmacists at the time of visit (Y/N)		
Availability of specialists for which claims are booked at the time of visit (Y/N)		
Medical documentation		
Availability IPD register at the time of visit (Y/N)		
Availability OT register at the time of visit (Y/N)		
Availability pharmacy record at the time of visit (Y/N)		
Availability of laboratory records at the time of visit (Y/N)		
Availability of fumigation register at the time of visit (Y/N)		

Availability of implants and prosthesis register at the time of visit (Y/N)		
Availability of pre-anaesthesia documents at the time of visit (Y/N)		
Availability of requested patient files (Y/N)		

Undertaking by hospital

This is to certify that the information provided by me/us about _____, is true to the best of my/our knowledge and is based on documentation and process followed in this hospital/institution. I/We had not suppressed any information or fact. Further, I/We understand that, in case the information provided is found to be incorrect and based on suppression of facts, the hospital stands to forfeit its claims.

Name & Signature of authorized person from hospital and Date with seal of hospital

Name & Signature of Auditing Doctor and date

4. Medical Audit Form

A. Hospital Details				
1	Date of investigation			
2	Name of Hospital			
3	Address of Hospital			
4	Hospital ID (if available)			
5	Type of hospital (Public/Private)			
6	Number of AB PM-JAY beneficiaries admitted in the hospital as per TMS			
7	Number of AB PM-JAY beneficiaries admitted in the hospital			
B. Hospital Infrastructure		Yes	No	Remarks
8	Hospital Existence			
9	Response from Hospital (Co-operative/Non Co-operative/Indifferent)			
10	Is hospital registered with DGHS?			
11	Availability of PMAM kiosk			
12	Location of PMAM kiosk (Easily Visible/Far inside)			
13	Promotional boards prominently displayed			
14	Total no of Beds			

15	Number of Beds in general ward			
16	Adequate distance (4 feet) maintained between two beds			
17	Is HDU available?			
18	Number of Beds in HDU			
19	Is ICU available?			
20	Number of Beds in ICU			
21	Is the ICU well equipped			
A	Standard ICU bed			
B	Equipment/monitor for the constant monitoring for vitals			
C	Emergency crash cart			
D	Defibrillator			
E	Ventilators			
F	Suction pumps			
G	Bedside oxygen facility			
H	Air conditioning			
22	Is OT available?			
23	No of OT			
24	No of OT tables			
25	OT sterilization facility functional			
26	Adequate lights (general level illumination) is provided in each OT			
27	Air conditioning is provided in each OT			
28	Is the OT well equipped			
A	Anaesthetic machine			
B	Ventilator			
C	Laryngoscopes (Adult/Pediatric)			
D	Endotracheal tubes/laryngeal masks			
E	Airways/Nasal tubes			
F	Suction apparatus and connectors,			
G	Oxygen			
H	Drugs for emergency situations			
I	Monitoring equipment including ECG, ETCO2 (where applicable)			

J	Pulse oximeter and blood pressure			
K	Cardiac monitor			
L	Defibrillator			
29	Pathology/Diagnostics (Inhouse/Outsourced/Not Available)			
30	Availability of Biomedical Waste Management			
31	Overall hygiene maintained in the hospital (Good/Average/Poor)			
32	Any other remark or observation:			
C. Human Resource		Yes	No	Remarks
33	Availability of PMAM at the time of visit			
34	Availability of on duty doctors at the time of visit (Whatever applicable)			
A	RMO			
B	Emergency doctor			
C	ICU doctor			
35	Availability of adequate number of nurses at the time of visit			
36	Are the nurses appropriately qualified			
37	Availability of technicians (if applicable)			
38	Availability of pharmacists (if applicable)			
39	Availability of specialists for which claims are booked			
40	Any other remark or observation:			
D. Documentation		Yes	No	Remarks
41	Availability of IPD register at the time of visit			
42	Completeness of IPD register at the time of visit (should have entry and exit dates of the patient)			
43	Availability of OT register at the time of visit			
44	Completeness of OT register at the time of visit (Should have name of patient, date, procedure name, diagnosis, anaesthetist's name, OT technician's name, surgeon's name, operation remarks and signature of surgeon)			
45	Availability of fumigation register at the time of visit			
46	Completeness of fumigation register at the time of visit (Should have date and time of fumigation)			
47	Availability of pharmacy record at the time of visit			

48	Completeness of pharmacy record at hr time of visit (Should have information on patient name and dispensing date)			
49	Availability of laboratory records at the time of visit			
50	Completeness of laboratory records at the time of visit (Should have date, patient name, sample collection date and report received date and findings)			
51	Availability of implants and prosthesis register at the time of visit			
52	Completeness of implants and prosthesis register at the time of visit (if applicable) (Should have dates of dispensing, name of patient, name of consultant, site of insertion, procedure name and bar code stickers)			
53	Any other remark or observation:			
E. Case Specific Details		Yes	No	Remarks
54	Name of patient			
55	Package booked			
56	Name of Treating Doctor			
57	Specialization of treating doctor			
58	Date and time of Hospital Admission as per hospital file			
59	Date and time of Hospital Discharge as per hospital file			
60	Type of Treatment (Surgical/Medical)			
61	Diagnosis:			
62	Did the patient leave against medical advice			
63	If yes, why?			
64	Entry in Outdoor Register found			
65	Entry in Indoor Register found			
66	Entry in OT Register found (only in case of surgical case)			
67	Entry in Hospital Lab Register found			
68	Availability of IPD papers			
69	Completeness of IPD papers (Should have patient details, presenting complaints, diagnosis, investigations, treatment etc.)			
70	Do the IPD papers align with and justify the treatment given			
71	Availability and completeness of OT notes			

72	Completeness of OT notes (should be on hospital stationery and should have Date & time of beginning and completion of surgery, Name of surgeon, Name of Anaesthetist, Type of anaesthesia, Surgery done (site, side and findings), Immediate Post op care, any complications faced and Signature of surgeon.			
73	Do the OT notes align with and confirm the conduction of booked surgery			
74	Availability of pre-anaesthesia documents assessed by a qualified anaesthesiologist			
75	Availability of daily nursing notes			
76	Completeness of daily nursing notes (Should have date, status/ progress of patient as recorded by nurse)			
77	Availability of daily doctor notes			
78	Completeness of daily doctor notes (Should have date, status/progress of patient and further course of medication/ treatment as recorded by doctor)			
79	Availability of daily progress chart			
80	Completeness of daily progress chart (Should have record of vitals with date and time)			
81	Availability of daily treatment chart			
82	Completeness of daily treatment chart (Should have record of medication with date and time)			
83	Availability of details of recorded monitoring of heart rate, cardiac rhythm, respiratory rate, BP, O ² saturation, airway security, and potency and level of anaesthesia			
84	Availability of Discharge Summary			
85	Completeness of Discharge Summary			
86	Do all the documents align and justify the need of and treatment given? Explain with remarks.			
87	Any other remark or observation:			
F. Patient/Attendant interview in the Hospital (Live Audit)		Yes	No	Remarks
88	Name of patient			
89	Package booked			
90	Name of Treating Doctor			
91	Specialization of treating doctor			

92	Date and time of Hospital Admission as per hospital file			
93	Date and time of Hospital Discharge as per hospital file			
94	Type of Treatment (Surgical/Medical)			
95	Patient Photograph collected with ID card			
96	Patient Id's proof Collected			
97	What were the presenting complaints at the time of admission?			
98	Since when was he suffering from the symptoms?			
99	Was he referred from another hospital/clinic/doctor?			
100	If yes, please name the hospital/clinic/doctor			
101	When did the patient get admitted?			
102	Is the patient admitted since then?			
103	What diagnostic tests (if any) were performed on the patient?			
104	Was any surgery conducted for the patient?			
105	if yes, is there a scar on the body?			
106	Has any money been charged so far?			
107	If yes, how much?			
108	Do they have receipts of the same?			
109	Is there any previous hospitalization of same patient at the same hospital?			
110	Any other remark or observation:			

5. Medical Audit Report Format

The medical audit team shall record their findings and submit report in the format as mentioned below. The report should be submitted to the competent authority at the earliest.

<State Name> Field Visit/Medical Audit

Hospital Name, District

Date of Visit

Trigger:

No. of patients found v/s no. of patients shown admitted in the TMS

Infrastructure and Quality of care:

- ▶ Observation on infrastructure and quality of care (pics if any)

Human Resource

- ▶ Observation on Human Resource (pics if any)

Documentation

- ▶ Observation on record keeping and documentation (pics if any)

Specific cases (if any)

- 1 Name of beneficiary
AB PM-JAY id
Case no.
Date of Admission
Date of Discharge
Package Blocked
Findings
2. Name of beneficiary
AB PM-JAY id
Case no.
Date of Admission
Date of Discharge
Package Blocked
Findings

Key Findings and Observations

Conclusion

6. Field Investigation Format

A. Hospital Details				
1	Date of investigation			
2	Name of Hospital			
3	Address of Hospital			
4	Hospital ID (if available)			
5	Type of hospital (Public/Private)			
6	Number of AB PM-JAY beneficiaries admitted in the hospital as per TMS			
7	Number of AB PM-JAY beneficiaries admitted in the hospital			
B. Hospital Infrastructure		Yes	No	Remarks
8	Hospital Existence			
9	Response from Hospital (Co-operative/Non Co-operative/Indifferent)			
10	Is Hospital Registered DGHS			

11	Availability of PMAM kiosk			
12	Location of PMAM kiosk (Easily Visible/Far inside)			
13	Promotional boards prominently displayed			
14	Total no. of Beds			
15	Number of Beds in general ward			
16	Adequate distance (4 feet) maintained between two beds			
17	Is HDU available?			
18	Number of Beds in HDU			
19	Is ICU available?			
20	Number of Beds in ICU			
21	Is OT available?			
22	No. of OT			
23	No. of OT tables			
24	Pathology/Diagnostics (Inhouse/Outsourced/Not Available)			
25	Overall hygiene maintained in the hospital (Good/Average/Poor)			
26	Any other remark or observation:			
C. Human Resource		Yes	No	Remarks
27	Availability of PMAM at the time of visit			
28	Availability of on duty doctors at the time of visit (Whatever applicable)			
A	RMO			
B	Emergency doctor			
C	ICU doctor			
29	Availability of adequate number of nurses at the time of visit			
30	Availability of specialists for which claims are booked			
31	Any other remark or observation:			
D. Documentation		Yes	No	Remarks
32	Availability of IPD register at the time of visit			
33	Availability of OT register at the time of visit			
34	Availability of pharmacy record at the time of visit			
35	Availability of laboratory records at the time of visit			

36	Availability of implants and prosthesis register at the time of visit			
37	Any other remark or observation:			
E. Case specific details		Yes	No	Remarks
38	Name of patient			
39	Package booked			
40	Name of Treating Doctor			
41	Specialization of treating doctor			
42	Date and time of Hospital Admission as per hospital file			
43	Date and time of Hospital Discharge as per hospital file			
44	Type of Treatment (Surgical/Medical)			
45	Diagnosis:			
46	Did the patient leave against medical advice			
47	If yes, why?			
48	Entry in Outdoor Register found			
49	Entry in Indoor Register found			
50	Entry in OT Register found (only in case of surgical case)			
51	Entry in Hospital Lab Register found			
52	Availability of IPD papers			
53	Availability and completeness of OT notes			
54	Availability of pre-anaesthesia documents assessed by a qualified anaesthesiologist			
55	Availability of daily nursing notes			
56	Availability of daily doctor notes			
57	Availability of daily progress chart			
58	Availability of daily treatment chart			
59	Availability of Discharge Summary			
60	Any other remark or observation:			
F. Patient/Attendant interview in the Hospital (Live Audit)		Yes	No	Remarks
61	Name of patient			
62	Package booked			

63	Name of Treating Doctor			
64	Specialization of treating doctor			
65	Date and time of Hospital Admission as per hospital file			
66	Date and time of Hospital Discharge as per hospital file			
67	Type of Treatment (Surgical/Medical)			
68	Patient Photograph collected with ID card			
69	Patient Id's proof Collected			
70	What were the presenting complaints at the time of admission?			
71	Since when was he suffering from the symptoms?			
72	Was he referred from another hospital/clinic/doctor?			
73	If yes, please name the hospital/clinic/doctor			
74	When did the patient get admitted?			
75	Is the patient admitted since then?			
76	What diagnostic tests (if any) were performed on the patient?			
77	Was any surgery conducted for the patient?			
78	if yes, is there a scar on the body?			
79	Has any money been charged so far?			
80	If yes, how much?			
81	Do they have receipts of the same?			
82	Is there any previous hospitalization of same patient at the same hospital?			
83	Any other remark or observation:			

7. Home Visit Format

F. Home Visit: Patient/Attendent Interview after discharge		
Has s/he availed services under AB PM-JAY?* If yes proceed further	Yes	No
In which hospital did s/he utilize the services?*		
What were the presenting complaints at the time of admission?*		
Since when was he suffering from the symptoms?		
Was he referred from another hospital/clinic/doctor?	Yes	No
If yes, please name the hospital/clinic/doctor		

When did the patient get admitted?* (calendar)		
When did the patient get discharged?*" (calendar)		
Was s/he provided free food and travel allowance?*	Yes	No
Was the patient given a discharge summary?"	Yes	No
Was post-hospitalization medication provided to the patient?*	Yes	No
Was any money asked by the hospital at any point of time?*	Yes	No
If yes, then how much?*		
For what purpose was the money charged?*		
Do they have receipts of the same?"	Yes	No
Did they buy any medicine or did any diagnostic test at their own cost?*	Yes	No
Does the patient have any receipt for the same?*	Yes	
What was the treatment given?*		No
Was any surgery conducted for the patient?*	Yes	No
If yes, is there a scar on the body?*	Yes	No
Any other remark or observation:		

8. Mortality Report

Section 8.1. and 8.2. is to be filled by the hospitals and sent at the time of beneficiaries' death (within 48 hrs) and 8.3 to be submitted at claim submission by the hospital

8.1 Death Summary (A brief note)

- ▶ Hospital Name
- ▶ Hospital ID
- ▶ Patient ID (e-card number)
- ▶ Patient Characteristics
- ▶ Name
- ▶ Age
- ▶ Sex
- ▶ Length of Admission in days
- ▶ Clinical Diagnosis (es) on Admission

- ▶ Clinical diagnosis(es) on Death
- ▶ Emergency or Elective
- ▶ Date of Admission:
- ▶ Date of Death:

8.2 Progress of the patient during hospitalization

- ▶ Abnormal Investigations:
- ▶ Hematology, Biochemistry, Radiology, Microbiology Others
- ▶ What was the treatment provided?
- ▶ Were there any clinical errors, omissions, process problems that hindered the process of giving good quality care?
- ▶ Were there identifiable clinical risks/incidents?
- ▶ Were there any of the clinical risks/incidents due to delay in Diagnosis, Delay in Treatment, Medical Clinical Errors, Nursing Clinical Errors, Medication Errors, Process Errors
- ▶ Please give further details below
- ▶ Were all standard protocols followed?
- ▶ What according to the treating doctor is the cause of death and contributing factors?
- ▶ Any other remarks

8.3 The Hospital would prepare ‘MORTALITY REPORT’ as mentioned below

Section A: General Information

- ▶ Patient details:
- ▶ Name:
- ▶ Age:
- ▶ Sex:
- ▶ DOA:
- ▶ Date of Surgery:
- ▶ Diagnosis:
- ▶ Treatment given:
- ▶ Surgery/Procedure/Radiotherapy/Chemotherapy/Others (specify)
- ▶ Hospital name:
- ▶ Name of Treating Doctor

Section B: Case Summary

Please provide a summary of the Case in the form of narrative – including complaints at the time of admission, chronology of events up to death of the patient -

Section C: Case Assessment

1. Were there any areas of CONCERN or ADVERSE EVENTS in the management of this patient?
Yes/No
2. Was surgery performed? Yes/No
3. Were there any areas of Concern, or Adverse Events in any of the following?
Yes/No

Operation/procedure was performed, or treatment provided?	Yes	No	NA
Pre-anaesthetic checkup/fitness for surgery/treatment			
Decision to operate			
Choice of operation			
Timing of operation (too late, too soon, wrong time of day)			
Intra-operative process			
Problems in functioning of OT			
Grade/experience of surgeon deciding			
Grade/experience of surgeon operating			
Post-operative period			

4. Was this patient treated in a critical care unit (ICU or HDU) during this admission?
Yes/No
5. If no, should this patient have been provided critical care in ICU/HDU?
Yes/No

Clinician's Opinion on the overall risk of death

Minimal/Mild/Moderate/Severe

If there any areas of CONCERN or ADVERSE EVENTS in the management of this patient:

Describe the significant event/s during the course of treatment in the hospital:

Note any areas of concern or Adverse Event

Note if these areas caused any of the following:

Made no difference to outcome _____

May have contributed to death _____

Caused death of patient who would otherwise be expected to survive _____

Was the death preventable? (i) Definitely (ii) Probably (iii) Probably not (iv) Definitely not (v) Don't know

Section D: Record of cause of death Hospital mortality review findings

Primary cause of death: _____

ICD code: _____

Secondary cause of death: _____

ICD Code: _____

Antecedent cause of death: _____

ICD code: _____

FINAL RECOMMENDATIONS (if any) OF THE MORTALITY REVIEW

1. _____

2. _____

3. _____

Attestation by:

S.No.	Name	Designation	Signature
1			
2			
3			

Date:

9. Mortality Audit Report (By SHA)

Section A: General Information

Patient details:

Name:

Age:

Sex:

Pre-auth No.:

DOA:

DOD:

Diagnosis:

Reviewing Doctor:

Please provide a summary of the Case in the form of narrative

Section B: Case Note Assessment

Were there any areas of CONSIDERATION, of CONCERN or ADVERSE EVENTS in the management of this patient?

Yes

No

1 Describe the most significant event:

Was surgery performed? Yes No

Were there any Areas of Consideration, of Concern, or Adverse Events in any of the following areas if an operation was performed?

Discussion points	Yes	No	N/A
Pre anaesthetic check-up/fitness for surgery			
Decision to operate			
Choice of operation			
Timing of operation (too late, too soon, wrong time of day)			
Intra-operative process			
Problems in functioning of OT			
Grade/experience of surgeon deciding			
Grade/experience of surgeon operating			
Post-operative period			

If yes above, provide details of

Area of:

Consideration

Concern

Adverse Event

Which:

Made no difference to outcome

May have contributed to death

Caused death of patient who would otherwise be expected to survive

Was it preventable?

Definitely

Probably

Probably not

Definitely not

Don't know

Please provide evidence to support your statements given above by referring to specific points relating to any investigation reports or progress of the patient, treatment provided etc., which substantiate your observations

2 Describe the second most significant event:

Area of:

Consideration Concern

Adverse Event

Which:

Made no difference to outcome

May have contributed to death

Caused death of patient who would otherwise be expected to survive

Was it preventable?

Definitely

Probably

Probably not

Definitely not

Don't know

Please provide evidence to support your statements given above by referring to specific points relating to any investigation reports or progress of the patient, treatment provided etc., which substantiate your observations

3 Describe the third most significant event:

Area of:

Consideration Concern

Adverse Event

Which:

Made no difference to outcome

May have contributed to death

Caused death of patient who would otherwise be expected to survive

Was it preventable?

Definitely

Probably

Probably not

Definitely not

Don't know

Please provide evidence to support your statements given above by referring to specific points relating to any investigation reports or progress of the patient, treatment provided etc., which substantiate your observations

Hospital mortality report review findings:

Record the cause of death (as given)

Conclusion:

Primary cause of death: _____

ICD code: _____

Secondary cause of death: _____

ICD Code: _____

Antecedent cause of death: _____

ICD code: _____

Was there enough information to come to a conclusion?

Yes No

If NO, what information was lacking?

Payment:

Pre-auth approved amount:

Amount Claimed:

Amount Recommended:

Name of the first line assessor:

Designation Date:

Signature

10. BIS Investigation Form

A. Patient Information

1. AB PM-JAY FAMILY ID: _____
2. Name:
3. Father's or Husband's name:
4. Address:
District: _____ State: _____ Pin Code: _____
5. Contact No.:
6. Members registered:

Sl.No.	Name	AB PM-JAY ID number	Gender	Age	Relationship
1.					
2.					
3.					
4.					
5.					
6.					

B. General Information

1. Where was the E card made?
2. If hospital, was the beneficiary charged any money for the E card? If yes, how much?
3. Has he/she availed services under AB PM-JAY? If yes -proceed further
4. In which hospital did s/he utilize the services?
5. What symptoms were the patient exhibiting when he/she visited the hospital?
6. When did he/she get admitted?
7. When did he/she get discharged?

8. For how many days was he/she hospitalized?
9. Was he/she provided free food?
10. What was the treatment given?
11. If any surgery, is there a scar on the body, which could help in verification of the surgery. (If yes, take photograph of the same)

(4 -11: match the information provided by the beneficiary with the one recorded in the TMS)

C. Match the photo of the beneficiary being interviewed with the one submitted in TMS

D. Any other remark or observation:

E. Recommendation of the Auditor:

Name and Signature of the Auditor with Date:

11. Beneficiary Audit Form

A. Patient Information

1. AB PM-JAY FAMILY ID; _____

2. Name:

3. Father's or Husband's name:

4. Address:

District:

State:

Pin Code:

5. Contact No.:

6. Members registered:

Sl.No.	Name	AB PM-JAY ID number	Gender	Age	Relationship
1.					
2.					
3.					
4.					
5.					
6.					

B. General Information

1. Where was the e-card made?

2. If hospital, was the beneficiary charged any money for the e-card? If yes, how much?

3. Has s/he availed services under AB PM-JAY? If yes -proceed further
4. In which hospital did s/he utilize the services?
5. What symptoms were the patient exhibiting when he/she visited the hospital?
6. When did s/he get admitted?
7. When did s/he get discharged?
8. For how many days was s/he hospitalized?
9. Was s/he provided free food?
10. What was the treatment given?
11. If any surgery, is there a scar on the body, which could help in verification of the surgery. (If yes, take photograph of the same)

(4 -11: match the information provided by the beneficiary with the one recorded in the TMS)

C. Match the photo of the beneficiary being interviewed with the one submitted in TMS

D. Any other remark or observation:

E. Recommendation of the auditor:

Name and signature of the auditor with date:

ANNEXURE 4

Sample Templates of Letters

1. Letter for Show Case Notice

Letter head of SHA/Insurance company

Letter number: Place,

Date

To

<Name of Hospital>

<Address>

<District, State>

Dear Sir/Ma'am,

Subject: Show Cause Notice to <name of the hospital> with reference to the agreement signed with SHA/Insurance Company dated <_>

The State Health Agency, <State Name>, has conducted medical audit of claims submitted by your hospital and/or field investigation, during which following irregularities/breaches were observed:

- ▶ Observations related to Infrastructure/Human resource/Quality of care/Patient Grievances/ others
- ▶ Observations specific to cases
 - ❖ Name
 - ❖ AB PM-JAY id:
 - ❖ Package booked:
 - ❖ Admission date:
 - ❖ Discharge date:
 - ❖ Observations:

You are thus hereby been called upon, to immediately reply to this notice within 5 days from receipt of this notice and provide all the details available with yourself pertaining to the breach/irregularities as stated above. The response should be shared to above email address and via registered post at above mentioned address, failing which we will be bound to take further necessary action as per the existing guidelines and under the provisions of applicable laws of India which may be civil and/or criminal in nature against you in the competent court of law at your risk and cost without any further correspondence.

Kindly ensure that your explanation is complete, accurate and supported by sufficient documentary proofs as may be required.

No response, inadequate response or response unsubstantiated by accurate evidences/documents within the stipulated time period will not be considered and would lead to suspension of your hospital from the provider network of AB PM-JAY as well as initiation of legal and disciplinary proceedings as per AB PM-JAY guidelines and applicable laws.

This is without prejudice to all other legal rights and remedies available to SHA for the above stated purpose.

This Notice is issued with approval of Competent Authority.

Your Sincerely

Letter head of SHA/Insurance company

Letter number: Place,

Date

To

<Name of Hospital>

<Address>

<District, State>

Dear Sir/Ma'am,

Subject: W.r.t. Show Cause Notice to <name of the hospital> with reference to the agreement signed with SHA/Insurance Company dated <_> and suspension for <_> months The State Health Agency, <State Name>, has conducted random audit of claims submitted by your hospital and/or field investigation, during which following irregularities were observed:

- ▶ Observations related to Infrastructure/Human resource/Quality of care/Patient Grievances/ others
- ▶ Observations specific to cases
 - ❖ Name
 - ❖ AB PM-JAY ID:
 - ❖ Package booked:
 - ❖ Admission date:
 - ❖ Discharge date:
 - ❖ Observations:

In lieu of above observations and as per AB PM-JAY guidelines, your hospital is suspended from providing services under AB PM-JAY for <__> months till further investigation and due diligence is completed and final decision by competent authority is arrived at. However, treatment of existing patients will continue as usual till they are discharged.

You are thus hereby been called upon, to immediately reply to this notice within 5 days and provide all the details available with yourself pertaining to the breach/irregularities as stated above. The response should be shared to above email address and via registered post at above mentioned address, failing

which we will be bound to take further necessary action as per the existing guidelines and under the provisions of applicable laws of India which may be civil and/or criminal in nature against you in the competent court of law at your risk and cost without any further correspondence.

Kindly ensure that your explanation is complete, accurate and supported by sufficient documentary proofs as may be required.

No response, inadequate response or response unsubstantiated by accurate evidences within the stipulated time period will not be considered and will lead to initiation of legal and disciplinary proceedings as per AB PM-JAY guidelines and applicable laws.

This is without prejudice to all other legal rights and remedies available to SHA for the above stated purpose.

This Notice is issued with approval of Competent Authority.

Your Sincerely

Copy to:

CEO, National Health Authority

Principal Secretary Health, <State name>

Letter head of SHA/Insurance company

2. Suspension Letter

Letter number: Place,

Date

To

<Name of Hospital>

<Address>

<District, State>

Dear Sir/Ma'am,

Subject: suspension for <____> months, w.r.t. Show Cause Notice to <name of the hospital>, dated <____>

This is with reference to show cause notice issued to your hospital dated <____> and response received thereof dated <____>. The explanation provided by your hospital and evidences submitted were not found satisfactory on below mentioned grounds- Therefore, as per AB PM-JAY guidelines, your hospital is suspended from providing services under AB PM-JAY for <____> months. However, treatment of existing patients will continue as usual till they are discharged.

This is without prejudice to all other legal rights and remedies available to SHA for the above stated purpose.

This Notice is issued with approval of Competent Authority.

Your Sincerely

Letter head of SHA/Insurance company

Letter number: Place,

Date

To

<Name of Hospital>

<Address>

<District, State>

Dear Sir/Ma'am,

Subject: suspension for <_> months and Penalty of INR _____ levied, w.r.t. Show Cause Notice to <name of the hospital>, dated <____>

This is with reference to show cause notice issued to your hospital dated <__> and response received thereof dated <__>. The explanation provided by your hospital and evidences submitted were not found satisfactory on below grounds.

Therefore, as per AB PM-JAY guidelines, your hospital is suspended from providing services under AB PM-JAY for <__> months. However, treatment of existing patients will continue as usual till they are discharged. And a penalty amount of INR____ is also levied on your hospital. The details are mentioned as below:

Please note penalty to the amount of INR_____ is being recovered against the pending claims of your hospital. You are further directed to deposit INR _____, within 7 working days of receipt of this notice via demand draft in favor of ' _____ ' or NEFT/RTGS to <Bank name>, <account number><IFSC code>. In case NEFT/RTGS is being used for depositing the amount, the hospital shall provide the Unique Transaction ID to SHA office. Failure to deposit the aforesaid amount in stipulated time period further suitable disciplinary actions would be taken as per AB PM-JAY guidelines.

This is without prejudice to all other legal rights and remedies available to SHA for the above stated purpose.

This Notice is issued with approval of Competent Authority.

Your Sincerely

Letter head of SHA/Insurance company

3. Penalty Letter

Letter number: Place,

Date

To

<Name of Hospital>

<Address>

<District, State>

Dear Sir/Ma'am,

Subject: Penalty of INR _____ levied W.r.t. Show Cause Notice to <name of the hospital>, dated <____> This is with reference to show cause notice issued to your hospital dated <__> and response received thereof dated <__>. The explanation provided by your hospital and evidences submitted were not found satisfactory on below grounds Therefore, as per AB PM-JAY guidelines, a penalty amount of INR____ is levied on your hospital.

The details are mentioned as below – Please note penalty to the amount of INR_____ is being recovered against the pending claims of your hospital. You are further directed to deposit INR _____, within 7 working days of receipt of this notice via demand draft in favor of ' _____ ' or NEFT/RTGS to <Bank name>, <account number><IFSC code>. In case NEFT/RTGS is being used for depositing the amount, the hospital shall provide the Unique Transaction ID to SHA office.

Failure to deposit the aforesaid amount in stipulated time period will lead to suspension of the hospital from providing services to AB PM-JAY beneficiaries till the time entire penalty amount is deposited.

This is without prejudice to all other legal rights and remedies available to SHA for the above stated purpose.

This Notice is issued with approval of Competent Authority.

Your Sincerely

Letter head of SHA/Insurance company

4. De-empanelment Letter

Letter number: Place,

Date

To

<Name of Hospital>

<Address>

<District, State>

Dear Sir/Ma'am,

Subject: De-empanelment of <hospital name>, W.r.t. Show Cause Notice to <name of the hospital>, dated <____> This is with reference to the suspension order dated <__>, the case was heard by SEC on <____>. The synopsis of the case is mentioned as below - The Right of being heard was accorded to yourself and after considering the evidence produced in front of the committee and arguments by both parties, the competent authority is of the view that your hospital could not defend the irregularities highlighted and it is established that the hospital has violated AB PM-JAY guidelines and/or applicable laws. Therefore, the competent authority has decided to De-empanel your hospital from the provider network of AB PM-JAY with immediate effect. However, treatment of existing patients will continue as usual till they are discharged. This is without prejudice to all other legal rights and remedies available to SHA for the above stated purpose.

This Notice is issued with approval of Competent Authority.

Your Sincerely

Letter head of SHA/Insurance company

Letter number: Place,

Date

To

<Name of Hospital>

<Address>

<District, State>

Dear Sir/Ma'am,

Subject: De-empanelment of <hospital name> and Penalty of INR<___>, W.r.t. Show Cause Notice to <name of the hospital>, dated <___>

This is with reference to the suspension order dated <___>, the case was heard by SEC on <___>.

The synopsis of the case is mentioned as below:

The Right of being heard was accorded to yourself and after considering the evidence produced in front of the committee and arguments by both parties, the competent authority is of the view that your hospital could not defend the irregularities highlighted and it is established that the hospital has violated AB PM-JAY guidelines and/or applicable laws Therefore, the competent authority has decided to De-empanel your hospital from the provider network of AB PM-JAY with immediate effect. However, treatment of existing patients will continue as usual till they are discharged.

Also, a penalty amount of INR___ is also levied on your hospital. The details are mentioned as below - Please note penalty to the amount of INR_____ is being recovered against the pending claims of your hospital. You are further directed to deposit INR _____, within 7 working days of receipt of this notice via demand draft in favor of '_____' or NEFT/RTGS to <Bank name>, <account number><IFSC code>. In case NEFT/RTGS is being used for depositing the amount, the hospital shall provide the Unique Transaction ID to SHA office. Failure to deposit the aforesaid amount in stipulated time period further suitable disciplinary and legal actions would be taken as per AB PM-JAY guidelines and/or as per applicable laws.

This is without prejudice to all other legal rights and remedies available to SHA for the above stated purpose.

This Notice is issued with approval of Competent Authority.

Your Sincerely

ANNEXURE 5

Important Definitions Under the Indian Penal Code

1. **Cheating:** Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat". (Section 415, IPC)

2. **Criminal Conspiracy:** When two or more persons agree to do, or cause to be done,— (1) an illegal act, or (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy: Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation. – It is immaterial whether the illegal act is the ultimate object of such agreement or is merely incidental to that object. (Section 120A, IPC)

3. **Dishonestly:** Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly". (Section 24, IPC)

4. **Document:** The word "document" denotes any matter expressed or described upon any substance by means of letters, figures, or marks, or by more than one of those means,

intended to be used, or which may be used, as evidence of that matter.

Explanation 1. – It is immaterial by what means or upon what substance the letters, figures or marks are formed, or whether the evidence is intended for, or may be used in, a Court of Justice, or not. Illustrations: A writing expressing the terms of a contract, which may be used as evidence of the contract, is a document. A cheque upon a banker is a document. A power-of-attorney is a document. A map or plan which is intended to be used or which may be used as evidence, is a document.

Explanation 2. – Whatever is expressed by means of letters, figures or marks as explained by mercantile or other usage, shall be deemed to be expressed by such letters, figures or marks within the meaning of this section, although the same may not be actually expressed.

Illustration: A writes his name on the back of a bill of exchange payable to his order. The meaning of the endorsement, as explained by mercantile usage, is that the bill is to be paid to the holder. The endorsement is a document and must be construed in the same manner as if the words "pay to the holder" or words to that effect had been written over the signature. (Section 29, IPC)

5. **Electronic record:** The words "electronic record" shall have the meaning assigned to them in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000. (Section 29A, IPC)

6. **Forgery:** [Whoever makes any false documents or false electronic record or part of a document or electronic record with intent to cause damage or injury], to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery. (Section 463, IPC)
7. **Fraudulently:** A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise. (Section 24, IPC)
8. **Good faith:** Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention. (Section 52, IPC)
9. **Injury:** The word "injury" denotes any harm whatever illegally caused to any person, in body, mind, reputation or property. (Section 44, IPC)
10. **Movable property:** The words "movable property" are intended to include corporeal property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth. (Section 22, IPC)
11. **Valuable Security:** The words "valuable security" denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished or released, or where by any person acknowledges that he lies under legal liability, or has not a certain legal right.
- Illustration:**
- A person writes his name on the back of a bill of exchange. As the effect of this endorsement is transfer the right to the bill to any person who may become the lawful holder of it, the endorsement is a "valuable security". (Section 30 IPC)
12. **Voluntarily:** A person is said to cause an effect "voluntarily" when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it. (Section 39, IPC)
- Illustration**
- A sets fire, by night, to an inhabited house in a large town, for the purpose of facilitating a robbery and thus causes the death of a person. Here, A may not have intended to cause death; and may even be sorry that death has been caused by his act; yet, if he knew that he was likely to cause death, he has caused death voluntarily. (Section 29, IPC)
13. **Wrongful gain:** "Wrongful gain" is gain by unlawful means of property to which the person gaining is not legally entitled. (Section 23, IPC)
14. **Wrongful loss:** "Wrongful loss" is the loss by unlawful means of property to which the person losing it is legally entitled. (Section 23, IPC)

ANNEXURE 6

Links to Access the Bare Acts

1. **The Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016**
https://uidai.gov.in/images/targeted_delivery_of_financial_and_other_subsidies_benefits_and_services_13072016.pdf
2. **The Companies Act, 2013**
<https://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf>
3. **The Drugs and Cosmetic Act, 1940- Section 18: Prohibition of manufacture and sale of certain drugs and cosmetics.**
<http://legislative.gov.in/sites/default/files/A1940-23.pdf>
4. **The Indian Contract Act, 1872**
<http://legislative.gov.in/actsofparliamentfromtheyear/indian-contract-act-1872>
<http://legislative.gov.in/sites/default/files/A1872-09.pdf>
5. **The Indian Penal Code 1860**
<https://www.indiacode.nic.in/bitstream/123456789/4219/1/THE-INDIAN-PENAL-CODE-1860.pdf>
6. **The Information Technology Act, 2000**
<https://www.indiacode.nic.in/bitstream/123456789/1999/3/A2000-21.pdf>
7. **The Mental HealthCare Act, 2017**
<http://egazette.nic.in/WriteReadData/2017/175248.pdf>
8. **The National Medical Commission Act, 2019**
https://www.indiacode.nic.in/bitstream/123456789/11820/1/a2019___30.pdf
9. **The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994**
<http://pnadt.gov.in/WriteReadData/l892s/PC-PNDT%20ACT-1994.pdf>
10. **The Prevention of Corruption Act, 1988**
<http://legislative.gov.in/sites/default/files/A1988-49.pdf>
11. **The Transplantation of Human Organs and Tissues Act, 1994 (THOAT Act 1994)**
<http://legislative.gov.in/sites/default/files/A1994-42.pdf>
12. **Professional Conduct, Etiquette and Ethics) Regulations, 2002, Medical Council of India**
<https://www.mciindia.org/documents/rulesAndRegulations/Ethics%20Regulations-2002.pdf>

ANNEXURE 7

Clauses Under Agreements with Insurance Company or ISA

All the agreements/MoUs with hospitals, insurance companies, ISAs and TPAs shall include definition of fraud as mentioned in Anti-fraud guidelines-Anti- Fraud Guidelines. It shall also include the steps to be taken if a fraud is detected and confirmed.

Below mentioned are the clauses that should be included in the agreements with the insurance company and the ISA as per model tender document issued by NHA-available at <https://pmjay.gov.in/resources/documents>.

Fraud Control and Management

- a) The insurer is expected to have the capability to develop a comprehensive fraud control system for the scheme; which shall at the minimum include regular monitoring, data analytics, e-cards audit, medical audit, field investigation, hospital audit, corrective action etc. It shall comply with provisions of AB PM-JAY Anti-Fraud Guidelines and Advisories as issued from time to time.
- b) For an indicative (not exhaustive) list of fraud triggers that may be automatically and on a real-time basis be tracked. The Insurer shall have capacities and track the indicative (not exhaustive) triggers and it can add more triggers to the list.
- c) For all trigger alerts related to possible fraud at the level of EHCPs, the Insurer shall take the lead in immediate investigation of the case in close coordination and under constant supervision of the SHA.
- d) Investigations pursuant to any such alert shall be concluded within 07 (seven) days and all final decision related to outcome of the investigation and consequent penal action, if the fraud is proven, shall vest solely with the SHA.
- e) The SHA shall take all such decision within the provisions of the Insurance Contract, AB PM-JAY Anti-Fraud Guidelines, Recovery Guidelines and Advisories etc. and be founded on the Principles of Natural Justice and as per applicable laws.
- f) The SHA shall on an ongoing basis measure the effectiveness of anti-fraud measures in the scheme through a set of indicators.
- g) The Insurer shall be responsible for monitoring the implementation of the AB-PM-JAY in the State.
- h) In the event of a fraudulent claim being made or a false statement or declaration being made or used in support of a fraudulent claim or any fraudulent means or device being used by any Empanelled Health Care Provider or the TPA or other intermediary hired by the Insurer or any of the beneficiaries to obtain any benefits under this Insurance Contract or any Policy issued by the Insurer (each a Fraudulent Activity), then the Insurer's sole remedies as per the approval of SHA shall be to:
 - i. Refuse to honour a fraudulent claim or claim arising out of fraudulent activity or reclaim all benefits paid in respect of a fraudulent claim or any fraudulent activity relating to a claim from the Empanelled Health Care Provider and/or any entity that has undertaken or participated in a fraudulent activity;

- ii. take disciplinary action against the Empanelled Healthcare Provider that has made a fraudulent claim or undertaken or participated in any unethical practice, including but not limited to issuing show cause notice, levying penalties as per provisions or refer for suspension or de-empanelment to the State Empanelment Committee, with the procedure specified in De-empanelment guidelines available at <https://pmjay.gov.in/sites/default/files/2020-06/Empanelment-and-De-empanelment-guidelines.pdf>
- iii. Terminate the services agreement with the intermediary appointed by the Insurer.

provided that the Insurer keeps the SHA informed of actions taken by it along with details thereof.
- iv. The State Health Agency shall have the right to conduct a random audit of any or all cases in which the Insurer has exercised such remedies against an Empanelled Health Care Provider and/or any beneficiary. If the State Health Agency finds that the Insurer has wrongfully de-empanelled an Empanelled Health Care Provider, then the Insurer shall be required to reinstate such benefits to such Empanelled Health Care Provider.
- i) The Insurer hereby releases and waives all rights or entitlements to:

Make any claim for damages and/or have this Insurance Contract or any Policy issued under this Insurance Contract declared null and void; or as a result of any fraudulent Claim by or any Fraudulent Activity of any Empanelled Health Care Provider.

ANNEXURE 8

Relevant Legal Provisions

1. The Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016

Section 34 Penalty for impersonation at time of enrolment.

Whoever impersonates or attempts to impersonate another person, whether dead or alive, real or imaginary, by providing any false demographic information or biometric information, shall be punishable with imprisonment for a term which may extend to three years or with a fine which may extend to ten thousand rupees or with both.

Section 35 Penalty for impersonation of Aadhaar number holder by changing demographic information or biometric information.

Whoever, with the intention of causing harm or mischief to an Aadhaar number holder, or with the intention of appropriating the identity of an Aadhaar number holder changes or attempts to change any demographic information or biometric information of an Aadhaar number holder by impersonating or attempting to impersonate another person, dead or alive, real or imaginary, shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to a fine which may extend to ten thousand rupees.

Section 36 Penalty for impersonation

Whoever, not being authorised to collect identity information under the provisions of this Act, by words, conduct or demeanour pretends that he is authorised to do so, shall be punishable with imprisonment for a term which may extend to

three years or with a fine which may extend to ten thousand rupees or, in the case of a company, with a fine which may extend to one lakh rupees or with both.

Section 37 Penalty for disclosing identity information

Whoever, intentionally discloses, transmits, copies or otherwise disseminates any identity information collected in the course of enrolment or authentication to any person not authorised under this Act or regulations made thereunder or in contravention of any agreement or arrangement entered into pursuant to the provisions of this Act, shall be punishable with imprisonment for a term which may extend to three years or with a fine which may extend to ten thousand rupees or, in the case of a company, with a fine which may extend to one lakh rupees or with both.

Interpretation and application

If during the course of AB PM-JAY enrolment and Aadhaar seeding of beneficiaries or at the any other stage of transaction during under AB PM-JAY it is found that the Aadhaar Card provided by individuals for enrolment are likely be a case of impersonation, or any other offence that may fall within the ambit of sections 34, 35, 36 and 37 of this Act, in addition to other actions and remedies that the SHA may want to undertake, SHA may forward complaint(s) to the Unique Identification Authority of India for action(s) under these sections.

Illustrative Scenarios

1. Individual presents a forged Aadhaar Card for enrolment under AB PM-JAY.

2. VLE tampers with an existing Aadhaar Card to empanel ghost beneficiaries or ineligible beneficiaries.

2. The Companies Act, 2013: Section 213 – Investigation into company’s affairs in other cases

⁴[The Tribunal may:

- (a) on an application made by:
 - (i) not less than one hundred members or members holding not less than one-tenth of the total voting power, in the case of a company having a share capital; or
 - (ii) not less than one-fifth of the persons on the company's register of members, in the case of a company having no share capital, and supported by such evidence as may be necessary for the purpose of showing that the applicants have good reasons for seeking an order for conducting an investigation into the affairs of the company; or
- (b) on an application made to it by any other person or otherwise, if it is satisfied that there are circumstances suggesting that:
 - (i) the business of the company is being conducted with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive to any of its members or that the company was formed for any fraudulent or unlawful purpose;
 - (ii) persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members; or
 - (iii) the members of the company have not been given all the information with respect to its affairs which they might reasonably expect, including information relating to the calculation of the commission payable

to a managing or other director, or the manager, of the company, order, after giving a reasonable opportunity of being heard to the parties concerned, that the affairs of the company ought to be investigated by an inspector or inspectors appointed by the Central Government and where such an order is passed, the Central Government shall appoint one or more competent persons as inspectors to investigate into the affairs of the company in respect of such matters and to report thereupon to it in such manner as the Central Government may direct:

Provided that if after investigation it is proved that:

- (i) the business of the company is being conducted with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose, or that the company was formed for any fraudulent or unlawful purpose; or
- (ii) any person concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, then, every officer of the company who is in default and the person or persons concerned in the formation of the company or the management of its affairs shall be punishable for fraud in the manner as provided in section 447.

Interpretation and application

1. Whereas the Company’s Act, 2013 primarily governs the formation and governance of an entity registered under this Act, section 213 sub clause (b) (i) deals with complaints related to fraudulent and unlawful acts of a company.
2. If an empanelled hospital, registered as a company under this Act, conducts any act that the SHA determines to be fraud, the SHA may approach the National Company Law Tribunal (NCLT) with an application under section 213(b) requesting appropriate actions against the fraudulent acts.

⁴ w.e.f. 01.06.2016 by vide Notification No. SO1934(E) dated 01.06.2016.

3. Such applications under Section 213(b) can implicate the hospital as an entity committing fraud under sub-clause 213(b)(i) and also implicate its directors and office bearers.
4. Complaints using this provision, if taken cognizance of by the NCLT, may, if allegations are proven true, attract punishments u/s 447, 448, 449, 450 and 451 of the Company's Act, 2013.

3. The Companies Act, 2013: Section 447 – Punishment for Fraud

⁵[Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud ⁶[involving an amount of at least ten lakh rupees or one per cent of the turnover of the company, whichever is lower], shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud:

Provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.

⁶[Provided further that where the fraud involves an amount less than ten lakh rupees or one per cent of the turnover of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to ⁷[fifty lakh rupees] or with both.]

Explanation: For the purposes of this section:

- (i) "fraud" in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact

⁵ This shall be effective from date 12th September 2013 as notified vide Notification No. 1/15/2013-CL.V.

⁶ Inserted by the Companies (Amendment) Act, 2017 w.e.f. 09.02.2018 vide Notification No. 1/1/2018-CL-I dated 09.02.2018.

⁷ Substituted by Companies (Amendment) Act, 2019, w.e.f. 02.11.2018 for the following: - "twenty lakh rupees".

or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss;

(ii) "wrongful gain" means the gain by unlawful means of property to which the person gaining is not legally entitled;

(iii) "wrongful loss" means the loss by unlawful means of property to which the person losing is legally entitled.]

Interpretations and application

1. The explanation to Section 447 above may prima facie read as related to affairs of a company, but when read in conjunction with section 213, the SHA can submit and present to the NCLT that frauds under AB PM-JAY 'involves public interest' and appropriate punishment be awarded.
2. Proceedings under this Act shall be independent of any other civil or criminal remedies that the SHA may seek.

Note: Many hospitals are registered as not for profit societies or trusts. It may be noted that statutes that govern societies and trusts do not have a similar provisions.

4. The Companies Act, 2013: Section 449 – Punishment for False Evidence

⁸[Save as otherwise provided in this Act, if any person intentionally gives false evidence- (a) upon any examination on oath or solemn affirmation, authorized under this Act; or (b) in any affidavit, deposition or solemn affirmation, in or about the winding up of any company under this Act, or otherwise in or about any matter arising under this Act, he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and with fine which may extend to ten lakh rupees.]

⁸ This shall be effective from date 12th September 2013 as notified vide Notification No. 1/15/2013-CL.V.

Interpretations and application

1. This section sets forth the punishment for “any matter arising out of this Act”. This will also include matters related to section 213 (b) (i) of this Act “*Investigation into company’s affairs in other cases*”.
2. If SHA proceeds with a complaint against a hospital u/s 213 to the NCLT, and if in response the hospital submits an evidence that is proven to be false, the hospital may be liable for punishment u/s 449.

5. The Companies Act, 2013: Section 450 – Punishment where no specific penalty or punishment is provided

⁸[If a company or any officer of a company or any other person contravenes any of the provisions of this Act or the rules made thereunder, or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in this Act, the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to ten thousand rupees, and where the contravention is continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues.]

Interpretations and application

If SHA’s complaint under against any hospital/ vendor (registered as a legal entity under this Act) u/s 213(b)(i) is accepted by the NCLT, and for that offence if no penalty is stipulated anywhere under this Act, punishment prescribed u/s 450 of this Act may apply.

6. The Companies Act, 2013: Section 451 –Punishment in case of Repeated Default

⁸[If a company or an officer of a company commits an offence punishable either with fine or with imprisonment and where the same offence is committed for the second or subsequent occasions

within a period of three years, then, that company and every officer thereof who is in default shall be punishable with twice the amount of fine for such offence in addition to any imprisonment provided for that offence.]

Interpretations and application

Punishment under this section will be applicable for repeated defaults.

7. The Drugs and Cosmetic Act, 1940- Section 18: Prohibition of manufacture and sale of certain drugs and cosmetics

From such date⁹ as may be fixed by the State Government by notification in the Official Gazette in this behalf, no person shall himself or by any other person on his behalf:

- (a) ¹⁰[manufacture for sale or for distribution, or sell, or stock or exhibit or offer for sale,] or distribute:
 - (i) ¹¹[any drug which is not of a standard quality, or is misbranded, adulterated or spurious;
 - (ii) ¹²[any cosmetic which is not of a standard quality, or is misbranded, adulterated or spurious;]
 - (iii) ¹³[any patent or proprietary medicine, unless there is displayed in the prescribed

9 1st April, 1947, for sub-clauses (i), (ii), (iv) and (v) of clause (a) and clauses (b) and (c); 1st April, 1949 for sub-clause (iii) of clause (a) in so far as it takes effect in Delhi, Ajmer and Coorg, see Notification No. 18-12-46-D, II, dated 11th February, 1947, Gazette of India, 1947, Pt. 1, p. 189, as amended by Notification No. F.I-2/48-D(II), dated 29th September, 1948; 1st April, 1953 for the States of Himachal Pradesh, Bilaspur, Kutch, Bhopal, Tripura, Vindhya Pradesh and Manipur, vide Notification No. S.R.O. 664, dated 30th March, 1953, Gazette of India, 1953, Pt. II, Section 3, p. 451.

10 Substituted by Act 68 of 1982, Section 14, for "manufacture for sale, or sell, or stock or exhibit for sale" (w.e.f. 1-2-1983).

11 Substituted by Act 68 of 1982, Section 14, for clause (i), (ii) and (iia) (w.e.f. 1-2-1983) earlier clause (iia) was inserted by Act 13 of 1964, Section 13 (w.e.f. 15-9-1964).

12 Substituted by the drugs and cosmetics (amendment) act 2008 for the following:- "(ii) any cosmetic which is not of a standard quality or is misbranded or spurious;]"

13 Substituted by Act 11 of 1955, Section 9, for sub-clause (iii).

manner on the label or container thereof¹⁴[the true formula or list of active ingredients contained in it together with the quantities, thereof];]

- (iv) any drug which by means of any statement, design or device accompanying it or by any other means, purports or claims¹⁵[to prevent, cure or mitigate] any such disease or ailment, or to have any such other effect as may be prescribed;
 - (v)¹⁶[any cosmetic containing any ingredient which may render it unsafe or harmful for use under the directions indicated or recommended;
 - (vi) any drug or cosmetic in contravention of any of the provisions of this Chapter or any rule made thereunder;]
- (b)¹⁴[sell, or stock or exhibit or offer for sale,] or distribute any drug¹⁷[or cosmetic] which has been imported or manufactured in contravention of any of the provisions of this Act or any rule made thereunder;
- (c)¹⁴[manufacture for sale or for distribution, or sell, or stock or exhibit or offer for sale,] or distribute any drug¹⁴[or cosmetic], except under, and in accordance with the conditions of, a licence issued for such purpose under this Chapter:

Provided that nothing in this section shall apply to the manufacture, subject to prescribed conditions, of small quantities of any drug for the purpose of examination, test or analysis:

Provided further that the¹⁸[Central Government] may, after consultation with the Board, by notification in the Official Gazette, permit, subject to any conditions specified in the notification, the¹⁹[manufacture for sale or for distribution,

14 Substituted by Act 68 of 1982, Section 14, for certain words (w.e.f. 1-2-1983).

15 Substituted by Act 11 of 1955, Section 9, for "to cure or mitigate".

16 Substituted by Act 21 of 1962, Section 14, for sub-clause (v) (w.e.f. 27-7-1964).

17 Inserted by Act 21 of 1962, Section 14 (w.e.f. 27-7-1964).

18 Substituted by Act 11 of 1955, Section 9, for "State Government".

19 Substituted by Act 68 of 1982, Section 14, for "manufacture for sale, sale" (w.e.f. 1-2-1983).

sale, stocking or exhibiting or offering for sale] or distribution of any drug or class of drugs not being of standard quality.

Interpretation and application

1. If any hospital empanelled under AB PM-JAY administers any drug or supplies that is prohibited under The Drugs and Cosmetics Act, 1940, the SHA may report such cases to the relevant authorities under this Act.
2. And further, if the SHA determines with adequate evidence that administration of such medicines by the hospital is a part of an intentional design for any wrongful gain, financial or otherwise, it may also be treated as a fraudulent act and attract criminal provisions under relevant sections of the IPC.

8. The Drugs and Cosmetic Act, 1940- Section 27: Penalty for manufacture, sale, etc., of drugs in contravention of this Chapter

²⁰[Penalty for manufacture, sale, etc., of drugs in contravention of this Chapter

Whoever, himself or by any other person on his behalf, manufactures for sale or for distribution, or sells, or stocks or exhibits or offers for sale or distributes:

- (a) any drug deemed to be adulterated under section 17A or spurious under section 21[17B and which] when used by any person for or in the diagnosis, treatment, mitigation, or prevention of any disease or disorder is likely to cause his death or is likely to cause such harm on his body as would amount to grievous hurt within the meaning of section 320 of the Indian Penal Code (45 of 1860), solely on account of such drug being adulterated or spurious or not of standard quality, as

20 Section 27 Substituted by Act 13 of 1964, Section 18 (w.e.f. 15-9-1964) and again Substituted by Act 68 of 1982, Section 22 (w.e.f. 1-2-1983).

21 Substituted by the drug and cosmetics (amendment) act 2008 dated 05.12.2008 for the figures, letter and words "17B or which".

the case may be, shall be ²²[punishable with imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine which shall not be less than ten lakh rupees or three times value of the drugs confiscated, whichever is more:]

²³[Provided that the fine imposed on and released from, the person convicted under this clause shall be paid, by way of compensation, to the person who had used the adulterated or spurious drugs referred to in this clause:

Provided further that where the use of the adulterated or spurious drugs referred to in this clause has caused the death of a person who used such drugs, the fine imposed on and realised from, the person convicted under this clause, shall be paid to the relative of the person who had died due to the use of the adulterated or spurious drugs referred to in this clause.

Explanation: For the purposes of the second proviso, the expression "relative" means:

- (i) spouse of the deceased person; or
- (ii) a minor legitimate son, and unmarried legitimate daughter and a widowed mother; or
- (iii) parent of the minor victim; or
- (iv) if wholly dependent on the earnings of the deceased person at the time of his death, a son or a daughter who has attained the age of eighteen years; or
- (v) any person, if wholly or in part, dependent on the earnings of the deceased person at the time of his death:
 - a. the parent; or
 - b. a minor brother or an unmarried sister; or
 - c. a widowed daughter-in-law; or

22 Substituted by the drug and cosmetics (amendment) act 2008 dated 05.12.2008 for the words "punishable with imprisonment for a term which shall not be less than five years but which may extend to a term of life and with fine which shall not be less than ten thousand rupees";.

23 Inserted by the drug and cosmetics (amendment) act 2008 dated 05.12.2008.

- d. a widowed sister; or
- e. a minor child of a pre-deceased son; or
- f. a minor child of a pre-deceased daughter where no parent of the child is alive; or
- g. the paternal grandparent if no parent of the member is alive;]

(b) any drug:

- a. deemed to be adulterated under section 17A, but not being a drug referred to in clause (a), or
- b. without a valid licence as required under clause (c) of section 18, shall be punishable with imprisonment for a term which shall ²⁴[not be less than three years but which may extend to five years and with fine which shall not be less than one lakh rupees or three times the value of the drugs confiscated, whichever is more:]

Provided that the Court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of ²⁵[less than three years and of fine of less than one lakh rupees;]

- (c) any drug deemed to be spurious under section 17B, but not being a drug referred to in clause (a) shall be punishable with imprisonment for a term which shall ²⁶[not less than seven years but which may extend to imprisonment for life and with fine which shall not be three lakh rupees or three times the value of the drugs confiscated, whichever is more:]

Provided that the Court may, for any adequate and special reasons, to be recorded in the

24 Substituted by the drug and cosmetics (amendment) act 2008 dated 05.12.2008 for the words "not be less than one year but which may extend to three years and with fine which shall not be less than five thousand rupees".

25 Substituted by the drug and cosmetics (amendment) act 2008 dated 05.12.2008 for the words "less than one year and of fine of less than five thousand rupees".

26 Substituted by the drug and cosmetics (amendment) act 2008 dated 05.12.2008 for the words "not be less than three years but which may extend to five years and with fine which shall not be less than five thousand rupees".

judgment, impose a sentence of imprisonment for a term of ²⁷[less than seven years but not less than three years and of fine of less than one lakh rupees];

(d) any drug, other than a drug referred to in clause (a) or clause (b) or clause (c), in contravention of any other provision of this Chapter or any rule made thereunder, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to two years ²⁸[and with fine which shall not be less than twenty thousand rupees]:

Provided that the Court may for any adequate and special reasons to be recorded in the judgment impose a sentence of imprisonment for a term of less than one year.

Interpretation and application

1. Any empanelled hospital that administers adulterated or spurious drugs to patients that is likely to cause death or bodily harm is tantamount to grievous hurt as defined under section 320 of the IPC (45 of 1860) and will attract a severe penalty of not less than 10 years of imprisonment which may extend to life and a fine not less than INR 10 lakhs or three times the value of drugs confiscated, whichever is more.
2. For any such event that may be detected during routine monitoring, patient complaint for adverse events or during medical audit or any other means, the SHA may seek appropriate actions as a complainant to the authority prescribed under this Act.
3. If such an act is intentional and fraud can be proven relevant sections of the IPC shall also apply.
4. Further, the SHA may initiate complaints to the relevant authority for cancellation of wholesale license, retail licence, and narcotics license issued under the provisions of Rules promulgated under this Act.

27 Substituted by the drug and cosmetics (amendment) act 2008 dated 05.12.2008 for the words "less than three years but not less than one year."

28 Substituted by the drug and cosmetics (amendment) act 2008 dated 05.12.2008 for the words "and with fine."

9. The Indian Contract Act, 1872: Section 17 – Fraud Defined

"Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract: -

- (1) the suggestion, as a fact, of that which is not true by one who does not believe it to be true;
- (2) the active concealment of a fact by one having knowledge or belief of the fact;
- (3) a promise made without any intention of performing it;
- (4) any other act fitted to deceive;
- (5) any such act or omission as the law specially declares to be fraudulent.

Explanation: Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech.

Note: There are 4 illustrations provided in the Statute which have not been reproduced here.

Interpretations and application

1. Essential ingredients for establishing fraud under this provision are:
 - a. There must be an assertion or misrepresentation.
 - b. Assertion or misrepresentation must relate to a fact.
 - c. It must be made with the knowledge that the assertion is false.
 - d. It must induce another party to act upon that assertion.
 - e. The other person should suffer from some loss or injury, economic or otherwise.
2. It is important to understand the difference between **fraud** and **misrepresentation**:
 - a. **Fraud** is a wilful misrepresentation. The person, at the time of representing, is fully conscious and aware that

the representation being made is incorrect.

Misrepresentation is a bonafide and genuine representation which is false – a statement made by one party *believing it to be true*. There is no intent to deceive. Such representations are innocent or negligent, not fraudulent.

Section 18 of the The Indian Contract Act, 1872 defines misrepresentation as:

“Misrepresentation” means and includes

- (1) *the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;*
 - (2) *any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him; by misleading another to his prejudice, or to the prejudice of any one claiming under him;*
 - (3) *causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.*
3. Section 17 of this Act can be invoked only by parties that have entered into a contract for offering goods or services associated with the design, administration and implementation of AB PM-JAY.

Examples

- a. SHA and a hospital that are parties to a contract for delivering services under AB PM-JAY.
 - b. An Insurance Company/ISA/TPA has a contract with SHA.
 - c. An agency/individual that has entered into a contract with NHA/SHA for offering goods and services related to AB PM-JAY.
4. Proceedings under this section can be initiated if any of the conditions set forth in sub-clauses 17(1) to 17(5) of The Indian Contract Act, 1872 is met.

INSIGHTS

Often the words ‘contract’ and ‘agreement’ are used interchangeably. At times confusion persists on which is the right.

“What agreements are contracts. – *All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.*”

Section 10, The Indian Contract Act, 1872

Illustrative scenarios

1. Doctor D, employed in Hospital H, prepares medical records for a procedure that was never done on a patient P. D is aware of this. D does so on the behest of the management representative of H. D hands over such medical records to the PMAM for submitting claims. D, at the time of handing over the documents, knew that the procedure has not been undertaken. Claim is paid by the SHA.

Case analysis

- a. D presents the case records as a fact while he knew that it is not true – section 17(1)
- b. D has actively concealed that the procedure was not done – section 17(2)
- c. The act of H and D was with the intention to deceive the SHA – section 17(4)
- d. D has forged medical records – it’s an act that is fraudulent under law – section 17(5)
- e. This is a suitable case for prosecution under different sections of the Indian Penal Code (discussed in the following sections).
- f. In addition, if H fails to pay the compensation and damages stipulated in the contract with SHA, SHA may seek legal remedies for compensation:
 - i. u/s 73 of the Indian Contract Act, 1872 if the compensation amount is not indicated in the contract between SHA and H; or

- ii. u/s 74 of the Indian Contract Act, 1872 if the compensation for such fraudulent acts are mentioned in the contract between SHA and H.
2. *Hospital H, at the time of application for empanelment, represents that it has a full time anaesthetist employed with it, whereas on the date of application there was no such full time anaesthetist employed. SHA empanels H.*

Case analysis:

- a. Willing and intentional misrepresentation by H made it eligible for empanelment and the SHA believing it to be true, empanels H and signs a contract.
 - b. Conditions of sections 17(1) and 17(2) of this Act appear to be fulfilled here.
 - c. This is fraud as defined under this Section. If H fails to pay the compensation and damages stipulated in the contract with SHA, SHA may seek legal remedies for compensation under Sections 73/74 of the Indian Contract Act, 1872.
 - d. Relevant sections of the IPC may also be applicable if the factual matrix of this case meets the essential ingredients of such sections under the IPC.
3. ISA, at the time of reviewing claims, detects that there are there are discrepancies in the claims submitted by hospital H. H instigates ISA to cover up the fact against some financial consideration. ISA recommends payment of claims to the SHA. SHA releases the payment to H.

Case analysis

- a. ISA has a contract with SHA. By forwarding the claim for payment, the ISA has made the suggestion to pay the claims - section 17(1).
- b. It has also concealed from the SHA that the claims are fraudulent – section 17(2).
- c. By releasing payment to H, SHA has suffered a loss.
- d. ISA has committed fraud u/s 17 of The Indian Contract Act, 1872.
- e. If ISA fails to pay the compensation and damages stipulated in the contract with

SHA, SHA may seek legal remedies for compensation:

- i. u/s (under section) 73 of the Indian Contract Act, 1872 if the compensation amount is not indicated in the contract between SHA and H; or
- ii. u/s 74 of the Indian Contract Act, 1872 if the compensation for such fraudulent acts are mentioned in the contract between SHA and H.

10. The Indian Contract Act, 1872: Section 73 – Compensation for loss or damage caused by the breach of contract

Compensation for loss or damage caused by a breach of contract. When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

Compensation for failure to discharge obligation resembling those created by contract - When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.

Explanation. In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

*Note: There are 18 illustrations provided in the Statute that have not been reproduced here. For better understanding of the applications of this Section, one may refer to these illustrations in the statute. **One limitation is that none of the***

illustration pertains to “compensation for failure to discharge obligations resembling those created by contract”.

Interpretations and application

1. Usually section 73 of The Indian Contract Act, 1872 is applied when for any breach of contract the quantum of compensation is not quantified in the contract itself. The breach, of course, has to be proven. Measure of damage and remoteness of damage are the two principles usually considered at the time of such decisions.

Note: All breach of contract may not be fraud until the intention to defraud is inherent in that breach and is proven.

2. In the context of AB PM-JAY or any State health insurance scheme, usually compensation and penalties against defaults are specified in the contract between the SHA and the service provider, which could be a TPA or an ISA or an Insurance Company or any other provider of goods or services. In such cases section 74 of The Indian Contract Act, 1872 shall apply, instead of section 73.

Illustrative scenarios

1. *Hospital H signs a contract with the SHA for offering pre-identified surgical procedures at pre-agreed prices. The contract is valid for 3 years. While the contract remains valid, the prices of implants and surgical supplies increase. H refuses to conduct certain procedures. It refuses patients coming for such procedures by misrepresenting to the patient that the services are not covered under the scheme.*

Case analysis

- a. H has a valid contract with SHA. Under the contract H is obliged to offer services to scheme beneficiaries as per the Scheme guidelines.
- b. H refuses to treat a patient. H breaks its promise to offer services. This is failure to discharge obligations under the contract.
- c. H must pay to SHA, by way of compensation, a sum equal to the difference between the contract price and the price for which SHA

could secure similar service, if no penalty for refusing to treat patients is provided in the contract.

- d. This is a case of breach of contract, which is not necessarily fraud, unless it is proven that H wilfully misrepresented to the patient that services are not available, thereby causing loss to the patient.
2. *SHA has empanelled Hospital H for undertaking procedures related to Radiation Oncology and a valid contract exists between H and the SHA. It is observed that for a certain period, say 3 months, there are no pre-authorisations for procedures under this specialisation.*

Case analysis

- a. H is intentionally not undertaking procedures for the said specialisation. This act may be deemed as fraud if the intention to not treat is proven.
- b. Such an act is surely a failure to discharge obligation.
- c. If required, remedies under Section 73 of this Act may be considered. Such an act may also be deemed as fraudulent and attract criminal proceedings under different sections of the IPC if there is adequate evidence to substantiate that not accepting cases under this specialization is an “**intentional**” act.

Such cases may arise when a hospital gets empanelment but undertakes only those procedures that are high-priced and turns away cases for such procedures for which the package price is not deemed to be attractive by the hospital.

11. The Indian Contract Act, 1872: Section 74 – Compensation for breach of contract where penalty stipulated for

²⁹[When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been

²⁹ Substituted by Act 6 of 1899, section 4, for the first paragraph of section 74.

caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.

Explanation: A stipulation for increased interest from the date of default may be a stipulation by way of penalty.]

Exception: When any person enters into any bail bond, recognizance or other instrument of the same nature or, under the provisions of any law, or under the orders of the ³⁰[Central Government] or of any ³¹[State Government], gives any bond for the performance of any public duty or act in which the public are interested, he shall be liable, upon breach of the condition of any such instrument, to pay the whole sum mentioned therein.

Explanation: A person who enters into a contract with Government does not necessarily thereby undertake any public duty, or promise to do an act in which the public are interested.

Note: There are 7 illustrations provided in the Statute that have not been included here. For better understanding of the applications of this Section, one may refer to these illustrations in the statute.

Interpretations and application

1. If the SHA has satisfactory evidence to establish beyond doubt that breach of contract has happened, as per the provisions of the contract, it can demand the defaulting party to pay the compensation and/or penalties as stipulated in the contract.
2. Section 74 of The Indian Contract Act, 1872 can be used in such circumstances of breach/fraud where the contracted party refuses to pay the compensation and/or penalty as stipulated in the contract, and the SHA intends to seek for legal remedies for the same.
3. In addition, depending on the circumstances of the case, and SHA may also seek criminal remedies under different sections of the IPC in the event that intention to defraud is traced to its inception.

30 Substituted by the A.O. 1937, for "Government of India".

31 Inserted by the A.O. 1950, for "Provincial Government".

INSIGHTS

1. All breach of contract does not culminate into cheating.
2. Not paying the penalty in response to a notice from the SHA, is not always fraud, unless the intent to not pay is established.
3. If the intent to not pay is established, for criminal matter, criminal proceedings can also be initiated under the relevant provisions of the IPC.

Illustrative scenarios

1. *PMAM, employed by a hospital H, intentionally issues an e-card to an ineligible beneficiary. The contract between the H and the SHA stipulates a penalty of INR 1000/- for every fake card generated and a recovery of 300% of amount utilized against that card. Claim for this beneficiary is settled for INR 35,000. SHA detects the facts after payment and issues a notice for recovery of INR 106,000 from H. H is not paying the penalty.*
2. *SHA contracts a hospital H. The contract stipulates that in the event of H charging any money from any scheme beneficiary, H shall be liable to fully refund the amount charged to the beneficiary, and in addition pay to SHA a penalty of an amount equivalent to five times the money charged from the beneficiary. SHA sends a notice to H to this effect. H is not paying the penalty.*

Analysis: In both these scenarios, section 74 will be applicable as a **breach has occurred where the penalty is stipulated for** in the contract.

12. The Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002: Section 1.3: Maintenance of Medical Records

- 1.3.1 Every physician shall maintain the medical records pertaining to his/her indoor patients for a period of 3 years from the date of commencement of the treatment in a standard proforma laid down by the Medical Council of India and attached as Appendix 3.
- 1.3.2 If any request is made for medical records either by the patients/authorised attendant

or legal authorities involved, the same may be duly acknowledged and documents shall be issued within the period of 72 hours.

1.3.3 A Registered medical practitioner shall maintain a Register of Medical Certificates giving full details of certificates issued. When issuing a medical certificate he/she shall always enter the identification marks of the patient and keep a copy of the certificate. He/She shall not omit to record the signature and/or thumb mark, address and at least one identification mark of the patient on the medical certificates or report. The medical certificate shall be prepared as in Appendix 2.

1.3.4 Efforts shall be made to computerize medical records for quick retrieval.

Interpretations and application

1. This will be applicable for all professionals registered under the Indian Medical Council Act, 1956 who, while undertaking any procedure under the AB PM-JAY, create and maintain fraudulent medical reports, certificates, and other documents for submitting false pre-authorisation requests or false claims.
2. All such cases should be referred to the Medical Council of India or the State Medical Council or any such body under the National Medical Commission Act, 2019 that replaces such existing councils, for punishment and disciplinary actions under section 8 of this Regulation.

Note: This may be replaced as and when regulations under the newly legislated National Medical Commission Act, 2019 are notified and this existing regulation is repealed.

13. The Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002: Section 7.6 Sex Determination Tests

On no account sex determination test shall be undertaken with the intent to terminate the life of a female foetus developing in her mother's womb, unless there are other absolute indications for termination of pregnancy as specified in the Medical Termination of Pregnancy Act, 1971. Any

act of termination of pregnancy of normal female foetus amounting to female foeticide shall be regarded as professional misconduct on the part of the physician leading to penal erasure besides rendering him liable to criminal proceedings as per the provisions of this Act.

Interpretations and application

1. This will be applicable for all professionals registered under the Indian Medical Council Act, 1956 who, while undertaking any procedure under the AB PM-JAY, violate any provision of this Act.
2. All such cases should be referred to the Medical Council of India or the State Medical Council or any such body under the National Medical Commission Act, 2019 that replaces such existing councils, for punishment and disciplinary actions under section 8 of this Regulation.

Note: This may be replaced as and when regulations under the newly legislated National Medical Commission Act, 2019 are notified and this existing regulation is repealed.

14. The Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002: Section 7.7 Signing professional certificates, reports and other documents

Registered medical practitioners are in certain cases bound by law to give, or may from time to time be called upon or requested to give certificates, notification, reports and other documents of similar character signed by them in their professional capacity for subsequent use in the courts or for administrative purposes, etc. Such documents, among others, include the ones given at Appendix - 4. Any registered practitioner who is shown to have signed or given under his name and authority any such certificate, notification, report or document of a similar character which is untrue, misleading or improper, is liable to have his name deleted from the Register.

Interpretations and application

1. This will be applicable for all professionals registered under the Indian Medical Council

Act, 1956 who, while undertaking any procedure under the AB PM-JAY, fraudulently sign medical reports, certificates, and other documents for submitting false pre-authorisation requests or false claims; or sign on any such fraudulent records, or assists in creating such fraudulent records.

2. All such cases should be referred to the Medical Council of India or the State Medical Council or any such body under the National Medical Commission Act, 2019 that replaces such existing councils, for punishment and disciplinary actions under section 8 of this Regulation.

Note: This may be replaced as and when regulations under the newly legislated National Medical Commission Act, 2019 are notified and this existing regulation is repealed.

15. The Indian Penal Code 1860, Section 34: Act done by several persons in furtherance of common intention

³²[Act done by several persons in furtherance of common intention

When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if they were done by him alone.]

Interpretations and application

1. Section 34 IPC is a rule of evidence. By itself, it does not create a substantive offence.
2. The term ‘intention’ in this section may be interpreted as *intention to defraud for unlawful gains*. This section will be applicable when more than one person with a common intention are involved in any act. This is best understood by a Supreme Court judgement:

“Section 34 lays down a principle of joint liability in the doing of a criminal act. The absence of that liability is to be found in the existence of common intention animating the accused leading to the doing of a criminal act in furtherance of such intention. The

³² Substituted by Act 27 of 1870, section 1, for the original section.

distinct feature of Section 34 is the element of participation in action. The common intention implies acting in concert, existence of a pre-arranged plan which is to be proved either from conduct or from circumstances or from any incriminating facts.”

Ramashish Yadav and Ors. vs. State of Bihar (1999) 8 SCC 555

Even if the intention is same, but not shared in advance – it cannot be interpreted as ‘common’.

3. This section may be invoked, in addition to other substantive charges, for all such instances of fraud under AB PM-JAY when two or more actors of fraud are acting in collusion and connivance **with a common intention**, irrespective of the nature and severity of alleged fraud.
4. All actors involved will be equally liable, irrespective of whether their action was overt or covert, that is, even if one was not present on the site where the crime occurred.
5. Evidence to prove section 34 IPC may be based on facts and circumstances of the case from which common intention has to be inferred.

“We reiterate that for common intention, there could rarely be direct evidence. The ultimate decision, at any rate would invariably depend upon the inference deducible from the circumstances of each case.”

Jhinku Nai v. State of U.P., AIR 2001 SC

Illustrative scenarios

1. An empanelled hospital H enters into a conspiracy with scheme beneficiary B. They connive and file false claims under the Scheme for procedures that were never undertaken on B. SHA pays such claims.

Case analysis

- a. This is an act of cheating pursuant to common intention of both H and B.
- b. There may be criminal conspiracy as well (section 120B IPC).
- c. In this scenario H and B have a common intention (to fraudulently earn money

by cheating the government), there is a pre-arranged plan and they have acted in concert.

- d. In this example substantive charge will be u/s 420 IPC (cheating), 120B IPC (criminal conspiracy), read with section 34 (act done by several person in furtherance of common intention).
 - e. It may be noted that if H did this act without the knowledge of B (B has no *mens rea*, that is no intention), B would not be guilty of any offence. In such circumstances, section 34 IPC or section 120B IPC will not apply.
2. *A member M of a District Empanelment Committee colludes with a hospital H to secure empanelment of the hospital, which otherwise would be ineligible under the Scheme, under an understanding that say 10% of every claim amount will be paid by H to M.*

Case analysis

- a. Both M and H have a common intention of fraudulently earning money.
- b. M and H are guilty of cheating (u/s 420 IPC) and criminal conspiracy (u/s 120B IPC).
- c. There is more than one person involved. There is a common intention that is known to both M and H. They act in furtherance of a common intention. So, the charges u/s 420/120B IPC can be read with 34 IPC.

Note: The nature of charge changes significantly if M is a 'public servant'. Refer to the interpretation and scenarios under The Prevention of Corruption Act (PCA) 1988 and Annexure 9 for details and for understanding who within the AB PM-JAY structure may fall within the ambit of the PCA, 1988.

16. The Indian Penal Code 1860, Section 35: When such an act is criminal by reason of its being done with a criminal knowledge or intention

Whenever an act, which is criminal only by reason of its being done with a criminal

knowledge or intention, is done by several persons, each of such persons who joins in the act with such knowledge or intention is liable for the act in the same manner as if the act were done by him alone with that knowledge or intention.

Interpretations and application

1. Like section 34 of IPC, section 35 is a rule of evidence for fixing liability, and not a substantive offence.
2. Fundamental difference between section 34 and section 35 IPC is that while in the former, the specific act of offence is the same for all parties involved, in the latter the acts for which they will be punished are distinctly different.
3. Therefore, sentencing for each individual involved will correspond to offences for acts each one have individually done to effectuate the overall criminal offence.

Illustrative scenario

An empanelled hospital H enters into a conspiracy with scheme beneficiary B. They connive and file false claims under the Scheme for procedures that were never undertaken on B. SHA reimburses the claim.

Case analysis

- a. Let's build upon the same scenario discussed for section 34. Both M and H have a common intention of fraudulently earning money.
- b. The acts of H and B are distinctly different, though intention is the same. Whereas, B lends his identity to H, H makes a false representation and submits forged claims to the SHA.
- c. So, whereas H can be accused of offence u/s 420 IPC, B may plead that he has merely lent his identity and was not involved in the act of submitting fraudulent claims to the SHA.
- d. Therefore, the charge would read something like H and B are guilty of offences u/s 420 and 120B, read with sections 34 and 35 IPC.

17. The Indian Penal Code 1860, Section 36: Effect caused partly by act and partly by omission

Wherever the causing of a certain effect, or an attempt to cause that effect, by an act or by an omission, is an offence, it is to be understood that the causing of that effect partly by an act and partly by an omission is the same offence.

Illustration

A intentionally causes Z's death, partly by illegally omitting to give Z food, and partly by beating Z. A has committed murder.

Interpretations and application

1. This section sets forth the principle that legal consequence of omission to do an act is the same as doing the act.
2. The omission has to be intentional, and the person omitting to do the act should be aware of the consequences of his inaction.
3. In the context of AB PM-JAY, such omissions may be done by different levels of actors involved in the Beneficiary Identification System (BIS) module, within the hospital and within the SHA.

Illustrative scenarios

1. *Claims Panel Doctor (CPD) employed by the ISA is aware that there are glaring infirmities in the claim document submitted by hospital H. CPD knows that this is a fraudulent claim but chooses to ignore. H's claim is paid by the SHA.*

Case analysis

- a. CPD is aware that this is a fraudulent claim.
- b. CPD is aware of the consequences that if not the case is not reported to the SHA, there is likely to be a wrongful loss to the SHA through reimbursing a fraudulent claim.
- c. Despite knowing this, the CPD does not act as he should have to prevent the occurrence of this offence.

- d. CPD is equally guilty of cheating through **this act of omission** as through this inaction or omission, CPD facilitates the offence of H cheating the SHA. **In so far as omission is concerned, intention is of no consequence.**
- e. Therefore, CPD is guilty of offence u/s 420 read with section 36 IPC, that is, cheating by omission.
- f. H may be prosecuted for offence of forgery (u/s 463 IPC) punishable u/s 465 IPC.

2. *Hospital H admits a scheme beneficiary B for treatment. B's condition is critical and demands intensive care. Instead of shifting B to the ICU, H continues to keep the patient in a general ward and intends to raise claims that cover ICU charges. During hospitalization, B dies. H submits to SHA a claim that includes ICU charges.*

Case analysis

- a. B dies on account of H's omission to shift B to ICU (of course, this has to be proven as leading to the loss/death).
- b. H may be guilty of offence u/s 304 IPC (culpable homicide not amounting to murder) and 304A (causing death by negligence) of the IPC. It may be noted that sections 304 and 304A IPC do not deal with fraud, but the fraudulent intent and act of submitting a forged claim (sections 420, 464, 465 IPC) read with section 36 IPC (act of omission – not to provide ICU care) led to B's death, thereby making H liable for prosecution also u/s 304 and 304A IPC.

3. *A staff S of SHA is aware that hospital H has submitted a forged document and misrepresented facts in its application to the empanelment committee. S does not report this to the empanelment committee. SHA empanels H.*

Case analysis

- a. H is guilty of forgery (u/s 463 IPC) punishable u/s 465 IPC, and cheating u/s 420 IPC, among various other charges that

may be applicable given the circumstances of the case.

- b. S will also be liable for the same offence of forgery and cheating u/s 465 and 420 IPC read with section 36 IPC (act of omission).

18. The Indian Penal Code 1860, Section 107: Abetment of a thing

Abetment of a thing: A person abets the doing of a thing, who –

First: Instigates any person to do that thing; or

Secondly: Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly: Intentionally aids, by an act or illegal omission, the doing of that thing.

Explanation 1: A person who, by willful misrepresentation, or by willful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration: A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B knowing that fact and also that C is not Z, willfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2: Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

Interpretations and application

1. Essential ingredients of ‘abetment’ as interpreted by the Supreme Court of India are:

“Abetment involves a mental process of instigating a person or intentionally aiding a

person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained.”

Gangula Mohan Reddy v. State of A.P. (2010) 1 SCC 750

2. Further, Section 108 of the IPC explains who an abettor is:

Abettor: A person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

Explanation 1: The abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act.

Explanation 2: To constitute the offence of abetment it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

Note: Illustrations provided in the statute have not be reproduced here.

3. As per this section, abetting can be done through instigation, conspiracy and aiding.
4. Essential ingredients of ‘instigation’ as interpreted by The Supreme Court of India are:

“Instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out.”

Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618

5. Conspiracy basically means an agreement between two or more persons to commit an unlawful act.

Illustrative scenarios

1. Hospital H instigates a specialist doctor D in conspiracy for using D's name as the treating doctor, despite actual service not being given by D. D agrees. Beneficiary is treated by a general physician in the hospital, and D signs off on all medical records. H submits the claims to the SHA with medical records that have D's signature.

Case analysis:

- a. In this case D abets H.
- b. The provisions of this section can be attracted to bring charges against both H and D.
- c. Engagement of D and H in conspiracy results in the illegal act against the beneficiary and the government.
- d. Charges:

Charges on both H & D	Additional charges solely on H	Additional charges solely on D
u/s 420 IPC (cheating) u/s 120B IPC (criminal conspiracy) u/s 34 (act done by several persons in furtherance of common intention)	u/s 464 IPC (making a false document)	u/s 107 IPC (abetment) u/s 114 IPC: (abettor present when offence is committed)

2. Other examples of abetment by aiding a person to do a thing:
 - a. PMAM in a hospital H aids in uploading fraudulent claims on the TMS.
 - b. A local elected representative aids an individual A in getting a certificate that fraudulently creates A's eligibility for the scheme and secures an e-card.

19. Indian Penal Code 1860, Section 120A: Definition of Criminal Conspiracy

Definition of Criminal Conspiracy When two or more persons agree to do, or cause to be done,-

- (1) an illegal act, or
- (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation: It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

Interpretations and application

1. There are three essential ingredients of criminal conspiracy:
 - a. there should be minimum two people involved;
 - b. there should be an agreement between them; and
 - c. the agreement must be to do either an illegal act or an act by illegal means.

Verbal agreement is also an agreement.

2. "Unlike other criminal offences which require simultaneous occurrence of *actus reus* (that is an act or conduct) and *mens rea* (ill will or criminal intent), criminal conspiracy is made punishable at the stage of *mens rea*"³³ The is further evidenced by the following Supreme Court Judgement:

"The gist of the offence of criminal conspiracy is in the agreement to do an illegal act or an act which is not illegal by illegal means. When the agreement is to commit an offence, the agreement itself becomes the offence of criminal conspiracy."

Pramatha Nath Taluqdar vs. Saroj Ranjan Sarkar, AIR 1962 SC 876

Illustrative scenarios

1. Hospital H and its employee doctor D agree to submit a pre-authorisation request for a ghost beneficiary. D generates fake medical reports

³³ Kalra, K. Criminal Conspiracy. Law Times Journal, available at <http://lawtimesjournal.in/criminal-conspiracy-2/>

and submits the pre-authorization request. Fraud analytics system of the SHA detects this case as suspect. Pre-authorization request is withheld and immediate investigation into the case reveals that the request was for a fake beneficiary.

Case analysis

- a. In this scenario, H and D have agreed to generate false claims for unlawful gains.
 - b. As a part of their agreement, both H and D have together developed a plan.
 - c. Both of them are aware of the intent.
 - d. Both H and D have committed an offence of criminal conspiracy u/s 120A of the IPC punishable u/s 120B of the IPC read with section 34 of the IPC.
 - e. In addition to the above, D may also be booked u/s 107 for abetting the crime.
 - f. H may be reported to the NCLT u/s 213(b) of The Companies Act, 2013 for fraudulent business practices, if it is registered under the Companies Act.
2. Refer to Scenario 1 under Section 34 IPC for another case illustration on criminal conspiracy.
 3. A VLE and a beneficiary B plan to use fake documents for generating e-cards of a large number of individuals under the same family ID. Both the VLE and B are aware of the intention.

Case analysis

- a. In this scenario, VLE and B have agreed to create false documents to enable inclusion of persons in the scheme, who are otherwise ineligible for the benefits.
- b. Both VLE and B can be deemed to have committed an offence of criminal conspiracy u/s 120A IPC, liable for punishment u/s 120B IPC.
- c. VLE forges the documents. So the VLE can additionally be charged for forging documents u/s 465 (punishment for forgery), one can alternately consider trying VLE u/s 467 IPC for forgery of valuable security. Whereas the punishment u/s 465 IPC is imprisonment

up to 2 years or fine or both; u/s 467 the punishment is significantly more severe to include “imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine”. Whether the charges u/s 467 can be sustained or not by the prosecution in a court of law, will depend on the factual matrix of the case, how strong the defense is, and judicial interpretation by the bench. Refer to our interpretation of section 467 on forging valuable security in later part of this Annexure.

20. The Indian Penal Code 1860, Section 120B: Punishment of Criminal Conspiracy

³⁴[Punishment of criminal conspiracy

1. Whoever is a party to a criminal conspiracy to commit an offence punishable with death, ³⁵[imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.
2. Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.]

Interpretations and application

1. Whereas section 120A IPC defines “criminal conspiracy”, this section 120B IPC deals with punishment of criminal conspiracy.
2. Section 120(1) IPC deals with offences where punishment is death or life imprisonment or rigorous imprisonment. It is highly unlikely and remote that such possibilities will arise under the AB PM-JAY. Most of the fraudulent acts under AB PM-JAY are likely to

³⁴ Inserted by Act 8 of 1913, section 3.

³⁵ Substituted by Act 26 of 1955, section 117 and Schedule, for “transportation for life” (w.e.f. 1-1-1956.)

attract punishment u/s 120B(2) IPC, subject to evidences being available to prove the offence.

3. This provision of criminal conspiracy is best understood from the following two judicial pronouncements:

“The essential ingredients of the offence of criminal conspiracy are: (i) an agreement between two or more persons; (ii) the agreement must relate to doing or causing to be done either (a) an illegal act; or (b) an act which is not illegal in itself but is done by illegal means. It is therefore, plain that meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means is *sine qua non* of criminal conspiracy.”

Rajiv Kumar v. State of U.P., (2017) 8 SCC 791

“The offence of conspiracy to commit a crime is different offence from the crime that is the object of the conspiracy because the conspiracy precedes the commission of the crime and is complete before the crime is attempted or completed, equally the crime attempted or completed does not require the element of conspiracy as one of its ingredients they are, therefore quite separate offence.”

Leo Roy Frey V. Suppdt. Distt. Jail (AIR 1958 SC 119)

Illustrative scenarios

Refer to illustrative scenarios presented u/s 120A IPC, as this section 120B IPC is the punishment for all such offences committed u/s 120A.

21. The Indian Penal Code 1860, Section 170: Personating a public servant

Whoever pretends to hold any particular office as a public servant, knowing that he does not hold such office or falsely personates any other person holding such office, and in such assumed character does or attempts to do any act under colour of such office, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Interpretations and application

1. In addition to any offence committed by anybody and liable under the corresponding sections of the IPC, if a person commits fraud by impersonating as a public servant, s/he shall also be liable for prosecution u/s 170 IPC.

Illustrative scenario

1. Hospital H has large outstanding due from the SHA. Getting to know of this from some source or the other, a person P, who is not a public servant, presents to hospital H that she is a public servant working in the SHA. P offers to get all pending payments released, and in return demand money from H. H, believing P to be a public servant, pays the money.

Case analysis

- a. P personates a public servant working in SHA. She does so knowingly.
- b. She acts and demands money in the assumed character of a public servant.
- c. In addition to the charges u/s 416 and 419 IPC, P will also be liable for prosecution u/s 170 IPC for personating a public servant.

22. The Indian Penal Code 1860, Section 415: Cheating

Cheating

Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

Explanation: A dishonest concealment of facts is deception within the meaning of this section.

Illustrations

- (a) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus

dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.

- (b) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.
- (c) A, by exhibiting Z a false sample of an article intentionally deceives Z into believing that the article corresponds with the sample, and thereby dishonestly induces Z to buy and pay for the article. A cheats.
- (d) A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonored, intentionally deceives Z, and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.
- (e) A, by pledging as diamonds articles which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money. A cheats.
- (f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby, dishonestly induces Z to lend him money, A not intending to repay it. A cheats.
- (g) A intentionally deceives Z into a belief that A means to deliver to Z, a certain quantity of indigo plant which he does not intend to deliver, and thereby, dishonestly induces Z to advance money upon the faith of such delivery. A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to civil action for breach of contract.
- (h) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed, and thereby dishonestly induces Z to pay money. A cheats.

- (i) A sells and conveys an estate to B. A, knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to Z, without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage money from Z. A cheats.

Interpretations and application

1. 'Dishonestly' and 'fraudulently' (defined in Sections 24 and 25 of the IPC) are the two basic elements of cheating under section 415.

Section 24 IPC defines 'dishonestly' as

"Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly".

Section 25 IPC defines 'fraudulently; as

"A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise."

2. **Non-fulfilment of promise is not always cheating**, unless intent of cheating is there right from the beginning. Misrepresentation is always false from the beginning. But promise, at the time of being made, may have been genuine, with the intent to deceive coming in at a later stage.

"To hold a person guilty of the offence of cheating, it has to be shown that his intention was dishonest at the time of making the promise. Such a dishonest intention cannot be inferred from the mere fact that he could not subsequently fulfil the promise."

State of Kerala vs. A. Pared Pillai and Ors. (1973) SC 326

For an act to be classified as cheating, there has to be a promise made by way of a false representation – else there is no cheating

3. Use of the word 'property' in the statute has an expanded meaning which is important to note. While dismissing a special leave petition, The Supreme Court of India has said:

The High Court quashed the proceedings principally on the ground that Chapter XVII of the Indian Penal Code deals with the offences against properties and, therefore, Section 415 must also necessarily relate to the property which, in the instant case, is not involved and, consequently, the F.I.R. was liable to be quashed. The broad proposition on which the High Court proceeded is not correct. While the first part of the definition relates to property, the second part need not necessarily relate to property. The second part is reproduced below:

...intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

This part speaks of intentional deception which must be intended not only to induce the person deceived to do or omit to do something but also to cause damage or harm to that person in body, mind, reputation or property. The intentional deception presupposes the existence of a dominant motive of the person making the inducement. Such inducement should have led the person deceived or induced to do or omit to do anything which he would not have done or omitted to do if he were not deceived. The further requirement is that such act or omission should have caused damage or harm to body, mind, reputation or property.

(Emphasis added)

G.V. Rao vs. L.H.V. Prasad and Ors. (2000) 3 SCC 693

4. Illustration (h) from this Section reads most relevant for AB PM-JAY.

"A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed, and thereby dishonestly induces Z to pay money. A cheats."

Illustrative scenarios

1. Hospital H intentionally submits claim for a ghost beneficiary. SHA reviews and pays the claim to H.

Case analysis

- a. H acts intentionally to submit claims, and in process H acts dishonestly.
- b. H induces the SHA to believe that it has delivered services to the patient.
- c. SHA reimburses the claim.
- d. Charges: H is guilty of cheating as defined u/s 415 and punishable u/s 420 IPC. The act of cheating is complete only if SHA reimburses the claim.

Note: In this case, if the SHA detects the fraud during claims review, does not reimburse the claim, and initiates action against H, this would be a case of attempt to cheat and can be prosecuted u/s 420/511 IPC.

2. SHA enters into a contract with an agency A for IEC campaign to strengthen demand for services under AB PM-JAY and conduct house-to-house campaign among other IEC activities. Agency A claims to have delivered the services in some geographical areas without actually having conducted house-to-house campaign. A submits its false invoice to SHA.

Case analysis:

- a. By signing a contract with SHA, A makes a representation and promise to deliver services as per the contract. It does not. Actions may be initiated for breach of contract.
- b. However, the act of intentionally submitting a bill for tasks not done is criminal – it is an attempt to cause wrongful loss to the government.
- c. Therefore if the invoice is paid by the SHA, A is guilty u/s 420 IPC. But if during invoice review SHA detects that services have not been performed and withholds the payments, A can be prosecuted for attempt to cheat u/s 420/511 IPC.

Note: In addition to the above two scenarios presented, refer to the seven scenarios analysed with respect to sections 34, 35, 36 and 107 IPC. Substantive charge for all these seven scenarios are that of cheating.

23. The Indian Penal Code 1860, Section 416: Cheating by impersonation

Cheating by Personation: A person is said to "cheat by personation" if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is.

Explanation: The offence is committed whether the individual personated is a real or imaginary person. Illustrations:

- (a) A cheats by pretending to be a certain rich banker of the same name. A cheats by personation.
- (b) A cheats by pretending to be B, a person who is deceased. A cheats by personation.

Interpretations and application

1. This Section exclusively deals with one form of cheating, that is cheating by impersonation.
2. All offences u/s 416 IPC are necessarily cognate to the principal offence of cheating being committed u/s 415 IPC. In short, section 415 IPC is the genus while the associated sections are species thereof only. So every offence u/s 416 IPC, has to qualify as an offence u/s 415 IPC, but the converse is not true.
3. Section 416 IPC requires any one of the following essential ingredients:
 - a. Knowingly misrepresenting one person for another: *A knowingly misrepresents to be B.*
 - b. Misrepresentation that he or any other person is a person other than he or such other person really is: *A makes a statement that he is B, though he is not B.*
4. The first illustration in the statute clarifies that **it is not necessary to change one's**

name to commit this offence, and that if there is any other person who also has the same name as that of the accused and the accused cheats by pretending to be that other person, he commits this offence.

5. The second illustration shows that this offence can be committed even by pretending to be some other such person who is dead.
6. To be booked for cheating by impersonation:
 - a. it is important that act of cheating is executed. Mere impersonating is not punishable under law.
 - b. it is important that such impersonation should be done with the object of defrauding intentionally.

Illustrative scenarios

1. A patient P with name Meena Kumari approaches a PMAM wanting treatment under the Scheme, but is not eligible. PMAM, in lieu of money, offers to fraudulently get P treated. On the transaction portal, PMAM identifies a beneficiary entry with the same name 'Meena Kumari' and registers P using forged identification documents. P gets treatment, though she is not the same Meena Kumari.

Case analysis

- a. There is an expressed agreement between P and the PMAM to do an illegal act, and pass off the illegal act as legal.
- b. P impersonates the actual Meena Kumari. Since she receives the treatment, the act of cheating by impersonation is complete (u/s 416 IPC).
- c. Both P and PMAM conspire to do the act (u/s 120B IPC).
- d. Hence, both P and PMAM are liable for prosecution u/s 416, 420 and 120B IPC.
- e. In addition, the charge of forgery shall also apply u/s 463, 465 IPC.
- f. However, if the fraud was detected by the SHA while P was hospitalised, let's say, pre-authorisation rejected on account of fraud, both P and PMAM can be tried for their attempts to commit an offence u/s 420/416/120B/511 IPC.

2. A physician P in a hospital H signs off as a cardiologist which he is not. H is aware of this. H earns out of such claims submitted to the SHA.

Case analysis

- a. P impersonates as a cardiologist to cheat. (sections 416, 420 IPC)
- b. P and H conspire to raise forged claims. (section 120B IPC)
- c. By signing as a cardiologist on a medical record, P is committing forgery (as defined u/s 463), by making a forged document (u/s 464), and is liable for prosecution for forgery (u/s 465).
- d. P forges the document and H uses it for the purpose of cheating the SHA. (section 468 IPC)
- e. Forged papers are a part of claim documents that H uses to get reimbursement (money). If the claims documents can be successfully argued to be a 'valuable security', charges u/s 467 IPC may also be explored.
- f. And finally, P and H do the act with a common intention (section 34, IPC)
- g. Charges on P: u/s 416, 420, 120B, 464, 465, 468, 34 IPC
- h. Charges on H: u/s 420, 120B, 468, 34 IPC

24. The Indian Penal Code 1860, Section 417: Punishment for cheating

Punishment for cheating: Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Interpretations and application

Section 417 IPC is punishment for acts that are proven as cheating by personation u/s 416.

25. The Indian Penal Code 1860, Section 418: Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect

Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect- Whoever cheats with the

knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates, he was bound, either by law, or by a legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Interpretations and application

1. All offences u/s 418 IPC are necessarily cognate to the principal offence of cheating committed u/s 415 IPC. In short, section 415 IPC is the genus while the associated sections are species thereof only. So every offence u/s 418 IPC, has to qualify as an offence u/s 415 IPC, but the converse is not true.
2. This section provides for an aggravated form of cheating. Here the accused cheats with the knowledge that wrongful loss may be caused to the person whose interest he is bound to protect under law.
3. "Wrongful loss" used in Section 418 has been defined in Section 23 of the IPC:

"Wrongful gain": "Wrongful gain" is gain by unlawful means of property to which the person gaining is not legally entitled.

"Wrongful loss": "Wrongful loss" is the loss by unlawful means of property to which the person losing it is legally entitled. Gaining wrongfully, losing wrongfully. A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.

Illustrative scenarios

1. Hospital, H is bound to protect the clinical interest of the beneficiary B. B is admitted for treatment package costing say INR 15,000/-. Instead the hospital seeks enhancement and bills for addition procedures with total claim amounting to INR 28,000/-. SHA reimburses the claim.

Case analysis

- a. H is bound by law to protect the interest of the patient and by contract to protect the related interest of SHA.

- b. By claiming the additional INR 13,000 from the government, H causes wrongful loss to both B and the government. B loses as his available sum insured reduces by INR 13,000.
 - c. In turn H also cheats SHA as ultimately, the SHA suffered wrongful loss by reimbursing the claim.
 - d. Therefore, H can be prosecuted for offence u/s 418, 420 IPC.
- d. There is a dishonest inducement of:
 - i. delivery of property; or
 - ii. destruction or alteration of whole or part, of the valuable security or of the property which is signed and sealed; or
 - iii. property which is capable of being converted into a valuable security.

26. The Indian Penal Code 1860, Section 419: Punishment for cheating by personation

Punishment for cheating by personation:

Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Interpretations and application

Section 419 IPC is punishment for acts that are proven u/s 416 IPC.

27. The Indian Penal Code, Section 420: Cheating and dishonestly inducing delivery of property

Cheating and dishonestly inducing delivery of property: Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Interpretations and application

1. Essential ingredient for an act to be booked under this Section are:
 - a. A representation that is false right from the beginning.
 - b. The (mis)representation was given knowingly.
 - c. It was given with the intention of causing wrongful loss or wrongful gain or both.
2. 'Property' in the context of this Scheme is either movable or intellectual property. Whereas intellectual property may include software and electronic database of NHA/SHA, moveable property under this Scheme is only the funds/money that flow from one party to the other, like the money transferred by the SHA to an empanelled hospital against reimbursement of claims.
 3. The offence of cheating u/s 420 IPC is compoundable by the person cheated with the permission of the court. **But the offence is cognizable and non-bailable.** It may, however, be noted that in cases of cheating related to government money, the Supreme Court of India has interpreted that the offence should not be made compoundable.

Illustrative scenarios

1. A person P misrepresents himself as belonging to a caste that is eligible under AB PM-JAY, whereas he is not, and produces a forged document to this effect and gets a treatment/benefit out of it.

Case analysis

- a. P misrepresents with the object of securing wrongful gain.
- b. P uses a forged document, though not sure if he himself forged it or got someone else to forge.
- c. P manages to get treatment under the scheme, therefore the act of forgery is complete.
- d. Charges: P can be prosecuted u/s 420, 467, 468 IPC.
- e. However, if P did not get the benefits/service, P could still be prosecuted for offences u/s 467, 468 and 420/511 IPC.

2. An entity E (individual or agency) creates a phishing or a spoofed website that resembles NHA or SHA or any other scheme related website. Website contains matters that are misleading and induces end users to share their personal information and/or make payments for securing benefits under this Scheme.

Case analysis

- a. All elements of cheating are described here, but it gets complete only if there is a reported case of a victim making a transaction on the website and incurring wrongful loss.
- b. In such a case this may be an offence u/s 420 IPC along with relevant provisions of the Information Technology Act 2000.
- c. However, there is no transaction based on the fake website resulting into a loss, it may be a case of attempt to cheat liable for prosecution u/s 420/511.

Refer to the nine scenarios analysed with respect to sections 34, 35, 36, 107 and 415. Substantive charge for all these scenarios can attract the provisions of section 420, depending on the factual matrix of the case.

28. The Indian Penal Code, Section 425: Mischief

Mischief: Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief".

Explanation 1: It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.

Explanation 2: Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.

Illustrations

- (a) A voluntarily burns a valuable security belonging to Z intending to cause wrongful loss to Z. A has committed mischief.
- (b) A introduces water into an ice-house belonging to Z and thus causes the ice to melt, intending wrongful loss to Z, A has committed mischief.
- (c) A voluntarily throws into a river a ring belonging to Z, with the intention of thereby causing wrongful loss to Z. A has committed mischief.
- (d) A knowing that his effects are about to be taken in execution in order to satisfy a debt due from him to Z, destroys those effects, with the intention of thereby preventing Z from obtaining satisfaction of the debt, and of thus causing damage to Z. A has committed mischief.
- (e) A, having insured a ship, voluntarily causes the same to be cast away, with the intention of causing damage to the underwriters. A has committed mischief.
- (f) A causes a ship to be cast away, intending thereby to cause damage to Z who has lent money on bottomry, on the ship. A has committed mischief.
- (g) A, having joint property, with Z in a horse, shoots the horse, intending thereby to cause wrongful loss to Z. A has committed mischief.
- (h) A causes cattle to enter upon a field belonging to Z, intending to cause and knowing that he is likely to cause damage to Z's crop. A has committed mischief.

Interpretations and application

1. In the context of AB PM-JAY, section 425 has very limited applicability and will apply only for moveable property – which includes – physical records, which may be at an empanelled hospital or government offices that are involved in administering the Scheme, or electronic database, or intellectual property.
2. Like in other criminal offences there should be a guilty intention and an act pursuing the guilty intention. Acts that are purely accidental

or negligent in nature cannot be booked for 'mischief'.

3. Without the intent and the act, a person cannot be held guilty of offence under this Section.
4. For the charge of mischief to be attracted, **the value or utility of the object concerned has to reduce or be destroyed by the act.**
5. Damaging computer systems and even denying access to a computer system will fall within the aforesaid section 425 of the IPC, in addition to the relevant provisions of the IT Act 2000 based on the circumstances of the case.

Illustrative scenario

1. Hospital H destroys medical records of patients after submitting fraudulent claims.

Case analysis

- a. Medical record is a moveable property.
- b. H destroys it intentionally to cause wrongful loss to the government in terms of reimbursement of false claims.
- c. H commits mischief and can be prosecuted u/s 425.

29. The Indian Penal Code, Section 426: Punishment for mischief

Whoever commits mischief shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Interpretations and application

Section 426 is the punishment for acts that are proven as mischief u/s 425.

30. The Indian Penal Code, Section 463: Forgery

Forgery: ³⁶[Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage

or injury], to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

Interpretations and application

1. This section shall be applicable on a large number of fraudulent acts under AB PM-JAY. Large number of frauds under the scheme are related to forgery and falsification of records related to beneficiary identification and treatment.
2. Ingredients of forgery:
 - a. The entire document or electronic record or a part of it is false.
 - b. It must have been dishonestly or fraudulently made (as defined in section 464 IPC).
 - c. There has to be an intent to cause damage or injury to the public or to any person by using such document, like:
 - Cause danger or injury to: (i) the public, or (ii) to any person; or
 - Support any claim or title, or
 - Cause any person to part with the property, or
 - Enter into any express or implied contract.
 - d. There is a wrongful gain to one and wrongful loss to another;
 - e. Intent of causing it to be believed that such document or electronic record is genuine.

Note: Every electronic record is a document but every document is not an electronic record.

3. Mere preparation of false document is not an offence under the IPC. An offence of forgery is committed **only when it is used as described above.**

Illustrative scenarios

Multiple illustrative scenarios related to forgery are presented in our interpretation of sections

³⁶ Substituted by the Act, 21 of 2000, Section 91 and Schedule I, for certain words (w.e.f. 17-10-2000).

34, 35, 36, 107 and 120A. It suggested that each of these multiple scenarios be read again to critically examine the element of forgery using the ingredients mentioned above. If these ingredients are a part of the cases described in 5 sections of the IPC referred to above, consider adding the punishment of forgery to the list of charges on the accused.

In addition to the above scenarios the following actions may also be prosecuted for forgery, provided all the essential ingredients of forgery described above are met:

1. Hospital H morphs patient P's photographs. H uses the photograph as evidence for submitting false claims. P is unaware.

Case analysis

- a. H is intentionally falsifying a record.
- b. H does so with the intent of causing wrong gain for self and wrongful loss to the SHA.
- c. H is submitting the records inducing the government to believe it to be true.
- d. Charges if H submits the claim and SHA reimburses: Sections 420, 463, 465, 467, 468 IPC
- e. Charges if H submits the claim and SHA detects fraud and declines to pay:

Since money is not paid to H, cheating is not complete. An attempt has been made for all other offences.

So the charges may be u/s 463, 467, 468 and 420/511.

- f. Charges if H falsifies record but does not submit the claim: No offence committed.
2. Doctor D submits fake medical qualification document during his application for a job at the SHA. D secures the job, completes one month and receives his salary.

Case analysis

- a. D has falsified a record. But D can be prosecuted for forgery only if he receives the job and also his first salary. *Unless some salary is paid by the SHA, there is no wrongful loss to the SHA.* In such a

situation, 'forgery' is not complete.

- b. But even if D does not get the job, mere application for job with a fraud document can attract the provision of attempt to cheat (u/s 420/511).
3. Few more examples of forgery – *provided all ingredients of forgery are met in real life situations that result from such acts:*
 - a. Hospital modifies patient records stored on the computer in order to alter the original entry either in accounts or in description. Hospital earns money by submitting claim using forged documents.
 - b. PMAM tampers with records stored on the computer in order to alter the original entry to create fake beneficiaries. Hospital submits claims for such fake beneficiaries.
 - c. VLE concocts records stored on the computer and alters the original entry to create fake beneficiaries.
 - d. VLE promises an individual who is otherwise not an eligible beneficiary to get her enrolled. VLE charges INR 500 for the service, and provides the individual a fake printed card.

31. The Indian Penal Code, Section 464: Making a false document

Making a false document. ³⁷[A person is said to make a false document or electronic record:

First: Who dishonestly or fraudulently:

- (a) makes, signs, seals or executes a document or part of a document;
- (b) makes or transmits any electronic record or part of any electronic record;
- (c) affixes any ³⁸[electronic signature] on any electronic record;
- (d) makes any mark denoting the execution of a document or the authenticity of the ³⁸[electronic signature],

37 Substituted by Act 21 of 2000, Section 91 and Schedule I, for certain words (w.e.f. 17-10-2000).

38 Substituted for "digital signature" by the Information Technology (Amendment) Act, 2008 (10 of 2009), Section 51, w.e.f. 27.10.2009.

with the intention of causing it to be believed that such document or part of document, electronic record or ³⁸[electronic signature] was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly: Who without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with ³⁸[electronic signature] either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly: Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his ³⁸[electronic signature] on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.]

Illustrations

- (a) A has a letter of credit upon B for rupees 10,000 written by Z. A, in order to defraud B, adds a cipher to the 10,000, and makes the sum 1,00,000 intending that it may be delivered by B that Z so wrote the letter. A has committed forgery.
- (b) A, without Z's authority, affixes Z's seal to a document purporting to be a conveyance of an estate from Z to A, with the intention to selling the estate to B. and thereby of obtaining from B the purchase-money. A has committed forgery.
- (c) A, picks up a cheque on a banker-signed by B, payable to bearer, but without any sum having been inserted in the cheque. A fraudulently fills up the cheque by inserting the sum of ten thousand rupees. A commits forgery.
- (d) A leaves with B, his agent, a cheque on a banker, signed by A, without inserting the sum payable and authorizes B to fill up the cheque by inserting a sum not exceeding

ten thousand rupees for the purpose of making certain payment. B fraudulently fills up the cheque by inserting the sum of twenty thousand rupees, B commits forgery.

- (e) A draws a bill of exchange on himself in the name of B without B's authority, intending to discount it as a genuine bill with a banker and intending to take up the bill on its maturity. Here, as A draws the bill with intent to deceive the banker by leading him to suppose that he had the security of B, and thereby to discount the bill, A is guilty of forgery.
- (f) Z's will contains the these words "I direct that all my remaining property be equally divided between A, B and C." A dishonestly scratches out B's name, intending that it may be believed that the whole was left to himself and C. A has committed forgery.
- (g) A endorses a Government promissory note and makes it payable to Z or his order by writing on the bill the words "Pay to Z or his order" and signing the endorsement. B dishonestly erases the words "Pay to Z or his order", and thereby converts the special endorsement into a blank endorsement; B commits forgery.
- (h) A sells and conveys an estate to Z. A afterwards, in order to defraud Z of his estate, executes a conveyance of the same estate to B, dated six months earlier than the date of the conveyance to Z, intending it to be believed that he had conveyed the estate to B before he conveyed it to Z. A has committed forgery.
- (i) Z dictates his will to A. A intentionally writes down a different legatee from the legatee named by Z, and by representing to Z that he has prepared the will according to his instructions, induces Z to sign the will. A has committed forgery.
- (j) A writes a letter and signs it with B's name without B's authority, certifying that A is a man of good character and in distressed circumstances from unforeseen misfortune, intending by means of such letter to obtain alms from Z and other

persons. Here, as A made a false document in order to induce Z to part with property. A has committed forgery.

- (k) A without B's authority writes a letter and signs it in B's name certifying to A's character, intending thereby to obtain employment under Z. A has committed forgery in as much as he intended to deceive Z by the forged certificate, and thereby to induce Z to enter into an express or implied contract for service.

Explanation 1: A man's signature of his own name may amount to forgery.

Illustrations

- (a) A signs his own name to a bill of exchange, intending that it may be believed that the bill was drawn by another person of the same name. A has committed forgery.
- (b) A writes the word "accepted" on a piece of paper and signs it with Z's name, in order that B may afterwards write on the paper a bill of exchange drawn by B upon Z, and negotiate the bill as though it had been accepted by Z. A is guilty of forgery; and if B, knowing the fact, draws the bill upon the paper pursuant to A's intention, B is also guilty of forgery.
- (c) A picks up a bill of exchange payable to the order of a different person of the same name. A endorses the bill in his own name, intending to cause it to be believed that it was endorsed by the person whose order it was payable; here A has committed forgery.
- (d) A purchases an estate sold under execution of a decree against B. B, after the seizure of the estate, in collusion with Z, executes a lease of the estate of Z at a nominal rent and for a long period and dates the lease six months prior to the seizure, with intent to defraud A, and to cause it to be believed that the lease was granted before the seizure, B, though he executes the lease in his own name, commits forgery by antedating it.
- (e) A, a trader, in anticipation of insolvency, lodges effects with B for A's benefit, and

with intent to defraud his creditors; and in order to give a colour to the transaction, writes a promissory note binding himself to pay to B a sum for value received, and antedates the note, intending that it may be believed to have been made before. A was on the point of insolvency. A has committed forgery under the first head of the definition.

Explanation 2: The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

Illustration

A draws a bill of exchange upon a fictitious person, and fraudulently accepts the bill in the name of such fictitious person with intent to negotiate it. A commits forgery.

³⁹[**Explanation 3:** For the purposes of this section, the expression "affixing ⁴⁰[electronic signature]" shall have the meaning assigned to it in clause (d) of sub-section (1) of section 2 of the Information Technology Act, 2000.]

Interpretations and application

1. This section defines one of the ingredients of forgery, that is making a forged document.
2. This section lays down various means through which a false document or an electronic record may be created.
3. Those who manufacture and fabricate a document through the above means, are guilty of offence under this section. When such forged documents are used, the provision of Section 471 shall also apply.
 - a. Against those who only manufacture a forged document: Section 464

³⁹ Inserted by Act 21 of 2000, Section 91 and Schedule I (w.e.f. 17-10-2000).

⁴⁰ Substituted for "digital signature" by the Information Technology (Amendment) Act, 2008 (10 of 2009), Section 51, w.e.f. 27.10.2009.

- b. Against those who only use a forged document knowingly: Section 471
- c. Against those who manufacture and use a forged document: Section 464 and Section 471.

Illustrative scenarios

Relevant scenarios discussed for previous sections may be referred to.

32. The Indian Penal Code, Section 465: Punishment for forgery

Punishment for forgery Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Interpretations and application

1. Section 465 is punishment for acts that are proven u/s 463. This implies that ingredients of section 464 should also be satisfied.
2. In case there is sole reliance of acts u/s 464, the charge of forgery cannot be sustained. No conviction u/s 465 is possible without the occurrence of an act u/s 463.
3. Unless the document is used, forgery is not there.

33. The Indian Penal Code, Section 467: Forgery of valuable security, will, etc.

Forgery of valuable security, will, etc.

Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver, any money, moveable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any moveable property or valuable security, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Interpretations and application

1. Section 467 IPC covers forgery of specific kinds of documents like 'valuable security' or 'will'.
2. The IPC, 1860 defines 'valuable security' as:
IPC, Section 30: Valuable security

The words "valuable security" denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished or released, or where by any person acknowledges that he lies under legal liability, or has not a certain legal right.

Illustration

A writes his name on the back of a bill of exchange. As the effect of this endorsement is transfer the right to the bill to any person who may become the lawful holder of it, the endorsement is a "valuable security".

3. All other essential ingredients described for forgery u/s 463 are applicable here.
4. In the context of AB PM-JAY: all claim submissions (including medical records/ tests/investigation reports) **may be argued** to be a valuable security as these documents are being used to earn money, therefore monetary gain.
5. The punishment u/s 467 is more severe (**"imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine"**) as the offence is more heinous as compared to section 468 where the punishment may extend up to 7 years or fine or both. This is because Section 467 deals with 'valuable security' unlike Section 468 which deals with forgery for cheating only.
6. This offence is non-cognizable and non-bailable.

Illustrative scenarios

Refer to all scenarios related to fraud that have been presented for sections 34-36, 120A, 120B,

415-420 and 463 where hospital claims are involved.

34. The Indian Penal Code, Section 468: Forgery for the purpose of cheating

Whoever commits forgery, intending that the ⁴¹[document or electronic record forged] shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Interpretations and application

1. The essence of commission of this offence lies in the intention to cheat, if there is no intention to cheat, the offence under this section is not committed.
2. This offence is an aggravated form of forgery where the intention or purpose is to cheat. There has to be a distinct reason why the offender is entering into the act of forgery.

Illustrative scenarios

Since this section deals with forgery for the purpose of cheating, all examples already discussed u/s 420 that involved forgery as described in sections 463 and 464, may be referred to.

35. The Indian Penal Code, Section 471: Using as genuine a forged ⁴¹[document or electronic record]

Whoever fraudulently or dishonestly uses as genuine any ⁴¹[document or electronic record] which he knows or has reason to believe to be a forged ⁴¹[document or electronic record], shall be punished in the same manner as if he had forged such ⁴¹[document or electronic record].

Interpretations and application

1. Ingredients for offence u/s 471 are: (a) dishonest use of document as a genuine; and (b) the person using it must have knowledge or reason to believe that the document is a forged one.
2. This section includes not only the one who has forged a document but also anyone who

⁴¹ Substituted by Act 21 of 2000, Section 91 and Schedule I, for "document forged" (w.e.f. 17.10.2000).

uses a forged document, even if he has not made it.

3. Further, relevant parts of 'Interpretations and application' provided for section 464 shall be applicable for section 471.

Illustrative scenarios

Refer to all scenarios related to forgery described for other sections. In all such cases where a forged document is being **used** as a genuine one, in addition to other charges that may be applied depending on the factual matrix of the case, the charge u/s 471 may also be levied.

36. The Indian Penal Code, Section 474: Having possession of document described in Sec. 466 or 467, knowing it to be forged and intending to use it as genuine

Having possession of document described in Sec. 466 or 467, knowing it to be forged and intending to use it as genuine. ⁴²[Whoever has in his possession any document, knowing the same to be forged, and intending that the same shall fraudulently or dishonestly be used as genuine, shall, if the document is one of the description mentioned in section 466 of this Code], be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and if the document is one of the description mentioned in Section 467, shall be punished with ⁴³[imprisonment for life], or with imprisonment of either description, for a term which may extend to seven years, and shall also be liable to fine.

Interpretations and application

1. Individuals/organizations who are keeping a forged document with them fully knowing that it is forged and has the intention to use it as genuine can be booked under this section.
2. Essential ingredients for a crime under this section: (a) offender must be in possession

⁴² Substituted by Act 21 of 2000, Section 91 and Schedule I, for certain words (w.e.f. 17.10.2000).

⁴³ Substituted by Act 26 of 1955, Section 117 and Schedule, for "transportation for life" (w.e.f. 17.10.2000).

of the forged document or the electronic record; (b) offender must have the knowledge that the document is forged; (c) he must have the intention to use the document/record as genuine.

3. It may be noted in this statute that the punishments are different if such documents fall under Section 466 and 467. In the context of AB PM-JAY only Section 467 is relevant as Section 466 deals with forgery of record of courts or of public register, etc.

Illustrative scenarios

1. Hospital H keeps a forged medical certificate of a doctor D for meeting the minimum eligibility criteria for empanelment.

Case analysis

- a. Till such time H actually uses the document, H will be liable for prosecution u/s 474 IPC provided there is evidence to prove that H was intending to use the forged medical certificate as a genuine one for any purpose whatsoever.
- b. The moment H uses the certificate (say submits the application for empanelment along with the forged medical certificate), H becomes liable for prosecution u/s 471 or 467 or 468. We are including section 467 here as qualification certificate may be argued to be a valuable security.

37. The Indian Penal Code, Section 477A: Falsification of Accounts

⁴⁴[Falsification of accounts.—Whoever, being a clerk, officer or servant, or employed or acting in the capacity of a clerk, officer or servant, wilfully, and with intent to defraud, destroys, alters, mutilates or falsifies any ⁴⁵[book, electronic record, paper, writing], valuable security or account which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer, or wilfully, and with intent to defraud, makes or abets the making of any false entry in, or omits or alters or abets the omission or alteration of any material particular

⁴⁴ Added by Act 3 of 1895, section 4.

⁴⁵ Substituted by Act 21 of 2000, Section 91 for Sch. I, for "book, paper, writing" (w.e.f. 17.10.2000).

from or in, any such ⁴⁵[book, electronic record, paper, writing], valuable security or account, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Explanation: It shall be sufficient in any charge under this section to allege a general intent to defraud without naming any particular person intended to be defrauded or specifying any particular sum of money intended to be the subject of the fraud, or any particular day on which the offence was committed.]

Interpretations and application

1. Section 477A is applicable for falsification of books and accounts, including electronic records.
2. In the context of the scheme, this may most commonly be applicable to instances where consultants or staff in SHA or any hospital falsifies accounts and accounting records related to AB PM-JAY transactions.
3. Essential ingredients of offence for booking under this section:
 - a. Falsification has to be done 'wilfully'.
 - b. It has to be done 'with the intent to defraud'.
 - c. The accounts must belong to or be in the possession of her/his employer.

Note: All entries done wilfully may not be with the intent to defraud.

4. Provisions of Section 477A are best understood through the following judicial interpretation of the High Court of Calcutta:

Sec 477A speaks of two offences, mainly, falsification of accounts and making of false entry or, omitting or altering or abetting the omission or alteration of any entry and these two offences are distinct and not inter-dependent.

Prafulla Chandra v. Emperor, AIR 1931 CAL 8

5. In this section falsification of books and accounts is punishable even though there is no evidence to prove misappropriation of any specific sum on any particular occasion.

Illustrative scenarios

1. Staff S of public hospital PH misappropriates accounts related to expenditure incurred on account of local purchases under AB PM-JAY using AB PM-JAY funds.

Case analysis

- a. Staff S is not the owner of accounts.
 - b. S falsifies accounts with the intent of defrauding money for himself and for this senior officer in PH.
 - c. S is also a public servant hence will fall within the ambit of the Prevention of Corruption Act (PCA), 1988.
 - d. S can be prosecuted for offence u/s 477A IPC and the relevant provisions under the PCA, 1988.
2. The Accounts Officer (AO), employed by an empanelled hospital EH, alters hospital accounts to show purchase of an implant for a beneficiary B. AO does so on the instructions of one EH management staff and is paid money to do this. AO does so willingly. The implant was actually not purchased. The procedure was not done on B. EH submits false bill for a procedure not done and cover up the records in case SHA conducts any audit at any point in time. SHA pays.

Case analysis

- a. AO is not the owner of accounts.
- b. AO falsifies accounts with the intent of defrauding money for himself and for the EH management staff.
- c. Both AO and EH are liable for prosecution u/s 377A.
- d. They have also committed the offence of criminal conspiracy (u/s 120A, 120B IPC), cheating (u/s 420), forgery (u/s 463, 465), submitted false claims for wrongful gains (u/s 467 – if claims can be argued to be a valuable security) – read with section 34.

38. The Information Technology Act, 2000, Section 43: Penalty and compensation for damage to computer, computer system, etc.

If any person without permission of the owner or any other person who is in charge, of a

computer, computer system or computer network:

- (a) accesses or secures access to such computer, computer system or computer network;⁴⁶[or computer resource]
- (b) downloads, copies or extracts any data, computer data base or information from such computer, computer system or computer network including information or data held or stored in any removable storage medium.
- (c) introduces or causes to be introduced any computer contaminant or computer virus into any computer, computer system or computer network.
- (d) damages or causes to be damaged any computer, computer system or computer network, data, computer data base or any other programmes residing in such computer, computer system or computer network.
- (e) disrupts or causes disruption of any computer, computer system or computer network.
- (f) denies or causes the denial of access to any person authorised to access any computer, computer system or computer network by any means.
- (g) provides any assistance to any person to facilitate access to a computer, computer system or computer network in contravention of the provisions of this Act, rules or regulations made thereunder.
- (h) charges the services availed of by a person to the account of another person by tampering with or manipulating any computer, computer system, or computer network.

⁴⁷["he shall be liable to pay damages by way of compensation to the person so affected"]

46 Inserted vide Information Technology (Amendment) Act, 2008 (Act No. 10 of 2009) w.e.f. 27.10.2009.

47 Substituted vide Information Technology (Amendment) Act, 2008 (Act No. 10 of 2009) w.e.f. 27.10.2009 previous text was : - "he shall be liable to pay damages by way of compensation not exceeding one crore rupees to the person so affected."

Explanation: For the purposes of this section:

- (i) "computer contaminant" means any set of computer instructions that are designed:
 - (a) to modify, destroy, record, transmit data or programme residing within a computer, computer system or computer network; or
 - (b) by any means to usurp the normal operation of the computer, computer system, or computer network;
- (ii) "computer database" means a representation of information, knowledge, facts, concepts or instructions in text, image, audio, video that are being prepared or have been prepared in a formalised manner or have been produced by a computer, computer system or computer network and are intended for use in a computer, computer system or computer network;
- (iii) "computer virus" means any computer instruction, information, data or programme that destroys, damages, degrades or adversely affects the performance of a computer resource or attaches itself to another computer resource and operates when a programme, data or instruction is executed or some other event takes place in that computer resource;
- (iv) "damage" means to destroy, alter, delete, add, modify or rearrange any computer resource by any means.
- (v) "computer source code" means the listing of programme, computer commands, design and layout and programme analysis of computer resource in any form."
- (i) ⁴⁶[destroys, deletes or alters any information residing in a computer resource or diminishes its value or utility or affects it injuriously by any means;
- (j) steal, conceal, destroys or alters or causes any person to steal, conceal, destroy or alter any computer source code used for a computer resource with an intention to cause damage;]

Interpretations and application

1. The entire AB PM-JAY transactions are based on an integrated IT-platform that comprises three primary modules: Beneficiary Identification System (BIS), Hospital Empanelment Module (HEM) and the Transaction Management System (TMS). At the design and management level, there are third party private entities responsible for handling the IT architecture having unfettered access to all contents, data warehouse and security systems. Each State has access rights to the modules and data warehouses.
2. Section 43 of the IT Act, 2000 is premised on access to computer system and data "without permission", hence an intent to do something unlawful is likely to be inherent in acts that may be booked under this section.
3. Section 43 can be used to initiate proceedings against acts like:
 - a. any unauthorised access to computer system or enabling unauthorised access to any individual or agency that is not authorised;
 - b. unauthorised data access including downloading, copying and extracting of data;
 - c. tampering with data and computer system with introduction of virus or otherwise;
 - d. disrupts the computer system and network;
 - e. disrupts authorised access to on any computer;
 - f. disrupting, stealing or destroying computer source codes.
4. The five explanations that are part of the statute clearly define the key terms used in this section. This may be used for interpreting and applying this section to different IT related fraudulent acts that may occur under AB PM-JAY. Refer to a few illustrative scenarios below.
5. This section includes activities like hacking, theft of scheme data not in the public domain including patient records, injecting viruses, damaging computers or computer networks or computer programmes, disrupting any

computer or computer system or computer network, denying an authorised person access to a computer or computer network, damaging or destroying information residing in a computer.

6. Each and every provision u/s 43 of this Act from (a) to (j), in some form or the other can take place within the ambit of functioning of AB PM-JAY. This section categorically speaks of the liability imposed upon the offender by way of damages in monetary terms to be given to the person affected. Refer to section 66 of this Act for penalties.
7. "Sensitive personal data or information" has been defined in the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data Or Information) Rules, 2011 Rule 3 as;

Sensitive personal data or information of a person means such personal information which consists of information relating to:

- (i) password;
- (ii) financial information such as Bank account or credit card or debit card or other payment instrument details;
- (iii) physical, physiological and mental health condition;
- (iv) sexual orientation;
- (v) medical records and history;
- (vi) biometric information;
- (vii) any detail relating to the above clauses as provided to body corporate for providing service; and
- (viii) any of the information received under above clauses by body corporate for processing, stored or processed under lawful contract or otherwise:

provided that any information that is freely available or accessible in public domain or furnished under the Right to Information Act, 2005 or any other law for the time being in force shall not be regarded as sensitive personal data or information for the purposes of these rules.

Almost all contents defined as defined as sensitive information is collected and stored within AB PM-JAY transactions and therefore their security, that

is, failure to protect them falls within the ambit of this IT Act, 2000.

8. The Information Technology (Reasonable Security Practices And Procedures And Sensitive Personal Data Or Information) Rules, 2011 also includes stipulations for collection of information (Rule 5), disclosure of information (Rule 6), transfer of information (Rule 7) and reasonable security practices and procedures (Rule 8) all of which are relevant for AB PM-JAY and any individual or entity that violates the provision of such Rules shall be liable for proceedings under this Act.

Illustrative scenarios

1. *VLE promises to a person P a golden card in P's name. P is otherwise not eligible under the scheme. P's father's name is F. In consideration of this services VLE charges INR 5000 from P. VLE accesses the BIS database through his login credential, identifies another entry on the SECC database that has a combination of beneficiary name as P and father's name as F. Against this entry, the VLE undertakes KYC verification of this P. P is enrolled as a beneficiary. P seeks hospitalization benefits under the scheme.*

Case analysis

- a. VLE charges money from P to be enrolled as a beneficiary, though not entitled, in lieu of money. VLE gains wrongfully.
- b. When P seeks hospitalisation benefit under the scheme, there is a wrongful loss to the government.
- c. VLE access the government BIS database to identify and access record of a person he was not authorised to access. (will attract section 43(a) of the IT Act, 2000).
- d. VLE conducts KYC verification of a one person (P) against the entry of another person and through this act enables P to impersonate another person having the same name and same father's name.
- e. Charges against VLE: u/s 43(a) – giving access, 43(b) – altering is damaging; 66 (computer related offences), 66C (punishment for identity theft) of the IT Act, 2000 and u/s 120B/34 IPC.

- f. Charges against P: u/s 66D (cheating by personation) of the IT Act, 2000; and 120B/34 IPC.
2. VLE shares his login credentials with another person P who is not authorised to access the database. P access the database and misuses it for fraudulent activities under the scheme.

Case analysis

- a. VLE shares the login credential with P (section 43 (a): accesses or secures access without permission).
 - b. VLE facilitates access to computer to an unauthorised person (section 43(g)).
 - c. VLE discloses information (login credentials) in breach of lawful contract (section 72A).
 - d. P misuses it for fraudulent activities. (section 66; dishonestly or fraudulently does any act u/s 43).
 - e. Charges on VLE: u/s 43(a), 43(g), 66, 72A of the IT Act, 2000.
 - f. Charges on P: u/s 66C (punishment for identity theft) of the IT Act, 2000.
 - g. Relevant provisions of IPC u/s 120B and others may apply on both depending on the factual matrix of the case.
3. *An IT service provider ITSP has a contract with the NHA for managing the AB PM-JAY data warehouse. A staff S of ITSP sells scheme beneficiary medical records and data to a pharmaceutical company for their research and development work.*

Case analysis

- a. ITSP has contract with NHA with managing data warehouse. S commits breach, which the ITSP as an employer, was obliged to prevent.
- b. ITSP may be accused of negligence here (section 43A of the IT Act, 2000: this section is related to negligent behaviour and therefore not fraud. Therefore, this section has not been separately listed in this Guidebook.). But if:
 - i. ITSP is aware and silent then it could be an act of omission.

- ii. ITSP is aware and a part of the plan, then it could be criminal conspiracy. It may be treated as fraudulent and punishable u/s 66 and 66B of the IT Act, 2000, in addition to charges u/s 120B IPC.

4. An empanelled hospital EH shares its login credentials to a non-empanelled hospital NEH. NEH admits scheme beneficiaries and treats them undertaking all transactions on the TMS using the EH login details. NEH submits claims as the EH. Claim is paid by the SHA.

Case analysis:

- a. EH provides assistance to NEH to gain unauthorised access to the AB PM-JAY transaction portal: sections 43(a) and 43(g) IT Act, 2000.
- b. EH and NEH connive: section 34 IPC.
- c. EH and NEH's act is fraudulent: section 66 IT Act, 2000.
- d. NEH steals the identity of EH (section 66C of the IT Act, 2000).
- e. Summary of charges:
 - EH:** can be tried u/s 43(a) and 43(g) of the IT Act, 2000, read with section 34 IPC, punishable u/s 66 of the IT Act, 2000.
 - NEH:** can be tried u/s 43(g) of the IT Act, 2000, read with section 34 IPC, punishable u/s 66 of the IT Act, 2000.

Note: 120B of the IPC (criminal conspiracy) may also be tried. However, since section 81 the IT Act states that the Act has an overriding effect, conviction for a particular offence will take place only under one of the Acts, based on the factual matrix of the case.

5. A person P hacks into the Hospital Empanelment Module of an empanelled hospital EH, replaces the bank details of EH. SHA reimburse claims of EH. On SHA records, funds against claims have been paid to the EH. A month later EH follows up with the SHA for reimbursement of pending claims. At this stage both SHA and EH realise that funds have actually been credited to the fake bank account that was updated by P.

Case analysis

- a. Without permission, P access the HEM module. (section 43(a) of the IT Act, 2000)
- b. P replaces bank details and data on the HEM (section 43(d) – damages data on the computer network).
- c. Payment for service offered by EH is transferred to the bank account of P (section 43(h)).
- d. P can be tried for charges u/s 66 (for all acts u/s 43) and u/s 66C (identity theft).

Variation: If the SHA has not yet transferred the money, P can be prosecuted for punishment for attempt to commit offence (section 84C of the IT Act, 2000 – somewhat similar to section 511 of the IPC).

6. A PMAM uses the photo and identification documents of a beneficiary B to create a ghost beneficiary account with the same beneficiary name B, but tags it along with another family ID. The PMAM generates this request and its approved. PMAM retains ghost beneficiary account card for phantom billing in connivance with the hospital H.

Case analysis

- a. B is unaware that his credentials are being used for a fraudulent act.
 - b. Through this act, the PMAM alters the data (section 65) on the computer network.
 - c. PMAM access the computer network and data (section 43(a)) for fraudulent purposes (section 66 of the IT Act, 2000)
7. A PMAM adds the name of a non-eligible beneficiary NEB in the family of the beneficiary holding golden card by submitting a personal ID and a fake relationship proof such as marriage certificate, adoption certificate etc. PMAM is aware that the documents are fake. The NEB becomes a family member of the existing golden card beneficiary. PMAM charges money for this act.

Case analysis

- a. PMAM uses forged identification documents.

- b. PMAM access computer network (section 43(a)) for a fraudulent task (section 66) of creating a fake ID.
- c. By adding name of NEB in the database, the PMAM undertakes a fraudulent act that falls in the category of section 43(i): “destroys, deletes or **alters any information residing in a computer resource...**”
- d. Summary of charges:

PMAM: u/s 43(a)/43(i)/43(h)/65/66C of the IT Act, 2000

NEB: u/s 43(d)/66 of the IT Act, 2000.

39. The Information Technology Act, 2000, Section 65: Tampering with computer source documents

Whoever knowingly or intentionally conceals, destroys or alters or intentionally or knowingly causes another to conceal, destroy or alter any computer source code used for a computer, computer program, computer system or computer network, when the computer source code is required to be kept or maintained by law for the time being in force, shall be punishable with imprisonment up to three years, or with fine which may extend up to two lakh rupees, or with both.

Explanation: For the purposes of this section, "computer source code" means the listing of programs, computer commands, design and layout and program analysis of computer resource in any form.

Interpretations and application

1. An action can be booked under this section 65 if there is an act of knowingly or intentionally:
 - a. concealing or causing others to others to conceal
 - b. altering or causing others to others to alter
 - c. destroying or causing others to others to destroy
2. This Section is aimed at protecting intellectual property within the computer programs.
3. This section stipulates a condition “...when the computer source code is required to be kept

or maintained by law for the time being...”. It may be a matter of judicial interpretation whether AB PM-JAY scheme guidelines that require source codes to be protected will fall within the ambit of this section. There is no legislation backing NHA and/or the AB PM-JAY. The defence may use this line of argument to rebut the charges.

Illustrative scenarios

1. An IT service provider ITSP has a contract with the NHA for managing the AB PM-JAY data warehouse. A staff S of ITSP sells scheme beneficiary medical records and data to a pharmaceutical company for their research and development work.

Case analysis

This case has been analysed under section 43. In addition to the charges already referred to for this case, punishment u/s 65 may be explored, if it can be argued that the ITSP contractual obligation to protect the data is akin to “required to be kept or maintained by law”.

40. The Information Technology Act, 2000, Section 66: Computer related offences

Computer related offences: If any person, dishonestly or fraudulently, does any act referred to in section 43, he shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to five lakh rupees or with both.

Explanation: For the purposes of this section:

- (a) the word: dishonestly shall have the meaning assigned to it in section 24 of the Indian Penal Code (45 of 1860);
- (b) the word: fraudulently shall have the meaning assigned to it in section 25 of the Indian Penal Code (45 of 1860).

Interpretations and application

1. Section 66 of the IT Act, 2000 prescribes the punishment for acts that are proven under Section 43 of this Act and are **dishonest or fraudulent**; and therefore, will cover all frauds under AB PM-JAY that are related to

information technology and referred to in the interpretation of section 43.

2. Since as per explanation (b) of this section, words ‘fraudulently’ and ‘dishonestly’ have the same meaning as in Sections 24 and 25 of the IPC respectively, the principles used in interpreting and analysing scenarios fraudulent acts under the IPC shall apply here as well.

Illustrative scenarios

Refer to relevant illustrative scenarios under section 43 of the IT Act, 2000.

41. The Information Technology Act, 2000, Section 66B: Punishment for dishonestly receiving stolen computer resource or communication device

Whoever dishonestly receives or retains any stolen computer resource or communication device knowing or having reason to believe the same to be stolen computer resource or communication device, shall be punished with imprisonment of either description for a term which may extend to three years or with fine which may extend to rupees one lakh or with both.

Interpretations and application

1. The IT Act, 2000 defines “Computer resource” as computer resource means computer, computer system, computer network, data, computer data base or software.
2. The IT Act, 2000 also defines data as:
“Data means a representation of information, knowledge, facts, concepts or instructions which are being prepared or have been prepared in a formalised manner, and is intended to be processed, is being processed or has been processed in a computer system or computer network, and may be in any form (including computer printouts magnetic or optical storage media, punched cards, punched tapes) or stored internally in the memory of the computer.”
3. This section prescribes a punishment of imprisonment up to 3 years or fine up to INR 1 lakh or both for merely receiving or retaining stolen computer resource or communication

device, provided it is done so **dishonestly**, which implies ‘*intention of causing wrongful gain to one person or wrongful loss to another person*’.

4. In the context of AB PM-JAY this would also include all patient data saved and stored in electronic/scanned document form in the data warehouse.
5. It is important that the one who receives the stolen property either does so dishonestly or should have reason to believe that it was a stolen property.

Illustrative scenarios

Refer to relevant illustrative scenarios under section 43 of the IT Act, 2000.

42. The Information Technology Act, 2000, Section 66C: Punishment for identity theft

Whoever, fraudulently or dishonestly make use of the electronic signature, password or any other unique identification feature of any other person, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine which may extend to rupees one lakh.

Interpretations and application

1. This is a section that lays down the punishment for frauds that are commissioned obtaining personal information of another person for the purpose of assuming that person’s identity/name through the use of information technology, like the ones indicated in point 2 below.
2. In the context of AB PM-JAY, fraudulent or dishonest acts that can be covered under this section are:
 - a. Stealing of login credentials to access IT modules/application (like the BIS, HEM, TMS) for committing fraudulent or dishonest acts.
 - b. Misuse of biometric data of patients for fraudulent or dishonest acts.
3. The essential ingredient of this section is that after securing the password, biometric data digital signature or any other identification feature, it has to be made use of causing

wrongful gain to one or wrongful loss to another or both.

Illustrative scenarios

Refer to relevant illustrative scenarios under section 43 of the IT Act, 2000.

43. The Information Technology Act, 2000, Section 66D: Punishment for cheating by personation by using computer resource

⁴⁸[Whoever, by means for any communication device or computer resource cheats by personation, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine which may extend to one lakh rupees.]

Interpretations and application

1. Provisions of this section may be applied when anyone cheats by using a computer resource by pretending to be another person.
2. Refer to discussions on section 416 of the IPC for understanding essential ingredients of cheating.
3. This section may be used to cover fraudulent websites and phishing mails aimed at defrauding and cheating.

Illustrative scenarios

- ▶ Refer to relevant illustrative scenarios under section 43 of the IT Act, 2000.
- ▶ Also refer to scenarios on cheating by impersonation presented u/s 416 IPC, In these cases, wherever the impersonation is taking place using the IT architecture and technology within AB PM-JAY, section 66D of the IT Act, 2000 can also be applied.

44. The Information Technology Act, 2000, Section 72A: Punishment for disclosure of information in breach of lawful contract

⁴⁸[Save as otherwise provided in this Act or any other law for the time being in force, any person

⁴⁸ Inserted vide Information Technology (Amendment) Act, 2008 (Act No. 10 of 2009) w.e.f. 27.10.2009.

including an intermediary who, while providing services under the terms of lawful contract, has secured access to any material containing personal information about another person, with the intent to cause or knowing that he is likely to cause wrongful loss or wrongful gain discloses, without the consent of the person concerned, or in breach of a lawful contract, such material to any other person, shall be punished with imprisonment for a term which may extend to three years, or with fine which may extend to five lakh rupees, or with both.}]

Interpretations and application

1. Essential ingredients of this section are:
 - a. Access to personal information while providing services under the terms of lawful contract.
 - b. A service provider disclosing personal information with the intention of causing 'wrongful loss' to another and 'wrongful gain' for self.
 - c. There is no prior consent for disclosing the information.
2. This section can also be applicable to those who hold information for passing it on. This includes intermediaries.
3. This Section **imposes criminal liability** for breach of lawful contract. This is a strong deterrent for those intentionally breaching data confidentiality under lawful contracts.

Illustrative scenarios

1. A hospital H discloses sensitive personal information related to diagnosis and treatment of patients to a third party for commercial use.
2. A hospital H discloses sensitive personal information related to diagnosis and treatment of patients to a third party and this disclosure harms the patient.
3. Also, refer to relevant illustrative scenarios under section 43 of the IT Act, 2000.

45. The Information Technology Act, 2000, Section 84B: Punishment for abetment of offences

[Whoever abets any offence shall, if the act abetted is committed in consequence of the

abetment, and no express provision is made by this Act for the punishment of such abetment, be punished with the punishment provided for the offence under this Act.

Explanation: An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.]

Interpretations and application

1. Section 84B is applicable for all cases where the act is committed through abetment.
2. For understanding the concept of abetment, refer to Section 107 of the IPC and the section on 'Interpretations and application' thereunder. However, note that simultaneous applicability of provisions under IPC and this Act shall not be possible. Refer to special note on The Information Technology Act, 2000 in Annexure 9.

46. The Information Technology Act, 2000, Section 84C: Punishment for attempt to commit offences

⁴⁹**[Punishment for attempt to commit offences:** Whoever attempts to commit an offence punishable by this Act or causes such an offence to be committed, and in such an attempt does any act towards the commission of the offence, shall, where no express provision is made for the punishment of such attempt, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the longest term of imprisonment provided for that offence, or with such fine as is provided for the offence, or with both.]

Interpretation and application

Under the IT Act, attempt to commit an offence, that is actions falling short of completion of a crime, is also a punishable offence. These are called 'inchoate' crimes. Section 511 of the IPC deals with such crimes.

⁴⁹ Inserted vide Information Technology (Amendment) Act, 2008 (Act No. 10 of 2009) w.e.f. 27.10.2009.

47. The Information Technology Act, 2000, Section 85: Offence by companies

- (1) Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of business of the company as well as the company, shall be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this subsection shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

- (2) Notwithstanding anything contained in subsection (1), where a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Explanation: For the purposes of this section:

- (i) company means anybody corporate and includes a firm or other association of individuals; and
- (ii) director, in relation to a firm, means a partner in the firm.

Interpretation and application

1. This section relates to offence by companies and makes the person who is connected with such company liable to be prosecuted.
2. The proviso to this section 85(1) speaks of a situation where such offence has been committed.

48. The Mental Health Care Act, 2017, Section 107: Penalties for establishing or maintaining mental health establishment in contravention of provisions of this Act

- (1) Whoever carries on a mental health establishment without registration shall be liable to a penalty which shall not be less than five thousand rupees but which may extend to fifty thousand rupees for first contravention or a penalty which shall not be less than fifty thousand rupees but which may extend to two lakh rupees for a second contravention or a penalty which shall not be less than two lakh rupees but which may extend to five lakh rupees for every subsequent contravention.
- (2) Whoever knowingly serves in the capacity as a mental health professional in a mental health establishment which is not registered under this Act, shall be liable to a penalty which may extend to twenty-five thousand rupees.
- (3) Save as otherwise provided in this Act, the penalty under this section shall be adjudicated by the State Authority.
- (4) Whoever fails to pay the amount of penalty, the State Authority may forward the order to the Collector of the district in which such person owns any property or resides or carries on his business or profession or where the mental health establishment is situated, and the Collector shall recover from such persons or mental health establishment the amount specified thereunder, as if it were an arrear of land revenue.
- (5) All sums realised by way of penalties under this Chapter shall be credited to the Consolidated Fund of India.

Interpretations and application

Proceedings under this Section can be initiated against all those hospitals that have provided treatment for any procedure related to mental disorders that the facility is not eligible to conduct without having valid registrations under this Act.

49. The Mental Health Care Act, 2017, Section 108: Punishment for contravention of provisions of the Act or rules or regulations made thereunder

Any person who contravenes any of the provisions of this Act, or of any rule or regulation made thereunder shall for first contravention be punishable with imprisonment for a term which may extend to six months, or with a fine which may extend to ten thousand rupees or with both, and for any subsequent contravention with imprisonment for a term which may extend to two years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees or with both.

Interpretations and application

1. Any hospital that while treating patients for mental health disorders violates any provision of this Act can be tried for punishment under this Section.
2. It may be noted that any offence related to violation of the provisions of this Act can be termed as fraud only if there is adequate evidence to substantiate that the (in)action of the hospital leading to violation is out of wilful intent, and in all such cases various criminal provisions under different Sections of the IPC shall get attracted.
3. If no such intent to defraud can be substantiated, the defaulting hospital may still be tried for punishment under this Section, but that will not be treated as fraud.

Illustrative scenarios

1. Hospital H admits patients for treatment of mental health disorders either without having a valid registration under this Act or having a forged registration document.
2. Hospital H conducts procedures⁵⁰ that are prohibited under Section 95 of the Act and does so illegally or in lieu of kick-backs from any third party for personal animosities.

50 (a) electro-convulsive therapy without use of muscle relaxants and anesthesia; (b) electro-convulsive therapy for minors; (c) sterilization of men and women when such sterilization is intended as a treatment for mental illness; and (d) chained in any manner or form whatsoever.

50. The Mental Health Care Act, 2017, Section 109: Offence by Companies

- (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in-charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this subsection shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he has exercised all due diligence to prevent the commission of such offence.

- (2) Notwithstanding anything contained in subsection (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Explanation: For the purposes of this section,

- (a) “company” means anybody corporate and includes a firm or other association of individuals; and
- (b) “director”, in relation to a firm, means a partner in the firm.

Interpretations and application

This Section can be used to initiate proceedings against the hospital as an entity and all the board members/trustees/office bearers of the company for all offences described under Section 107 and Section 108 of this Act above.

51. The National Medical Commission Act, 2019: Section 34: Bar to practice

(Effective from the date of enforcement of Rules and Regulations)

(1) No person other than a person who is enrolled in the State Register or the National Register, as the case may be, shall:

- (a) be allowed to practice medicine as a qualified medical practitioner;
- (b) hold office as a physician or surgeon or any other office, by whatever name called, which is meant to be held by a physician or surgeon;
- (c) be entitled to sign or authenticate a medical or fitness certificate or any other certificate required by any law to be signed or authenticated by a duly qualified medical practitioner; and
- (d) be entitled to give evidence at any inquest or in any court of law as an expert under section 45 of the Indian Evidence Act, 1872 on any matter relating to medicine.

Provided that the Commission shall submit a list of such medical professionals to the Central Government in such manner as may be prescribed.

Provided further that a foreign citizen who is enrolled in his country as a medical practitioner in accordance with the law regulating the registration of medical practitioners in that country may be permitted temporary registration in India for such period and in such manner as may be specified by the regulations.

(2) Any person who contravenes any of the provisions of this section shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to five lakh rupees or with both.

Interpretations and application

1. The SHA may invoke this provision in all such cases where a practitioner employed by a hospital is providing services but is either not enrolled or has fraudulently enrolled in the National or the State register as set forth in Section 60(1) of this Act.
2. In all such cases the relevant provisions of IPC shall also be applied.

Note: Section 35(8) of this Act clarifies that all medical qualifications which have been recognized before the date of commencement of this Act and

are included in the relevant sections of The Indian Medical Council Act, 1956, shall also be recognized medical qualifications for the purposes of this Act.

52. The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994: Section 22: Prohibition of advertisement relating to pre-natal determination of sex and punishment for contravention

(henceforth abbreviated as the PC-PNDT Act)

Prohibition of advertisement relating to pre-natal determination of sex and punishment for contravention.

1. No person, organization, Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic, including clinic, laboratory or center having ultrasound machine or imaging machine or scanner or any other technology capable of undertaking determination of sex of foetus or sex selection shall issue, publish, distribute, communicate or cause to be issued, published, distributed or communicated any advertisement, in any form, including internet, regarding facilities of pre-natal determination of sex or sex selection before conception available at such center, laboratory, clinic or at any other place.
2. No person or organization including Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic shall issue, publish, distribute, communicate or cause to be issued, published, distributed or communicated any advertisement in any manner regarding pre-natal determination or preconception selection of sex by any means whatsoever, scientific or otherwise.
3. Any person who contravenes the provisions of sub-section (1) or sub-section (2) shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees.

Explanation: For the purposes of this section, “advertisement” includes any notice, circular, label, wrapper or any other document including advertisement through internet or any other media in electronic or print form and also includes

any visible representation made by means of any hoarding, wall-painting, signal, light, sound, smoke or gas.

Interpretation and application

1. This provision can be applied to any empaneled hospital, public or private, that promotes pre-natal; determination of sex through advertisements by means set forth in the ‘*Explanations*’ to the main statute.
2. It is important to note that Article 27 of the PC&PNDT (Amendment) act 2003 states “*every offence under this Act shall be cognizable, non-bailable and non-compoundable*”.

53. The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994: Section 23 – Offences and Penalties

Offences and penalties:

1. Any medical geneticist, gynecologist, registered medical practitioner or any person who owns a Genetic Counselling Centre, a Genetic Laboratory or a Genetic Clinic or is employed in such a Centre, Laboratory or Clinic and renders his professional or technical services to or at such a Centre, Laboratory or Clinic, whether on an honorary basis or otherwise, and who contravenes any of the provisions of this Act or rules made thereunder shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees and on any subsequent conviction, with imprisonment which may extend to five years and with fine which may extend to fifty thousand rupees.
2. The name of the registered medical practitioner shall be reported by the Appropriate Authority to the State Medical Council concerned for taking necessary action including suspension of the registration if the charges are framed by the court and till the case is disposed of and on conviction for removal of his name from the register of the Council for a period of five years for the first offence and permanently for the subsequent offence.

3. Any person who seeks the aid of a Genetic Counselling Centre, Genetic Laboratory, Genetic Clinic or ultrasound clinic or imaging clinic or of a medical geneticist, gynecologist, sonologist or imaging specialist or registered medical practitioner or any other person for sex selection or for conducting pre-natal diagnostic techniques on any pregnant women for the purposes other than those specified in sub-section (2) of section 4, he shall, be punishable with imprisonment for a term which may extend to three years and with fine which may extend to fifty thousand rupees for the first offence and for any subsequent offence with imprisonment which may extend to five years and with fine which may extend to one lakh rupees.
4. For the removal of doubts, it is hereby provided, that the provisions of sub-section (3) shall not apply to the woman who was compelled to undergo such diagnostic techniques or such selection.

Interpretation and application

1. Penalties under this provision are applicable for individual doctors and specialists, irrespective of whether they are employed full time or part time or working in an honorary capacity in a government or a private hospital.
2. Charges of abetment and fraud under relevant sections of the IPC may also be applicable if there is evidence that the hospital has induced the patient.
3. It is important to note that Article 27 of the PC&PNDT (Amendment) act 2003 states “*every offence under this Act shall be cognizable, non-bailable and non-compoundable*”.

54. The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994: Section 25 – Penalty for contravention of the provisions of the Act or rules for which no specific punishment is provided

Whoever contravenes any of the provisions of this Act or any rules made thereunder, for which no penalty has been elsewhere provided in this Act,

shall be punishable with imprisonment for a term which may extend to three months or with fine, which may extend to one thousand rupees or with both and in the case of continuing contravention with an additional fine which may extend to five hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

Interpretation and application

1. This Section of this provision can be used for all other violations under this Act where the penalty is not prescribed. In addition, given the circumstances of the case, if intent behind the action is proven for any gains or for any other ulterior motive, relevant sections of the IPC may also be applicable if there is evidence that the hospital has induced the patient.
2. It is important to note that Article 27 of the PC&PNDT (Amendment) act 2003 states “every offence under this Act shall be cognizable, non-bailable and non-compoundable”.

55. The PC-PNDT Act, 1994: Section 26 – Offences by companies

Offences and penalties.-

Where any offence, punishable under this Act has been committed by a company, every person who, at the time the offence was committed was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this subsection shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

Notwithstanding anything contained in subsection (1), where any offence punishable under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such

director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation: For the purpose of this section:

- (a) “company” means anybody corporate and includes a firm or other association of individuals, and
- (b) ‘director’, in relation to a firm, means a partner in the firm.

Interpretation and application

1. Penalties under this provision is applicable for the hospital as an entity, irrespective of the Act under which they are registered.
2. It is important to note that Article 27 of the PC&PNDT (Amendment) act 2003 states “every offence under this Act shall be cognizable, non-bailable and non-compoundable”.

56. The Prevention of Corruption Act, 1988, Section 7: Offence related to public servant being bribed

⁵¹[Offence related to any public servant being bribed. Any public servant who,--

- (a) obtains or accepts or attempts to obtain from any person, an undue advantage, with the intention to perform or cause performance of public duty improperly or dishonestly or to forbear or cause forbearance to perform such duty either by himself or by another public servant; or
- (b) obtains or accepts or attempts to obtain, an undue advantage from any person as a reward for the improper or dishonest performance of a public duty or for forbearing to perform such duty either by himself or another public servant; or
- (c) performs or induces another public servant to perform improperly or dishonestly a public duty or to forbear performance of such duty in anticipation of or in consequence of accepting an undue advantage from any person,

⁵¹ Substituted by the Prevention of Corruption (Amendment) Act, 2018 w.e.f. 26.07.2018 Vide Notification No. SO3664(E) dated 26.07.2018.

shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

Explanation 1: For the purpose of this section, the obtaining, accepting, or the attempting to obtain an undue advantage shall itself constitute an offence even if the performance of a public duty by public servant, is not or has not been improper.

Illustration: A public servant, 'S' asks a person, 'P' to give him an amount of five thousand rupees to process his routine ration card application on time. 'S' is guilty of an offence under this section.

Explanation 2: For the purpose of this section:

- (i) the expressions "obtains" or "accepts" or "attempts to obtain" shall cover cases where a person being a public servant, obtains or "accepts" or attempts to obtain, any undue advantage for himself or for another person, by abusing his position as a public servant or by using his personal influence over another public servant; or by any other corrupt or illegal means;
- (ii) it shall be immaterial whether such person being a public servant obtains or accepts, or attempts to obtain the undue advantage directly or through a third party.]

Interpretation and application

1. Understanding the definition and scope of the term 'public servant' is important to understand the applicability of this Section in the context of AB PM-JAY. Refer to Annexure 9 for the expanded meaning of 'public servant' and how it is can be applied to AB PM-JAY.
2. The act of 'public servant' obtains or accepts any *or even attempts to obtain* is criminalized under the ambit of this Act. In addition, the one giving bribe can also be charged with '*criminal conspiracy*'.
3. As per a judgement of The Supreme Court of India, **proof of 'demand' is an essential ingredient of proving a charge under Section 7** of this Act:

The proof of demand of illegal gratification, thus, is the gravamen of the offence Under Sections 7 and 13(1)(d)(i) & (ii) of the Act and in absence thereof, unmistakably the charge therefore, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act.

Krishan Chander vs. State of Delhi (2016) 3 SCC 108

4. In addition to the above, proceedings may also be initiated under the All India Service Rules or State government service rules as appropriate and applicable for government employees, if such rules have provisions to cover the impact of decisions under the Prevention and Corruption Act, 1988.

Illustrative scenarios

1. A hospital H offers bribe to a public servant P for securing empanelment under AB PM-JAY. Proceedings under this Act can be initiated against both H and P. P can be prosecuted under Section 7 of this Act.
2. A public servant P withholds payment of legitimate claims of hospital H to coerce H into offering financial kickbacks:
 - a. P can be booked for criminal proceedings under this Section.
 - b. If H pays P, both H and P are guilty. P can be prosecuted under Section 7 of this Act.
3. A public servant P threatens to de-panel hospital H from the AB PM-JAY if either free services or discounted medial services are not provided by H to a patient (non-AB PM-JAY beneficiary) referred by P:
 - a. P can be booked for criminal proceedings under this Section.
 - b. If H pays P, both H and P are guilty. P can be prosecuted under Section 7 of this Act.
4. SHA releases a tender for hiring the services of ISA. A bidder B offers bribe to a public servant P associated with the SHA to influence the tendering process in its favour. P can be

booked for criminal proceedings under this Section, irrespective of whether B is awarded the contract or not and irrespective of whether B has paid commission to P or not. Provided, there are adequate evidences to substantiate the charges.

57. The Prevention of Corruption Act, 1988, Section 7A: Taking undue advantage to influence public servant by corrupt or illegal means or by exercise of personal influence

⁵²[Taking undue advantage to influence public servant by corrupt or illegal means or by exercise of personal influence.]

Whoever accepts or obtains or attempts to obtain from another person for himself or for any other person any undue advantage as a motive or reward to induce a public servant, by corrupt or illegal means or by exercise of his personal influence to perform or to cause performance of a public duty improperly or dishonestly or to forbear or to cause to forbear such public duty by such public servant or by another public servant, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.]

Interpretation and application

1. Understanding the definition and scope of the term 'public servant' is important to understand the applicability of this Section in the context of AB PM-JAY. Refer to Annexure 9 for the expanded meaning of 'public servant' and how it is can be applied to AB PM-JAY.
2. This section can be used to initiate proceedings against any individual/organization who takes gratification from anybody for claiming to provide any undue benefit or advantage under AB PM-JAY by pretending to:
 - a. represent a public servant;

⁵² Inserted by the Prevention of Corruption (Amendment) Act, 2018 w.e.f. 26.07.2018 Vide Notification No. SO3664(E) dated 26.07.2018.

- b. act on the behest of or behalf of a public servant;
- c. have the capacity to influence the decision of a public servant.

3. Therefore, this section will cover within its ambit all middlemen and agencies that pretend to act as intermediaries.
4. In addition to the above, proceedings may also be initiated under the All India Service Rules or State government service rules as appropriate and applicable for government employees, if such rules have provisions to cover the impact of decisions under the Prevention and Corruption Act, 1988.

Illustrative scenarios

1. An agent A presents to a person P that A knows a public servant in the SHA and through that officer (irrespective of whether the name of that officer is taken or not) can get e-cards generated for people who are not otherwise eligible for benefits under AB PM-JAY. The agent A seeks a commission per card promised to be generated. Actions against A can be initiated under this Act, provided A exercises his personal influence over P.

58. The Prevention of Corruption Act, 1988, Section 8: Offence related to bribing of a public servant

⁵³[Offence relating to bribing of a public servant

- (1) Any person who gives or promises to give an undue advantage to another person or persons, with intention--
 - (i) to induce a public servant to perform improperly a public duty; or
 - (ii) to reward such public servant for the improper performance of public duty;

shall be punishable with imprisonment for a term which may extend to seven years or with fine or with both:

⁵³ Substituted by the Prevention of Corruption (Amendment) Act, 2018 w.e.f. 26.07.2018 Vide Notification No. SO3664(E) dated 26.07.2018

Provided that the provisions of this section shall not apply where a person is compelled to give such undue advantage:

Provided further that the person so compelled shall report the matter to the law enforcement authority or investigating agency within a period of seven days from the date of giving such undue advantage:

Provided also that when the offence under this section has been committed by commercial organisation, such commercial organisation shall be punishable with fine.

Illustration: A person, 'P' gives a public servant, 'S' an amount of ten thousand rupees to ensure that he is granted a license, over all the other bidders. 'P' is guilty of an offence under this sub-section.

Explanation: It shall be immaterial whether the person to whom an undue advantage is given or promised to be given is the same person as the person who is to perform, or has performed, the public duty concerned, and, it shall also be immaterial whether such undue advantage is given or promised to be given by the person directly or through a third party.

(2) Nothing in sub-section (1) shall apply to a person, if that person, after informing a law enforcement authority or investigating agency, gives or promises to give any undue advantage to another person in order to assist such law enforcement authority or investigating agency in its investigation of the offence alleged against the later.]

Interpretation and application

1. Section 8 prescribes punishment for persons giving a bribe or attempting to indulge in corruption with a public servant.
2. The recent amendment exempts those acts committed out of compulsion, provided a person so compelled files a compliant with the police or investigating agency within 7 days of giving a bribe under compulsion.
3. In addition to the above, proceedings may also be initiated under the All India Service Rules or State government service rules as appropriate

and applicable for government employees, if such rules have provisions to cover the impact of decisions under the Prevention and Corruption Act, 1988.

Illustrative scenarios

1. Private vendors/service providers bribing SHA official for securing tenders for goods and services.
2. Corruption in local purchase of medicines and consumables done by government hospital under AB PM-JAY or done by the State procurement agency.

59. The Prevention of Corruption Act, 1988, Section 9: Offence relating to bribing a public servant by a commercial organisation

⁵⁴[Offence relating to bribing a public servant by a commercial organisation

(1) Where an offence under this Act has been committed by a commercial organisation, such organisation shall be punishable with fine, if any person associated with such commercial organisation gives or promises to give any undue advantage to a public servant intending--

- (a) to obtain or retain business for such commercial organisation; or
- (b) to obtain or retain an advantage in the conduct of business for such commercial organisation:

Provided that it shall be a defence for the commercial organisation to prove that it had in place adequate procedures in compliance of such guidelines as may be prescribed to prevent persons associated with it from undertaking such conduct.

(2) For the purposes of this section, a person is said to give or promise to give any undue advantage to a public servant, if he is alleged to have committed the offence under section 8, whether or not such person has been prosecuted for such offence.

⁵⁴ Substituted by the Prevention of Corruption (Amendment) Act, 2018 w.e.f. 26.07.2018 Vide Notification No. SO3664(E) dated 26.07.2018.

(3) For the purposes of section 8 and this section:

(a) "commercial organisation" means:

- (i) a body which is incorporated in India and which carries on a business, whether in India or outside India;
- (ii) any other body which is incorporated outside India and which carries on a business, or part of a business, in any part of India;
- (iii) a partnership firm or any association of persons formed in India and which carries on a business whether in India or outside India; or
- (iv) any other partnership or association of persons which is formed outside India and which carries on a business, or part of a business, in any part of India;

(b) "business" includes a trade or profession or providing service;

(c) a person is said to be associated with the commercial organisation, if such person performs services for or on behalf of the commercial organisation irrespective of any promise to give or giving of any undue advantage which constitutes an offence under sub-section (1).

Explanation 1: The capacity in which the person performs services for or on behalf of the commercial organisation shall not matter irrespective of whether such person is employee or agent or subsidiary of such commercial organisation.

Explanation 2: Whether or not the person is a person who performs services for or on behalf of the commercial organisation is to be determined by reference to all the relevant circumstances and not merely by reference to the nature of the relationship between such person and the commercial organisation.

Explanation 3: If the person is an employee of the commercial organisation, it shall be presumed unless the contrary is proved that such person is a person who has performed services for or on behalf of the commercial organisation.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the offence under sections 7A, 8 and this section shall be cognizable.

(5) The Central Government shall, in consultation with the concerned stakeholders including departments and with a view to preventing persons associated with commercial organisations from bribing any person, being a public servant, prescribe such guidelines as may be considered necessary which can be put in place for compliance by such organisations.]

Interpretation and application

1. This section covers "commercial organizations" that may be engaged in corrupt practices set out in Sections 7, 7A and 8 of this Act.
2. It also includes persons associated with the organization. This can include a wide range of people from directors, staff to clients and contractors of such commercial organizations.
3. In addition to the above, proceedings may also be initiated under the All India Service Rules or State government service rules as appropriate and applicable for government employees, if such rules have provisions to cover the impact of decisions under the Prevention and Corruption Act, 1988.

Illustrative scenarios

In the four illustrative scenario presented for Section 7 of the Prevention and Corruption Act, 1988, the Hospital H and the bidder B can be prosecuted under this Section 9 as an organizational entity, which implies, the Chairman, and the Board members.

60. The Prevention of Corruption Act, 1988, Section 10: Person in charge of commercial organisation to be guilty of offence

⁵⁵[Person in charge of commercial organisation to be guilty of offence

⁵⁵ Substituted by the Prevention of Corruption (Amendment) Act, 2018 w.e.f. 26.07.2018 Vide Notification No. SO3664(E) dated 26.07.2018.

Where an offence under section 9 is committed by a commercial organisation, and such offence is proved in the court to have been committed with the consent or connivance of any director, manager, secretary or other officer shall be of the commercial organisation, such director, manager, secretary or other officer shall be guilty of the offence and shall be liable to be proceeded against and shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

Explanation: For the purposes of this section, "director", in relation to a firm means a partner in the firm.]

Interpretation and application

This is a punishment for offence under Section 9.

61. The Prevention of Corruption Act, 1988, Section 11: Public servant obtaining undue advantage, without consideration from person concerned in proceeding or business transacted by such public servant

Public servant obtaining⁵⁶[undue advantage], without consideration from person concerned in proceeding or business transacted by such public servant

Whoever, being a public servant, accept or obtains⁵⁷[***] or attempts to obtain for himself, or for any other person, any⁵⁶[undue advantage] without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the⁵⁸[official functions or public duty] of himself or of any public servant

56 Substituted by the Prevention of Corruption (Amendment) Act, 2018 w.e.f. 26.07.2018 Vide Notification No. SO3664(E) dated 26.07.2018 for the following :- "valuable thing".

57 Omitted by the Prevention of Corruption (Amendment) Act, 2018 w.e.f. 26.07.2018 Vide Notification No. SO3664(E) dated 26.07.2018 the previous text was :- "or agrees to accept".

58 Substituted by the Prevention of Corruption (Amendment) Act, 2018 w.e.f. 26.07.2018 Vide Notification No. SO3664(E) dated 26.07.2018 for the following :- "official functions".

to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

Interpretation and application

1. Essential ingredients for offences to be booked under this Section:
 - a. Public servant has to accept or obtain or attempt to obtain.
 - b. The benefit has to be either for himself or for any other person for undue advantage.
 - c. The benefit is not in form of money.
2. Section 2(d) of The Prevention of Corruption (Amendment) Act, 2018 introduced the phrase 'Undue advantage' with the following definition that is self-explanatory:

"undue advantage" means any gratification whatever, other than legal remuneration.

Explanation: For the purposes of this clause:

- (a) *the word "gratification" is not limited to pecuniary gratifications or to gratifications estimable in money;*
- (b) *the expression "legal remuneration" is not restricted to remuneration paid to a public servant, but includes all remuneration which he is permitted by the Government or the organisation, which he serves, to receive.*

3. In addition to the above, proceedings may also be initiated under the All India Service Rules or State government service rules as appropriate and applicable for government employees, if such rules have provisions to cover the impact of decisions under the Prevention and Corruption Act, 1988.

62. The Prevention of Corruption Act, 1988, Section 12: Punishment for abetment of offences

⁵⁹[Punishment for abetment of offences

59 Substituted by the Prevention of Corruption (Amendment) Act, 2018 w.e.f. 26.07.2018 Vide Notification No. SO3664(E) dated 26.07.2018.

Whoever abets any offence punishable under this Act, whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than three years, but which may extend to seven years and shall also be liable to fine.]

Interpretation and application

This is a punishment for offence for abetment under this Act.

63. The Prevention of Corruption Act, 1988, Section 13: Criminal misconduct by a public servant

⁶⁰[(1) A public servant is said to commit the offence of criminal misconduct:

- (a) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or any property under his control as a public servant or allows any other person so to do; or
- (b) if he intentionally enriches himself illicitly during the period of his office.

Explanation 1: A person shall be presumed to have intentionally enriched himself illicitly if he or any person on his behalf, is in possession of or has, at any time during the period of his office, been in possession of pecuniary resources or property disproportionate to his known sources of income which the public servant cannot satisfactorily account for.

Explanation 2: The expression "known sources of income" means income received from any lawful sources.]

- (2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than [four years] but which may extend to [ten years] and shall also be liable to fine.

⁶⁰ Substituted by the Prevention of Corruption (Amendment) Act, 2018 w.e.f. 26.07.2018 Vide Notification No. SO3664(E) dated 26.07.2018.

64. The Prevention of Corruption Act, 1988, Section 14: Habitual committing of offence under Sections 8, 9, 10

Whoever habitually commits:

- (a) an offence punishable under section 8 or section 9; or
- (b) an offence punishable under section 12.

shall be punishable with imprisonment for a term which shall be not less than [five years] but which may extend to [ten years] and shall also be liable to fine.

Interpretation and application

1. This section prescribes a more severe punishment for habitual offenders.
2. There is a high probability of habitual offence under AB PM-JAY as transactions under the scheme are high frequency and in large volumes.
3. In addition to the above, proceedings may also be initiated under the All India Service Rules or State government service rules as appropriate and applicable for government employees, if such rules have provisions to cover the impact of decisions under the Prevention and Corruption Act, 1988.

Illustrative scenarios

1. Public servant P repeatedly takes bribe from hospital P for claim processing.

65. The Prevention of Corruption Act, 1988, Section 15: Punishment for attempt

Whoever attempts to commit an offence referred to in [clause (a)] of sub-section (1) of section 13 shall be punishable with imprisonment for a term [which shall not be less than two years but which may extend to five years] and with fine.

Interpretation and application

This is a punishment for offence referred to in Section 13(1)(a).

ANNEXURE 9

Notes on Specific Acts

1. The Information Technology Act, 2000

There are considerable overlaps between the offences in The information Technology Act, 2000 and the Indian Penal Code, 1860. It may be noted that position of law on simultaneous applicability has been settled by Supreme Court judgements.

Further, Section 81 of The Information Technology Act, 2000 States that this Act has an overriding effect on any other Act. The legislative intention is clear. More than one prosecution for the same offence is a “brazen violation of protection against double jeopardy.”

2. The Prevention of Corruption Act, 1988

Who is a public servant?

Section 2: Definitions

(c) "public servant" means:

- i. any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;
- ii. any person in the service or pay of a local authority;
- iii. any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);
- iv. any Judge, including any person empowered by law to discharge, whether by himself or

as a member of any body of persons, any adjudicatory functions;

- v. any person authorised by a court of justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver or commission appointed by such court;
- vi. any arbitrator or other person to whom any cause or matter has been referred for decision or report by court of justice or by a competent public authority;
- vii. any person who holds an office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;
- viii. any person who holds an office by virtue of which he is authorised or required to perform any public duty;
- ix. any person who is the president, secretary or other office-bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);
- x. any person who is a chairman, member or employee of any Service Commission or Board, by whatever name called, or a member of any selection committee appointed by such Commission or Board for the conduct of any examination or

making any selection on behalf of such Commission or Board;

- xi. any person who is a Vice-Chancellor or member of any governing body, professor, reader, lecturer or any their teacher or employee, by whatever designation called, of any University and any person whose services have been availed of by a University or any other public authority in connection with holding or conducting examinations;*
- xii. any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner established, receiving or having received any financial assistance from the Central Government or any State Government, or local or other public authority.*

Explanation 1

Persons falling under any of the above sub-clauses are public servants, whether appointed by the Government or not.

Explanation 2

Wherever the words "public servant" occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

Interpretation

Apart from government employees, the following categories of personnel may also be interpreted as public servants – **this of course will be subject to judicial interpretation:**

1. Individuals who are not government employees but are contracted and paid by the government.

By the virtue of definition: 2c (i) any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty.

2. Individuals who are not government employees, not contracted and paid by the government, but paid through development partner support and function full time out of government offices officially handling responsibilities.

By the virtue of definition: 2(viii) *any person who holds an office by virtue of which he is authorised or required to perform any public duty;*

Read with:

Explanation 1

Persons falling under any of the above sub-clauses are public servants, whether appointed by the Government or not.

3. The Clinical Establishments (Registration and Regulation) Act, 2010

This act primarily deals with the registration of clinical establishments. There are no provisions specific to fraudulent acts under AB PM-JAY, except forging a CEA registration document to seek empanelment under the scheme.

The rules notified by the Ministry of Health and Family Welfare, Government of India pursuant to this Act talks of compliance to Standard Treatment Guidelines (STG) that may be determined by the Central or State government (Rule 9(iv)) as one of the conditions for registration and continuation of clinical establishments.

Lack of compliance to STGs cannot be interpreted as fraud.

In short, this Central Act does not include within its fraudulent practices of clinical establishments and actions thereof.

Further, many States have promulgated their own legislations related to clinical establishments. SHAs in States that have their State-specific legislations, may consider analysing if any such provision exists in their State laws.

