

Heat+

The eyes that see so much more

Photographer Suzanne Lee brings to light the problems of the downtrodden ... **p04-05**



The Heat

OCT 5-11, 2013

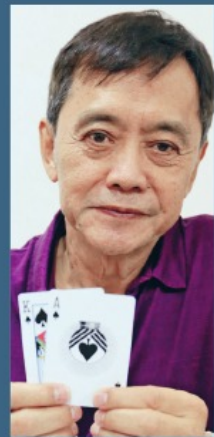
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Are you ready for Personal Data Protection Act?

Find your solution here! Enterprise IT pros say losing confidential company info is a top concern - what personal devices have you seen on workplace networks?

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What the RCI has covered over the years

- **The Sabah illegal immigrant problem (2013 – now)**

The RCI which commenced January this year heard witnesses reveal that some 66,000 blue identity cards (ICs) were given out to win the general elections all through the 80's and 90's. However, former Prime Minister Tun Mahathir Mohamad denied he gave away illegal ICs and citizenship, and claimed ignorance of implications over Project IC. He claimed that his name was put on everything.

- **The death of Teoh Beng Hock (2009 – 2011)**

Three Malaysian Anti-Corruption Commission (MACC) officers who allegedly psychologically abused and kept Teoh Beng Hock confined for long hours while they interrogated him got away scot-free even after strong recommendations by former Federal Court judge Tan Sri James Foong, who chaired the commission. They were suspended after the report was released, but evidently, the suspension was short-lived as one of the officers was tasked into the Enforcement Agencies Integrity Commission. The Teoh family continues to push for a review of the RCI, but to no avail.



Federal Court judge Foong said MACC officers were accountable for Teoh's death

- **The V.K. Lingam Video Clip (2007-2008)**

Six high-profile individuals, including Mahathir himself, were implicated in a telephone conversation featuring lawyer VK Lingam that was recorded on video, which smacked of judicial fixing. All six got away scot-free – despite prima facie findings to prosecute them for misconduct after the video clip was found to be genuine. This RCI yielded the infamous Lingam testimony of: "It looks like me, sounds like me, but it's not me", when asked if he was the one in the video.



V.K. Lingam – "It looks like me, sounds like me."

- **Police Reform (2004)**

The RCI for police reform recommended greater transparency and greater accountability via the Independent Police Complaints and Misconduct Commission to prevent deaths in custody and enable the police to better serve the rakyat. But with eight deaths in custody this year alone, a sharp increase in crime rates and stubborn refusal to set up the IPCMC, it would seem the key recommendation continues to be ignored.

- **Datuk Seri Anwar Ibrahim's black eye while in police custody (1999)**

Many Malaysians saw the black eye and bruised arms when Anwar went into the courtroom to face charges of sodomy and corruption. Few knew the report released by the RCI on his injuries, and nobody was punished for what was clearly abuse by police over a man in custody.

- **Fire at the Bright Sparklers Factory in Sungai Buloh New Village (1991)**

At that time the nation's worst disaster, the fire claimed 21 lives and the RCI was set up to find out why.

- **Fire at Sekolah Agama Rakyat Taufikah al-Halimah in Padang Lumat, Yan, Kedah (1989)**

- **Collapse of the upper deck of the Pengkalan Sultan Abdul Halim Ferry Terminal in Butterworth (1988)**

- **The Teaching Services (1971)**

- **The workings of local authorities in West Malaysia (1968)**

- **Salaries and conditions of service of the Public Service (1965)**

The Royal Commission on Salaries and Conditions of Service of the Public Service resulted in the Suffian Report, named after its chairman Tun Mohamad Suffian Hashim. It recommended the government grant housing loans to civil servants to build or buy houses.

Hopes dim on royal panels of inquiry

Another scandal, another RCI – but to what end? In at least the last four inquiries, the government has ignored the commission's key findings or recommendations, doing irreparable damage to the public's beacon of hope for change

THE Royal Commission of Inquiry (RCI) is a veritable public institution, a beacon of hope for uncovering the truth and for change. But the government's inaction over the findings and recommendations of the last four inquiries since 1999 has turned that hope into scepticism.

By ignoring key recommendations, what the government has effectively done is to diminish the commission's importance, notwithstanding the fact that the law that gives birth to the commission allows the government to do so.

Judging from the postings on the Internet, that's how some quarters are viewing the ongoing RCI on the Sabah illegal immigrants issue, even with the shocking revelations on the trading of identity cards for votes. It's unfortunate that they are expecting things to go the way of the last four inquiries, even before the report is out.

Why is this so? First, let's look at what happened in the last four inquiries.

► Teoh Beng Hock

On July 11, 2011, what was supposed to be closure for the family of political aide Teoh Beng Hock turned out to be yet another bitter pill for his grieving family to swallow.

A RCI set up to investigate Teoh's death on July 16, 2009, found that he committed suicide after a lengthy and torturous interrogation at the hands of the Malaysian Anti-Corruption Commission (MACC).

Teoh's broken body was found on the fifth floor corridor of then Selangor MACC office in Plaza Masalam in Shah Alam after he plunged nine floors from the fourteenth floor where he had been held for an investigation concerning his boss, Seri Kemangan assemblyman Ean Yong Hian Wah.

The RCI named three officers who they concluded had driven Teoh to suicide: former Selangor MACC deputy director Hishamuddin Hashim, investigating officer Mohd Anuar Ismail and officer Mohd Ashraf Yunus.

Despite calls from several quarters to charge the officers with culpable homicide, the officers were merely suspended, and have since dropped out of notoriety. Some felt that the RCI should have delved into the circumstances surrounding the death, something the terms of reference did not cover.

► The VK Lingam video clip

On Feb 15, 2008, a five-man RCI panel found that the video clip of prominent lawyer Datuk V.K. Lingam allegedly involved in 'judicial fixing' was authentic, and recommended that appropriate action be taken against the individuals implicated in the video.

The video clip saw Lingam talking about the



BY PAULINE WONG



Teoh (above) was driven to suicide by; (below, from left) MACC's Hishamuddin Hashim, Mohd Anuar Ismail and Mohd Ashraf Yunus who interrogated Teoh



appointment of judges to another person, purportedly former Chief Judge of Malaya Tun Ahmad Fairuz Sheikh Abdul Halim.

In the grainy eight minute video clip taken on the mobile phone of ex-Kelana Jaya MP Loh Gwo Burne, Lingam was supposedly talking about the need to appoint the person at the other end of the line into the judiciary's top post of Chief Justice, and had alleged that he could get tycoon Tan Sri Vincent Tan and Umno secretary-general Tengku Adnan Tengku Mansor to 'talk' to former Prime Minister Tun Dr Mahathir Mohamad.

The RCI recommended that the six persons



Despite the recommendations of the RCI on Anwar's black eye, no action was taken against the officers responsible

“The government (by ignoring recommendations) gives the impression that they have no regard for the public who participated in the enquiry, and that it has no respect for the effort put in by the commissioners. It also gives the impression that it has never been serious about RCIs nor that they intended to abide by the recommendations in the first place.”

and outright refusal to set up the IPCMC, it would seem the recommendations fell on deaf ears after all.

► Anwar Ibrahim's black eye

In 1999, an RCI was set up to investigate the injuries sustained by former Deputy Prime Minister (and now opposition leader) Datuk Seri Anwar Ibrahim while in police custody.

The RCI, headed by (the late) former Chief Judge of Malaya Tan Sri Anuar Zainal Abidin, found that police officers gave Anwar the infamous 'black eye' while he was in their custody after being charged with sodomy and corruption.

The three-man panel recommended action against the police officer whom they did not name to the media at that time, but whom many believe to be former Inspector-General of Police Tan Sri Rahim Noor. However, there was no notable action taken against Rahim or any police officer in charge of Anwar at the time.

In the last 14 years, these RCIs were held because the controversies just refused to go away. It would seem they were held to pacify the public, to lull them into thinking that the government would act to redress the situations that

implicated in the video – Lingam, Ahmad Fairuz, Tan, Mahathir, Tengku Adnan and former Chief Justice Tun Mohd Eusoff Chin – be charged with misconduct.

It also found there was *prima facie* evidence to investigate the six men for offences under the Sedition Act, Official Secrets Act, Penal Code and the Legal Profession Act. However, the findings were ignored by the government because they were not legally binding.

► Police reform

In 2004, the RCI for police reform recommended greater transparency and greater accountability via the Independent Police Complaints and Misconduct Commission (IPCMC) to prevent deaths in custody and enable the police to better serve the people. But with eight deaths in custody this year alone, a sharp increase in crime rates

SHARIL AMIN ABDUL RAHIM/THE HEAT



Bar Council president Christopher Leong says the government should have the moral and political fortitude to implement recommendations

What's an RCI?

According to the Commissions of Inquiry Act 1950, an RCI may be convened by the Yang di-Pertuan Agong when it appears to him to be expedient to do so, on advice of the Cabinet or a Minister acting under the general authority of the Cabinet.

Essentially, RCIs are convened to look into matters of considerable public importance. These matters include the conduct of any federal officer, the conduct or management of any department of the public service or of any public institution and any matter in which an inquiry would be for the public welfare, except for matters involving the Islamic religion or Malay custom.

Their terms of reference, again, are also determined by the King on the advice of the Cabinet.

In an RCI, the powers of the commissioners are quasi-judicial in nature, as the proceedings are deemed to be judicial proceedings, hence retired judges are usually appointed as commissioners.

They have the powers to procure and receive all necessary evidence, written or oral, and to examine all persons who have knowledge of the matter in question as witnesses. The evidence of the witnesses

► Continues on page 08

gave rise to public anger.

While the RCIs do attempt to reveal the truth, and in the process of doing so drag those implicated through the court of public opinion, they stop there. The government will study the findings or recommendations, and when public pressure has died down, so do the proposed actions to redress the situation.





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RCI ruse to buy time

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can be taken on oath or affirmation or by way of statutory declaration.

The Act also confers upon the commissioners the power to summon any person in Malaysia to appear before them to give evidence. If he fails to do so, a warrant of arrest can be issued to compel his attendance.

Where an RCI goes moot is in its inability to prosecute, as it is a fact-finding body. Its recommendations, no matter how controversial or hard-hitting, can be disregarded by the government at any given time with no consequences.

Because of this, it would seem RCIs are set up to silence dissent among the people, and actually serve no further purpose than to give the media and public scraps to chew on while the real buffet is going on elsewhere.



Abdul Aziz Bari: "Public should pressure government to take action."

As such, it then becomes the duty of every citizen to speak up and demand action on the commission's recommendations or findings. They need to defend the institution that gives them hope for change.

Constitutional law expert Abdul Aziz Bari said while the reality is that an RCI simply has no prosecutorial powers, the public should nevertheless seize the opportunity after every RCI to pressure the government into taking action on recommendations and findings.

"At the end of the day, it is up to the people and civil society to take the findings further, to ask the relevant authorities to take action," he told *The Heat*.

But the fact that the RCIs are formed on the advice of the government in the first place is its biggest stumbling block.

"That is the problem... the government will elect those who are politically favourable to them," he said.

Bar Council president Christopher Leong was critical of the government's lack of resolve in ensuring the recommendations are implemented.

"The government (by ignoring recommendations) gives the impression that they have no regard for the public who participated in the enquiry,

and that it has no respect for the effort put in by the commissioners," he told *The Heat*.

"It also gives the impression that it has never been serious about RCIs nor that they intended to abide by the recommendations in the first place," he added.

Leong stressed that RCIs are of great public importance, as a public inquiry like an RCI is meant to be accessible to the public, and is about revealing the truth.

"In the context of the court of law, the truth of a matter may be limited sometimes to what parties involved choose to reveal or to expose in proceedings, whereas in an RCI, the public can give information and it is up to the commissioners to decide if it is important or not," he said.

He said the government should have the moral and political fortitude to implement the recommendations, at the very least, otherwise it would appear the government is simply using RCI's to buy time to defuse a heated situation.

This, then, would probably explain why the government announces RCIs as and when it is favourable to them for political mileage and to 'improve' perceptions.

The government, in its less-than-stellar track record, appears to form RCIs as public relations exercises when the situation calls for it.

Last word on the Sabah RCI

With a track record of inaction, what will the ongoing RCI on the Sabah illegal immigrants issue achieve?

The panel, headed by former Chief Judge of Sabah and Sarawak Tan Sri Steve Shim, convened at the start of this year to probe into problems of immigrants in Sabah who were allegedly given identification cards and citizenship illegally.

Its terms of reference included investigating the number of foreigners in Sabah who were granted citizenship, whether the citizenship was given in accordance to law, and most importantly, if these 'illegals' have been registered into Sabah's electoral roll.

So far, the revelations from this RCI have been startling.

One witness revealed that Mahathir was behind "Project IC" which allegedly gave away tens of thousands of blue ICs (citizens carry blue ICs, while permanent residents carry the red IC) to immigrants.

These citizenships were purportedly given freely in exchange for votes throughout his reign as Prime Minister in the 80's and 90's.

But with Mahathir denying all knowledge of Project IC, and a lethargic attitude from authorities towards witness testimonies, will the outcome of this RCI be mere window dressing to placate Sabahans?

The RCI's report is expected out on Dec 21. It is time the government silences its critics and restores faith in the RCI. ■



The IPCMC was strongly recommended but never implemented

Key recommendations persistently ignored

SOME key recommendations from Royal Commissions of Inquiry just won't go away, and will continue to be a thorn in the government's flesh.

One of them is the proposed Independent Police Complaints and Misconduct Commission (IPCMC) to act as police watchdog. It was key among 125 reforms recommended by the RCI on police reforms headed by former Chief Justice Mohd Dzaiddin Abdullah in 2005.

The formation of the IPCMC was to ensure the enforcement of rules and regulations governing the police, and it would have the power to investigate even without a complaint from the public. The IPCMC would be able to order any action deemed fit, including suspension or demotion of guilty officers, with the only recourse for appeal being the courts. There would be seven commissioners, none of whom could be serving or retired police officers; it would be mandatory for the chair to have some legal background.

Eight years on, the IPCMC remains a dark cloud hanging over the heads of both Prime Ministers since—Tun Abdullah Badawi and Datuk Seri Najib Abdul Razak.

The reluctance to implement and the weak compromise in the Enforcement Agencies Integrity Commission (EAIC) seem to suggest that the IPCMC may render the police force impotent. Conversely, it has invited criticism that the government is afraid of the weaknesses the IPCMC would expose in the police force, or the rampant corruption that it is often accused of.

Other key recommendations such as increasing representation of ethnic minorities and women in the force, while crucial, appear to have been overlooked as well – there are less than two per cent of Chinese and Indians in the entire civil service.

Inquiries into deaths in custody are conducted, but the findings are always kept hidden from the public eye, with no telling whether any action will be taken on parties responsible.

With crime on the rise, the strengthening of the police force has never been more essential.

Other suggested reforms from the RCI, some of which have been implemented.

- Establish reasonable grounds for suspicion before arrests.
- Amend Section 113 of the Criminal Procedure Code (CPC) to clearly outline

what kinds of statements from suspects will be admissible in court; at the moment any statement is admissible.

- Record all statements or confessions before a magistrate.
- Make compliance with human rights and other legislation a top priority of the police.
- Launch a campaign to improve awareness of human rights within the force.
- Amend the Police Act to reduce the burden on organisers of peaceful public gatherings, who face difficulty obtaining police permits.
- Amend the Internal Security Act and Dangerous Drugs (Special Preventive Measures) Act to mandate that the detainee be brought before a magistrate within 24 hours, and be given access to their family and lawyers; the maximum detention period would also be reduced to 30 days.
- Repeal the Restricted Residence Enactment, Emergency (Public Order and Prevention of Crime) Ordinance and partially repeal the Prevention of Crime Act.
- Amend Section 117 of the CPC, making seven days the maximum remand time for a suspect arrested without a warrant, and 24 hours for a suspect arrested with a warrant. At the end of the remand period, the suspect must be charged or freed.
- Suspects must be given access to a lawyer, and if there is none, the magistrate must enquire if the suspect has any complaint about his arrest or detention.
- Adopt a code of practice on the arrest and detention of persons.
- Conduct inquiries into all cases of deaths in custody.
- Clearly delineate the powers and responsibilities of the Special Branch in the law, and define "security" to ensure it does not overstep its bounds while remaining accountable and responsible.
- Create two positions of Deputy Inspector-General of Police; one for operations and the other for finance and administration.
- Strengthen community policing.
- Allocate more resources towards fighting crime.
- Work more closely with non-governmental organisations and the private sector.

(source: Centre for Public Policy Studies Factsheet)

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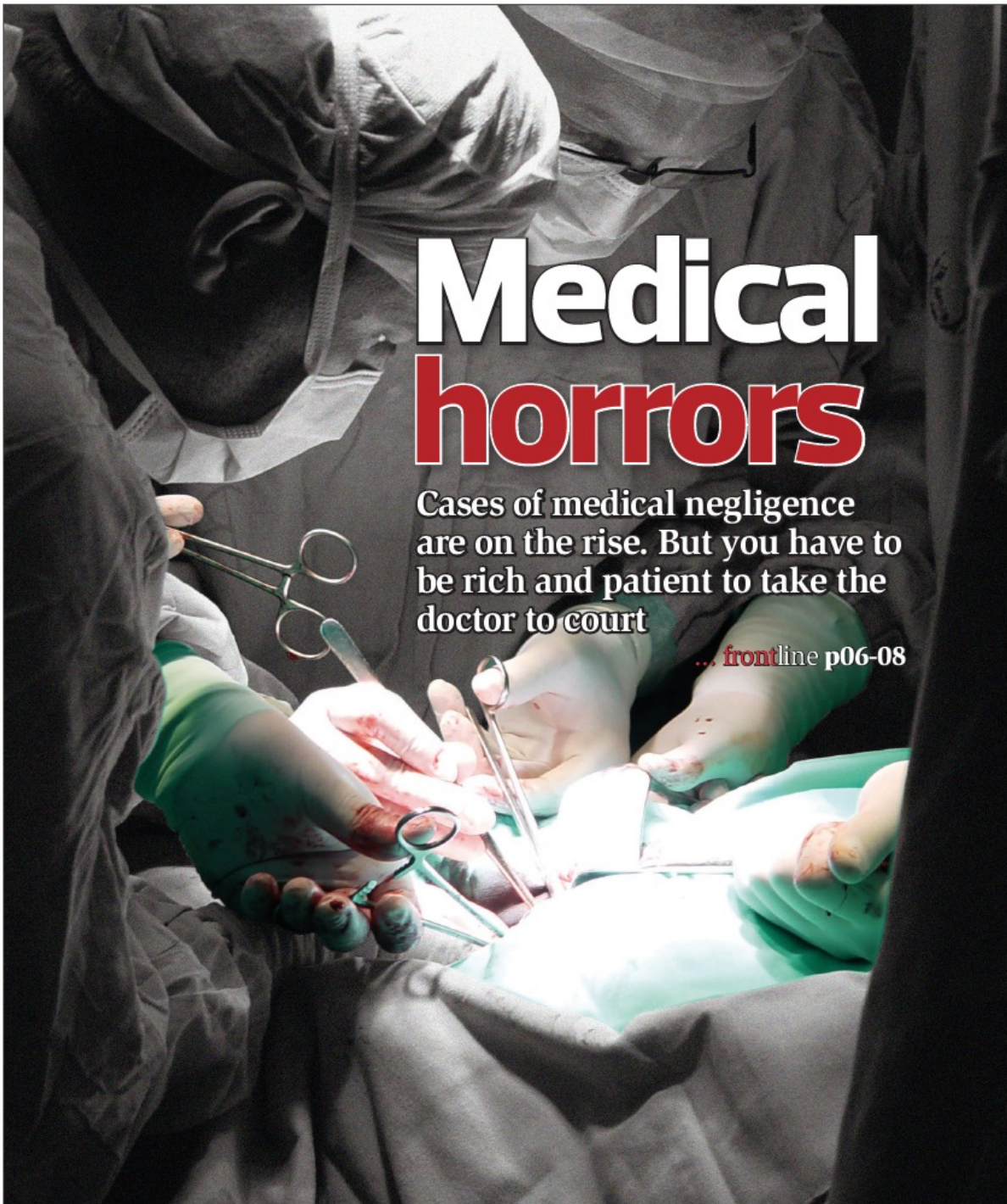
Falling prey to bomohs

Victims could end up dead after seeking their help ... p14



Case for oral sex

Andrologist Dr Mohd Ismail Mohd Tambi says hygiene is only concern ... p18



Medical horrors

Cases of medical negligence are on the rise. But you have to be rich and patient to take the doctor to court

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Hijab-clad pole dancer

Munira Yusoff challenges convention by taking up the exotic dance ... p14&15, Heat+

Saifuddin stays relevant

The ex-minister finds his voice again via his three passions: civil society, debate and basketball ... p20&22



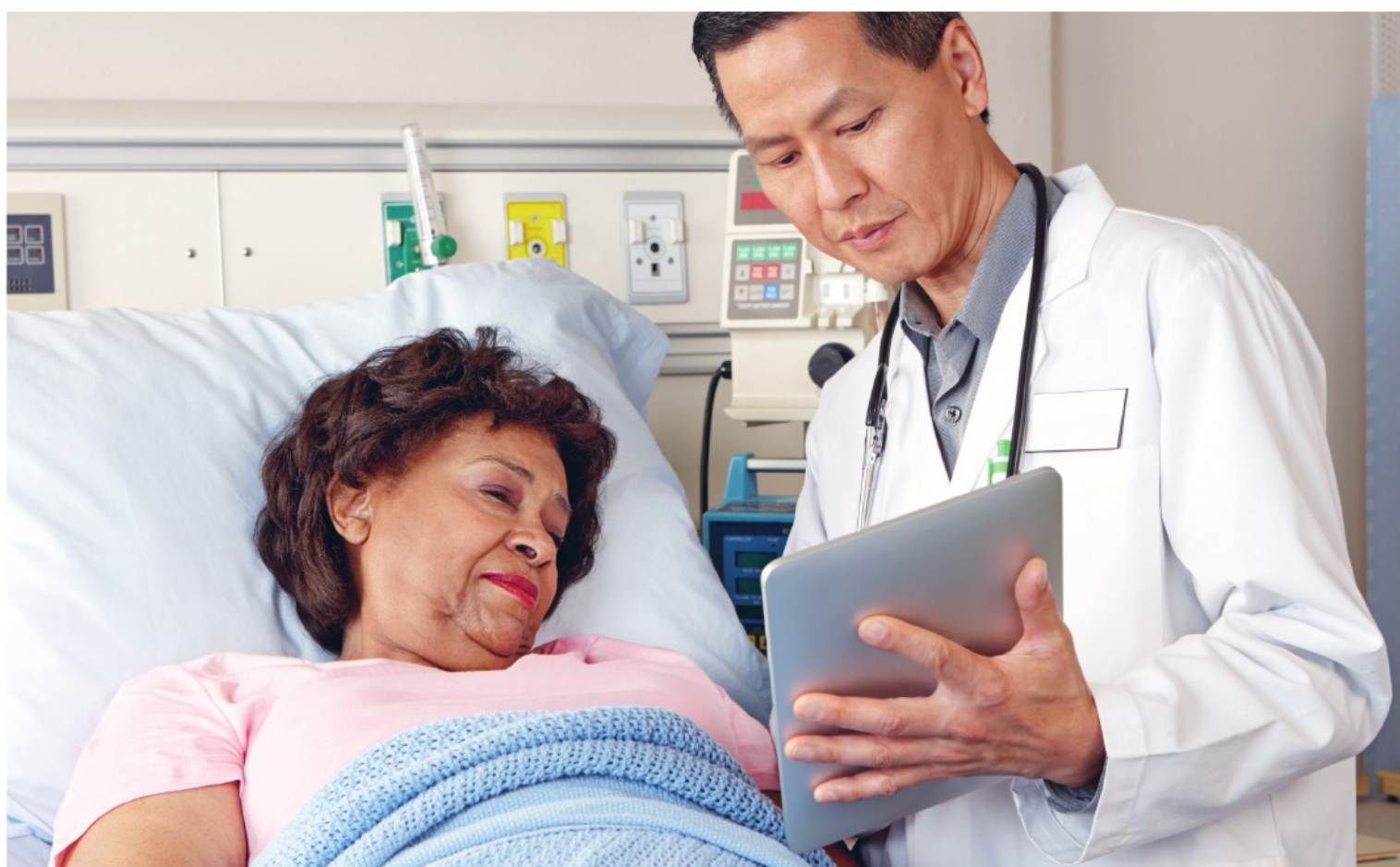
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When explaining a diagnosis, most doctors use medical jargon that is difficult for the average person to understand



BY V SHUMAN

IMAGINE being cut up by a surgeon who suspects a malignant growth in one of your vital organs, only to have the biopsy show up as a misdiagnosis. And to add salt to the wound, you still have to pay the full cost of the procedure.

You hear stories like this in casual conversations. Yet a number of them do not end up in court. It's because suing doctors for negligence is a rich and patient man's pursuit.

Even middle-income earners balk at the idea of engaging a lawyer, who will probably have to spend 10 to 20 years on the case, fighting all the way to the Federal Court for an ultimate decision that can go both ways.

Just how prevalent medico-legal litigation is today is hard to quantify because statistics on suits against private practitioners are not routinely compiled and publicised.

In the case of government hospitals, the Ministry of Health's medico-legal section reports a significant jump in such cases, with a total payout of RM6.6 million for the period 2005-2009 (see tables). For a country with a population of 28 million, this is considered extremely low.

James Khong Yoon Hong, a lawyer who is familiar with medico-legal suits, says there has been a definite increase in such cases.

"Doctors speak a language that laymen don't understand. For this reason, diagnoses given by doctors are often thoroughly followed by patients, without them completely understanding the procedure. If things go wrong, the patients will be forced to seek further recourse," Khong says.

He says the rise in litigation demonstrates the increased awareness among the people of their rights as patients. "With the Internet, many people don't rely on doctors for simple diagnoses anymore. As society progresses, the medical lingo is slowly being unravelled and the days of doctors knowing best are gone."

The perils of suing a doctor

The odds are stacked against the average man who has been irreparably harmed by a negligent doctor. It's time the fault-based system is reviewed for the benefit of people who have no means to pursue litigation

Suing a doctor, however, is no walk in the park. A businessman who is currently suing a hospital says he has to bring in medical experts from abroad to help in his defence as local doctors are reluctant to act as defence witnesses.

"Can you imagine how much it will cost me to bring the experts in every time the case comes up for hearing? I have to pay his plane fare, his hotel expenses and other allowances. How many people can afford to do so?"

The fault-based system

Malaysia practises the tort or fault-based system to regulate medical negligence litigation. This system provides for compensation only when a doctor or any other medical personnel assisting in the treatment of a patient has been proven to be negligent by a court of law.

International Islamic University Malaysia's head of department (civil law) Associate Professor Dr Puteri Nemie Jahn Kassim says there are weaknesses to this system, which is adversarial in nature.

"Under this system, it is up to the plaintiff to prove the doctor had positively breached a recognised standard of care. In this case, the acceptable manner of proof of the standard of care is another doctor's testimony.

"This often posed an obstacle to the victim, who routinely has to face the unwillingness of one doctor to provide evidence against a colleague. The 'conspiracy of silence' has effectively prevented numerous medical accidents from prevailing at trial and deterred others from starting litigation," she says.

Even if litigants do get past the stage of getting experts to testify for them, pursuing a claim can get messy and drawn out. For instance, a well-documented case took 24 years to wrap up, from the date of incident through to the Federal Court. (See side story)

Delays may occur at different stages in the medical litigation process and for various reasons. It

Government hospitals' medico-legal cases settled (2005 – 2009)

NO	DISCIPLINE	2005	2006	2007	2008	2009	TOTAL
1	O & G	4	8	7	5	18	42
2	Surgery	1	3	2	4	7	17
3	Orthopaedic	1	0	1	4	2	8
4	Paediatric	3	3	2	2	7	17
5	Anaesthesia	0	0	0	1	0	1
6	Medical	0	1	3	6	14	24
7	Psychiatry	0	1	0	0	0	1
8	Ophthalmology	0	0	0	0	1	1
9	Oncology	0	0	0	0	2	2
	Total	9	16	15	22	51	113

Source: Complaints, Enforcement and Medico-Legal Section, MoH

Compensation paid upon court orders and ex gratia (2005 – 2009)

NO	DISCIPLINE	2005	2006	2007	2008	2009	TOTAL
1	O & G	257,994	315,224	328,775	114,000	844,135	1,860,128
2	Surgery	25,779	121,809	28,265	132,362	87,319	395,534
3	Orthopaedic	15,000	-	10,000	70,034	29,736	124,770
4	Paediatric	30,000	32,907	293,819	189,867	109,300	655,893
5	Anaesthesia	-	-	-	12,000	-	12,000
6	Medical	-	613,057	423,353	659,096	1,551,224	3,246,730
7	Psychiatry	-	141,993	-	-	-	141,993
8	Ophthalmology	-	-	-	-	75,000	75,000
9	Oncology	-	-	-	-	152,200	152,200
	Total	328,773	1,224,990	1,084,212	1,177,359	2,848,914	6,664,248



Dr Puteri Nemie Jahn Jassim and Dr Milton Lum Siew Wah

occurs before the plaintiff seeks legal advice, while waiting for information from the opposing side, while the parties wait for experts to investigate and produce their reports, while the parties seek and exchange documentary evidence and while waiting for the trial date.

Formidable adversary

The patient is often up against a formidable adversary. The doctor will fight hard to win as the future of his practice depends on it. On top of that, because he is insured against malpractice claims, the insurance company's lawyers will back him up and take the case all the way to the apex court.

An insurance agent told *The Heat* that he is in the midst of selling an insurance package to a small hospital with five surgeons. For a coverage of up to RM3 million, the hospital has to pay RM27,000 in annual premium. "If our client gets sued, our company's lawyers will back him up. After all, if he loses the case, we are the ones who pay."

This is why medical practitioners are one of the best protected professionals. A recent report on the bid by doctors to raise specialist fees stated that obstetricians, gynaecologists and plastic surgeons pay a hefty RM80,000 annually in insurance premium.

However, Dr Puteri Nemie says facing a lawsuit itself can be detrimental to a doctor's reputation and practice, even if the matter does not go to trial. Doctors not only fear losing a lawsuit

but the lawsuit itself.

"In a way, a malpractice suit challenges professional reliability and authority. Such development may not only cause the adoption of defensive medicine but also deter doctors from

opting for high-risk specialities.

"The threat of litigation also subtly changes the doctor's relationships with all patients, not just those who initiate claims against him. This is because the threat of malpractice compels the doctors to view his patients as a future adversary in a courtroom proceeding," she says.

She adds that frequency of medical

malpractice suits and the amount of awards against doctors can lead to sharp increases in the cost of doctor's liability insurance, as is the case in the United States, Australia and the United Kingdom.

Defensive medicine

There is concern that the increasing number of malpractice suits may cause many doctors to opt for "defensive medicine". This refers to the practice of adopting procedures which are not for the benefit of the patient but as safeguards against the possibility of making a claim of negligence. Such procedures include subjecting the patient to additional tests which may be clinically unnecessary but done to ensure nothing goes wrong.

Aside from the court, patients who are harmed by negligent doctors have no other recourse. It is a misperception that they can get re-

dress through the Malaysian Medical Council (MMC), which regulates the profession. Dr Puteri Nemie says the council addresses complaints of professional misconduct, not negligence.

"The fact that MMC disregards complaints of medical errors in misdiagnosis or treatment clearly goes against its primary duty to protect the public and fails to become an effective disciplinary mechanism to safeguard the public," she says.

Because of its refusal to look into cases of medical negligence, and the fact that most of its tribunal members are medical professionals, the MMC has been dubbed "a toothless tiger" in terms of its role as a patient complaint mechanism.

Dr Milton Lum Siew Wah, a practising gynaecologist and former president of the Malaysian Medical Association (MMA), admits that the healthcare industry, as advanced as it has become in recent years, is not free from risks.

He says studies show patients in healthcare are more prone to harm than an airline traveller. "Statistics by the World Health Organisation show a one in 300 chance of a patient being harmed while in healthcare, while there is only one in a million chance of a person being harmed while in an aircraft. Other studies also show that one in 10 hospitalised patients is harmed because of adverse events or errors."

Lum, who is also a member of the MMC, says there are several mechanisms in place for patients who feel they have been wronged, to voice their grievances.

"Patients have to remember that when they are in the healthcare system, they don't only deal with the doctors, but the system as a whole. There are surgeons, nurses, medical officers, physiotherapists and so on, depending on the nature of their treatment. If something does go wrong while they are in the system, they must be able to pinpoint who is responsible," he says.

As in all litigation cases, it's not easy to prepare an air-tight case. In medico-legal cases, it may be even more so because the odds are stacked against the patient. It is time the authorities relook the fault-based system and provide alternatives for redress for those who have no means to drag the negligent doctor to court. ■

Alternative ways to handle medical negligence cases

► Adopt a no-fault system for medical negligence

This provides compensation without the need to prove fault. Compensation is based on the injury suffered. The scheme is practised in countries like New Zealand and Sweden. There is no legal fee and little administrative cost. A fund is needed to disburse compensation once eligibility criteria have been met.

Possible problem: Financially not viable for a large population base. Political will and strong financial commitment needed to make it work.

► Improve consumer complaints mechanism

Complaint mechanisms should be free from bias and without prejudice to maintain public confidence. Consumer complaints are now channelled through the Malaysian Medical Council (MMC), which comprises mainly of doctors. The council only deals with cases of medical misconduct and not negligence.

► Set up a complaints unit in all public and private hospitals

Designated patient relations officers attend to complaints on the spot and refer matter for investigation as soon as possible. Complaint procedures should also be publicised and available to patients.

► Introduce pre-action protocols

These are procedures that enable parties to a dispute to negotiate, seek explanation or discuss with doctors and hospital without having to file a suit. This allows an appropriate apology or explanation to be offered at the earliest instance.

► Set up a medical review bureau

This will act as a forum outside the courtroom in which a complaint can be solved without the expense, publicity and the difficulty of court proceedings. The bureau will adopt an inquisitive approach, rather than an adversarial one. Written reports will be submitted, which could then be referred to the MMC. A full response is later given to satisfy the claimant that his concerns have been taken seriously. An apology and expression of genuine regret, which does not amount to an admission of liability, should be given. Once the report has been finalised, the parties are free to accept or reject the findings of the Bureau.

► Mediation

This focuses on reconciliation arranged by a panel of lawyer, doctor and lay person. The role of the mediator is to establish an atmosphere in which the parties work to settle a situation themselves. Unlike arbitration or court litigation, no resolution can be reached save by the consent of the parties and mediator's decision is not binding.

► Arbitration

The parties in dispute appoint a third party, whose decision will be binding on them.

Note: These proposals were contained in an academic paper by Dr Puteri Nemie Jahn Kassim

Delays in settling malpractice suits

Where delays occur:

- Plaintiff seeks legal advice
- Parties wait for experts to investigate and produce their reports
- Parties seek and exchange documentary evidence while waiting for court date
- Appeals against decisions, right up to Federal Court

Two cases which were dragged out in court:

- Case of Dr Chin Yoon Hiap v Ng Eu Khoon & Ors and other appeals

Length of time: 16 years

The suit was filed on Dec 23 1981, and judgment was delivered on Nov 7 1997. If taken from the time the incident took place, which was Jan 7 1976, the duration would be 21 years.

- Case of Foo Fio Na v Hospital Assunta & Anor

Length of time: 24 years

The cause of action took place on July 19 1982, and the High Court gave its judgment on Oct 8 1998. The Court of Appeal gave its decision on April 5 2001.

An application for leave to appeal to the Federal Court against the decision of the Court of Appeal in Dr Soo Fook Mun v Foo Fio Na & Anor was made in November 2001 and the Federal Court finally delivered its judgment on Dec 29 2006, after a delay of over four and a half years.

MANY patients who have been misdiagnosed by doctors or who had been the subject of negligent actions often suffer in silence because the route of litigation is paved with high costs, delays and uncertainties.

The Heat spoke to four people whose faith in the doctor was shaken because of what they, or their loved ones, were subjected to during their illness. These cases serve as reminders that not all doctors share the same opinion and skill set. Always seek a second opinion. It might just save your life.

Case of a 'rare illness' that was a milk allergy

Tashwita Devi Yogesh, now five, is a bright and extremely chatty girl. One would never guess that the first three months of her life was spent in and out of hospitals. Paediatric specialists at a government hospital thought she suffered from a rare and incurable disease, when it turned out to be a simple case of intolerance to cow's milk protein.

Her mother Anusha Vasu, 35, says her baby was fed formula milk after she was born. Soon after, she started having diarrhoea and vomiting spells, to the extent of getting dehydrated.

"She was barely six weeks old when my husband and I took her to a government hospital in Cheras. They admitted her and took her urine, blood and stool samples.

"It was horrible to watch my baby crying helplessly as the doctors, and sometimes housemen, prodded her tiny arms with needles to take blood samples," Anusha says.

During her stay in the paediatric ward, she and her husband Yogesh Karisenan, also 35, had many times suggested to the doctors that it may be a case of allergy to formula milk but they were overruled.

Tashwita was discharged after several days, but her problems persisted.

"She became dehydrated again after a bout of diarrhoea when she was about 12 weeks old and we rushed her to the hospital. She was again warded and the same team attended to her.

"This time, they even took her spinal fluid. The specialist told us it was a case they had never encountered before and that it might be a rare incurable illness," relates Anusha, adding that she was devastated by the news. Tashwita was discharged while the lab processed samples obtained from her.

Soon after that, she fell severely ill. "She actually turned blue, due to extreme dehydration. This time, we took her to a private medical centre in Cheras.

"There, a specialist checked her and told us that it was a case of allergy to cow's milk protein.

"She prescribed a special milk formula for babies with protein allergy. We followed her advice and Tashwita has been healthy ever since," says Anusha, adding that they did not confront the specialist at the government hospital, as "it would not have made any difference".

Incurable disease turns out to be simple allergy

Some cases of medical negligence that never made it to court



Anusha shows Tashwita's baby pictures as the five-year-old looks on

Case of the doctor who admitted his mistake

The conduct of a doctor who reneged on his words changed the way Philip, in his 50s, looks at doctors. "I believe that there are still good doctors out there but having dealt with a rogue one, I don't really look at people in the profession with rose-tinted glasses anymore."

His predicament began when his 75-year-old mother needed hip joint surgery after she had a fall in her house in George Town in 2011.

"We took her to a hospital in George Town, where the consulting doctor decided to conduct hip joint surgery to connect the dislocated joints using a metal ball on a stem, measuring about 8 inches long. The structure was supposed to correct the misaligned joints and eventually fuse into the bones.

"She successfully underwent the surgery and we took her to the physiotherapist at the same hospital. But after five or six months, she was still using an adult walker and experiencing pain," he says.

Philip took his mother back to the surgeon who had operated on her. The doctor took an X-ray of his mother's hip and after studying it, concluded that nothing was wrong. "My sister and I took some snapshots of the X-ray with our handphones for the record. We later studied the pictures and found the stem placement was misaligned with the bones. It was tilted."

They went back to the same doctor, and in a meeting where the chief executive officer of the hospital was present,



Shasikala shows her hefty RM11,000 bill for a botched eye surgery

confronted him with the evidence. Surprisingly, the doctor admitted his mistake.

"He (the doctor) was extremely apologetic and told us he was willing to rectify it via another corrective surgery. I was impressed with his response and commended him for it. Even the CEO expressed surprise that the doctor had admitted his fault," says Philip.

But the date for the second surgery never came. "Every time we got in touch with them, they would give all sorts of reasons. After more than a month, the CEO dropped a bombshell on us. He said the doctor had denied admitting his botched job.

"I believe the doctor's lawyers and insurance company must have advised him that his admission would cost him both his reputation and money if it became exposed.

"We then scheduled a corrective surgery at a government hospital in Penang. My mother was fine after that," says Philip, adding that the first surgery cost about RM15,000, while the second cost only a third the amount.

The family did not sue the doctor or the hospital, as they knew it would be a long and expensive process, and there would be no guarantee they would win.

"I think recording the doctor's confes-

sion would have made a huge difference in the outcome of the case," says Philip.

Case of the superstitious ophthalmologist

Shasikala Devi Gopalan, in her 40s, almost ended up blind in one eye – no thanks to a botched eye surgery by a doctor, who refused to carry out a corrective procedure, as he believed the first job was "jinxed".

Shasikala had suffered from severe myopia (short-sightedness) in both eyes since young. Wanting a permanent solution, she went to see an ophthalmologist in a private hospital in Bangsar last June, who suggested implanting lenses in her eyes. She was told the lens implant, called intraocular lens (IOLs), was safer than laser treatment.

The surgery, called Clear Lens Extraction and Replacement (CLEAR), has been used to fix various eye problems since 1999. Patients are put under local anaesthesia, and the IOL lenses inserted via a small incision in the eyes, similar to cataract surgery. Most people recover within a week of surgery. Shasikala's surgery took place on June 27 last year.

But after waking up in the ward with a patch over her right eye, the doctor who conducted the surgery told her something had gone wrong.

"He told me the artificial lens that he was about to insert into my eye had broken in half and that he had to halt the procedure. He said it was not a common occurrence.

"He also told me he was a superstitious person and was reluctant to re-do the procedure as he felt jinxed! He suggested I consult another ophthalmologist at a different hospital," relates Shasikala.

Three days later she was transferred to a medical centre in Subang Jaya for corrective surgery. "The second doctor said I was put under unnecessary invasive surgery which could have caused a retinal detachment. The following day, I was operated on under local anaesthesia and discharged the same day with some sight on my right eye," she says.

The first doctor who performed the botched surgery charged the full cost of RM11,645 for the one eye, despite not finishing the job. Shasikala incurred more than RM6,500 in bills at the second hospital.

She has referred her case to a lawyer.

Other medical blunders

Perhaps the most high-profile case recently involved a tycoon who had his pancreas removed after doctors in a medical organisation in Singapore wrongly diagnosed the organ as being cancerous. The medical suit is in the courts.

There's also the case of a woman in her 30s, who tried to conceive for seven long years after having her first child, to no avail. Checks later revealed that the doctors who had operated on her during her first child's birth had tied her fallopian tubes by mistake. ■

No redress for children abused by carers

Child abuse is becoming a big problem in Malaysia, but perpetrators seldom have to answer for their crimes. What are the shortcomings in our system that allows this to happen, and what can be done?



BY V SHUMAN

IN MALAYSIA, it is quite easy to get away with sexually abusing a child – at least that is what our records show. Of every 10 cases of child sexual abuse taken to court only one ends in a conviction – a very bad record by any standard.

In many cases, the perpetrators are close relatives, such as the father, brothers or uncles. In some, the abuser is the mother's boyfriend.

More often than not, the abused child is too afraid to testify against an adult, or the mother refuses to co-operate with the police.

Child abuse is not an uncommon problem in Malaysia. One recent case is that of a six-year-old girl who was found wandering in the wee hours in Setapak, Kuala Lumpur, bruised and hungry.

Investigations revealed that the child had been subject to months of physical torture before she ran away from the house where she lived. Police have since arrested her guardians.

Dead end

Unlike the case of this six-year-old child, most abusers get away scot free, according to lawyer Pra-

modini Nair.

She recalls the case of five-year-old Chin (not her real name) who suffered years of sexual abuse by her father. He used to sneak into the bedroom Chin shared with her seven-year-old sister and rape them.

The girls' mother was fully aware of what was happening but chose to turn a blind eye as she was dependent on her husband to support the family, according to Nair.

"The woman just refused to snitch on her husband. When the elder child told her mother about the sexual assaults, she received a scolding and was told to keep her mouth shut," Nair recalls. The child eventually broke down in school and that was when the matter came to light.

A probe was immediately initiated and medical check-ups revealed that both girls had marks on them that were consistent with sexual abuse. But when their father was arrested, the girls' mother chose to stand by her husband.

"The children could recount the rapes and how the suspect laughed when they tried to push him away," Nair says.

The culprit was never convicted, but the children have been placed under the care of the Welfare Department. They are now in their teens.

Although this case took place years ago, it remains a reflection of the current situation. "It is safe to say that out of 10 cases that are reported, evidence can be culled for only three cases and, out of that, only one sees conviction," Nair says.

There are many reasons for this. Usually, the family members of the abuser and victim do not want to report to the police for fear of the stigma. In two of every 10 cases, the women side with the perpetrators, be they husbands or boyfriends, and refuse to co-operate with the police.

Even if a case is reported, there is every likelihood that it will be classified as a "domestic issue". "Investigations into cases of child sexual abuse require a lot of legwork and I have personally encountered policemen who ask complainants to withdraw their reports and settle the matter amicably," Nair says.

For the few who succeed in getting legal recourse, remedy is still a long shot. In most cases, the prose-

ANWAR FAIZ AHMAD TA JUDIN/THE HEAT



Suka Society executive director Anderson Selvasegaram

cution has little to go by – the result of poor police work. "It is not like a Hollywood movie where the police and the legal system work hand in hand to probe the case deeply," Nair points out. "Most of the time, the deputy public prosecutor (DPP) only gets the case file on the day of the court proceedings. A shoddy report will leave the DPP with nothing to fight on, hence the low conviction rate."

Even for cases that reach the courts, the rate is low. "Children make the worst witnesses. A child who has undergone a lot of trauma is not likely to speak against the perpetrator who happens to be in the same courtroom. I have seen children freeze upon seeing the abuser," she says.

Defence lawyers usually grill the victims on the nature of the assault, and this can break the victim. They just refuse to relive the ordeal.

Testimony by video is usually bogged down by technicalities.

Family affair

In many cases, the abuse can be committed by several members of the family – from father to uncles to brothers and even guests.

Children's welfare organisation Suka Society (Suara Kanak-kanak) executive director Anderson Selvasegaram recalls a case where a girl was raped repeatedly by her father for four years starting from when she was 12. "Soon several male tenants who were staying in the sus-

pect's home also began to sleep with the girl. The victim's mother lived under the same roof but she suffered from mental illness," Selvasegaram says.

Later, the girl's aunt got to know about the abuse and lodged a police report. The suspect went into hiding and the girl was placed in a shelter home. Being a school dropout, she stayed at the shelter until she was 19 when she took up a course in hairstyling.

Unfortunately the culprit later caught up with her and convinced her to sleep with him again. "In her young mind, she did not think it was wrong. The suspect was never caught," Anderson says. In fact, it is safe to say that nothing short of a confession will nail a child abuser.

In another case, a nine-year-old girl was raped by her 13-year-old brother. But when the matter came before the syariah court, she was made to forgive him. The girl ended up in a welfare home, and the abuser walked away scot free.

In many cases, the tables are usually turned against the victim. "The victim ends up being punished," Nair says.

For instance, there are victims who have been placed in the care of the Welfare Department for so long that the protection they are supposed to get becomes an imprisonment.

"They not only lose a big part of their childhood due to abuse, but are also made to sacrifice their blood ties and freedom, while the perpetrators walk free," Anderson says. "Some lucky ones are taken care of by relatives but many will find foster homes or get jobs after a few years and move on with their lives."

The best way to resolve this is to get to the root of the problem. Potential abusers must be stopped before they can attack their victims, most of all their own children.

And for those who have already been through such abuse, every step must be taken to not only ease the pain for them, but to also make their abusers pay for the crime. Only then will there be hope for the child. ■

This couple are charged for a family suicide attempt that killed their five-year-old daughter. An older son survived



Mindset must change to ensure protection for children

THE ATTITUDE towards cases of child abuse must change before more concrete measures can be taken to protect children.

The government can start by putting in place the necessary legislation to ensure the rights of children are respected and they are protected against potential abusers, including parents and

close relatives.

Current laws are not deterrent enough to address the issue of child neglect. For instance, if a parent leaves his child unattended in the car and the child is abducted or dies of a heatstroke, it is clearly a case of negligence but the authorities normally do not take action against the parent.

"If the child dies, the parents should actually be charged with manslaughter," says children's welfare organisation Suka Society (Suara Kanak-kanak) executive director Anderson Selvasegaram.

Lawyer Pramodini Nair recalls a meeting she had with a former Women, Family and Community Development Minister where they discussed a child

abuse case. When asked if the father should be prosecuted, the minister's response was: "The man has already lost a child and has four more children to feed. Who is going to feed them if we imprison him?"

With attitudes such as this, it will be a long time before our children can feel safe again.