

# Anecdote from Editors Desk

## Anecdote 5- Legal Fight to Defend Retraction: An Unhealing Sore

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We received a short communication from a premier government teaching hospital of India. The Head of the Department (HOD) was among the authors, besides two residents. The work was vetted, peer-reviewed and published.

Few months later, we received a mail from a print journalist stating that the study data was falsified. Such a study couldn't have been done in the stated time period because the telephone connection to the department was defunct (which was an integral part of the study methodology). He also attached a published news item from the newspaper he worked in, which stated the same. In that the name of the journal and the Chief Editor was mentioned. We were not privy to the internal investigation undertaken by the journalist and hence the reporter didn't have the journal's version of events.

We thought it was pertinent to look into the matter. We mailed the corresponding author citing the newspaper article and requested a robust proof of the study including whole data that was collected. One fine day the Chief Editor received a phone call from the senior author (HOD) trying to coax him to stop the inquiry. However, he firmly maintained his stand and re-requested the evidence. Next few weeks were a tussle of email correspondences. Finally, the journal office received a courier containing a dairy which was apparently the proof of the study. It had the researcher's notes on the data of the study. First impressions from the diary led to a belief that it was done by a less-devoted researcher; the texts were illegible almost like a scribble with very fuzzy data collected for each telephonic conversation (the primary aim of the study). The most outstanding observation was that the notes in the dairy did not match the descriptive outcome that was shown in the manuscript. It appeared that the diary was 'made up' in haste. Also, every page had signature of either of the co-authors. Now, since we already had the copyright form, we found that none of corresponding signatures match; as if one person had signed for all. We sought an external opinion too- sent the manuscript and the data to an expert. The report further confirmed our observations regarding the data mismatch. So, we finally came to the conclusion that we were deliberately misled into publishing a fabricated work and thus we decided to retract the article.

Later, we came to know that there existed a feud between the senior author (HOD) and the institute head which had spilled over into the media.

Following the article retraction, the institute research committee was also conveyed to and they upheld our decision.

The story took a nasty turn when the HOD served us a court notice asking for a sum of INR 10,00,000/- complaining that the retraction has caused him defamation. The notice had named few others too, besides the Chief Editor of JCDR, the newspaper journalist, a department colleague and the institutional head- a

total of ten defendants. The lawsuit was filed in the state where the hospital was situated. We decided to contest and hired a lawyer. He found numerous flaws in the lawsuit. The multiple defendants were unrelated to each other and each was charged with a disparate offence. How will the liability be shared? We were forced to make a representation before the court. This in itself was a task at hand. For the first few hearings the Chief Editor had to take few days off for preparation of the case and attend the hearing. Judicial proceedings work at their own slow pace. It has been more than 5 years since the first hearing and the case still remains open; this event remains as an un-healing sore.

This case fulfills the first point in favour of retraction as per the COPE guidelines (<https://publicationethics.org/files/retraction-guidelines.pdf>). The American Journal of Clinical Nutrition and Diabetes were winners against a lawsuit filed against them after they retracted articles based on data falsification. (<https://www.nature.com/news/courts-refuse-scientists-bids-to-prevent-retractions-1.18175>). In two separate incidences, Guangwen Tang (a nutrition scientist at Tufts University in Boston, Massachusetts) and Mário Saad (a medical researcher at the University of Campinas in São Paulo, Brazil), lost their respective cases against the journals.

Even the big-shot publishers like Elsevier too get such threats (<https://retractionwatch.com/2016/05/24/author-threatens-to-sue-elsevier-if-paper-remains-retracted/>). Another such lawsuit ended where the publisher had to revise the words in the original retraction notice, in order to be sublime towards the author. This was done after the author filed a complaint, lost the case, but the judge ruled in favour of the author's argument about his defamation due to the retraction notice. "Misappropriated data, plagiarised and concealed the authorship of work" was changed into something milder- "as some of the findings have previously been published" (<https://retractionwatch.com/2017/12/20/author-wins-judgment-elsevier-lawsuit-retraction/>).

There are quite a few such stories on journal-author feud leading to civil litigations. The correct modus operandi is to let the authors know about the journal action plan and giving them an opportunity to present their side of argument. If the case is clear and weighs towards fraud or data manipulation, there is no point of wasting time and resources. This would be beneficial for the journal and authors; rather than making it a fight of ego. After this one failed attempt to publish the questionable paper, now it's time to let it go.

If the research is fundamentally wrong or is nothing but clear fraud then the authors are expected to take the retraction honorably. But, more often than not, the saga does not end at retraction. The Indian Penal Code has sections concerned to plagiarism (section 57 and Section 63 and Section 63 (a) of Copyright Act, 1957) and has specific copyright laws. (<http://www.copyright.gov.in/Documents/CopyrightRules1957.pdf>). This essentially means

that a copyright form is considered significant evidence. Every journal/publisher requires the authors to sign a copyright form acknowledging the declaration that the study is true and honest.

In cases such as this anecdote, the author has clearly infringed the copyright law. But paradoxically or perhaps preemptively, they filed a case against us.

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