
Legal Perspectives of Medical Practices in India

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Abstract: : Law is enforced code of conduct by the machinery of sovereign state applied similarly on every citizen of nation. It is founded on philosophy of equality and right for everyone in any healthy society. Medical professionals being in direct contact of safety of human lives are more vulnerable to law enforcement agencies, but following the honest code of conducts and awareness of concerned legal matters make them legally abide reputed citizen. Concepts of conduct is practiced since antiquity in India as Indian philosophy of law and Ayurveda acknowledges them well. Any negligence or rashness on the part of medical professionals may result in loss of life (interfering with right to life and personal liberty), so enforced codes for good behaviours in general is applied in form of law. Indian Penal Code, Code of Criminal Procedures, Evidence Act and Consumer Protection Act provide tools to every citizen to get the justice in case of deficiency of services or negligence or rashness in actions by medical professionals. Indian Medical Council Act and Good Clinical Practices provide guidelines to medical professionals to follow the law of land.

Keywords: Law, Medical Professionals, Indian Penal Code, Code of Criminal Procedure, Evidence Act, Consumer Protection Act, Indian Medical Council Act, Code of conduct.....

Law is written or positive rule or collection of rules prescribed under the authority of the state of nation, as by the people in its constitution¹. It is a rule of conduct or action prescribed or formally recognized as binding or enforced by a controlling authority. Law is both liberating and restraining. It is whole of body of customs, practices or rules². Behaviour or conduct under rules of state is matter of law. It's obligatory for every citizen to behave under the mentioned standard behaviour. It is the price everybody has to pay for corresponding benefits of free and protected society in lawful state.

Any conduct below the standard behaviour against the unreasonable risk of harm is treated as negligence in law. Negligence under tort is breach of legal duty causing extent of loss and according to degree of negligence, criminal law is applied³. Negligence is applicable to every field including medical profession. Any improper, unskilled or negligent treatment of a patient by a physician, dentist, nurse, pharmacist or other health professional is termed as *Medical negligence*⁴. But it must satisfy the four criteria including breach in discharging the duty, violation of applicable standard of care, injury or harm to patient and injury or harm caused by substandard conduct of physician.

Medical Council of India (MCI) or Central Council of Indian Medicine is statutory body under the *Indian Medical Council Act, 1956* and *Central Council Act, 1970* to ensure high standards of medical education, for accreditation of colleges, to recognize medical qualifications and for granting registration to medical practitioners and to monitor medical practices in India⁵. The medical council also prescribes standards of professional conduct and etiquette and code of ethics under section 20 A.1. Section 33 (m) further mentions the observation of professional conduct and etiquette and code of ethics by medical practitioners⁵.

Indian Medical Council Act under Section 20 A.2 clearly negates the power of MCI to withstand the any law of land. Medical professionals are also accountable to law. The law creates conditions congenial to the advance of medicine, to the benefits of patients, to the protection of the doctor and ultimately to the good of the community¹⁰.

Legal Panorama of Medical Practices in Ancient India

Concept of systematic conduct enforced by state machinery is not a new concept. Manusmriti 9/284 made reference to fine for all physicians who treat their patients wrongly⁷. Yagvalakyasmriti had also cited the punishment on wrong treatment, but the intensity of punishment was suggested as per the degree of offence, classes and discretion of king⁸. *Arthashastra* marked the punishment to physicians with the first amercement and second amercement for death of patients. The first amercement was referred to the physician for treating the patient with dangerous diseases without intimating the king leading to death of patient while second amercement was cited for death of patient due to carelessness in the treatment. Negligence resulting in growth of disease due to negligence of physician was regarded as assault or violence⁶.

Qualities of treatment and physicians are well mentioned in Ayurveda. *Charak Samhita* Sutrasthana (CSS) 9/6 highlights the quadruple of qualities of physicians letting in theoretical knowledge, practical experiences, skillful while performing and cleanliness⁹. *Sushruta Samhita* notes down a person having good conduct, brave, cleanliness, humble, intelligent, with good memory and firmness as suitable to learn Ayurveda¹⁰. Even *Ashtanga Hridaya* Sutrasthana 1/27 specifies the quality of physician being alert, disciplined, having good knowledge about disease and treatment, having practical experiences and cleanliness¹¹. CSS 1/134-135 indicates that a physician is one who relieves the disorders of patients with proper application and is endowed with all qualities¹². As per CSS 10/22, a wise physician is able differentiate curable and incurable diseases and takes actions without wrong notions¹³. CSS/9/26 recognizes four attitudes of physicians as friendliness, compassion towards the diseased, interest in the amenable and indifference to those who are moving towards end¹⁴.

Charak Samhita Vimanasthana 8/13-14 notifies the conducts of physicians. Physician should be truth speaking, without haughtiness, careful, with concentrated mind, humble, without jealousy, blissful, pure, righteous, thankful etc. He/she should not engage his/her speech, mind and sense organs anywhere except patients. Excellence of conduct is expected and learning is suggested even from enemies. He/she should implement advices after due consideration only.

All these conducts expose the dutifulness of physician towards the code of conduct. In case of not following the code of conducts, provisions of expulsion from course or as per the law of court of kings were implemented.

Indian Laws Applicable To Medical Professionals At Present

Number of Acts of nation is applicable in medical profession from teaching to practicing or managing a hospital viz., laws related to governing the commissioning of hospital, laws governing the qualifications or practice and conduct of professionals, laws related to storage, sell and safety of medicaments, laws governing the management and safety of patients, staffs and public, laws related to environment, laws governing the biomedical research, laws in respect to employment of manpower, laws of professional training and research, regulations governing the business aspects of hospitals and law governing the medico-legal aspects.

Laws governing the medico-legal aspects are more concerned to civil law and criminal law. Civil law is the body of law that governs private or civil rights, providing redress for wrongs by compensating the person or entity that has been wronged rather than punishing the wrongdoer¹⁵. The term criminal law is applicable when acts and conducts are defined as crime or are seen by the government to threaten public welfare or safety, the severity which categorizes various crimes as either misdemeanor or felony¹⁶.

Consumer Protect Act, 1986 deals with cases implicated with deficiency of service. Deficiency of service means any fault, imperfection, shortcoming or inadequacy in the quality, nature, or manner of performance that is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of contract or otherwise in relation to service¹⁷. Law doesn't seek highest degree of skill, knowledge and care, but reasonable degree of skill, knowledge and care are expected¹⁸. Medical practitioners rendering free services of treatment are not covered under this act as per section 2 (1) (o) of Consumer Protection Act, 1986. Even the payment of token amount for registration purpose is also taken as same, but if payment is done for treatment, the word 'service' come in force¹⁸.

Once medical professionals' actions of negligence result to violation of law or morality leading to physical or mental harms or injuries or death, criminal laws are used in practice. Three main statutes regulate medico-legal system viz., Indian Evidence Act 1872, Indian Penal Code (IPC) 1860 and Code of Criminal Procedure (CrPC) 1973.

Technological advancements have brought dependencies of legal procedures to experts or medical professionals in number of criminal cases seeking medical evidences. Reports based on post-mortem, DNA analysis,

fingerprints, serum analysis etc. are commonly presented as evidences in courts where medical professionals' expertise is utilized. As per *Lyon's Medical Jurisprudence*, evidences can be classified as¹⁹:

1. Documentary evidence
 - a. Certificates of death
 - b. Medical reports
 - c. Dying declaration or *Leterm Mortem*
 - d. Printed opinions of experts
2. Oral evidence of witnesses
 - i. Common witnesses
 - ii. Expert witnesses

Medical evidences are taken as option evidence or advisory. It is only corroborative. Courts can use the medical evidences for consistent with direct and circumstantial evidences, paternity, identity of deceased and rape²⁰.

Mostly doctors treat patients in good mind after getting consent of the patients under the legal provisions, hence many of sections of IPC are not applicable to physicians until gross negligence is observed. Some familiar sections are advised to be known to apprehend doctors' liability under the IPC. Section 40 is related with the word 'offence' while section 44, 45 and 46 are respectively for injury, life and death. Section 52 of IPC evidently refers to that nothing is done or believed in 'good oath' which is done or believed without due care or attention. Section 80 concerns to accident in doing a lawful act as nothing is an offence which is by accident without any criminal intention or knowledge in the doing of lawful act in lawful manner. Lawful manner stands for proper care and caution. Section 81 mentions act likely to cause harm, but done without criminal intent, and to prevent other harm. Section 87 corresponds to act not intended and not likely to cause death or grievous hurt, done by consent while section 88 and 89 illustrates act not intended to cause death, done by consent or person or guardian's in good faith respectively for person's benefit or benefit of child or insane person. Sections 90 is associated with consent either in fear or misconception whereas section 92 deals with act done in good faith but without consent. Section 93 clarifies that no communication made in good faith is an offence²¹.

Section 269 and 270 are connected to act likely to spread infection of disease dangerous to life in order to negligence and malignance. Section 304A mentions the imprisonment or/with fine for death by negligence or rash act amounting to culpable homicide. Miscarriage, of injuries to unborn children, of the exposure of infants and of the concealment of births are commended in section 312-316. References of hurt and grievous hurt are cognized in sections 319 and 322 which can be caused by medical professionals. Section 328 species hurt by means of poison etc. Hurt and grievous hut caused by act endangering life or personal safety of others are mentioned in sequence in section 337 and 338. Section 340 and 342 details in sequence about wrongful confine and punishment for wrongful confinement. A patient cannot be detained for non-payment of hospital charges²¹.

Code of Criminal Procedure (CrPC), 1973 is legislation on administration of substantive criminal law in India. Section 53 CrPC mentions the examination of accused by medical practitioner at the request of police officer not below the rank of sub-inspector, and for any person acting in good faith in his aid and under his direction. A female registered medical practitioner can only supervise or examine a female. In this section and in section 53-A, section 54, "registered medical practitioner" means a medical practitioner who possesses any recognized medical qualification as defined in clause (h) of section 2 of the Indian Medical Council Act, 1956 (102 of 1956) and whose name has been entered in a State Medical Register. Section 53-A relates to examination of accused of rape by medical practitioner. Apart from the basic information of the name, address, marks of injury, if any, on the person of the accused etc. the description of material taken from the person of the accused for DNA profiling, and other material particulars in reasonable detail are necessitated. Section 54 cites examination of arrested person by medical

officer or registered medical practitioner.

The registered medical practitioner is required to forward the report of the investigating officer, who shall forward it to the Magistrate referred to in section 173 as part of the documents referred to in clause (a) of Sub-Section (5) of that section. Section 291 illustrates the deposition of civil surgeon or other medical witness to examine subject matter of his/her deposition on call of the court. If any accused is lunatic or of unsound mind, the magistrate can cause such person to be examined by the civil surgeon and if the civil surgeon finds the accused to be of unsound mind, he/she shall refer such person to a psychiatrist or clinical psychologist for care, treatment and prognosis. Section 338 refers to the procedure where lunatic detained is declared fit to be released²².

Some Judicial Pronouncements

Jacob Mathew v. State of Punjab case is a most cited one in which Apex Court's judgement is read as landmark for stipulating the guidelines to be followed before launching a prosecution against a doctor for negligence as the investigating officer cannot always be supposed to have knowledge of medical science, so as to determine whether the accused medical professional amounts to rash or negligent act within the domain of Criminal Law under section 304-A of IPC²³.

In another popular case of *Achutrao Haribhau Khodwa and Ors v. State of Maharashtra* Honorable Justice Kripal B.N. noticed that negligence cannot be attributed to a doctor so long as he is performing his duty with due care, caution and attention. He would not be liable because he chooses one course of action over other²⁴.

Bench of Honourable Justice G.S. Singhvi and Justice Ashok Kumar Ganguly in *V. Kishan Rao v. Nikhil Super Specialty Hospital* case awarded compensation of Rs. 2 lakhs to complainant under the principle of *res ipsa loquitur* (things speak for itself)²⁵.

In the highest-ever compensation awarded in medical negligence case, a bench of Justice C.K. Prasad and Justice V. Gopala Gowda awarded Rs. 5.96 crore to complainant with interest at the rate of 6% in *Dr. Kunal Saha v. AMRI* case²⁶.

In *Kurban Hussein v. State of Maharashtra* case Honourable Justice Wanchoo K.N. stated that, 'to impose criminal liability under section 304-A of IPC, it is necessary that the death should have been the direct result of rash and negligent act of the accused, without other person's intervention'²⁷.

In *Juggankhan v. State of Madhya Pradesh* case, Honourable Justice S.M. Sikri observed accused being guilty of rash and negligent act as accused had no knowledge on the effect of administration of substances, yet he did so. Honourable Court noted that the principle which emerges is that a doctor who administers a medicine known to or used in a particular branch of medical profession impliedly declares that he has knowledge of that branch of science and if he does not, in fact, possess that knowledge, he is prima facie acting with rashness or negligence²⁸.

Legal Advisories to Medical Practitioners

1. Inform police wherever needed under the section 176 of IPC as it deals with omission to give notice or information to public servant by person legally bound to give it. Provisions of punishment are there in case of intentional omission which is further discussed under the subsection 1 of section 565 of CrPC.
 2. Cooperation to investigating agencies or police is mandatory for medical professionals under various sections IPC and CrPC.
 3. Medical professionals have to submit all records to police, court or relatives on demand as per section 175 of IPC.
 4. All documents of legal formalities must be completed in emergency cases or cases of serious nature.
 5. Consent of patients are essential segment of treatment as mentioned in section 90 of IPC.
 6. All legal procedures given in various statutes applied for medical practitioners must be followed.
 7. There should not be any false statement passed in oral or written as given in section 177 of IPC.
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8. Post-mortem is essential in case of death, if cause is not ascertained.
9. Medical professionals must follow the provisions mentioned under the Medical Council Act, 1956.
10. Law professionals should be consulted without getting panic.
11. All compulsive compromise should be discouraged.
12. Practicing with patients' life as subject of utmost importance with all possible precautions in good faith is best way to avoid any legal objection.

Conclusion: Philosophy of law and science works on same theme that human lives are most important. Money or any other things are secondary. Many of ancient texts have cited nicely the sanctified approach of medical professionals to save human lives. Code of conducts are prescribed to maintain the order of actions for rights of human beings. Medical professionals, once selected the profession, are bound to adhere with philosophy of human rights. *World Health Organization* has issued the guidelines for *Good Clinical Practices* to avoid any legal conflict of any nation. Any failure in performing the actions against the compliance of constitutional liabilities by medical practitioners is subject of rashness and negligence. In any cases of endangering the human life, law of land takes its own action. Following the norms of Indian Medical Council Act, 1956 is best way to avoid legal conflict.

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