

Legal Stand of Medical Practitioner

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Abstract

Every Medical Practitioner equally must have sufficient knowledge of law in order not to conflict with it during the practice of his profession. He stands in the Witness box, when he deals with a Medico-legal case or when he prepares and issues a Document or when charges of Medical Negligence are framed against him. Medico-legal case is the property of Law, and the Registered Medical Practitioner is only the custodian for time being. 174 Cr. P. C. empowers the police to enquire and report on suicide, etc. It can also include deaths arising out of investigative and therapeutic procedures performed by qualified medical practitioners of all recognized medical systems. It does not preclude the right of aggrieved relatives of a deceased patient to prosecute the doctor for criminal liabilities under Section 304-A of the IPC, it prevents doctors from being arrested immediately after the unfortunate death of a patient. It also offers doctors an opportunity for being assessed by their peers for any alleged professional lapses. There is a need to emphasize the importance of proper communication skill and vigilantly dealing of the medico legal cases. "Ideal" medical records should be kept in every case. Doctor should use the reasonable degree of skill, care, knowledge prudence in treatment of his patient.

Keywords: Mens Rea; MLC; 174 Cr. P. C; Criminal Law.

Introduction

A Registered medical Practitioner is the medical man after having medical degree and registering with provincial medical council entitled to practice of allopathic modern system of medicine [1]. The Medical doctor not only relieves suffering of patients, he also guides and educates the society about the diseases and their preventions. He is a master in his field of medicine i.e. in dealing with the patients and his sufferings. Medical doctors have highest level of social responsibility, professional integrity, professional excellence and help in the administration of justice [2]. Every Medical Practitioner equally must have sufficient knowledge of law in order not to conflict with it during the practice of his profession. The legal system is like mire to medical Practitioner, for this he has to be familiar with various

acts and rules & regulations that are in force, know his responsibilities about medico-legal cases, law of the state and country or otherwise he may find himself inadvertently contravening these and courting trouble and also amounts to professional misconduct attracting disciplinary action by State Medical Council [3].

As such with the professional qualification and capacity, a Registered Medical Practitioner enters the Court of Law into two areas. They are the Witness box and Accused box. He is made to stand in the Witness box, when he deals with a Medico-legal case (M.L.C.), or when he prepares and issues a Document. When charges of Medical Negligence are framed against him, he enters the accused box [4].

Medico-legal case

Medico legal case is a case of injury or illness resulting out of sexual assault, poisoning or any suspicious circumstances, where the attending doctor, after eliciting history of the patient and on medical examination, decides that an investigation by law enforcement agencies is essential to understand establish and fix the criminal responsibility for the case in accordance with the law of the land in the

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interest of truth and justice of victim / patient and state. But as such no act in the law defined it so far [5]. It is implied that, any case in which a Medical examination or treatment is done, where the Law is expected to interfere, at any time. Medical practitioners many times identify the cases as Medico-legal cases, and the Law never interferes in them. Sometimes in some trivial cases, he may not regard it as a Medico-legal case, but the Law may ask about the details. However, it is always advisable, to label the case as Medico-legal case, even a little of suspicion arises [6].

How a Medico-legal case differs from Medical case

Medico-legal case is the property of Law, and the Registered Medical Practitioner is only the custodian for time being. Hence any Medico-legal case is examined or treated; intimation must be made to the nearest Police Station, voluntarily by the Hospital authority. Casualty area must have an accident register to enter the cases with serial number for further reference and all details about the case must be entered in to it. All those things must be preserved, which act as Material Evidence about the case, or which need further examination or analysis. They must be sealed and handed over to the I.O. under receipt. Necessary Requisition is to be issued to the I.O. in case an analysis of the preserved material is needed, which includes the exact nature of examination required. Intimation must be made to the nearest Police Station regarding the Discharge / Death / Missing of such patient. Necessary arrangements are to be made for conducting the Post-mortem examination, in case of Death. A copy of the case sheet may be given to the I.O. on requisition [6].

When to inform the Magistrate / Police in Medico Legal Case

The Law gives no time limit regarding the intimation of M.L.C. No concept of Late MLC there is no stipulated time period beyond which an MLC cannot be registered. Request of the patient, relatives or friends regarding non registration of an MLC, should not be entertained. Generally, an intimation is to be made immediately after the examination / admission, or before closer of General Diary (G.D.) of that day in Police Station. Usually within 24 hours of admission / examination is accepted.

In case of recording the Dying Declaration, an immediate intimation should be sent to the Magistrate, with a copy to the nearest Police Station. In case of Death / Discharge / Missing of Patient, no time lapse is to be made in intimating the Police.

Failure to inform police in such cases may result in

penal consequences.

Is it necessary to register a case as M.L.C? Is it necessary to inform the Police in all M.L.C. s?

Yes, as we are not the representatives of the Law, we are not the investigating authority to decide on the case, we are not going to follow up the case after its Discharge / Death and we are not taking any legal opinion about the case.

Is it necessary to inform in cases of Suicidal Deaths

Yes, as it is an unnatural Death and we do not know the mens rea or Guilty mind: The criminal mind that made a person to commit the offence, behind the act.

Is it necessary to inform in Suicidal attempts

Yes, as we do not know the mens rea, it may be necessary to record the Dying Declaration. The case may become serious and die, where a Post mortem examination may become mandatory, as it is an unnatural death.

Sec. 309 IPC: Attempt to commit suicide: Describes that "Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to 1 year or with fine or both". an attempt for committing suicide is an offence, but the Medical practitioner can take little risk in withholding the information for a while, at least till the patient becomes serious, as the patient and attendants do not want to take the trouble created by the so called Law protectors [7].

Sec. 306 IPC: Abetment to commit suicide: Describes that "If any person commit suicide, whoever abets the commission of such suicide shall be punished with imprisonment of either description for a term which may extend to 10 years, and shall also be liable to fine" [7].

Some important things to be remembered in M.L.C.s

Any Registered Medical Practitioner can treat M.L.C.s, provided proper procedures are followed. Earlier permission from District Authorities was needed, to treat M.L.C.s. All instructions given to Duty Doctors / Para -Medical staff must be in writing only. No oral instructions are to be followed / given. Do not discuss about the case with un-authorized persons. No certificate is to be issued to the patient or attendant without informing Police, and without proper Requisition. All Documents must be prepared

in Duplicate. Always keep a copy for the record. In case of receiving M.L.C. from other Hospital, always insist for the referral letter. Check whether it is already made M.L.C. Other wise make it now and intimate the Police. In case of referring the M.L.C. to other centre, always send a Referral letter, which bears the details of M.L.C, prepared in duplicate and issued under receipt.

Our role as Medical Practitioner is not just limited to activating the police machinery and a false belief that determining nature of injury accidental or suicidal is the role of police and not ours. In spite of the fact that health system has been identified as a key sector in identifying reasons for a certain health complaint as well as documenting good quality evidence in cases where medico legal overtones are involved [5].

In current scenario, the nursing cadre plays insignificant role in handling the medico legal cases. Though they play a crucial role in caring for the patient, they have no powers in medical hierarchy in handling medico legal cases. A growing concept of Forensic Nursing in western countries where Nurses being trained to collect any trace evidence, keep records properly and in lock and key, label and seal materials properly, keep all materials in safe custody till handing over to police and handing over materials to police after proper receipt.

What is a *Document*? : According to **Sec. 29 of I.P.C.**, any matter, this is written or otherwise, taken as evidence in the Court of Law is a Document [8,9].

A Registered Medical Practitioner prepares three types of Documents. They are Reports, Opinions, and Certificates.

Report is a filled in proforma of enlisted findings made on a fact by a person having specialized knowledge in that field.

Opinion is interpretation of the findings to come to a conclusion, based on the knowledge, experience, and belief.

Second Opinion: Always does the basic examination and observes the findings before interpreting them.

Expert Opinion: Interprets on the available findings, may not do another examination.

Certificate is a strengthened statement made on the facts, which is in writing, by a Competent Authority. A Registered Medical Practitioner issues two types of certificates.

Medical Certificate: Voluntarily can be issued by Registered Medical Practitioner.

Medico legal Certificate: Issued by a Registered

Medical Practitioner on the Requisition made by a Competent Authority.

A Registered Medical Practitioner enters into Accused Box when a charge of Medical negligence is framed against him. Before going to the details about the medical negligence it is better to have some knowledge about the sections in Criminal Major Acts.

Sections those are helpful to Medical Practitioner [7,10]

Sec. 88 of I.P.C. says that nothing is an offence, which is not intended to cause the death of a person, for whose benefit it is done, in good faith, with his consent.

Sec 52 of I.P.C. defines the Good faith as Nothing is said to be done in good faith, which is done without due care and attention.

Sec. 92 of I.P.C. says that nothing is an offence, which is not intended to cause the death of a person, for whose benefit it is done in good faith, even without the person's consent, if the circumstances are such that it is impossible for obtaining the consent from him or his guardian.

Sections doing harm to Medical Practitioner [7,10]

Sec. 90 of I.P.C. explains that Consent is not valid, if the consent given by a person doing the act knows that; consent was given of such fear or misconception

Sec. 304-A of I.P.C. says whoever causes Death of any person by doing any rash or negligent act not amounting to culpable homicide, shall punished with imprisonment of either description for a term which may extend to two years, or with a fine, or with both.

Sec.304 of I.P.C. says any death resulted by person who has the knowledge of such death and without any intention of such death has caused the culpable homicide not amounting to murder.

Indian Evidence Act in its Sections 101 to 105 says that burden of proof lies on that person whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exists.

When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person. Usually it is on Victim.

174 Cr. P. C. empowers the police to enquire and report on suicide, etc. It can also include deaths arising out of investigative and therapeutic procedures performed by qualified medical practitioners of all recognized medical systems. Subsection 1 of Section 174 of the Cr. P. C mentions

the conduct of inquest by the officer-in-charge of the police station. However, in complaints involving medical negligence, the investigating officer should be preferably not below the rank of Deputy Superintendent of Police/Assistant Commissioner of Police.

Further, subsection 3 of Section 174 of the Cr. P. C provides ample powers to an investigating officer when there is any doubt regarding the cause of death; or the police officer for any other reason considers it expedient to conduct an autopsy by a Civil Surgeon¹¹. This subsection can be further modified so that autopsies on deaths due to alleged medical negligence should only be performed by a team of doctors, which includes experts from a related specialty under the guidance of a forensic expert. Only if in the opinion of the medical experts there is prima facie evidence of criminality, the investigating officer should proceed further with framing of charges against a qualified doctor under Section 304-A of the IPC[11,1].

The advantages of bringing the investigation of deaths due to alleged medical negligence under Section 174 of the Cr. P. C are that while it does not preclude the right of aggrieved relatives of a deceased patient to prosecute the doctor for criminal liabilities under Section 304-A of the IPC, it prevents doctors from being arrested immediately after the unfortunate death of a patient. It also offers doctors an opportunity for being assessed by their peers for any alleged professional lapses.

Any death of a patient occurred during treatment by a Medical Practitioner, has to be proved by the Victim (Public Prosecutor) beyond all reasonable doubts in the Court of Law that the Doctor was negligent in delivering his duties. As the Doctor is a target figure for many people in the society, some times false allegations are also made, with some motives and interests. Many times, Police people are not considerate to the Medical Profession. Some times, they may worsen the situation for some interests. If it is proved in the Court of Law that the Doctor is not guilty of Medical Negligence after complete trial, damage is already done to his profession by that time. If he wants to claim compensation for such wrong accusation, it is made by serving a Show Cause notice to the person who made a wrong accusation, If the explanation is not satisfactory, a fine of Rs. 500/- is awarded to him and a simple imprisonment for a period of one month. Nothing will get back the reputation of a Doctor. And the Investigating Officer is safe guarded by the law every time as he is doing every thing in a good faith.

In the recent past Honourable Supreme Court of

India gave a ruling that, no doctor must be booked directly under Sec. 304-A of I.P.C. for Medical Negligence charges with out taking Medical Opinion from a Medical Board and legal opinion from the Bar [7,12].

In spite of making such provisions, Medical Practitioners are unable to enjoy them, because the Investigating Officer is booking the deaths occurring in the treatment procedures under Sec. 304 of I.P.C. as the Medical Practitioner has the knowledge about such death as a consequence to his treatment, instead of Sec. of 304-A, which is for rash and negligent act. Comparison of two sections of I.P.C. the basic difference is that in Sec. 304 there is intentional act of negligence while in 304-A the act is never done with the intention to cause death [7].

Sec. 304 – A of I.P.C.	Sec. 304 of I.P.C.
Cognisable	Cognisable
Bail able	Non-bail able
Compoundable	Non-compoundable
Tried in Magistrate Court	Tried in Sessions Court
2 years imprisonment	>7 years imprisonment

Conclusion

The principal that doctors, and indeed all professionals, should be accountable for their failures is entirely acceptable. It does not; however mean that criminal prosecutions should be the instrument chosen to perform that task. This paradigm shift in the perceptions of society in controlling the professional activities of Doctors has brought in defensive medicine, which in turn escalates the cost of health care. In fact making doctors criminally liable for the death of a patient means a step backwards towards the ancient feudal system.

There is a need to increase awareness on the role of Medical Practioner with respect to their ethical responsibilities as providers and also a strong need to formulate standard operating procedure (SOP) in the context of Medical Practioner, nurses and police and their respective Medico legal roles.

There is a need to emphasize the importance of proper communication skill and vigilantly dealing of the medico legal cases.. "Ideal" medical records should be kept in every case. Doctor should use the reasonable degree of skill, care, knowledge prudence in treatment of his patient. Lastly one should never forget; "Not knowing the law is no defense and every person of a sound mind and age of discretion is bound to know the law present at that time".

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Conflict of Interest

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Ethical Clearance

The articles do not violate any ethical, moral or legal guidelines pertaining to original scientific work.

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