



Law & Medicine in India: An Overview

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Did you know:

- Sex determination of a foetus is illegal in many states, and illegal across the country if used for the purpose of aborting?
- A non-standard drug prescribed by a medical professional is a poison by definition?
- A doctor may not release any information about a patient's medical records to anyone, except if subpoenaed by a court of law?
- A doctor may not release medical records to the parents of a minor without the minor's consent, if the minor is deemed mature enough to understand information pertinent to his medical need?

In a country of over a billion people that gave the world its first school of medicine, Ayurveda, and a country from which a sizable population of doctors train and practice abroad, one would expect a high standard in the health care industry. Indeed, "medical tourism" thrives in India, where people from all over the world come to avail themselves of some of the state-of-the-art facilities that cater exclusively to them. But the reality for an ordinary citizen such as you and I is quite different. The newspaper these days is abundant with stories of people losing their life or being disabled due to doctor's negligence. A recent case in Chandigarh is one such example. A patient who had complained about abdominal pain was asked to undergo an ultrasound, but his doctors asked the family to come back after the 2-day holiday, assuring them that he wasn't in any danger. The patient died later that day. In another instance, a man with a chest tumor was paralyzed when his doctor operated on him without the consultation of a neurosurgeon. In this case, the Supreme Court awarded the man Rs. 1 crore as compensation, albeit after years of litigation. The court also set a benchmark by clarifying the criminal liability of errant doctors and hospital staff.

Such cases leave us confused about the state of Patient Rights in our country. We consider doctors to be the know-all, cure-all caregivers that we trust and rely on in times of need. But when you visit a doctor or a hospital, do you know what the law guarantees you as a patient? Do you know your duties that correspond with these rights?

The Geneva Convention declares a doctor's primary responsibility as preserving the health of a patient. The World Health Organization (WHO) defines health as a state of physical, mental and social well being, not just the absence of disease. Every human has a fundamental right to health. Article 21 of the Constitution of India guarantees every citizen the right to life, which is considered a Fundamental Right. This provision states that no citizen "shall be deprived of his life or personal liberty except according to procedure established by law," which is deemed to include the right to health care, a doctor's assistance, and a pollution-free environment. Human rights are further established as Directive Principles in Part IV of the constitution. Several Articles address the issue of human rights: Article 47 directs the state to



regard raising the standard of living and better nutrition as a primary duty. Article 41 gives us the right to public assistance in case of sickness or disability. Article 42 requires the State to make this right effective. It also requires the State to make provisions for maternity relief. Article 48 directs the state to protect the environment for the betterment of public health. Laws in the area of torts, contract, consumer protection, crime, etc. are put in place to ensure that a citizen's rights are protected.

Rights & Duties

When you visit a doctor, your relationship with the doctor is seen as a legal contract, whether express or implied. Section 2, clause (h) of the Indian Contract Act, 1872, guarantees this relationship by stating that "an agreement enforceable by law is a contract." It is a contract made in good faith on both sides. The contract comes with an important factor: Consent. Section 13 of the Contract Act clarifies the concept of consent and states that "two or more persons are said to have given consent when they agree upon the same thing in the same sense." The Act also requires the consent to be "free," or not caused by undue influence of any party.

The contractual obligation of a doctor revolves around several main duties that are enforceable by law:

1. To act in good faith and honesty, and serve the contract with due diligence.
2. To make full disclosure and use of the skills and facts available to him that will benefit the transaction.
3. To continue to treat a patient when necessary and provide reasonable care with reasonable skill.
4. Not to undertake any treatment that is beyond his knowledge or skill.
5. Not to divulge professional secrets that are kept in confidence with a patient.

If a doctor fails to uphold his duties, he has breached trust and violated the contract. A patient may claim damages for losses suffered, as provided by Section 75 of the Contract Act, and the doctor may be held negligent under the law of torts.

A doctor has many other duties beyond upholding a contract. He has a duty towards his patient, towards society in general, towards law enforcers, and towards other medical professionals. He also has a duty to uphold personal ethics and not do anything illegal. Some of his duties to a patient include practicing due diligence, using standard procedures in treatments and surgery, providing the use of standard and well-maintained medical equipment, practicing proper record-keeping, keeping the patient well-informed of the alternatives, risks and complications, and not experiment on the patient. A doctor is also bound to provide emergency care on humanitarian grounds when it is needed. His other duties include informing the state of births and deaths, and informing law enforcement about victims of crimes. Above all, he has a duty to treat patients without any regard to their socio-economic standard of living, race, religion, political preference and nationality, and to uphold the Hippocratic Oath.

A patient, however, also has certain duties towards a doctor whose services he avails. He must:



1. Disclose all pertinent information necessary for proper diagnoses and treatment.
2. Cooperate with the doctor for any relevant investigations required.
3. Act on the instructions of the doctor in terms of drugs, food, rest, or any such prescribed treatment.
4. Compensate the doctor (in the case of a private medical practitioner) with money and money alone, as per the pre-set rate.

Failure of the patient to perform his duties may result in termination of the doctor-patient contract, free the doctor of his legal responsibilities of the contract, and also may be classified as contributory negligence in the case of a malpractice accusation.

Confidentiality

Information that you discuss with your doctor is considered privileged information. A fundamental rule of the doctor-patient relationship is that a doctor must keep all communications secret and handle cases with discretion and professionalism. This is one of the foremost principles of medical ethics. One reason for the need of confidentiality is to avoid social stigma and embarrassment that comes with certain diseases. There is also the fear of losing one's job if an employer finds out about a potentially debilitating disease. A patient is more apt to fully disclose his symptoms and past medical history to a doctor if he trusts that the doctor will keep this information in confidence.

There are a few instances where a doctor may disclose confidential information about a patient. Such instances include obtaining the patient's consent, in the case of a minor not being mature enough to understand relevant issues, or in case of a patient being of unsound mind, where a guardian may be privy to their medical information. A doctor must also disclose information upon being subpoenaed by law enforcement officials in the course of a criminal investigation or coroner's inquest, or upon being called on by a court. He may also disclose information related to communicable infectious diseases that are in the public's interest, as in if the interest of the general public is larger than that of the patient. The doctor may also consult a colleague or other medical practitioners that are involved in the care of a patient, or for the purpose of statistical research and teaching, or if disclosure of information is in the interest of the patient in any way. The information disclosed must be just enough to be relevant and necessary, and on a "need-to-know" basis. Excessive or irrelevant disclosure may have serious disciplinary consequences for the doctor.

In conclusion, Law and Medicine are two subjects that intersect at many times. A country's laws are put in place to regulate the medical profession and protect patients and medical practitioners alike. Laws are based on the principles of Human Rights that are globally defined, and enforced in a way as to uphold these rights. India today faces several problems in the practice of medicine that arise due to the increasing population and the socio-economic structure of her society. Although we have come a long way in improving medical facilities and providing universal care, there is still much to be done to educate the masses. As always, a well-informed patient is necessary in an effective health care system and in improving the health and standard of living of society as a whole.