

Review Article

Unveiling the laws for doctors: a dire necessity

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ABSTRACT

The Hon'ble supreme court of India and various high courts have repeatedly pointed out that every criminal offence is an offence against the state (The nation). In many such cases, a medical examination is required to ascertain the causes of injury/death so that an appropriate and timely legal action can be taken to impart justice. The high court of Allahabad has also observed that the medico legal report (MLR), if given clearly, can either endorse the incident as given by the eye witnesses or can disprove the incident to a great extent. But what if the medical practitioner conducting the medical examination pleads ignorance of the legal provisions and procedures, leading to non-accumulation of the essential medical evidence? Though bound by the legal principle of 'ignorance of the law is no excuse,' the Judiciary will not entertain such a plea; nonetheless, justice would be compromised. Further, the trusts of the patients would also be at stake. This manuscript attempts to address the said concerns and the ones accompanying it so that neither the medical practitioners nor the patient and, most importantly, the nation becomes the victim of oblivion, and thus, reaching the only resolution- 'National medico-legal protocol' as necessitated not only by the facts, but also the regulation - the criminal procedure (Amendment) act, 2005.

Keywords: Medico-legal, Medicine and law, Laws for doctors

INTRODUCTION

Voltaire once said: *"Those who are occupied in the restoration of health to others, by the joint exertion of skill and humanity, are above all the great of the earth. They even partake of divinity since to preserve and renew is almost as noble as to create."*

We live in a country that goes by an old saying that doctors are second to God on this earth, as besides God if somebody can save mankind from suffering and sickness and give life, it is the doctors.^{1,2} The bench of Chief Justice Vikram Nath and Justice J. B. Pardiwala, Gujarat high court, in a recent judgment, addressing the doctors who have died in the Covid-19 pandemic, said:³ *"Just like a soldier is martyred on the battlefield, these heroes have also been martyred."*

The judges further said, *"For those who believe in God to be the life giver and life saver, our doctors are the personification of God on earth."*

The medical profession has always been regarded as one of the most sacred professions in the world. It is the foremost duty of every doctor to treat any patient, for which they bind themselves by taking the Hippocratic oath at the onset of their profession, whereby they pledge to perform their duties with utmost dignity and integrity, always promising to put the patient's needs first.⁴ Nothing shall prevent the doctors from providing treatment, especially in emergent medical conditions, which the hon'ble supreme court of India has also upheld in a landmark judgment.⁵

This sentiment underscores the profound reverence attached to the medical profession, a profession bound by

an ethical code of conduct that demands the highest degree of integrity and service. However, while the moral and ethical duties of doctors have long been emphasized, the significance of their legal responsibilities often remains overlooked. The intricate intersection of medicine and law, particularly in the realm of medico-legal cases, highlights the need for a comprehensive understanding of legal protocols within the medical community. This article delves into the critical importance of a 'national medico legal protocol' in the context of India, emphasizing the necessity of uniform guidelines to ensure the efficacious handling of medico-legal cases, safeguard the integrity of the profession, and uphold justice for all.

MATERIAL

Being of divine origin to many, the servers of this sanctified profession called medicine, unlike God, are not exempted from societal rules and ethics. Inherent in any profession is a code of conduct containing the basic ethics underlying the moral values that govern professional practice and aim to uphold its dignity. Medical Ethics fortifies the values at the heart of the doctor-client relationship. At the same time, a doctor has legal obligations and must abide by the laws of the land while discharging his duties.⁶

While talking about the ethical duties of a doctor in India, The Indian medical council (Professional conduct, etiquette and ethics) regulations, 2002 governs the professional conduct of registered medical practitioners (RMPs), their duties towards patients, responsibilities towards each other, duties towards the public and allied healthcare profession as well as the professional misconduct of RMPs. These regulations impart the duty upon the medical practitioners to render emergency medical care at the outset before receiving any fee/payment.⁷ Additional duties such as obtaining consent, prohibition from publishing photographs or case reports, and restraining from abusing professional position have also been listed as ethical obligations in the regulations as mentioned earlier.^{8,9} As per this code, an RMP must also be cooperative in observance and enforcement of sanitary law and regulation in the interest of public health (Section 1.9).

It would not be wrong to state that before stepping into practice, all medical professionals are oriented with the provisions of the Indian medical council (Professional conduct, etiquette and ethics) regulations, 2002. However, insufficient knowledge is accorded when it comes down to complying with Section 1.9.¹⁰ Every registered medical practitioner has to attend, sooner or later, a Medico-legal case (MLC)-something they may have never learned in their academic term.

An MLC is a case of injury/illness where the attending doctor, after eliciting history and examining the patient, thinks that investigation by law enforcement agencies is

essential to establish and fix responsibility for the case following the law of the land.¹¹ It can also be defined as a case of injury or ailment, etc., in which investigations by law-enforcing agencies are essential to fix the responsibility regarding the causation of the said injury or ailment.¹² Thus, a medical case with legal implications or a case requiring medical expertise is a medico-legal case. Accordingly, a MLR is prepared for litigation-imminent or prospective. In a case of a clinical negligence, MLR may be required to prove the act of the clinician. In case of a personal injury, a properly documented MLR would prove the cause of the injury. Similarly, in case the incised wound, the injury depicted in the MLR/postmortem report can clarify whether the knife was sharp on one side or both sides; the size of the blade; the force with which the knife has been thrust in the body and the direction from which the knife has been thrust. Likewise, in blunt injury cases, explanation of the injury in the MLR speaks volumes about the manner in which the injury might have been caused and the nature of weapon of offence used. This would assist the Court in formulating an opinion regarding the manner in which an incident might have taken place.¹³

The medico-legal documents form an essential element of the charge sheet in every criminal case;¹⁴ however, this evidence is compromised due to the lack of expertise by the medical practitioners attending the case. Either the medical evidence is not recorded or partly recorded or shared with a third party, destroying the entire case's sanctity. According to a cross-sectional study on knowledge of RMPs, regarding management of medico-legal cases conducted in Meghalaya from 1st December 2019 to 30th November 2020, out of 94 subjects analyzed for their answers, 56% had adequate knowledge.¹⁵ Amongst non-specialist doctors (n=53), 52.8% had adequate knowledge and amongst specialist doctors (n=34), 67.6% had adequate knowledge in various aspects of management of medico-legal cases, and it was found that 6.4% had adequate knowledge in documentation, 21.2% in consent, 3.2% in the protection of children from sexual offences (POCSO) act, 71.2% in autopsy, 88.2% in legal duties in emergency care. A total of 68.7% of those having 16-20 years of experience had adequate knowledge. Chi-square test of designation and years of experience on knowledge was found to be 0.33 and 0.75, respectively.

Considering the 6.4% of knowledge in documentation and the existing lacuna in medico-legal expertise, an improperly documented medico-legal document may destroy the entire case of the prosecution and lead to miscarriage of justice. Further, this obliviousness creates a daunting apprehension among the doctors to attend to such matters. Adding to the anxiety is the involvement of law enforcement agencies which is ever dreaded by many. And for those who have gained some experience in dealing with medico-legal cases, the unbearable workload resulting from the lack of qualified personnel becomes detrimental to the quality of reports.

The Hon'ble high court of Allahabad in a recent judgment observed that:¹³ *"15. The MLR, if given clearly, can either endorse the incident as given by the eyewitnesses or can disprove the incident to a great extent. This is only possible if a detailed and clear MLR is furnished by the doctors, with complete responsibility. The medical reports, however, are written in such shabby handwriting that they are not readable and decipherable by advocates or Judges."*

It is to be considered that the MLRs and postmortem reports are prepared to assist the persons involved in the process of dispensation of criminal justice viz. counsel for the defence, the prosecutor, the counsel for the victim/complainant/informant and the Judge, at all stages of proceedings. If such a report is readable by medical practitioners only, it shall not serve the purpose for which it is made."

This leads to the principal question: When and who will educate the medical practitioners about the applicable laws and legal procedures, their importance, and the legal safeguards available to them? Since there is no doctor-specific legislation, should doctors dive into this country's legislations unearthing the relevant provisions from every legislative piece? Or should they be left to plead ignorance? Even in that case, our hon'ble Judiciary will bind them with the legal principle 'ignorantia juris non-excusat'.¹⁶

Since a proper medico-legal examination is the right of the injured/victim and the duty of every registered medical practitioner, and since the issue involves imparting justice, the answer to the above questions lies in a 'national medico legal protocol' to be included explicitly in either the curriculum of all medical practitioners or in their orientation sessions. The hon'ble high court of Delhi observed that: *"Orientation be given to the doctors who prepare MLCs or conduct post-mortems to ensure that the MLCs and post-mortem reports are up to the mark and stand judicial scrutiny in Courts."*¹⁷

Further, the Madras high court, in its verdict, held that: *"Before entering into further discussion in this matter, the existing systems in the field of forensic medicine as well as the medico-legal curriculum taught in the Indian medical schools, are to be borne in mind. The education curriculums in the medical educational institutions have to be arranged so as to render an appreciable background and exposure in this particular area. Initiation of steps may be undertaken with an avowed object of alleviating the flaws, which could be noted by the judiciary in the certificates issued by the medical experts."*¹⁸

Attempts in this regard have been made by various States such as Kerala (The Indian Medico-Legal Protocol, Kerala Medico-Legal Society), Haryana (Haryana Medico Legal Manual), Goa (Medico-Legal Guidelines -

Goa Medical College), Puducherry (Pondicherry Police Manual), Punjab (Punjab Medico Legal Manual), etc. The Indian army also has its medico-legal guidelines titled 'Medico-Legal Issues: Guidelines to Medical Officers.' However, none is applicable at the national level either due to being non-comprehensive or because the formats and procedures are state/institution specific. Further, the ministry of health and family welfare, government of India, has also drafted guidelines titled 'Medico-Legal Care for Survivors/Victims of Sexual Violence.' Still, the same has limited correspondence towards the medico-legal cases arising out of sexual violence only, with no address to cases of accidents, assaults, poisoning, burns, etc. Furthermore, the amendments to the code of criminal procedure, 1973, from 2005 to 2009, and the criminal law amendment act, 2013 make it mandatory that the guidelines for medico-legal examinations are comprehensive, updated and fulfilling the law requirements. The changes in the concepts of law enforcement, human rights, and judicial interpretation of the law and the significant increase in the number of medico-legal cases also necessitate the formation of a uniform set of guidelines to ensure the efficiency of the medico-legal systems in India.

CONCLUSION

To conclude, it is indisputable that a doctor's primary duty is to treat the patient. However, ignorance of the laws of the land cannot be an excuse for the doctor to wash his hands off his legal responsibilities. For this, firstly, he should be able to do all the duties expected from him as a modern doctor. Secondly, he should keep himself updated on the various legal provisions applicable to him and the changing regulations concerning him and his duty. However, the absence of such national guidelines/protocols complicates the situation.

Furthermore, with the increasing violence and litigations against medical professionals and the ease of accessibility and improved awareness about individual rights with accountability running in the veins of health care delivery system; autonomy now governs the doctor-patient relationship making patients the consumers and hence, open to the world of lawsuits. Knowledge of management of medico-legal issues can thus, help to prevent litigations as well as improve the doctor-patient relationships making it the need of the hour. Any lacunae in the knowledge of practicing doctors should be managed without any delay as it involves ethical, legal, and moral obligations.

Thus, since the codes of law are uniformly applicable to the entire country, and because a registered medical practitioner can practice medicine throughout the country, the guidelines for medico-legal examinations, which are undertaken as per the provisions of the law, should also be uniform throughout the country. With these national guidelines in place, doctors should be mandatorily

oriented with the same before putting on those surgical gloves.

This a calling of the nation by the saviors of the nation for the people of the nation!

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