



Medico-legal Aspects of Health Care

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Overview of the presentation

- **Medico-legal Issues in Health Care Administration:**
 1. **Patients**
 2. **Staff**
 3. **Institutional**
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International Declarations

First expression of the right to health: The WHO Constitution (1946)

“The States parties to this Constitution declare, in conformity with the Charter of the United Nations, that the following principles are basic to the happiness, harmonious relations and security of all peoples.

Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.

The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition (...)”

The right to health is also recognized in numerous other international instruments

- 1961 European Social Charter
- 1966 International Covenant on Economics, Social and Cultural Rights (most detailed; Article 12.1 and 12.2)
- 1978 Declaration of Alma Ata
- 1981 African Charter on Human and People's Rights
- 1988 Additional Protocol to the American Convention on HRs in the Area of Economic, Social and Cultural Rights
- 1989 Convention on the Rights of the Child

International Covenant on Economics, Social and Cultural Rights (ratified by 147 countries)

Article 12 recognizes the

- *“right of everyone to the enjoyment of the highest attainable standard of physical and mental health”*

Article 12.2 illustrates a number of

- *steps to be taken by States parties to achieve:*
 - a. maternal, child and reproductive health
 - b. healthy natural and workplace environments
 - c. prevention, treatment and control of disease
 - d. health facilities, goods and services

Committee on Economic, Social and Cultural Rights (May 2000)

Art.12.2.c:

Right to prevention, treatment and control of diseases includes creation of a system of urgent medical care in case of accidents, epidemics; and disaster relief and humanitarian assistance

Art 12.2.d:

Right to health facilities, goods and services includes appropriate treatment of prevalent diseases, preferably at community level; and the provision of essential drugs as defined by the WHO Action Programme on Essential Drugs

Universal Declaration of Human Rights (1948)

Art.25.1

*“Everyone has the right to a standard of living adequate for the health of himself and of his family, including food, clothing, housing and **medical care** and necessary social services”*



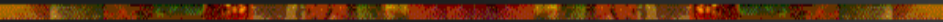
Indian Constitution & Laws

■ Constitution of India

■ Article 21: Right to life

■ Article 39: ***Certain principles of policy to be followed by the State***

- (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;
- (f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

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- **Article 47: *Duty of the State to raise the level of nutrition and the standard of living and to improve public health***
 - The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavor to bring about prohibition of the consumption except for medicinal purpose of intoxicating drinks and of drugs which are injurious to health.

Francis Coralie Mullin v Union Territory of Delhi 1981(1) SCC 608.

- Initial Recognition of right to health by the Courts:

The Indian Supreme Court since 1970's onwards started reiterated in several of its decisions that the Right to Life guaranteed in Article 21 of the constitution in its true meaning includes the basic right to food, clothing and shelter.

- More than mere animal existence

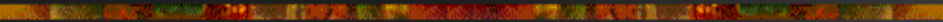
Bandhua Mukti Morcha etc. v Union of India and Ors. AIR 1984 SC 802

- THE Court addressed the types of conditions necessary for enjoyment of health. The Court held that right to live with human dignity also involves right to “protection of health”
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Parmanand Katra v. Union of India (1989) 4 SCC 286

The petitioner filed a writ petition under Article 32 of the Constitution where in it requested the Union of India to include a direction where it is made mandatory to treat every injured individual instantly so as to preserve the life and the procedural criminal law should be followed after that so as to prevent any negligent deaths to occur.

- **ISSUES:** The issue that was dealt in this case was regarding the moral and professional duties and obligations of a medical practitioner.
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The court held that every medical practitioner is professionally obligated to treat emergency cases with expertise and cannot refuse to offer treatment to such cases. The government hospitals further cannot refuse any kind of treatment unless it requires more technical expertise that too not without giving primary treatment. It also held that no legal procedures as prescribed under Criminal Procedure Code should act as a hindrance for a doctor to treat an emergency case and hence all the fulfillment of these legal formalities should be a secondary action and that of saving a person's life should be the primary action.

The Motor Vehicle (Amendment) Bill, 2017 (Passed by Lok Sabha, pending before Rajya Sabha)

Makes Provision for:

- Cashless treatment for road accident victims during golden hour.
- Golden hour: Time period of up to an hour following a traumatic injury, during which the likelihood of preventing death through prompt medical care is the highest.

Paschim Banga Khet Mazdoor Samity and Ors. vs State of West Bengal-1996(4) SCC 37

Facts--In this case, Hakim Sheikh, a member of the Paschim Banga Khet Mazdoor Samity, fell off a train and suffered serious head injuries. He was brought to a number of state hospitals, including both primary health centre and specialist clinics, for treatment of his injuries. Seven state hospitals were unable to provide emergency treatment for his injuries because of a lack of bed space and trauma and neurological services. He was finally taken to a private hospital where he received his treatment. Feeling aggrieved by the callous and insensitive attitude of the government hospitals in Calcutta in providing emergency treatment the petitioner filed this petition in the Supreme Court and sought compensation.

Paschim Banga Khet Mazdoor Samity and Ors. vs State of West Bengal-1996(4) SCC 37 cont.

- The issue presented to the Court was whether the lack of adequate medical facilities for emergency treatment constituted a denial of the fundamental right to life under Article 21.
- Court Held--Article 21 of the Constitution casts an obligation on the state to take every measure to preserve life. The Court found that it is the primary duty of a welfare state to ensure that medical facilities are adequate and available to provide treatment and due to the violation of the right to life of the petitioner, compensation was awarded to him.
- The Court recognized that substantial expenditure was needed to ensure that medical facilities were adequate. However, it held that a state could not avoid this constitutional obligation on account of financial constraints.

State of Punjab and Others v Mohinder Singh AIR 1997 SC 1225

- **“It is now a settled law that right to health is integral to right to life. Government has a constitutional obligation to provide health facilities.”** Apart from recognizing the fundamental right to health as an integral part of the Right to Life, there is sufficient case law both from the Supreme and High Courts that lays down the obligation of the State to provide medical health services.

Mahendra Pratap Singh v State of Orissa AIR 1997 Ori 37

- A case pertaining to the failure of the government in opening a primary health care centre in a village, the court had held “In a country like ours, it may not be possible to have sophisticated hospitals but definitely villagers within their limitations can aspire to have a Primary Health Centre. The government is required to assist people get treatment and lead a healthy life. Healthy society is a collective gain and no Government should make any effort to smother it”. It also stated that, “great achievements and accomplishments in life are possible if one is permitted to lead an acceptably healthy life”. **Thereby, there is an implication that the enforcing of the right to life is a duty of the state and that this duty covers the providing of right to primary health care.** This would then imply that the right to life includes the right to primary health care.

Consumer Education and Research Centre v Union of India(1995)3 SCC 42

- The Supreme Court for the first time explicitly held that, “the right to health . . . is an integral fact of [a] meaningful right to life.”
- Facts--This case was concerning the occupational health hazards faced by workers in the asbestos industry.
- Court Held--Reading Article 21 with the relevant directive principles guaranteed in articles 39 (e), 41 and 43, the Supreme Court held that the right to health and medical care is a fundamental right and it makes the life of the workman meaningful and purposeful with the dignity of person.

LANDMARK CASE--This recognition established a framework for addressing health concerns within the rubric of public interest litigation and in a series of subsequent cases, the Court held that it is the obligation of the state not only to provide emergency medical services but also to ensure the creation of conditions necessary for good health, including provisions for basic curative and preventive health services and the assurance of healthy living and working conditions.

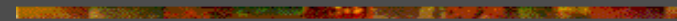
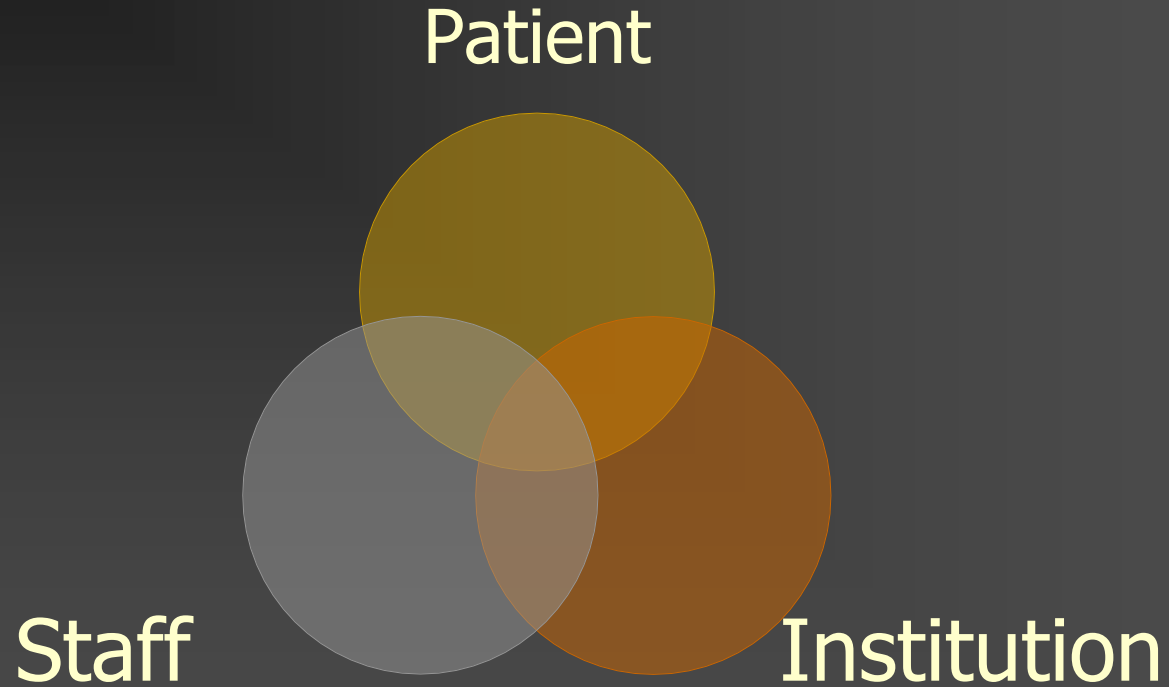
VHAP v Union of India No. 349/2003

- Despite a steady rise in the rate of HIV infection, prior to 2004, the Government of India only had an AIDS prevention policy. Treatment was not part of its duty. In 2003, a petition on behalf of the Voluntary Health Association of Punjab (VHAP) was filed calling upon the government to provide free ARV drugs to HIV positive persons.
 - Soon after the petition was filed, the Government announced free ARV drugs for 100,000 people in six high prevalence States:
Maharashtra, Andhra Pradesh, Nagaland, Manipur, Tamil Nadu and Karnataka, with the objective of providing free anti-retroviral treatment to 100,000 PLHAs by the end of 2005, and to provide treatment to an additional 15-20 percent of AIDS cases each year, thereafter, for a period of 5 years.
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Medico-legal Issues

Domains of Concern



MEDICOLEGAL CASE

- WHAT
- IS
- A
- MEDICOLEGAL
- CASE?

MEDICOLEGAL CASE



MEDICINE+LAW

WHAT IS A MEDICOLEGAL CASE?

- No legal definition
- Pre-labeled case: It is a case of injury or ailment where an attending doctor after taking history and clinical examination of the patient thinks that some investigation by law enforcing agencies is essential, so as to fix the responsibility regarding the case in accordance with the law (BPRD).
- Any case can turn MLC

What is the magnitude of MLC

Yr.	No. of MLC	Total	%
2000	16,118	1,07,166	15
2005	31,351	1,54,201	20
2015	35,804	3,52,944	10

Where to Examine cases

- No specified area
- Usually casualty or emergency
- Where ever there is first contact with the doctor
- However, now recommendations are coming for separate/ designated area in relation to Sexual Assault cases (One stop centre/ OSC)



When to register a MLC

A. Some of the Pre-labeled MLC (as per BPRD)

- *RTA's, factory accidents or any other unnatural mishap
- *Suspected or evident homicides or suicides
- *Suspected or evident poisoning
- *Burn injuries due to any cause
- *Injury cases where foul play is suspected
- *Injury cases where there is likelihood of death in near future
- *Suspected or evident criminal abortions
- *Unconscious cases where cause of it is not clear

Medicolegal cont...

B. Should be registered as early as possible

C. Is there any time limit for preparing ?

NO

Who should manage MLC

Any doctor who

- * Possess permanent registration with MCI/SMC
- * Some experience (preferable)
- * First contact with patient

Preparing MLR by interns/house
physicians/PG

Who?

■ Special Circumstances

Child Sexual Abuse-Section 27 of POCSO Act, 2012

- (1) The medical examination of a child in respect of whom any offence has been committed under this Act, shall, notwithstanding that a FIR or complaint has not been registered for the offences under this Act, be conducted in accordance with section 164 A of the Cr. P.C.
- (2) In case the victim is a girl child, the medical examination shall be conducted by a woman doctor.
- (3) The medical examination shall be conducted in the presence of the parent of the child or any other person in whom the child reposes trust or confidence.
- (4) Where, in case the parent of the child or other person referred in sub-section (3) cannot be present for any reason during the medical examination of the child, the medical examination shall be conducted in presence of a woman nominated by the head of the medical institution.

Section 357 C, CrPC-Treatment of Victims

- All hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, shall immediately, provide the first-aid or medical treatment, free of cost, to the victims of any offence covered under section [326A](#), [376](#), [376A](#), [376AB](#), [376B](#), [376C](#), [376D](#), [376DA](#), [376DB](#) or section [376E](#) of the Indian Penal Code, and shall immediately inform the police of such incident.

Who & How?

- (2) The registered medical practitioner, to whom such woman is sent shall, without delay, examine her and prepare a report of his examination giving the following particulars, namely:-
- (I) the name and address of the woman and of the person by whom she was brought;
 - (II) the age of the woman;
 - (III) the description of material taken from the person of the woman for DNA profiling;
 - (IV) marks of injury, if any, on the person of the woman;
 - (V) general mental condition of the woman; and
 - (VI) other material particulars in reasonable detail.
- (3) The report shall state precisely the reasons for each conclusion arrived at.
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Who & How?

- **Section-164 A of Cr.P.C.- Medical examination of the victim of rape. (Criminal Law Amendment Act, 2005)**
 - (1) Where, during the stage when an offence of committing rape or attempt to commit rape is under investigation, it is proposed to get the person of the woman with whom rape is alleged or attempted to have been committed or attempted, examined by a medical expert, such examination shall be conducted by a registered medical practitioner employed in a hospital run by the Government or a local authority and in the absence of a such a practitioner, by any other registered medical practitioner, with the consent of such woman or of a person competent to give such consent on her behalf and such woman shall be sent to such registered medical practitioner within twenty-four hours from the time of receiving the information relating to the commission of such offence.
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How to manage MLC

- **First aim is to preserve life**
 - **Registration:**
 1. Proper forms/ registers
 2. Entertaining requests of patient/relative
 3. Cases already registered and referred
 - *Duty of referring doctor
 - *Duty of receiving doctor
-

How to manage MLC (Cont.)

3. Mark of injury (if any)
4. Description of the material taken from the person of the accused for DNA profiling
5. Other material particulars in reasonable detail

The report shall state precisely the reasons for each conclusion arrived at.

Exact time of commencement and completion of examination to be noted in the report.

How to manage MLC (Cont.)

Examination of the victim of rape, under Section 164A, Cr P C [Inserted by Cr P C Amendment Act, 2005]

*For cases of rape or attempted rape, the victim should be examined by RMP in a Govt./ local body hospital or in the absence of these by any other RMP with-in 24 hrs of the receipt of such information with the consent of such woman or of a person competent to give consent on her behalf

How to manage MLC (Cont.)

Section 53A – Examination of person accused of rape by RMP [Inserted by The Cr P C (Amendment) Act, 2005]

Examine and prepare a report giving following details:

1. Name & address of the accused and the person by whom brought
 2. Age of the accused
-

How to manage MLC (Cont.)

The point to be included in the examination are same as in Section 53

Additionally general mental condition assessment has been added.

How?

Follow

- A. Protocols/ SOP/ Guidelines/ Manuals, such as
 1. Ministry of Health Protocol for cases of Sexual Assault
 2. Ministry of Child and women Development for child trafficking
 3. Haryana Medico-legal Manual, Kerala Medico-legal Manual etc.
 - B. Laws and Judicial Pronouncements e,g.
 1. Cr. P. C, POCSO Act, MTP, PCPNDT, HOTTA, HIV etc.
 2. Court Judgment regarding age board etc.
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Why to manage MLC

- *Duty and obligation to sick
- *Crucial piece of evidence

Can a doctor refuse to attend MLC?

Laws Regarding Information to Police

- **Section 39 CrPC** (Public to give information of certain offences-Section 302-304)
- Section 21(1) of the POCSO Act, 2012 requires mandatory reporting of cases of child sexual abuse to the law enforcement authorities, and applies to everyone including parents, doctors and school personnel. Failure to report a suspicion of child abuse is an offence under the Act. The legislation makes it clear that the reporting obligation exists whether the information was acquired through the discharge of professional duties or within a confidential relationship (Model Guidelines under Section 39 of POCSO Act, by MOWCD, Sept, 2013)

Dr. Satyasaheel Nandlal Naik vs State of Maharashtra, 1996 Cri LJ1463

- Not informing a case of accident to police registered against doctor under Section 176 of Cr.P.C.

CONSENT in Medicolegal Cases

- In case of emergency
- Role of Section 53, 53A, 54 Cr P C
- In case of minor, mentally ill and unconscious patient

Issue of Consent- Legal Provisions

- **Section 53 Cr P C** (Examination of accused by medical practitioner at the request of police officer)
- **Section 53A Cr P C** (Examination of person accused of rape by medical practitioner)
- **Section 54 Cr P C** (Examination of arrested person by medical practitioner at the request of the arrested person)

LEGAL PROVISIONS (cont.)

Under Section 53, 53A & 54 Cr P C, examination includes-

Examination of blood, blood stains, semen, swabs in case of sexual offences, sputum & sweat, hair samples and nail clipping by the use of modern and scientific techniques including DNA profiling and such other tests which the RMP thinks necessary in the particular case.

Other Issues in MLC

1. Informing about patients condition

2. Dying declaration

3. Informing police

*about a case

*about discharge

*about LAMA

4. Custody of ML Records

5. Attending court of Law

LEGAL PROVISIONS

- **Section 191 IPC** (Giving false evidence)
- **Section 192 IPC** (Fabricating false evidence)
- **Section 193 IPC** (Punishment for false evidence)-Imprisonment up-to 7 years+ fine
- **Section 201 IPC** (Causing disappearance of evidence of offence, or giving false information to screen offender)

LEGAL PROVISIONS (cont.)

- **Section 202 IPC** (Intentional omission to give information of offence by person bound to inform)
- **Section 203 IPC** (Giving false information respecting an offence committed)-Under Sections 201 and 202 and in this section the word “offence”, includes any act committed under Section:
302,304,382,393,394,395,396,397,398,402,435,436,449,450,457,458,459 and 460

LEGAL PROVISIONS (cont.)

- **Section 204 IPC** (Destruction of document or electronic record to prevent its production as evidence) Imprisonment up-to 2 years or fine or both
 - **Section 88 IPC** (Act not intended to cause death, done by consent in good faith for person's benefit)
 - **Section 89 IPC** (Act done in good faith for the benefit of child or insane person, by or by consent of guardian)
-

LEGAL PROVISIONS (cont.)

- **Section 92 IPC** (Act done in good faith for benefit of a person with out consent)
- **Section 93 IPC** (Communication made in good faith)

LEGAL PROVISIONS (cont.)

- SC directions for dealing with Emergency cases (AIR 1996 SC 2426)
 1. Adequate facilities at PHC to give immediate primary treatment to stabilize the patient;
 2. Hospitals at district level and subdivision level are upgraded so that serious cases can be treated there;

SC DIRECTIONS (cont.)

3. Facilities for giving specialist treatment are increased and are available at the district and sub division level having regard to the growing needs;
4. Centralized communication system to ensure bed availability;
5. Proper arrangement of ambulance from PHC to CHC/ District hospital

SC DIRECTIONS (cont.)

6. Ambulance is adequately provided with necessary equipment and medical personnel;
7. The health centres and hospitals and medical personnel attached to these centres and hospitals are geared to deal with larger number of patients needing emergency treatment on account of higher risk of accidents on certain occasions and in certain seasons.



Staff



11/21/2023

Medico-legal Issues in Staff

- Medical Negligence
- Responsibility of Hospitals in any medical negligence committed by staff
- Sh. Naresh Mehra v Dr. A.P. Choudhary
(Delhi State Consumer Commission
Judgment dated 31-10-2008)

Institutional Issues

- Clinical Establishment (Registration and Regulation) Act, 2010
 - Other specific laws e.g. MTP Act, PCPNDT, THOTA etc.
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Conclusion & Recommendations

- Health is a basic right enshrined in both Indian Laws as well as international declarations.
 - Medico-legal issues are mainly concerned with patients, staff and institution as a whole but primarily with patients.
 - As no medical professional can avoid dealing with medico-legal issues, it is better to engage with them efficiently.
 - The newer laws/guidelines/ directions are enforced in medical domain routinely, it is good to refresh and update information
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“THE LAW MAY BE AN ASS,
BUT MORE OFTEN IT
MAKES AN ASS OUT OF
THOSE WHO CIRCUMVENT
IT”

JUSTICE JOHN UNDERWOOD

साक्षी व्यक्ति के नाम सम्मन

न्यायालय **ADJ-11**

धारा **147, 148, 304, 504, 506 IPC**

मु अ सं **211/94**

बनाम **जिलेडवर आर्व 61**

वाद सं STNo. **1003/17**

चालानी थाना **तल्लेरीड**

तारीख पेशी **22-07-22**

नाम पता साक्षी:-

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आर्य आर्य
मु. लक्ष्मण

डा० एस० के० (S.K) वर्मा,

→ गुरुतैग बहादुर अस्पताल (G.T.B)
(दिल्ली)

4. नोट - (वर्ष 1994 में तैनात रहे हैं)

चूंकि आपको उपरोक्त उपस्थिति अपराध के आरोप में साक्ष्य देने के लिए आवश्यक हैं अतएव आपकी एतद् द्वारा आदेश दिया जाता है कि स्वयं/अधिवक्ता द्वारा उपयुक्त न्यायालय के समक्ष सन् 20०१ ई 22 मास के 07

Dr. S.K. Verma
Through: HOD
AR(G)
सन् 20०१ ई 22

H.C. वि०

न्यायालय की
मोहर

20/7/22
16/7/22
श्री 22

दिवस को दिनांकित

जिला **9** सत्र न्यायद्वारा
फॉर्म नं०-11, माहिशावर (उ०प्र०)
15-7-22
हस्ताक्षर
मजिस्ट्रेट

