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Criminal Liabilities In Medical Profession

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Ignorance of the law is never an excuse especially when it comes to the medical profession, the doctors are under tremendous pressure to perform at the best of their ability and follow the lawsuit in general as their performance reflects if the patient would be cured /saved. They have certain civil and criminal responsibilities. But, the double-edged sword of treatment burden, death of patient, and medical errors are always hanging above head of doctors. The doctors have to outperform and exceed their expectations but the truth is - death can never be controlled by anyone.

If found guilty, doctors are criminally liable under these circumstances:

A] Evidence and Record:

Section number Actual Act Explanation

174 Non-attendance in obedience of an order from a doctor A doctor is legally bound to appear in court or in front of the magistrate if he/she is in relation with that case.

175 Failure to produce document to legally bounded person A doctor is bound to produce all documents (e.g. medical reports or treatment record) in case of the medico-legal case.

176 Omission to provide notice or information to public servant by legally bounded person A doctor is bound to inform police about the medico legal, murder case, or a rape case which is admitted in their dispensary or hospital.

187 Not assisting public servant when bound by law to provide required assistance A doctor if he/she fails to treat a patient or public servant allotted to him.

192 Fabricating false evidence A doctor or a medical professional in any circumstance produces false evidence, makes a false entry , false statement.

197 Issuing or signing a false certificate A doctor in any way is not allowed to issue or sign a certificate which is intentionally constructed for a false manner.

470 Forged document or electronic record A document which is made partly or completely by forgery is legally not allowed in the court of law

471 Using a forged document as a genuine document Doctors at any cost are not allowed to utilize forged documents like an original document for whatever reason

B] Laws on Public Health, Safety and Drugs:

Section number Actual Act Explanation

269-271 Negligence resulting in the spread of infectious diseases & disobedience of quarantine rule. The medical professionals are liable to follow strict standards which are set for treating patients under the guidelines and protocols especially for dangerous diseases like AIDS, Hepatitis etc.

274 Drug Adulteration The medical professionals aren't allowed to adulterate any medical preparation which arbitrarily affects the efficiency and safety of the drug rendering it useless.

276 Sale of drugs as a different drug or preparation The medical practitioners aren't allowed to retail drugs with their own formulation. All drugs which are liable to sale should be duly approved by the regulatory authorities.

278 Making the work atmosphere unreliable to work The medical practitioner caught violating the norms of the general practice that intoxicates the work environment on a large scale are liable.

284 Negligence while handling a poisonous substance If the medical practitioner, due to any unforeseen reason is involved in providing a poisonous or toxic substance to the patient which can endanger the life.

287 Negligence in handling medical devices The medical practitioner needs to be very careful while handling

medical devices, if any sort of negligence occurs in any circumstance it could lead to serious complications under this section.

C] Laws in relation to endangering life:

Section number Actual Act Explanation

319-22 Causing grievous hurt For example loss of limbs, loss of vision, loss of hearing or disfigurement.

336 Endangering the life or personal safety of others Act performed with negligent intentions which proceeds to endanger their life or personal safety.

337 Hurting life or personal safety of others A procedure performed which harms human life or personal safety.

338

Hurting grievously or personal safety of others An act which is responsible for grievously hurting someone which proceeds to endanger their life or personal safety

D] Laws in relation to indoor patients:

Section number Actual Act Explanation

340 Wrongful confinement A medical practitioner is not allowed to wrongfully restrain a person from his/her rights in a manner as to limit the medical proceedings further. It is totally unlawful to confine a person, withhold discharge for any given reason or withhold handing of the dead body due to payment disputes.

E] Laws governing death due to negligence:

Section number Actual Act Explanation

304-A

Causing death due to negligence The medical practitioner who is found guilty of causing death due to medical

The Supreme Court of India is of view that situation should be very carefully analysed while imposing criminal offences on doctors .

Section 304 and 304-A

There is lot of discrepancy while applying these sections in cases of professional negligence by doctors. Most of the times the police authorities register the cases of professional negligence deaths under Sec. 304 of IPC. According to this Section the offence is non-bailable. This causes lot of hardship, bad reputation and mental agony to the doctors. In fact the police should register the cases of deaths due to medical negligence under Sec. 304-A of IPC, in which the offence is bailable and the doctor can be released on bail. The judgment has been passed by Bombay High Court in Criminal Revision application no. 282 of 1996 (Dr. Mrs. Mrudula S. Deshpandevs State of Maharashtra) dated 28th November 1998(3). 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. When to Inform Police - Police must be informed in (i) cases of suspected homicide, (ii) cases of suicidal deaths, (iii) unknown, unconscious patient, (iv) death on operation table, (v) suspected unnatural death, (vi) sudden, unexpected, violent and unexplained death, (vii) instant death after treatment or reaction of medicine, and a (viii) married lady dying within seven years of marriage due to any reason.

It is advisable to inform police in following circumstances (i) undiagnosed death within 24 hrs. of admission or specially if there is any suspicion, (ii) any cases of poisoning, (iii) accidental deaths, and (iv) in cases of hospital deaths if (a) accidents not related to medical management like fall from staircase etc., though there is no legal obligation on doctor, it is advisable to inform the police, (b) unexpected or rare complications may occur sometimes, e.g. a child may vomit, aspirate the content and may die. This is very unpredictable and it is not obligatory on part of the doctor to inform such deaths. But it is better if we inform the police because sometimes patient's relatives may allege negligence in such cases.

"Brought dead cases": In such cases, if the cause of death is apparent and there are no reasonable grounds to suspect some medico-legal complications then it is not necessary to inform the police. If the cause of death can't be ascertained in any case then it is desirable to send the body for postmortem examination preferably with the help of the police.

Information to police shall preferably be in writing and the written acknowledgement should be obtained. If the information is telephonic one must note down name, buckle number and designation of the police.

Can a Doctor be Arrested?

Doctors have no immunity against arrest (as any other citizen of India) for the various criminal acts as per the provisions of IPC or CPC of India.

Illegal organ trading, unlawful sex determination etc. are non-bailable offenses.

But the question is whether a doctor be arrested for:

(a) alleged medical negligence during day to day care of a patient,

(b) unexplained hospital deaths like SIDS etc.,

(c) postoperative complication or failure of operation;

(d) not attending or refusing a patient (who was not already under his care) who becomes serious or dies and

(f) not attending a case of roadside accident.

The Supreme Court directives (criminal writ petition no. 270 of 1988) in a roadside accident include:

• The medical aid should be instantaneous. It is duty of registered medical practitioner to attend the injured and render medical aid, treatment without waiting for procedural formalities unless injured person or guardian

(in case of minor) desires otherwise.

- The effort to save person and preserve life should be top priority, not only of doctor but also of police officer or any other citizen who happens to notice such an accident.
- The professional obligation of protecting life extends to every doctor, whether at Government hospital or otherwise.
- The obligation being total, absolute and paramount, no statutory or procedural formalities can interfere in discharging this duty.
- Whenever better or specific assistance is required, it is duty of treating doctor to see that patient reaches the proper expert as early as possible.
- Non-compliance of these directives may invite prosecution under provisions of Motor Vehicle Act or IPC(7).

If FIR is lodged by patient or relatives then the police may arrest the doctor. Hence better approach in cases where we feel that patients or relatives may create nuisance will be as follows:

1. The doctor should lodge a FIR that a particular incidence has happened in my hospital.
2. A crisis management committee may be formed at each Taluka or District level. The committee shall include doctors, social workers, legal personalities, politicians, press reporters etc. The committee members may meet the police officers and request them for complete investigation of the incidence and to avoid prosecution till the guilt is proved. The committee can also request the press reporters not to give unnecessary publicity to such cases.

The Government of Kerala (G.R. no. 3231/SS-B4/92/Home dated 20.09.1993) has issued the following instructions if there are any cases of criminal negligence against a private practitioner, doctor or private hospital. According to G.R. the investigating Deputy Superintendent of Police shall refer the case to a panel of Superintendent of Police, commissioner of Police, District Medical Officer or Principal of Medical College. Still if the views differ, the opinion of an apex body consisting of Director of Health Services and expert in that particular speciality may be taken. The affected doctor is also free to approach the apex body with appeals.

Do's and Don'ts -

- Inform police whenever necessary.
- Extend all possible co-operations to police.
- Furnish copies of medical records to police, court or relatives whenever demanded. Consent of patient may be taken while providing information to police.
- Follow legal procedures or provisions.
- Have valid informed consent for treatment.
- Preserve documents, records especially in medico-legal, controversial or complicated cases.
- Insist for post-mortem examination if cause of death can't be ascertained.
- Involve medical associations, medico-legal cells, and voluntary organizations whenever legal problem arises.
- Consult your lawyer before giving any reply.
- Don't become panicky.
- Don't manipulate or tamper with documents.
- Don't do unlawful or unethical acts.
- Don't issue false or bogus certificates. Certificate was issued on request is no defense.
- Don't neglect treatment while completing legal formalities especially in serious or emergency situation.

Finally, it needs to be remembered that establishing a strong doctor-patient relationship could assist in many ways.

More time you spend with your patient in your consulting room, it might reduce your time in courtroom.

Reference-Textbook on Medicolegal Issues. <https://www.ima-india.org/ima/left-side-bar.php?scid=207>

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