

**Role Of Medico Legal Ethics In Criminal Justice System In Special Reference Of
Medical Negligence**

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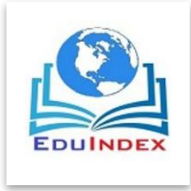
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ABSTRACT: - The evolving specialist tolerant relationship and commercialization of therapeutic practice have influenced the act of medication. From one perspective, there can be ominous consequences of treatment and then again, the patient speculates carelessness as a reason for their affliction. There is an expanding pattern of therapeutic prosecution by unsatisfied patients. The Supreme Court has set down rules for the criminal indictment of a specialist. This has diminished the pointless provocation of specialists. As the restorative calling has been brought under the arrangements of the Consumer Protection Act, 1986, the patients have a simple strategy for suit. There ought to be lawful mindfulness among the specialists that will help them in the correct account of restorative administration subtleties, this will help them in guarding their case during any charge of therapeutic carelessness. A few specialists consider medicinal morals as an extremely obscure field, expelled from the down to earth contemplations of clinical practice. The facts confirm that medicinal morals is most importantly a matter of still, small voice, however it additionally has some exceptionally down to earth suggestions and applications.

Key words: Medico Legal Ethics, Medical Negligence, Criminal Justice system

MEDICAL LEGAL ETHICS

It is an established belief that law and ethics has a significant relationship with one another which is a very controversial topic on its own. Legal and ethical considerations are integral part to medical practice for proper care of the patient.



Medical ethics has developed into a well based discipline which acts as a "bridge" between theoretical bioethics and the bedside.¹

The goal is "to improve the quality of patient care by identifying, analyzing, and attempting to resolve the ethical problems that arise in practice".²

With the increasing achievements and progress in the medical sciences also grows the complex legal system in modern developing society and increasing awareness of human rights.

It has observed that moral decision making within medicine is becoming increasingly institutionalized and subject to formalized procedures and constraints across a broad range in the landscape of contemporary medicine, such as human subject's to research, organ procurement and transplantation, assisted reproduction, the rationing of health care and the forgoing of life sustaining treatment.³

Thus science and medicine are increasingly drawn and driven into ethical debate which raises the clash between scientific method and philosophical, mental, physical and ethical questions. Such rules are increasingly institutionalized; they are embedded in statutes, regulations, directives, court opinions, administrative mandates and institutional protocols.

In decisions regarding terminal care, the rules inform about counseling and educational mechanisms, encouraging patients and their families to engage in treatment and discussions⁴ and to give prior statements about wanted and unwanted treatment.⁵

CRIMINAL JUSTICE SYSTEM IN INDIA

The concept of Criminal Justice System came into India with the advent of Manu. He had described many offences and believed in the "divine theory" which means that King is the Supreme and people are bound to follow his rules and regulations.

It was in this tough time only that the theories like Divine theory, Social Contract theory and theory of Natural Justice came into existence. In modern times we have the codified laws.

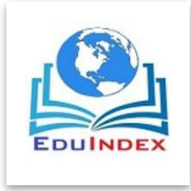
¹ Fletcher JC, Hite CA, Lombardo PA, Marshall MF, eds. Introduction to Clinical Ethics. Frederick Maryland: University Publishing Group, 1995.

² Siegler M, Pellegrino ED, Singer PA. Clinical ethics revisited. BMC Medical Ethics 2001;

³ Sen.A, The Quality of Life, Oxford Clarendon Publication, London, 1993, pp-303-35

⁴ See the Discussion of Laws J at first instance in R v Cambridge HA expB (AMinor) (1995), 23 BMLR, 1 p.16

⁵ Re Ak (2001) 58 BMLR



The essential objects of these laws are to protect society from unwanted criminal objects and create threat of punishments to the prospective law breakers. In India the administration of Criminal Justice is divided into two parts-

1. Substantive law
2. Procedural law

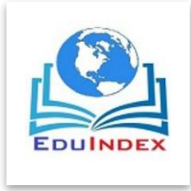
The criminal justice system throughout the world is in the hands of State and State being at the Centre stage. Law and order is the foremost duty of the State. With this primary duty the state fosters peace, prosperity, maintains rule and order and provides access to Justice for all. Every citizen in the welfare state like India is expected to have the basic human rights called Fundamental rights given by the constitution of India. Whenever these rights are violated, the judicial system provides mechanism for redressal of such violations. Whenever a citizen is harmed or injured as a result of crime, he or she is referred as “victim”. Though there has been inbuilt mechanism to initiate criminal proceedings against the offender of such crime. Crime affects the individual victims, their families and causes financial losses to the victims. These crimes cause serious and psychological injuries to the families of victim of crime.⁶ It is only in the past few decades that the impacts of victimization on crime have affected the person and drew their attention towards the present system of criminal justice and asked to be treated with compassion and dignity so that their fundamental rights must be protected and preserved.

More people are arrested each year for drug-related offenses than any other type of crime, and taxpayers spend tens of billions on arresting, prosecuting and jailing offenders for drug crimes. That means drugs represent a huge focus for those who participate in the criminal justice system.

ROAD ACCIDENTS AND MEDICO LEGAL ETHICS

The World Health Organisation estimated in 2010, that India has the highest number of road accident deaths in the world at approximately 15 deaths per hour. A number of studies have shown that 80 percent of the road accident victims could be saved when medical treatment is made available within one hour of the accident. But there are certain apprehensions that prevent people from helping the hapless victims. The biggest deterrent is the fear of being

⁶Measures for Crime Victims in the Indian Criminal Justice System by Kumaravelu Chockalingam.



questioned by the hospital staff and police, and spending time going to courts till the case is closed. Efforts are made to protect bystanders by implementing the Good Samaritan law.

Karnataka has become the first state in India to come out with legislation for the Good Samaritan law in order to protect the people who help accident victims. The Karnataka Good Samaritan and Medical Professional Bill, will be tabled in the forthcoming legislative session. Almost two years ago, the Supreme Court of India emphasized on framing guidelines to protect bystanders to reduce their hesitation to assist. Fear of being sued or prosecuted for unintentional injury or wrongful death prevents many from coming forward to save lives. The Supreme court directives prompted the Union Road Transport Ministry to come out with law that will be a relief to bystanders.

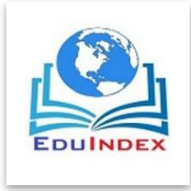
“There have been several cases where people have been found busy clicking photos or making videos of the victims, instead of saving them by administering first-aid or rushing them to nearby hospitals.

In the absence of an efficient Emergency Medical Services system in India, bystanders can play a crucial role in providing assistance to victims within the first one hour. In fact, the Law Commission of India had noted in its 201st report that over 50 percent of road accident deaths can be averted with timely medical care within the first one hour. Considering that Karnataka is one of the top 5 states in road accidents deaths in India with over 10,800 people being killed in 2015 alone, the proposed legislation will potentially save over 5000 lives annually.

MEDICAL CRIMES AGAINST WOMEN

Earlier in the Vedic times, women were given lots of respect and honor in the Indian society. They were equally given opportunities like men to develop socially, intellectually and morally. They were completely free to choose their own path in the life and select life partner. They were getting complete education before marriage as well as military training for their own safety. However, women status in the Indian society got deteriorated in the middle ages because of various bad practices against women.

The position of women became inferior when they supposed to be plaything of man . Women became almost slave of man passions and forced to live behind “Pardah”. They left their rights of education and property. However again in the Independent India, women are said to enjoy perfect equality with the man. They are no longer a slave of man’s passion and not



living at the mercy of man. They are raising their voice and help in shaping the destiny of country. The people had a thought that male child will be source of money whereas female child will be consumer of money. Birth of daughter was supposed as curse to the family. Violence against women in India refer to physical or sexual violence committed against Indian women, typically by a man. Common forms of violence against women in India include acts such as domestic abuse, sexual assault, and murder. Some of the medical crimes against women are as follows:-

1. SEX DETERMINATION

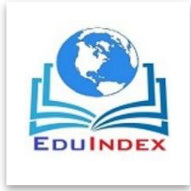
The terribly unbalanced child sex ratio in the country, which is going from bad to worse. Back in 1981, there were 962 girls in the age group of 0-6 years for every thousands boys. This ratio fell to 945 girls in 1991, then to 927 girls in 2001, and to 918 girls by the time of the 2011 Census.

To arrest this slide, the authorities had promulgated the Pre-conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act in 1994. There were concerns that ultrasound technologies were being used to determine the sex of the unborn child and abort the female foetus, so the 1994 law made it illegal for medical practitioners to reveal the sex of a foetus.

But, the law didn't work as well as was hoped, as the Census figures over the years show.

According to Public health activists, this is because the government didn't implement the law properly – sex determination and female foeticide continue because of insufficient monitoring of medical practitioners. Radiologists and gynaecologists, on the other hand, claim it is because the law was misdirected from the very beginning – it held the medical fraternity responsible for a problem that is manifestly societal.

The PNDT Act mandates that all ultrasound facilities must be registered and medical practitioners must maintain records of every scan of a pregnant women. It states that pre-natal diagnostic techniques can be used only to detect “genetic abnormalities or metabolic



disorders or chromosomal abnormalities or certain congenital malformations or sex-linked disorders”.

2. ABORTION

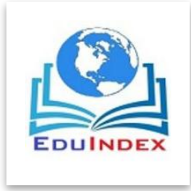
Throughout history, induced abortions have been a source of considerable debate and controversy. An individual's personal stance on the complex ethical, moral, and legal issues has a strong relationship with the given individual's value system. A person's position on abortion may be described as a combination of their personal beliefs on the morality of induced abortion and the ethical limit of the government's legitimate authority.

It is a woman's individual rights, right to her life, to her liberty, and to the pursuit of her happiness, that sanctions her right to have an abortion. A woman's reproductive and sexual health and shape her reproductive choices. Reproductive rights are internationally recognized as critical both to advancing women's human rights and to promoting development. In recent years, governments from all over the world have acknowledged and pledged to advance reproductive rights to an unprecedented degree. Formal laws and policies are crucial indicators of government commitment to promoting reproductive rights. Each and every woman has an absolute right to have control over her body, most often known as bodily rights.

3. MARITAL RAPES

Section 375 of Indian Penal Code under family Law defines rape as a criminal offence wherein a male makes sexual intercourse/contact with a female forcibly without the consent of female or will be forcing pressure, threats, violence, abuse, molestation, etc.. Irrespective of attaining the age of majority or being in the minors, a rape is termed as a criminal offence in the eyes of law.

Marital rape or rape in marriage or Spousal Rape refers to unwanted and non-consent sexual intercourse by a man with his wife wherein the man dominates, pressurizes and threatens his wife subjecting with physical violence, force, fear generations, etc. Marital rape is a non consensual act of violent perversion undertaken by a husband against his spouse.



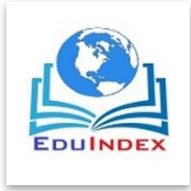
Cocclusion-

In India pretty much consistently there is an instance of restorative carelessness which is seen. It is seen in the large just as in the little medical clinics, facilities, dispensaries and so on. Because of this various

individuals are enduring in our nation. The most well-known sort of restorative carelessness is seen in tasks and during the conveyance of the youngster and so on a number o cases has been documented

against specialists who carelessly depart their careful instruments in the body of the patient and so forth, still various specialists leave their instruments in the stomach of the patient which could be lethal. In India specialists are treated as divine beings, thus when some sort of careless acts are completed by them, they believe that it was the desire of god and don't make the specialist answerable for this. Ignorance is another huge factor that isn't letting our kin to know what sorts of wrongs are being dedicated in our nation. Our nation is confronting a horrendous time today as the specialists likewise are exploiting needy individuals and are making their administration division, a benefit situated part and changing their vision from giving great wellbeing to picking up benefits from blameless individuals by requesting that they experience many tests previously treating them for a typical virus. Nature in the medical clinics like the neatness and so on is additionally not kept up by a large portion of the clinics in the provincial area as well as in the urban area which results in the spread of transmittable illnesses quicker and simpler.

The casual conduct by the individuals, by the clinic specialists and the administration officials who check these spots has brought about the casual conduct of the specialists, which is the principle reason that the quantity of instances of restorative carelessness is expanding. As I would see it if the average citizens with the help of the administration force runs on these medical clinics and likewise make sure that these principles are actualized then quite possibly the benchmarks of our emergency clinics would improve and consequently the ability and information of specific and approved specialists would be utilized without limit. We should likewise spread mindfulness in the provincial areas[especially] with the goal that destitute individuals don't get abused and battle for their privileges and inquire for the



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necessary cure from the restorative expert causing them the mischief. At the point when every one of these issues are investigated and the essential move is made, our models will in tasks and during the conveyance of the youngster and so on a number o cases has been documented
