

Medicolegal Issues related to Trauma Care in India

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Abstract: Patients with bodily injuries from varied mechanism or mode forms a significant population in the emergency care set up of any hospital. Providing emergency medical care to the victim of trauma in that situation is the priority. However, along with this the medico-legal aspects related to trauma are to be taken into consideration. The physician must discharge his or her duties efficiently within the legal framework and also completing the requirements of law enforcement agencies for further investigation and prosecution of assailant. There are specific provisions related to trauma in Indian penal code and Criminal procedure code. Beside these provisions, there are various landmark decisions of Indian judicial system regarding care of trauma victim. Also, there are some specific laws for situations dealt by an emergency medical expert like drunkenness, child abuse, hospital violence, torture and sexual assault. In this paper, we have discussed various existing legal provisions, court decisions and special laws to sensitize the medical fraternity dealing with trauma victims and may be helping them to discharge their duties as per the requirement of law of the land, ignoring of which may cause a legal problem to the expert itself.

Trauma, in general means an insult to the living tissue¹. In other words, trauma is an injury or wound to a living body caused by the application of external force or violence².

LEGAL TERMS RELATED TO TRAUMA³

- Injury - Any harm whatever illegally caused to any person, on body, mind, reputation or property (Section 44 of Indian Penal Code).
- Assault - It is an offer or threat or attempt to apply force to body of another in a hostile manner (Section 351 of Indian Penal Code).
- Hurt - It includes bodily pain, disease or infirmity caused to any person (Section 319 of Indian Penal Code).

In the emergency care set up of any hospital, victims of trauma constitute a significant patient population. The common etiology of trauma includes road traffic accidents, assault, fall from height, burns, etc. Providing emergency medical care to the victims of trauma is a process complicated by multiple factors including medico-legal situations². Emergency medical practitioner has responsibility not only towards patient for saving the life but also towards state particularly in medico-legal cases. Section 134 of the Motor Vehicles Act, 1988 also imposes a duty on the doctor and hospital for the treatment of injured person in a case of accident.

LANDMARK JUDGEMENTS BY INDIAN COURTS REGARDING CARE OF TRAUMA VICTIMS

With time role of doctor and public in trauma cases keeps refining & redefining

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and court judgement in specific cases had played an important role in this. Excerpts of some of the landmark judgements are as under

In case “**PN Katara vs. Union of India (1989)**”, Honourable Supreme Court of India ruled that *the preservation of human life is of paramount importance. In order to avoid negligent death, every injured citizen brought for medical treatment should instantaneously be given medical aid to preserve life and thereafter the procedural criminal law should be allowed to operate*⁴.

Honourable Supreme Court in **Indian Medical Association vs. V. P. Shanta (1995)** observed that *a hospital has generally two categories of patients, those who pay and those who are treated free, the free patients acquire the status of consumers because it is deemed that the treatment to free patients is deemed to be met by the paying patients*⁵.

In case “**Paschim Banga Khet Mazdoor Samity vs. State of West Bengal (1996)**”, Honourable Supreme Court observed that *providing adequate medical facilities for the people is an essential part of the obligations undertaken by the Government in a welfare state. The Government discharges this obligation by running hospitals and health centres which provide medical care to the person seeking to avail those facilities. Article 21 of Constitution of India imposes an obligation on the State to safeguard the right to life of every person. Failure of the government to provide timely emergency medical treatment constitutes a violation of the right to life*⁵.

The **National Consumer Disputes Redressal Commission in Pravat Kumar Mukherjee vs. Ruby General Hospital & Others (2005)** declared that *a hospital is duty bound to accept accident victims and patients who are in critical condition and that it cannot refuse treatment on the ground that the victim is not in a position to pay the fee or meet the expenses or on the ground that there is no close relation of the victim available who can give consent for medical treatment*⁵.

The above listed judgements have made it mandatory for all the hospitals to

provide free of cost emergency treatment to all the trauma victims on priority basis in order to save their life and only after that medicolegal formality as required by law should be completed.

STATE POLICY AND LAW RELATED TO TRAUMA

As per the guidelines⁶ prepared in 1983 by the committee constituted by Delhi Government for uniformity in medico-legal work, medico-legal case is defined as “the case of injury or ailment, wherein an attending doctor after taking history and clinical examination of the patient/s, thinks that some investigations by law enforcing or evident homicides including attempted suspected or evident agencies are essential, so as to fix the responsibility regarding the case in accordance with the law of the land”.

As per the guidelines the cases which are invariably labelled as medicolegal cases includes- all cases of accidents and unnatural mishap, suspected or evident cases of poisoning, burn injury due to any cause, suspected or evident cases of homicide included attempted homicides, injury cases where there is likelihood of death in near future, suspected or evident cases of sexual offences, suspected or evident cases of criminal abortion, unconscious cases where cause of unconsciousness is not clear, cases brought dead with improper history and in those cases where regarding injured patient doctor thinks that the patient is either victim or accused in a crime case.

As per the guidelines, even if patient reports several days after sustaining injuries, the medicolegal cases report is prepared and it is not necessary for the police to accompany the trauma victim. Any intentional act of the doctor benefiting the accused or victim of trauma is a punishable offence under section 201/202 of Indian Penal code, hence adequate precaution should be taken while dealing with medicolegal cases in preparation of report and collection of evidences of importance for help in further investigation.

MEDICOLEGAL ISSUES RELATED TO EXAMINATION AND TREATMENT

Many difficulties arise during the examination and treatment of trauma patient. During treatment the patient may not be able to provide consent, as treatment is often required to be life-saving without time for formal consent processes. Furthermore, the patient may not be in a sound frame of mind to allow for ethically and legally valid consent. Because multiple providers of care may be required, especially in the case of polytrauma, the patient's autonomy is further reduced⁷. In such condition required emergency treatment must be done as Sec. 92 IPC defines that any harm caused to a person in good faith, even without that person's consent is not an offence, if the circumstances are such, that it is impossible for that person to signify consent, and has no guardian or other person in lawful charge of him². In addition, the risk of missed injury is increased because of loss of information at handover in situations of multiple transfers of care⁸. So the findings must be carefully noted and case must be properly studied during referrals.

The trauma may have occurred during commission of an offence, in which case the patient may be under guard, or may even be concealing weapons or contraband. This could necessitate an ‘invasion of privacy’ to identify or remove such items. Consent becomes an important issue during examination of the trauma patient also. A victim cannot be examined without consent however an accused can be examined without consent if the examination is requested by a police officer not below the rank of sub-inspector (Sec 53 CrPC).

SPECIAL SITUATIONS

- 1. Torture-** The World Medical Association defined Torture in relation to detention and imprisonment during Declaration of Tokyo, 1975 as “the deliberate, systematic or wanton infliction of physical or mental suffering by one or more persons acting alone or on the orders of any authority, to force another person to yield information, to make confession or for any other reason” (Section 330 and 331 IPC)^{3,9}.
As per Guidelines of National Human Right Commission (No. 7/11/99-PRP&P, 22 Nov, 1999) If the arrestee has been remanded to police custody under the orders of the court, the arrestee should be subjected to medical examination by a trained Medical Officer every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory. Further on arrest on request of arrestee or if police officer feels that some medical assistance is required, the same should be arranged promptly. All the injuries on the body of arrestee are noted down and at times they are brought to emergency department for documentation and treatment of the arrestee.
- 2. Sexual Assault:** As per section 357C of Criminal Law Amendment Act

(2013), all the hospitals, public or private, whether run by 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 vitriolage and sexual violence and shall immediately inform the police of such incident. Failure to do so attract punishment under section 166B of Criminal Law Amendment Act 2013. Victims of sexual violence should be examined in the emergency care setting by the registered medical practitioner without any delay. (164 A CrPC)

- 3. Hospital violence:** Violence against the doctors and staff of hospital by the attendants of patient is a serious matter and has shown rising incidences now a days. Many states in India are having acts to prevent violence against medical service personnel, such as The Karnataka (2009) Maharashtra (2009) and Tamil Nadu (2008). In Delhi, there is *Delhi Medicare Services Personnel and Medicare Institutions (Prevention of violence and damage to property) Act 2008* with penal provisions including punishment for 3 year imprisonment or fine 10,000 rupees or both, Recovery of damages and there has been Protection for the Institutions. Also the medical professionals must comply with the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 to minimise such incidences of violence.
- 4. Child abuse (Physical and sexual):** Trauma among children could be the result of physical abuse. Hence, the cases of paediatric trauma should be dealt with high index of suspicion for diagnosis of battered baby syndrome. Sexual abuse of children is also not uncommon, therefore they are also brought for examination and treatment in emergency (The Protection of Children from Sexual Offences act 2012).
- 5. Drunkenness:** Association of trauma and alcohol has been widely reported in literature. Injured victim brought to emergency for treatment are at times found to have consumed alcohol. In India, one of the most common medicolegal issues related to alcohol is drunken driving. Documentation of injuries, breath alcohol analysis, collection and appropriate preservation of samples for alcohol are the important medicolegal responsibilities of the emergency physician. Different countries have different laws which define the upper limit of blood alcohol level, above which driving vehicle becomes an offence. In India the upper limit is set to 30 mg% according to Sec. 185 of Motor Vehicle Act, 1988.

GOOD SAMARITAN ACT

Apathy of the public in helping the road side victim in shifting the hospitals has also been highlighted all over the country. People witnessing the accident fear harassment by police and they do not wish to take the victim to a hospital or report to the police in order to avoid unnecessary harassment. They do not want to be called to the police station or to the Court for their statements or evidence to be recorded.

In 2004, Govt of India, Department of Road Transport and Highways, (Road safety Cell)¹⁰ has issued a notification citing that the escorts should, under no circumstances, be detained in the hospital for interrogation. They should be treated with courtesy and should not be harassed in any way. Even if they are unwilling to give their particulars, the same should not be insisted upon.

In 2012, honourable Supreme Court of India¹¹ had said that good Samaritans who save the lives of hit-and-run victims by rushing them to hospitals cannot be given immunity from appearing in court as witnesses, but it agreed to examine additional measures to insulate them from harassment. The bench said, “If a person has witnessed an accident, it would be unfortunate in law to ask whether he wants to be a witness or not. They further added that a legal system cannot have the luxury that a witness be given discretion whether or not to appear before court.

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