



A HANDBOOK ON
**FORENSIC
MEDICINE**
Volume- I

JV'n Dr. Gaurav Gupta

JAYOTI VIDYAPEETH WOMEN'S UNIVERSITY, JAIPUR

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A
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ON
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Volume- I

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PREFACE

Forensic Medicine is an essential knowledge that should be possessed by every medical practitioner. The aim of the teaching of Forensic Medicine is to provide knowledge to a physician about medico-legal responsibilities in the practice of medicine. Physician will also be capable of making observations and inferring conclusions by logical deductions to set enquiries on the right track in criminal matters and connected medico-legal problems. It provides knowledge of the law in relation to medical practice, medical negligence and respect for codes of medical ethics.

The aim of writing this book is too concise all essential information in an easily comprehensible arrangement that can easily be understood by students without missing any essential information. It is tried to keep chapter arrangement in a uniform format so that it can become easy to learn.

JV'n Dr. Gaurav Gupta
Author

ABOUT AUTHOR

Dr Gaurav Gupta is a Homoeopathic academician and consultant having B.H.M.S. M.D. from Jaipur. Currently, he is working as Assistant Professor in the Department of Forensic Medicine and Toxicology at Faculty of Homoeopathic Science under Jayoti Vidyapeeth Women's University, Jaipur. He has a vast clinical experience of more than 4 years. He has written and published 3 research papers in SCOPUS indexed international Journal, 2 in UGC Care listed Journals and 4 research papers in peer reviewed journals. He has published a book on Toxicology. He has written multiple book chapters in many edited volumes. He has also published 6 patent applications. He has knowledge of the subject and has a unique style of teaching.

ACKNOWLEDGEMENT

Writing a book is harder than I thought and more rewarding than I could have ever imagined. My inspirations in writing this book are my students, whose need always pushed me to do a work that is easily comprehensible and can be read and revise even before the examination.

I would like to thank the publisher, who gave me the opportunity to publish this book

I would like to thank my parents and family for their immense support, without which this work was not possible. I would also like to thank my colleagues who encouraged and supported me in writing this book.

I wish that this book will help students to understand the topic and will also guide them in preparation for the PG examination.

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CHAPTER-1 FORENSIC MEDICINE- FEW DEFINITIONS

Forensic Science- It is a scientific branch that deals with criminal investigation. In this branch, scientific knowledge and methodology are applied in legal problem and criminal investigations. It includes various fields of sciences such as physics, biology, chemistry, geology, psychology, engineering etc.

Forensic Medicine- It is application of medical and paramedical knowledge to aid in the administration of justice. E.g. – Application of medical knowledge in cases of injuries, murder, suicide, accidents, sexual offences, poisoning, etc.

Medical jurisprudence- It is application of law in practice of medicine i.e. knowledge of legal responsibilities of physician. It includes physician's relation with patients, other doctors and state.

Forensic pathology- It is study of the human body to determine the cause of death & injury in case of violence and suspicious deaths. It is study of area of pathology in the cases of sudden and violent death.

Medical Ethics- It is moral principles for the medical professional and guides them while dealing with each others, patients and state.

Medical Etiquettes- These are conventional law and customs of courtesy that guides the doctors about their behaviour with each other.

CHAPTER-2 LEGAL PROCEDURE

Indian Penal Code (I.P.C.) - IPC passed as law in 1860. It is the law of India that deals with substantive criminal law of India. It describes offences and punishment.

Criminal Procedure Code (Cr.P.C.)- This law was passed in 1973. It defines the procedure of investigation and mechanism for punishment against the substantive criminal law.

Indian Evidence Act (IEA)- This law deals with evidences and judicial proceedings. It is common for civil and criminal cases.

Criminal Law- It deals with the offences that are against the public interest. In these cases, one party is state and other is accused.

Civil Law- It deals with the legal disputes between two individuals or parties.

INQUEST

An inquest is an inquiry or investigation into the cause of death, when death do not appear due to natural cause. It is conducted in cases of:

- Suicide
- Homicide
- Infanticide
- Death from accident, poisoning.
- Death in suspected case of dowry
- Death from burns
- Death under anaesthesia or on operative table
- Death from Medical negligence

- Death of a convict in police custody, mental hospital.
- Death due to any unnatural cause.
- Unidentified dead body.

Types of Inquest

1. Police Inquest
2. Magistrate Inquest
3. Coroner's Inquest
4. Medical Examiner System

1. Police Inquest-

- Its procedure is given in **Sec. 174 Cr.P.C.**
- The purpose of conducting police inquest is:
 - To identify the deceased.
 - To identify place of death.
 - To find time of death.
 - To find apparent cause of death.
- It is conducted by a police officer holding rank of senior Head constable or above and is known as Investigation officer (IO).
- In cases of suspected death, police informs nearest Executive Magistrate as soon as information is received and proceeds to the site of crime.
- Investigation is performed by IO in presence of 2 respectable persons (Panchas) (Under **Sec. 175 Cr.P.C.**)
- A report is prepared mentioning apparent cause of death, describing wounds, injuries etc. and about the method of injury, possible weapon that caused that injury.

- This inquest report (Panchnama) is signed by IO and Panchas.
- If the death is found to be suspected, then body is sent for post-mortem otherwise handed over to the family and the report is forwarded to Magistrate.

2. Magistrate Inquest-

- Its procedure is given in **Sec. 176 Cr.P.C.**
- It is conducted by District Magistrate, Judicial Magistrate, SDM or any Executive Magistrate empowered by the State Government.
- It is performed in cases of:
 - Death in police firing
 - Disappearance or death of a person in police custody or during police interrogation.
 - Death of a convict in jail.
 - Exhumation cases (where the body is dug out of a grave).
 - Rape alleged to have been committed on any woman in the custody of the police.
 - Dowry deaths (suicide/death of a woman within 7 years of marriage).
 - Admission of a mentally ill person in a psychiatric hospital under certain provisions of Mental Health Act, 1987.
 - In any case of death, magistrate may conduct an inquest.

3. Coroner's Inquest-

- This inquest is conducted in USA, UK and other countries but not in India.
- It is conducted in all cases of unnatural and suspicious death.
- The coroner has power resembling to the court of law or judge. It can impose punishment or penalty.

4. Medical Examiner System-

- This inquest is conducted in USA, Japan, Canada etc. but not in India.
- A medical person is appointed as a coroner.
- Examiner doesn't have any power similar to coroner.
- In this inquest, medical examiner visits the site of crime and perform inquest.
- This inquest is superior to Coroner's and police inquest.

COURTS OF LAW:

- Criminal courts and offices are constituted under **Sec. 6-25 of Cr.P.C.**
- In India, there are two types of court-
 1. Criminal Court
 2. Civil Court
- In India, Criminal courts are of following type:
 1. The Supreme Court
 2. The High Court
 3. The Session Court
 4. Magistrate Court

1. The Supreme Court-

- It is highest office of justice and court of appeal located in New Delhi.
- Acc. to Article 134, Constitution of India, it is superior to all courts and law declared by it is binding on all court.

2. The High Court-

- Usually located in the capital of every State and is the highest court in the state.

- High Court judges are appointed by the President of India in consultation with the Chief Justice of India and the Governor of the State.
- It is court of appeals from lower courts.
- It may try any offence and pass any sentence authorized by law (Sec. 28 CrPC).

3. The Session Court-

- Usually located at the district headquarters.
- Appointment of district Judge is done either by the state Government in consultation with the High Court or by way of elevation of Judges from courts subordinate to district courts.
- It can pass any sentence authorized by law including death sentence which is subject to confirmation by the High Court (Sec. 28 CrPC).

4. Magistrates' Courts-

- These are of three types:
 - i. Chief Judicial Magistrate
 - ii. First Class Judicial Magistrate
 - iii. Second Class Judicial Magistrate.
- In metropolitan cities with more than 1 million population, the Chief Judicial Magistrate and first class Judicial Magistrate are designated as Chief Metropolitan Magistrate and Metropolitan Magistrate respectively.
- The High Court appoints the Judicial Magistrate of first class to the Chief Judicial Magistrate (Sec. 12 CrPC).
- Powers of Magistrate court is given in Sec. 29 CrPC. Higher court can enhance the sentence awarded by it.

S.No.	Magistrate	Punishment	Amount of fine
1.	Supreme Court	Imprisonment for any period including death sentence	Any amount
2.	High Court	Imprisonment for any period including death sentence	Any amount
3.	District and Session	Imprisonment for any period including death sentence (Need to confirm by High Court)	Any amount
4.	Assistant Session	Imprisonment for upto 10 years	Any amount
5.	Chief Judicial/Chief Metropolitan	Imprisonment for upto 7 years	Any amount
6.	First Class Judicial/Metropolitan	Imprisonment for upto 3 years	Upto 10,000
7.	Second Class Judicial	Imprisonment for upto 1 years	Upto 5,000

OFFENCES- It means any act or omission made punishable by any law. As per Cr.P.C., offences are of following type:

1. Bailable offences- Offences in which bail can be granted by the law.

2. Non-bailable offences-

- Offences in which bail cannot be granted.
- These are the serious offences and the decision is taken by a Judicial Magistrate only.

3. Warrant case- It is related to an offence punishable with death, life imprisonment or imprisonment for ≥ 2 years,

4. Summons cases- Cases other than warrant cases.

5. Cognizable offence: It is an offence in which a police officer can arrest a person without warrant from the Magistrate, e.g. rape, murder, dowry death or attempt to murder [Sec. 2 (c) CrPC].22,23 ,,

6. Non-cognizable offence- It is an offence in which the police officer cannot arrest without a warrant from the Magistrate.

SENTENCES- The punishments authorized by law are:

- (1) Death or Capital punishment
- (2) Imprisonment for life
- (3) Imprisonment: rigorous, or simple
- (4) Forfeiture of property,
- (5) Fine.

Capital Punishment or death sentence is the judicial killing of a person for an offence. This punishment can be given by hanging, electrocution, shooting, cyanide poisoning, lethal injection, garroting and guillotine. In India, this punishment can be granted pardon by President of India.

SUBPOENA OR SUMMONS:

- Sec. 61 to 69 of Cr.P.C. deal with summons.
- Subpoena is a document that compels the attendance of a witness to give evidence in a Court under penalty, on a particular day, time and place. The person should present with the evidence in any form.
- It is issued by the Court in writing, in duplicate, signed by the presiding officer of the Court and bears the seal of the Court. This letter contains crime number and name of the accused person and is served by a police officer, by an officer of the

Court or other public servant or by registered post or can be fixed on house in which person resides, by delivering to him one of the copies of the summons.

- If the person summoned is in the active service of the Government, a duplicate is send to the head of the office in which such person is employed.
- The witness will be excused from attending the Court, if he has a valid and urgent reason.
- If the witness fails to attend the Court without any valid reasons :
 - (1) In a civil case, he will be liable to pay damages.
 - (2) In criminal cases, the Court may issue notice under S.350, Cr.P.C. and after hearing the witness, if it finds that the witness neglected to attend the Court without any justification, may sentence him to a fine, or imprisonment, or the Court may issue bailable or non-bailable warrants to secure the presence of the witness (S.172 to 174, I.P.C. and S.87, Cr.P.C.).
- In case of call as a witness from two different courts, criminal Court have priority over civil Court, higher Court have priority over the lower. He can attend the second Court after finishing his evidence in the first Court.

CONDUCT MONEY:

- It is the fee offered or paid to a witness in civil cases, at the time of serving the summons to meet the expenses for attending the Court.
- If the fee is not paid or is less, this matter can be brought in the notice of the Judge before giving evidence in the Court and the amount will be decided by the Judge.
- In criminal cases, no fee is paid and evidence is given in the interest of the State in order to secure justice. If failed to give evidence, contempt of Court is charged.

However, conveyance charges and daily allowance can be claimed by the doctor according to Government rules.

MEDICAL EVIDENCE- It is an expert form of evidence. It includes all statements & documents presented in court, in relation to matters of fact under inquiry produced for inspection of the Court.

The medical evidence can be:

- (1) Documentary
- (2) Oral

1. DOCUMENTARY-

- It includes all documents produced for the inspection of the Court during trial under the Sec. 61 to 90 of Indian Evidence Act, 1872.
- The contents of the documents may be proved either by primary or by secondary evidence (S.61, I.E.A.). Primary evidence means the document itself produced for inspection of the Court (S.62, I.E.A.). Secondary evidence means, certified copies, copies made from the original by mechanical processes, copies made from or compared with the original, oral account of the contents of a document (S.63, I.E.A.).
- It is of three types:
 - (1) Medical Certificates
 - (2) Medicolegal Reports
 - (3) Dying Declaration :

(1) MEDICAL CERTIFICATES-

- They are issued to certify ill-health, insanity, age, death, etc.

- These are issued by a qualified registered medical practitioner and are acceptable in a Court of law.
- The certificate of ill-health should contain exact nature of illness, and probable period of expected absence.
- A medical practitioner should issue death certificate without charging fee, stating the cause of death after inspecting the body and satisfying himself that person is dead and should not be issued if the doctor is not sure of the cause of death, or in case of suspicion of any foul play. In foul play is suspected, the matter should be reported to the police.
- Issuing a false certificate is punishable under S. 197, I.P.C.

(2) MEDICOLEGAL REPORTS:

- These reports are prepared by a doctor on the request of the investigating officer, usually in criminal cases.
- These reports consist of two parts. First part reports the facts observed on examination and second part reports the opinion drawn from the facts.
- It will be admissible as evidence only when testified by doctor to the facts under oath.
- The report should show competence, lack of bias and offer concrete professional advice.

(3) DYING DECLARATION:

- It is a written or oral statement of a person dying as a result of any criminal act about the material facts of cause of his death or the circumstances (S.32, I.E.A.).
- If possible, Executive magistrate should be called to record the declaration and if there is no time, it should be recorded by doctor in presence of two witnesses.

- There is no need to take declaration under oath while recording the dying declaration in the belief that the dying person doesn't lie.
- The doctor should certify that the person is conscious and his mental faculties are normal before statement is recorded.
- The statement should be recorded in the dying person's own words without any alteration and no leading questions should be asked.
- The statement should be recorded without any undue influence, outside prompting or assistance.
- Question may be asked to clear things and then be read over to the declarant, and his signature or thumb impression is taken.
- The doctor and the witness should also sign the declaration. If the statement is written by the declarant himself, it should be signed by him, the doctor and the witnesses.
- The declaration is admissible against accused who killed the declarant and other persons involved in the incident.
- The declaration is sent to the Magistrate in a sealed cover
- If the declarant survives, the declaration is not admitted, but has corroborative value, and the person is called to give oral evidence.

DYING DEPOSITION: It is a statement of a person on oath, recorded by the Magistrate in the presence of the accused or his lawyer, who is allowed to cross examine the witness. This procedure is not followed in India.

2. ORAL-

A. Direct - Evidence of a fact which is actually in issue, e.g., an electric blanket that has caused injury, prescription, or a consent form.

B. Indirect or Circumstantial- These are collateral evidences which are not directly associated but an interpretation can be drawn and are consistent with the direct evidence.

C. Hearsay- It is any statement produced in court by any person which he did not witness directly but is based on information given by others.

EXCEPTIONS TO ORAL EVIDENCE :

(1) Dying declaration

(2) Expert opinion expressed in a treatise may be proved in Court by producing book without calling author for oral evidence.

(3) Evidence of a doctor recorded in a lower Court is accepted in a higher Court, provided it is recorded and attested by Magistrate in the presence of the accused but can be called if evidence is deficient or needs further explanation

(4) Evidence given by a witness in a previous judicial proceeding in future judicial proceeding if witness is dead or cannot be found or cannot give evidence.

(5) Evidence of Mint officers or an officer of the India Security Press.

(6) Reports of certain Government scientific experts : E.g.- reports by chemical Examiner, Chief Inspector of Explosives, Director Fingerprint Bureau, Director, Central or State Forensic Science Laboratories etc.

(7) Public records : A record kept in a public office, e.g., birth and death, certificates of marriage, etc., is admissible in evidence without oral testimony.

(8) Hospital records

WITNESSES: It is a person who gives sworn testimony as evidence in court regarding facts.

Types of Witnesses:

1. Common
2. Expert

1. COMMON WITNESS: It is a person who gives sworn testimony about the information or facts observed by him.

2. EXPERT WITNESS: It is a person who is trained or skill and has scientific or technical knowledge and is able to interpret the information and facts observed by him/her or by others and draw opinion and conclusion from it.

HOSTILE WITNESS- The witness for whom it is supposed that he is hiding some truth due to any interest or motive, or giving completely false evidence. The court has power to declare a witness hostile on suggestion of lawyer who have summoned and can be examined by him.

PERJURY: it is giving wilful false/fabricated evidence even after being legally bound by an oath It occurs when earlier statement regarding the facts does not reconcile with subsequent statement. The witness is liable to be prosecuted for perjury, and the imprisonment may extend to seven years (S. 193, I.P.C.)

RECORD OF EVIDENCE: The evidence of the witness is recorded under S. 138 to 159, I.E.A. and Indian Oath Act 44, S.2,4,and 6, 1969 as follows

OATH: The witness has to take an oath in the witness box before he gives his evidence. The oath is taken in the name of God." (S.51, I.P.C.). Oath is essential and it holds witness responsible for the consequences of his evidence.

1. EXAMINATION-IN-CHIEF (DIRECT EXAMINATION) (S.137, I.E.A.):

- This is the first examination of a witness.
- Questions are asked by the lawyer which has summoned him.
- In criminal acts, the State becomes a party instead of the affected person
- In a criminal case, the prosecution has to prove guilty and the accused is presumed to be innocent till the contrary is proved.
- The object is to elicit all relevant, convincing facts and the expert witness can draw interpretation.
- Leading questions are not allowed, except in those cases, where the Judge is satisfied that a witness is hostile.
- The effect of the questions and answers is recorded indirectly and not in the form of the question and answer (S.275 and 276, Cr.P.C.).

2. CROSS-EXAMINATION:

- The witness is questioned by the opposition lawyer
- In a criminal case, the defence witness is cross-examined by public prosecutor.
- The objectives are
 - to elicit facts favourable to his case,
 - to test the accuracy of the statements
 - to modify, or explain what has been said,
 - to develop new or old facts,
 - to discredit the witness, and
 - to remove any undue or excessive emphasis which may have been given to any of them
- Leading questions can be asked.

3. RE-EXAMINATION:

- The witness is questioned again by the lawyer for the side he has been called.
- The object is to correct any mistake or to clarify or add details to the statements the witness has made in cross-examination.
- The witness should not bring in any new matter at this stage.
- The opposing lawyer has right of re-cross-examination on the new point raised
- Leading questions are not allowed.

4. QUESTIONS BY JUDGE:

- The Judge may ask any question about any fact at any stage of the examination to clear up doubts.
- The Court has power to recall and re-examine the witness.

CONDUCT AND DUTIES OF THE DOCTOR IN THE WITNESS BOX

- (1) Be well prepared with the details of your evidence before entering the box; anticipate certain likely questions on it and be prepared to answer these in advance. It may be necessary to study the literature on the subject about which he is likely to be cross-examined.
- (2) Take all records, and relevant reports that may have to be quoted in the box.
- (3) Do not discuss the case with anyone in the Court, except the lawyer by whom you were asked to testify.
- (4) Be well dressed and modest.
- (5) Stand up straight.
- (6) Be relaxed and calm and not frightened or nervous.
- (7) Never attempt to memorise and refresh your memory from copies of reports.

- (8) Speak slowly, distinctly, and audibly so that the Judge can record your evidence.
- (9) Look people in the eye when you speak, for it gives the impression of honesty.
- (10) Speak with assurance.
- (11) Use simple language, avoiding technical terms to the best of your ability.
- (12) Avoid superlatives and exaggerations.
- (13) Do not fumble in referring to case notes, records, etc.
- (14) Address the Judge by his proper title, such as "Sir" or "Your honour".
- (15) Avoid difference between your record and your testimony. If an error or slight contradiction has been made in the testimony, admit and correct it.
- (16) Do not underestimate the medical knowledge of the lawyers.
- (17) Be pleasant, polite and courteous to the lawyer.
- (18) Do not avoid a question. Say I do not know if you do not know.
- (19) Never become hostile, angry, rude or sarcastic during questioning.
- (20) Do not lose your temper. An angry witness is often a poor witness, and the effectiveness of his testimony is diminished or destroyed.
- (21) Defence lawyer may irritate the witness into anger by unfair questions, abuse and unfair remarks. The witness should remain calm and keep his temper. Do not argue, just disagree if you do not agree; disagree firmly and repeatedly.
- (22) Don't be too anxious to please or too eager to fight.
- (23) Retain independence of your mind. Be honest, impartial, unbiased and truthful. A biased expert is a useless expert. Be frank to admit any points in favour of the accused if that is the truth. Speak only of facts which come within your personal knowledge.
- (24) Do not alter your findings to what is said in statements to be the facts. The doctor should "tell it as it is", and should not choose sides.

- (25) Listen carefully to the questions. Do not hesitate to ask to have the question repeated, if you do not understand it. If still it is not clear, say so frankly, for the lawyer to reframe the question. Give yourself time to think.
- (26) Avoid long discussion..
- (27) Consider all aspects of the question before answering it. Answer only what is asked.
- (28) If you believe the question is unfair or that the lawyer is teasing you excessively, look at your lawyer before answering. If he fails to object, turn to the Judge and ask whether you should answer the question.
- (29) Do not overemphasise replies to questions from the cross-examining lawyer.
- (30) You may use an opportunity to insert a positive point that you have omitted during your chief-examination; but be careful not to provoke a new line to questioning.
- (31) Watch for double question and questions that include an assumption of facts which have not been proven.
- (32) You are an authority in this particular case, as you have examined the patient or the dead body and have specific medical knowledge about it. What applies to many cases in general may not apply to this particular case.
- (33) Express an opinion from your own knowledge and experience. Say, "In my opinion
- (34) When the opinion relates to quantity or number, it should be stated within certain limits, unless an exact answer can be given, e.g., the age of an individual. Keep the opinions within the limits of reasonable medical certainty.
- (35) Do not be drawn outside your particular field of competence.
- (36) When asked to comment upon the competence of a colleague, avoid any insulting remarks. If he is competent, say so but without superlatives. If you do not wish to make any statement, say that you have "no opinion".

- (37) An expert may adopt the published opinion of the writers on the subject as his own opinion. The published work need not be produced in the Court.
- (38) When lawyer quotes a passage from a textbook, and asks the witness whether he agrees with it, the doctor must always take the precaution before answering, of reading the portion which is quoted to him and also of reading a paragraph before and after the quoted passage since it may be taken out of context, and he should satisfy himself that the edition of the book is recent and the views expressed by the author are current.
- (39) Textbooks of established repute can be produced in evidence.
- (40) A medical witness has no professional privilege, and therefore he must answer any question.
- (41) Volunteering of information: Information should not be volunteered beyond that asked for in the question.

PROCEDURE OF CRIMINAL TRIAL

TYPES OF TRIAL:

- (1) **ADVERSARIAL SYSTEM:** It is for the prosecution to prove their case to the Magistrate, beyond reasonable doubt. The defence does not have to prove innocence.
- (2) **INQUISITORIAL SYSTEM:** Both the prosecution and defence have to make their cases to the court, which then chooses which is more credible.

EXAMINATION OF MEDICOLEGAL CASES: Following things should be taken care dealing with medico-legal cases:

1. Cases of accidents, assault, burns, scalds and electrical injuries, poisoning, intoxication, comatose patients, cases brought in terminal stages, cases brought dead, sudden unexpected death, suicide, homicide and infanticide, deaths during

operation or under anaesthesia, drug mishaps, suspicious deaths, cases referred from police or court.

2. Medico-legal cases should be examined without delay at any time of day or night.
3. A private hospital or nursing home can treat and admit medico-legal cases except victims and accused of rape cases.
4. Medical Officer has no jurisdiction. He has to examine all medico-legal cases sent by the police.
5. Obtain informed consent from the patient.
6. Note at least two identification marks which are individualistic.
7. In all medico-legal cases, details of examination of injured person. whether admitted into hospital or treated as outpatient have to be entered in an Accident Register. When the register has been fully utilised, it should be sent to Medical Record Section.
8. If a patient is admitted, and later it turns out to be M.L.C., such case has to be made M.L.C. by entering in the Accident Register.
9. The police should be informed about all cases labelled as M.L.C.
10. Treatment gets priority over medico-legal formalities.
11. General history and a specific history of the particular incident should be obtained from the victim. In case of criminally accused person, no attempt should be made to obtain any history of the specific incident. It should be limited to questions about the causation of injuries only.
12. If death is imminent, the doctor should arrange for a dying declaration.
13. If the patient is treated as outpatient it should be mentioned in the report.
14. Immunisation should be carried out if necessary.
15. Carry out all the necessary investigations.

16. When the injured person in a victim of criminal assault is admitted and treated and later referred to a higher centre for expert treatment, the doctor who has examined the case first has to prepare the wound certificate.
17. All the documents, material, samples should be collected as evidence.
18. In a case of poisoning, stomach wash should be done immediately and the specific antidote administered & admit the patient.
19. In a criminal case, obtain a second medical opinion from a senior doctor if surgery has to be performed.
20. The doctor should seek help from experts in difficult situations to finalise any report.
21. In case of difference of opinion between two experts, such as a radiologist and orthopaedic surgeon, the medical officer should adopt the opinion which he considers correct. The opinions of the experts should be attached to the file and sent to the Court.
22. Over-writings, alterations and interpolations should be avoided. Nothing should be erased or obliterated. Avoid abbreviations.
23. Medico-legal reports should be issued as soon as possible to help the investigation.
24. All forms filled for X-ray, laboratory examination, etc. should be labelled by the words M.L.C.
25. In case of discharge or death of a medico-legal case in the hospital, the police having local jurisdiction should be informed.
26. Inform the police before discharging against advice of a medico-legal case.
27. At the time of discharge, detailed instructions should be given in writing about the treatment and general care including diet, exercise, etc.
28. If a person is brought dead to the hospital, do not examine the wounds, inform the police and do not hand over the body to the relatives. Fill the death

certificate form if available, or note it on the outpatient ticket, without giving the cause of death.

29. Do not issue death certificate and do not release the body to the relatives. if a crime has already been registered by police or when the cause of death is not known.
30. Autopsy to be conducted on a body or no is the discretion of the police.
31. There is no jurisdiction for the doctor, and he has to conduct autopsy on any body brought to him.
32. The doctor cannot refuse to conduct autopsy if inquest report is not given.
33. Either a male or female medical officer can conduct autopsy on a male and female body.
34. Always write injuries are ante-mortem in autopsy report. Note age of injuries.
35. Do not omit to mention vital facts in the report. The accused will get benefit of doubt if a vital fact is omitted.
36. If opinions are given to police before evaluation of data are complete, they should be clearly and unmistakably labelled as preliminary impressions, subject to change if and when the facts so warrant.
37. If post-mortem is conducted by two doctors and they do not agree as to the cause of death, they have to read a standard textbook, and if necessary consult an expert.
38. The report should be given on the same day or as early as possible.
39. Keep confidential all information about medico-legal cases.
40. No time limit is prescribed by law for preserving medico-legal reports. The information can be given only to the investigating officers.
41. If the investigating officer gives requisition for any clarifications regarding any points in the report. the answers should be given in writing (S.179, I.P.C.; S.161, Cr.P.C.).

42. If the investigating officer requires any documents, such as case sheet, either the original or the xerox copy, it should be given and a receipt obtained (S.91, Cr.P.C.).
43. If the Court requires X-rays, postmortem report, or any other documents, they should be deposited in the Court and a receipt obtained.
44. The doctor can be summoned to the police station for recording a statement if the investigation demands (S.160 Cr.P.C.).
45. Oral statements made to the police and recorded by the police should not be signed (S.162, Cr.P.C.).

COMMON LEGAL TERMS:

- **Accused-** Accused/ alleged to have committed crime
- **Acquittal-** Accused not guilty
- **Affidavit-** Voluntary written statement of facts under oath before an officer of the court / notary public
- **Appeal-** Complaint made to superior court
- **Appellant-** Person who makes appeal
- **Assailant-** One who has committed an assault
- **Bail-** Security on behalf of accused person, on giving which, he is released from custody, pending investigation/ court trial
- **Warrant case-** Relating to an offence punishable with death, life imprisonment or imprisonment exceeding 2 yrs
- **Summons case-** Relating to an offence, for which the punishment is less than 2yrs imprisonment
- **Civil case-** Dispute between 2 private parties (wealth, property etc)
- **Criminal case-** Case between govt. and a private party concerning matters of public interest & safety (assault, robbery, murder, rape)

- **Contempt of court-** Intentional insult or interruption to a court during judicial proceeding
- **Conviction-** Accused proved guilty in court of law
- **Culpability-** Being at fault, deserving punishment
- **Damage-** Injury suffered by a party as a result of action of another
- **Damages-** Compensation payable to a victim, as decided by the court
- **Defendant-** Party against whom a complaint has been filed (accused)
- **Defence counsel-** Legal practitioner who acts on behalf of accused
- **Public prosecutor-** Lawyer appointed by govt. for conducting prosecution on behalf of the state
- **Search warrant-** Written authority issued by magistrate to police officer, for search of any general / specified thing/ document
- **Trial-** Legal process in accordance with the law, to determine guilt / innocence
- **Verdict-** Formal decision or finding made by a judge / jury at the end of a trial.

CHAPTER-3 MEDICAL LAW AND ETHICS

THE INDIAN MEDICAL COUNCIL ACT, 1956

CONSTITUTION: The Medical Council is constituted under the Act with following members:

1. One member from each State to be nominated by the Central Government in consultation with the State Government concerned.
2. One member from each university elected from the members of the medical faculty of the university
3. One elected member from each State registered in State Medical Register, maintained by state.
4. Seven members to be elected from among themselves by persons enrolled on any of the State Medical Registers.
5. Eight members nominated by the Central Government.
 - The term of office is five years and a president and a vice-president are elected from among these members.
 - The Council appoints a Registrar who acts as secretary and may also act as treasurer.

SCHEDULES:

- 1st Schedule of the Act- It contains the recognised medical qualifications granted by universities in India.
- 2nd Schedule- It contains the recognised medical qualifications granted by universities outside India.
- 3rd Schedule
 - Part I- It contains those granted by medical institutions not included in the First Schedule.

- Part II-It contains those granted outside India, but not included in the Second Schedule.

FUNCTIONS:

- 1. MEDICAL REGISTER:** A register is maintained by The Council where medical practitioners are registered, known as the Indian Medical Register. It contains the names of all persons enrolled in any State Medical Register and if name is removed from State Medical Register then the Council also removes that name from the Indian Medical Register.
- 2. MEDICAL EDUCATION:** The Council is authorised to make standards of undergraduate and postgraduate medical education for the guidance of the universities. It makes uniform standards for medical education across the country.
- 3. RECOGNITION OF FOREIGN MEDICAL QUALIFICATIONS:** It negotiates with foreign Medical Councils, and can recognise such foreign qualifications on reciprocal basis.
- 4. APPEAL AGAINST DISCIPLINARY ACTION:** If the name of any person is removed from the State Medical Register, he may appeal to the Central Government.
- 5. WARNING NOTICE:** The Council may prescribe standards of professional conduct, etiquette and a Code of Ethics for medical practitioners and can issue Warning Notice for the act falling within the meaning of the term, "serious professional misconduct."
- 6. PERMISSION FOR ESTABLISHMENT OF NEW MEDICAL COLLEGE, NEW COURSE OF STUDY AND INCREASE IN SEATS.**
- 7. RECOGNITION AND DE-RECOGNITION OF MEDICAL QUALIFICATION GRANTED BY UNIVERSITIES IN INDIA.**
- 8. CERTIFICATES.**

9. CME PROGRAMMES.

10. FACULTY DEVELOPMENT PROGRAMME.

STATE MEDICAL COUNCILS

- The State Medical Councils are autonomous bodies established under the State Medical Council Act.
- It consist:
 - Members elected by the registered medical practitioners
 - Members nominated by the State Government.
 - The president and the vice-president of the Council elected by the members.

FUNCTIONS:

1. **MEDICAL REGISTER:** A Registrar appointed by the Council, who keeps a Register of medical practitioner.
2. **DISCIPLINARY CONTROL:** They have the disciplinary control over the medical practitioners and can remove the names of medical practitioners permanently or for a specific period from their Registers after due enquiry.
3. **WARNING NOTICE:** The Council may prescribe standards of professional conduct, etiquette and a Code of Ethics for medical practitioners and can issue Warning Notice for the act falling within the meaning of the term, "serious professional misconduct."

RED CROSS EMBLEM:

- It is the special sign of the medical services of an army.
- In war, it also covers the formations of national Red Cross Societies and other recognised relief societies assisting the medical services of an army.

- Its use is permitted to the members of Army Medical Corps and to the Red Cross Society during war as well as peace time while serving humanity.
- The Geneva Convention Act, 1960, under S.12, prohibits use of Red Cross and other allied emblems such as "Red Crescent", "Red Crystal" for any purpose without approval of the Government of India and imposes penalty for unauthorised use with a fine up to Rs. 500/- and forfeiture of the goods upon which emblem was used.

DUTIES OF MEDICAL PRACTITIONERS-

- 1. DUTY TO EXERCISE A REASONABLE DEGREE OF SKILL AND KNOWLEDGE-** The duty of practitioner arises by examining someone for signs of illness or trauma or by accepting a patient onto a list of existing patients. The legal duty to the practitioner arises as soon as advice is given.
- 2. DUTIES WITH REGARD TO ATTENDANCE AND EXAMINATION-** Practitioner is obliged to attend to the case as long as it requires attention and can withdraw only after giving reasonable notice or when asked by the patient to withdraw.
- 3. DUTY TO FURNISH PROPER AND SUITABLE MEDICINES-** Practitioner should provide a proper prescription having detailed instructions and should also give suitable medicines if he has his own dispensary. If any temporary or permanent damage in health is caused due to wrong prescription, doctor is held responsible.
- 4. DUTY TO GIVE INSTRUCTIONS-** Complete instructions regarding the use, the exact quantities and precise timing for taking medicines and diet should be given to patients or their attendants. Patients should also be advised regarding any side-effect.

5. **DUTY TO CONTROL AND WARN-** A physician should warn the patients about the adverse effects due to use of a prescribed drug or device.
6. **DUTY TO THIRD PARTIES-** In case of an infectious disease, the doctor should warn the patient as well as those who are in close contact with the patient and authorities.
7. **DUTY TOWARDS CHILDREN AND ADULTS INCAPABLE OF TAKING CARE OF THEMSELVES-** Special precautions should be taken to prevent accidents or harm in case of children and incapable adults who can't take care of themselves.
8. **DUTY TO INFORM PATIENT OF RISKS-** All risks and adverse effect of any prescription or procedure should be informed to patients who have sound senses.
9. **DUTY WITH REGARD TO POISONS-** Poisons should be handled and labelled carefully. In case of poisoning, case should be attended immediately and police should be informed to ascertain whether the poisoning is suicidal or accidental or homicidal.
10. **DUTY TO NOTIFY CERTAIN DISEASES-** A doctor is bound to give information of communicable diseases, births, deaths, etc., to the Public Health authorities and failure to this results in criminal penalties and negligence in civil suits brought by injured parties.
11. **DUTIES WITH REGARDS TO OPERATIONS-** Patient should be informed by nature and extent of operation and consent should be taken. Other duties in case of operation, Care should be taken during operation on the wrong patient or on the wrong limb. (3) When a surgeon undertakes to operate, he must not delegate that duty to another. (4) He must not experiment. (5) He must be well-informed of current standard practice and must follow it. (6) He must operate with proper and sterilised instruments. (7) He should make sure that all the swabs, instruments, etc., put in are removed. (8) He should take proper postoperative care and should give proper directions to his patient when discharging him.

12. DUTIES UNDER GENEVA CONVENTIONS- Geneva conventions, 1949, protects the wounded or sick of the armed forces, ship-wrecked person. prisoners of war and civilians of enemy nationality without any adverse distinction based on sex, race nationality. political opinions or any other similar criteria.

13. DUTIES WITH REGARD TO CONSULTATION- Consultation should be advised preferably with a specialist in the following conditions.

- a. If the patient requests consultation.
- b. In an emergency.
- c. When the case is obscure or has taken a serious turn.
- d. If the quality of the care or management can be considerably enhanced.
- e. When an operation or a special treatment involving danger to life is to be undertaken.
- f. When an operation affecting vitality of intellectual or generative functions is to be performed.
- g. When an operation is to be performed on a patient who has received serious injuries in a criminal assault.
- h. When an operation of mutilating or destructive nature is to be performed on an unborn child.
- i. In homicidal poisoning.
- j. When a therapeutic abortion is to be procured.
- k. When a woman on whom criminal abortion has already been performed has sought advice for treatment.

14. DUTY IN CONNECTION WITH X-RAY EXAMINATION- All cases of injuries, except minor should be X-rayed.

15. PROFESSIONAL SECRECY- It is a self-implemented contract between the doctor and his patient. Trust, confidence, fidelity and honesty are the basic requirement in the relation of doctor and patient. The doctor should keep all the information of the patient in the course of his professional work as secret.

Everything said by a patient or his family members to a physician in the context of medical diagnosis and treatment is confidential and its disclosure leads to failure of trust and confidence. The doctor can be sued by the patient in case of voluntary disclosure for his damages (mental suffering, shame or humiliation) if the information is not disclosed in the interest of the public.

PRIVILEGED COMMUNICATION:

- It is a bonafide statement made by a doctor upon any subject matter to the concerned authority to protect the interests of the community or of the State.
- The plea of privilege communication fails if the communication is made to more than one person, or to a person who has not a direct interest in it.
- The first attempt should be to obtain the patient's consent before notifying the proper authority.
- Doctor is not liable to any damage if disclosure of professional secrets is done to protect the interest of the community, (under a moral and social obligation).\
- The examples of privileged communication are:
 - i. Infectious Diseases
 - ii. Venereal Diseases
 - iii. Servants and Employees
 - iv. Notifiable Diseases
 - v. Suspected Crime
 - vi. Patient's own Interest
 - vii. Self-interest
 - viii. Negligence Suits
 - ix. Courts of Law

PRIVILEGES AND RIGHTS OF PATIENTS

- i. Access to health care facilities and emergency services regardless of age, sex, religion, social or economic status.
- ii. Choice: To choose his own doctor freely.
- iii. Continuity: To receive continuous care for his illness from doctor/institution.
- iv. Comfort: To be treated in comfort during illness and follow-up.
- v. Complaint: Right to complain and redressal of grievances.
- vi. Confidentiality: All information about his illness should be kept confidential.
- vii. Dignity: To be treated with care, compassion, respect without any discrimination.
- viii. Information: Should receive full information about his diagnosis, investigations, treatment plans, alternative therapy, procedures, diagnosis, complications and side-effects.
- ix. Privacy: To be treated in privacy.
- x. Refusal: Can refuse any specific or all measures.
- xi. Records: Can have access to his records and demand summary or other details.

DUTIES OF A PATIENT

- i. Complete information about the facts and circumstances of his illness should be shared with doctor.
- ii. Instructions of the doctor as regards diet, medicine and lifestyle should be followed.
- iii. He should pay a reasonable fee to the doctor.

TYPES OF PHYSICIAN-PATIENT RELATIONSHIP

It is of two types:

1. Therapeutic relationship: A doctor is free to accept or refuse to treat a patient, subject to constraint of his work, except in emergencies. He may refuse to treat the patient in following circumstances:

- i. Beyond his practicing hours.
- ii. Not belonging to his speciality.
- iii. Doctor or any other family member is ill.
- iv. Doctor having important social function in family
- v. Illness beyond the competence and qualification of the doctor or beyond the facilities available in his setup.
- vi. Doctor is having alcohol.
- vii. Patient is malingering.
- viii. Patient has been defaulting in payment.
- ix. Patient or his relatives are abusive/uncooperative.
- x. Patient refuses to give consent.
- xi. Patient demanding specific drugs, like amphetamine, steroids, etc.
- xii. Patient rejecting low-cost remedies in favour of high cost alternatives.
- xiii. At night, on grounds of security, if patient is not brought to him.
- xiv. An unaccompanied minor or female patient.
- xv. When doctor remains engaged with an emergency or more serious case.
- xvi. Any new patient, if he is not the only doctor available.

2. Formal relationship: It pertains to the situation where the third party has referred the person/patient for impartial medical examination. Such as

- i. Pre-employment.
- ii. Insurance policy.
- iii. Yearly medical checkups.

- iv. Cases of rape or victims of crimes.
- v. Intimate body searches and other medico-legal cases.
- vi. In certain psychiatric illnesses referred by court/ police.

PROFESSIONAL NEGLIGENCE

Professional negligence is defined as absence of reasonable care and skill, or wilful negligence of a medical practitioner in the treatment of a patient, which causes bodily injury or death of the patient.

Types:

- 1. Civil
- 2. Criminal
- 3. Corporate
- 4. Contributory

1. CIVIL NEGLIGENCE- Question of civil negligence arises:

- a) When a civil suit is filed by patient, or in case of death; relative in a civil court for realization of compensation from doctor, if he has suffered injury due to negligence.
- b) When a civil suit is filed by doctor for the realization of his fees from patient or his relatives, who refuse to pay the same, alleging professional negligence.

Civil negligence involves the act on the part of the treating physician which causes some suffering, harm or damage to the patient and does not demand legal punishment.

Elements of negligence: Liability for negligence arises if the following conditions are satisfied:

- 1. Duty:** Existence of a duty of care by the doctor.

- 2. Dereliction:** The physician must conform to the standard of a "prudent physician" under similar circumstances. The failure on the part of the doctor to maintain applicable standard of care and skill.
- 3. Direct causation:** The failure to exercise a duty of care must lead to damage. The patient must show that a reasonably close and causal connection exists between the negligent act or omission and the resulting injury without any intervening cause. This is referred to as legal cause or proximate cause.
- 4. Damage:** The damage should be of a type that would have been foreseen by a reasonable physician.

Burden of proof: The patient has to prove all four elements of negligence by a preponderance of the evidence and doctor is considered innocent until proved guilty.

Liability: The amount of damage done is a measure of the extent of the liability.

Damages are like:

- 1) Loss of earning, either due to absence from work or prevention or impairment of his ability to carry out his occupation.
- 2) Medical expenses including medical rehabilitation, vocational rehabilitation, retraining or other incidental expenses.
- 3) Reduction in expectation of life.
- 4) Reduced enjoyment of life.
- 5) Pain either physical or mental.
- 6) Loss of potency.
- 7) Aggravation of a pre-existing condition.
- 8) Death.

A doctor is not liable for:

- 1) For an error of judgement or of diagnosis.
- 2) For failure to cure or for bad result that may follow, if he has exercised reasonable care and skill.
- 3) If he exercises reasonable care and skill, provided that his judgement conforms to the accepted medical practice, and does not result in the failure to do something or doing something contrary to accepted medical practice.

The liability of doctor for negligence is considered when he failed to:

- 1) Consider the possibility that such a complication might occur,
- 2) Watch for it carefully or to recognise it promptly, or
- 3) To treat in a timely and appropriate fashion.

THE DOCTRINE OF RES IPSA LOQUITUR ("the thing or fact speaks for itself")

Usually professional negligence must be proved in Court by the expert evidence of another physician but patient doesn't need to prove negligence in case where the rule of *res ipsa loquitur* applies, i.e. "the thing or fact speaks for itself".

This doctrine applies when:

- (1) There would be no injury in absence of negligence by doctor.
- (2) The instrument or treatment that has caused injury is in control of doctor.
- (3) Patient was not guilty of contributory negligence, i.e. injury was not the result of his own voluntary act or neglect.

Examples:

1. Prescribing an overdose of medicine producing ill-effects.
2. Giving poisonous medicine carelessly.
3. Failure to give anti-tetanic serum in cases of injury causing tetanus.
4. Burns from application of hot water bottles or from X-ray therapy.

5. Breaking of needles.
6. Failure to remove the swabs during operation which may lead to complications or cause death.
7. Blood transfusion misadventure.
8. Loss of use of hand due to prolonged splinting.

MEDICAL MALOCCURRENCE

- If any injury or adverse reaction develops after any medical treatment in spite of good medical attention and care, is known as medical maloccurrence.
- The injured person is not liable to receive any monetary compensation in every mishap or accident which results in injury.
- Accident is an unpredictable event resulting in a recognisable injury and inevitable accident is unavoidable accident even after applying reasonable precautions expected.
- E.g. breaking of a needle during intramuscular injection due to sudden muscular spasm, or damage to the recurrent laryngeal nerve during thyroidectomy.

NOVUS ACTUS INTERVENIENS

- A person is responsible not only for his actions, but also for the logical consequences of those actions.
- Result produced due to logical sequence of events, the responsibility for the subsequent disability or death may pass from original incident to the negligent act of the doctor.
- For a plea of *novus actus interveniens*, an element of negligence is essential.
- E.g.- leaving a swab or instrument in the abdomen after laparotomy. „

CONTRIBUTORY NEGLIGENCE

- Any unreasonable conduct, or absence of normal care on the part of the patient, or his personal attendant, which combined with the doctor's negligence, contributed to the injury complained of, as a direct, proximate cause and without which the injury would not have occurred.
- It include:
 - Failure to give the doctor accurate medical history.
 - Failure to co-operate with his doctor in carrying out all reasonable and proper instructions,
 - Refusal to take the suggested treatment,
 - Leaving the hospital against the doctor's advice,
 - Failure to seek further medical assistance if symptoms persist.
- The doctor cannot plead contributory negligence, if he fails to give proper instructions.

CORPORATE NEGLIGENCE

- It is the failure of those in hospital administration/management who are responsible for providing the treatment, accommodation and facilities necessary to carry out the purpose of the institution, to follow the established standard of conduct.
- E.g.
 - Providing defective equipment or drugs. „
 - Selecting or retaining incompetent employees including doctors.
 - Fails in some other manner to meet the accepted standard of care, and such failure results in injury to a patient to whom the hospital owes a duty.

ETHICAL NEGLIGENCE :

- Ethical negligence is the violation of the Code of Medical Ethics

CRIMINAL NEGLIGENCE: The question of criminal negligence may arise:

- When a doctor shows gross absence of skill or care during treatment resulting in serious injury to or death of the patient, by acts of omission or commission.
- When a doctor performs an illegal act.
- When an assaulted person dies, the defence may attribute the death to the negligence or undue interference in the treatment of the deceased by the doctor.

A doctor will not be criminally liable if a patient dies due to an error of judgement or carelessness or want of due caution, though he can be liable to pay compensation.

Examples:

- (1) Amputation of wrong finger or operation on wrong limb or wrong patient.
- (2) Leaving instruments, tubes, sponges or swabs in abdomen.
- (3) Grossly incompetent administration of a general anaesthetic by a doctor addicted to the inhalation of anaesthetic.
- (4) Gross mismanagement of the delivery of woman especially by a doctor under the influence of drink or drugs.
- (5) Performing criminal abortion.
- (6) Administration of a wrong substance into the eye causing loss of vision.
- (7) Death resulting from an operation or injection of any drug producing anaphylaxis by a quack is considered criminal negligence.

VICARIOUS LIABILITY (liability for act of another):

- An employer is responsible not only for his own negligence but also for the negligence of his employees, if such acts occur in the course of the employment

and within its scope, by the principle of *respondeat superior* (let the master answer).

- Conditions must be satisfied:
 - (1) There must be an employer-employee relationship,
 - (2) the employee's conduct must occur within the scope of his employment, and
 - (3) while on the job.

CONSENT IN MEDICAL PRACTICE

- It means voluntary agreement, compliance or permission.
- Consent implies acceptance of the consequences of an act.
- To be legally valid, it must be given after understanding what it is given for, and of risks involved and if a doctor fails to give the required information before taking consent to a particular act, he may be charged for negligence.
- To examine, treat or operate upon a patient without consent is assault in law, even if it is beneficial and done in good faith. The patient may recover damages.

TYPES OF CONSENT:

1. Express
 - (a) verbal
 - (b) written.
2. Implied.

1. **Expressed:** Specifically stated by the patient.
 - I. Oral consent- It is obtained for relatively minor examinations or therapeutic procedures.
 - II. Written consent– It is to be obtained in all major diagnostic procedures, general anaesthesia and operations.

2. **Implied:** Consent is considered to be implied when the patient presents himself at OPD. Other examinations, like rectal and vaginal, and withdrawal of blood for diagnostic purposes, expressed permission should be obtained.

INFORMED CONSENT

The information provided to patients should be simple, easy to understand language and list any possible major complications to enable the patient to determine whether to undergo or decline a procedure. Remote or theoretical risks should not be informed as they will create confusion and may result in refusal to take treatment. The standard to which physicians are held in negligence suits is that of a 'reasonable physician' dealing with a 'reasonable patient.' Informed consent implies an understanding by the patient of:

- i. His/her condition or nature of illness
- ii. Purpose or necessity for further testing
- iii. Natural course of condition and possible complications
- iv. Nature of procedure or treatment proposed
- v. Risks and benefits of treatment or procedure
- vi. Risks and benefits of alternative treatment or procedure
- vii. Prognosis in the absence of intervention
- viii. Duration and approximate cost of treatment
- ix. Expected outcome and follow-up. „

Exceptions to Informed Consent „

- i. Emergencies „
- ii. Medical examination requested by a police officer of an accused under Sec. 53 (1) CrPC
- iii. Therapeutic privilege „
- iv. Therapeutic waiver „

- v. Medico-legal post-mortems (Sec. 174 CrPC) „
- vi. Psychiatric examination or treatment by court order „
- vii. Use of placebos „
- viii. Prisoners

RULES OF CONSENT

1. Consent should be free, voluntary, clear, intelligent, informed, direct and personal. There should be no undue influence, fraud, and misrepresentation of facts, compulsion, coercion or other consequences.
2. Informed consent is legally not required to be in writing, but provides evidence that consent was in fact obtained, if necessity arises.
3. It should be in a proper form and suitably drafted for the circumstances.
4. The written consent should be witnessed by another person, present at the signing.
5. Any procedure beyond routine physical examination, such as operation, blood transfusion or collection of blood requires expressed consent.
6. The doctor should explain the object of examination to the patient, and patient should be informed that the findings would be included in the report.
7. Patient should be informed that he has right to refuse to submit to examination.
8. A person > 18 years of age can give valid consent.
9. A person can give valid consent to suffer any harm which may result from an act not intended or not known to cause death, done in good faith and for his benefit (Sec. 88 IPC).
10. A child < 12 years of age and an insane person cannot give valid. The consent of the parent or guardian should be taken (Sec. 89 IPC).

LOCO PARENTIS (in place of a parent): In an emergency involving children, when their parents or guardians are not available, consent is taken from the person-in-charge of the child, e.g. a school teacher can give

consent for treating a child who becomes sick during a picnic away from home, or the consent of the principal of a residential school.

11. The consent given by an insane or intoxicated person, who is unable to understand the nature and consequences of that to which he gives his consent is invalid (Sec. 90 IPC).
12. Sec. 92 IPC deals with cases of emergency, e.g. head injury requiring urgent decompression. It states that any harm caused to a person in good faith, even without the 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 him from whom it is possible to obtain consent in time for the thing to be done in benefit. In an emergency, the law implies consent.
13. Even in emergency, unless patient is unconscious, the consent offered by the parents of major (> 18 years) is void and amount to negligence.
14. Nothing is said to be done in good faith which is done without due care and attention (Sec. 52 IPC).
15. Consent of the in-mates of the hostel is necessary, if they are > 12 years of age.
16. In civil cases, examination should not be done without the consent of the person.
17. In criminal cases, the victim cannot be examined without his/her consent. The court cannot force a person to get medically examined.
18. In rape cases, victim should not be examined without her written consent
19. In medico-legal cases of pregnancy, delivery and abortion, the woman should not be examined without her consent.
20. Under Sec. 53 (1) CrPC, an accused can be examined by a doctor by using reasonable force, if requested by a police officer (not below S.I.), if examination may provide evidence to the commission of the offence.

21. Whenever an accused female is to be examined, the examination shall be made only by, or under the supervision of a female medical practitioner.
22. Under Sec. 54 CrPC, an arrested person may be examined by a doctor at his request to detect evidence in his favor, a copy of the report is to be furnished by the doctor to the arrested person.
23. Consent of one's spouse is not necessary for the treatment of other. Husband or wife has no right to refuse consent to any operation, which is required to safeguard the health of the partner.
24. For contraceptive sterilization and artificial insemination, consent of both husband and wife should be obtained.
25. Consent given for a diagnostic procedure cannot be considered as consent for therapeutic treatment.
26. Consent given for a specific treatment/ procedure is not valid for conducting some other treatment/procedure.
27. There can be a common consent for: • diagnostic and operative procedures where they are associated.
28. The law provides the consent in any procedure made compulsory by state, e.g. mass immunization.
29. In case of consent for donation of organ after death, the will of the deceased is enough.
30. In prenatal diagnostic procedures, informed written consent of pregnant woman is obtained and a copy of the consent is given to the woman.
31. Pathological autopsy should not be carried out without the consent of family of the deceased while medico-legal autopsy does not require any consent.

EUTHANASIA (mercy killing): It means producing painless death of a person suffering from hopelessly incurable and painful disease.

TYPES:

1. Active or positive.
2. Passive or negative.

1. Active Euthanasia- It is a positive merciful act to end useless suffering. It is an act of commission, e.g. by giving large doses of drugs to hasten death.

2. Passive Euthanasia- It means stopping or not using extraordinary life sustaining measures to prolong life. This includes acts of omission, such as failure to resuscitate a terminally ill or hopelessly incapacitated patient or a severely defective newborn infant. It is not using measures that would probably delay death such as, turning off a respirator, stopping medications or food and water and allowing the person to dehydrate or starve or not delivering (cardio-pulmonary resuscitation), which permits natural death to occur.

A. Voluntary Euthanasia- It means at the will of the person.

B. Involuntary Euthanasia- It means against the will of the person, i.e., compulsory.

C. Non-voluntary Euthanasia- It refers to cases of persons incapable of making their wishes known, e.g., in persons with irreversible coma or severely defective infants.

D. Assisted Suicide: A person providing information to another with information, guidance and means to take his own life with the intention that it will be used for this purpose is assisted suicide

E. Physician-Assisted Suicide- It includes the administration of morphine and similar medications, which has a dual effect of relieving of pain and hastening the death (aid-in-dying). If the patient requests the same medical treatment with its known dual effects, and if the physician knowingly provides that medication by prescription so that patient can end his life, it is considered.

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