

**MEDICO-LEGAL CHALLENGES IN AYURVEDA****Dr. Maitri Jani\* and Dr. Charu Savrikar**

India.

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**INTRODUCTION**

Every registered medical practitioner has to follow ethics and perform some medico-legal duty during discharge of his/her duty. Ethics are defined as the moral principles that govern a person's behaviour of conducting an activity. Legal and ethical issues in the field of medical practice have been rapidly increased over last quarter of century. It has numbers of reasons.

1. Highly specialised hospitals, nursing homes, administrators, drug industry, pathological labs, insurance companies, funding agencies all have developed a chain of business in medical field, concentration of doctors on earning money has spoiled their moral values, resulting in clashes of views, opinions and priorities which have major ethical and legal dimensions.
2. Development of multicultural societies and healthcare related decisions have to be made on the background of so many different ethnicities, culture and religion implication
3. People of modern era have more opportunity to move from one country to other to seek cost effective treatment which leads to various legal issues
4. Development of new medical specialities and introduction of newer techniques in medical practice have increased the spectrum of ethical and legal issues.

American philosophers Tom Beauchamp and James Childress introduced the highly influential "four principles" to approach medical ethics. These four universal laws of ethics are **Autonomy, Beneficence, Non Maleficence and Justice**. Application of these four principles alone or in combination, help to identify and resolve ethical and legal issues in medicine.

**Ethical Values of Right Medical Education and Practical Skills**

The most ancient surgeon of India Acharya Sushruta had mentioned several moral principles

beneficial to doctors. His ethical values start right from the stage when doctor enters to medical profession as a student. According to him a student should enter the medical profession leaving behind anger, greediness, attachment, proud, jealousy, hardness and lethargy. The ancient Indian physician Charaka said, A good physician nurtures affection for his patients exactly same like mother, father or brother. The physicians having such qualities gives life to the patients and cure their disease. Sushruta mentioned that a doctor having conceptual knowledge along with practical skills is successful in his practice. He compared a doctor having conceptual knowledge without its applied aspects with donkey carrying sandalwood on his back unaware of its smell.

### AIM

To make aware about legal duties of physicians while delivering a medical care or treatment in clinic or hospital set up.

### QUALITIES OF VAIDYA

In Ayurveda, Acharya has mentioned about qualities and duties of Vaidya regarding treatment of patient.

Ashtang Sangraha has given four qualities of physician while delivering medical care.

1. **Daksh:** Alertness
2. **Tirthattshatrarth:** physician must have knowledge obtain from Guru
3. **Drushtakarma:** Must have experience of treating patient
4. **Shuchi:** Physician should maintain external and internal hygiene

Acharya Charaka has mentioned about four fold attitude of physician.

1. Friendly relation with patient
2. A good and kind behaviour towards patient or ill people
3. A good nursing care should be there while treating the patient
4. Good counselling to the patient or relative when patient is in untreatable condition

### PROFESSIONAL DUTIES

According to Supreme Court of India, a person who holds himself out ready to give medical advice and treatment impliedly undertakes that he is possessed of skill and knowledge for the purpose. Such a person when consulted by patient owes him certain duties viz, a duty of care in deciding what treatment to give or a duty of care in administration of that treatment.

1. Treatment of patient is implied contract.
2. Duty to examine patient properly with prior verbal or written consent.
3. Examination of female patient with consent of patient or relative in presence of female attendance of hospital or clinic.
4. Duty to earn confidence.
5. Right to choose patient.
6. Duty to give proper direction or guideline to patient regarding treatment and disease both.
7. Duty to notify communicable disease.
8. Duty to obtain the consent of the patient before attempting surgical treatment and in the case of minor the parent's consent must first be obtained.

### **Duty Towards Colleague**

1. Extend same honor, respect and good behavior expected from them.
2. Should not do or utter anything to lower down the name of colleague.
3. Should not entice patient from colleague.
4. Free medical service to fellow colleague. A breach of any of those duties gives a right of action for negligence to the patient.

### **Negligence of Doctor**

1. It is careless conduct without reference to any duty to take care. e.g. negligence is a quack treating a patient.
2. Negligence means breach of legal duty to take care.
3. Consequential damage.
4. Under consumer protection act if the plaintiff proves that the doctor is negligent but fails to prove loss or damages then he will not entitled to claim compensation.

### **Duty Not To Experiment**

1. It is a physician's legal duty to follow the accepted method of practice prescribed by his profession.
2. If the physician wishes to avoid civil liability, he must employ in the treatment of patient, methods which are recognized and approved by his profession as most likely to produce favorable results.

**Duty To Refer Another Physician**

1. If a physician is consulted by patient with regard to a disease which he has not the skill and knowledge to treat, it is his legal duty to so inform the patient and to suggest service of another physician.

**Duty To Give Instructions To The Patient**

1. It is legal duty of physician in dealing with a case to give the patient all necessary instruction applicable to the diagnosis, so that patient may have better understanding of ailments and thus patient has a right to know the treatment and obtain second opinion about his treatment and if he wishes has a right to obtain alternative forms of treatment. Doctor should honor the right of patient.

**Code of Ethics**

1. Advertising
2. Nomenclature of qualification: It shall be compulsory for a practitioners of Indian medicine to affix the correct degree or diploma before or after his name
3. Rebate and commission

**RIGHT TO PRACTICE MODERN MEDICINE**

1. Acharya Sushruta gave us ethical right to study concepts of modern science by saying that the principle of any science can not be understood by studying the concepts of one field only, so a doctor should study the concepts of another field too.
2. Registered medical practice means, holding a qualification granted by an authority specified or notified under section 3 of the Indian medical degree Act, 1916 (7 of 1916) or specified in the schedule to the Indian medical council Act, 1956 (102 of 1956).

**Application of Four Principle In Medical Ethics****Autonomy**

The principle of respect for autonomy mainly involves "Obtaining Consent", "Respecting Confidentiality" and "Avoiding Deception". Among these most important issue in surgical or gynaecological practice is informed consent. One difficulty faced commonly.

In surgical practice is, how much information is adequate? It is neither desirable nor practicable to describe all possible complications to patients. Providing too much information can enhance a patient's autonomy by confusing the patient rather than decreasing. Excessive

information about theoretical complications may frighten the patient which may result in refusal. However, whatever the rare possibility of complication to occur, if it occurs, may land surgeon into problem if dragged in court of law by highly legally conscious society.

In countries like India, the investigations and delivery of the verdict mostly conducted by medically ill-informed personnel. Many times such verdicts are passed without adequate consultation with medical experts. However it is not uncommon that many times surgeons fail to provide necessary information also. More over the circumstances under which surgeons are practicing in different part of country is not uniform rather very wide range of variations exists.

To solve this problem, the national level professional associations of respective discipline consultation with medico-legal experts, should evolve a uniform standard format/protocol for obtaining informed consent for each and every procedure that may be followed all over country. However it may not cover all cases but it can be effectively used in court of law as reference where the question of adequately informed consent is to be decided.

Regarding the feminists perspective of autonomy it is said by Sushruta to avoid close sitting, laughing and taking anything from female patients. The ethical duty of surgeon to take informed consent is described by Acharya Sushruta in Mudgarbha Chikitsa where he mentioned to do surgery Udarpatan for protecting Garbha and Garbhini after taking consent from attendant (Swami). Consent from Adhipati/ Swami should also be taken before performing any procedure to remove Mudhgarbha like Apkarshan, Utkarshan, Chedan, Bhedan, Daran etc.

## **BENEFICENCE**

Every effort should be made to do benefit and to reduce likelihood of complications. For this physician should not only be knowledgeable and competent but also be able to judge limitations.

Under the principle of beneficence it is important that the doctor should update their knowledge and skill by attending conferences, seminars, workshops and reading journals to keep himself informed on the latest developments in their field.

Regulation 1.2.3 of Indian Medical Council (Professional conduct, Etiquette and Ethics) regulations 2002, states that “A physician should participate in professional meetings as part

of Continuing Medical Education programs, for at least 30 hours every five years, organized by reputed professional academic bodies or any other authorised organizations.”

Good surgical judgment to determine appropriateness of surgery necessitates the evaluation of risks, burdens and benefits of surgery combined with belief and values of individual patient. Judgment of limitations is not only limited to knowledge and skill of the surgeon but also includes the limitations related to lifestyle, habits, age related changes, personal physical & mental infirmities, resources etc. The senate of surgery of Great Britain and Ireland (now called surgical forum) advises that the surgeon should “avoid lifestyles and habits giving rise to potential risk to patients.”

The surgeon should ensure that the team has adequate rest between shifts and follows appropriate infection control measures to reduce the incidence of iatrogenic complications. It is duty of the surgeon to ensure that all equipments are functioning and reliable right from simple light source to most sophisticated instruments.

In conducting research and in using innovative techniques statutory guidelines like ICMR guideline and declaration of Helsinki should be followed in letter and spirit. The surgical Forum advises that such innovation is acceptable to the degree that a responsible body of medical opinion would agree that it has been employed in a situation where there was no alternative.

The individual circumstances of each patient should be considered by a doctor for whom Acharya Sushruta gave the concept of Sadhya Asadhyta (prognosis). The treatment of different type of Arshas (cervical polyps, piles and warts) is given according to their characteristics through Aushadh, Kshar, Agni and Shastra Karma. Instructions are given to avoid surgery in conditions where the disease can be treated by Snehaadi Kriya (medical treatment). He instructed to perform surgery only when the disease is Ashadhyta or in emergency conditions. Regarding the beneficence of pregnant women Sushruta said to abort the foetus if the mother is suffering from an intolerable disease and to do efforts to save Sthiti Yogya Garbha/Pariharya Garbha (threatened abortion) through external and internal medicine instead of removing it through Dilatation and Curettage.

### **Non Maleficence**

Non Maleficence means not harming or inflicting least harm possible to reach a beneficial

outcome. It includes preventing harm and removal of harmful condition. The issues discussed under the principles of beneficence like continuous professional development, research and innovations, checking instruments, strict infection control measures and quality development also falls under the principle of Non maleficence.

The first step is to prevent harm to the patient undergoing any surgery by maintaining sterile field and aseptic conditions. Removal of infections from labor room and Operation Theater is necessary, failure to which may result in puerperal sepsis after delivery, pelvis inflammation following Dilatation and Curettage, abnormal discharges from the abdominal wound and many more complication. Sterilization through fumigation by Commiphora wightii (Guggulu), Aquillaria agalocha (Agar), Acaros calamus (Vacha), Brassica juncea (Sarshap), salt (Lavan), Azadirachta indica (Nimba Patra) has been described by Sushruta.

In context of management of obstructed labor, he said that it is mandatory to save the life of mother and to avoid caesarean section in case foetus is died in womb. More emphasis is given on delivery by vaginal route.

Another important issue which has been captured by more than one Principle is Good communication skills. Substandard communication with unclear and insufficiently detailed instructions can lead to emotional distress in patients and reduction in efficiency among the surgical teams. Rules of informed consent require “All disclosures must be in language, the patient can understand.”

It is the moral obligations of surgeons to minimize the recurrence of surgical complications by conducting regular morbidity and mortality meetings. Involvement of autopsy surgeons is of paramount importance in these meetings. The surgeons should also describe their surgical experiences in journal articles and conferences, so that other may also benefit from any lesson learned.

### **Justice**

Besides the principle of distributive justice, the doctors are also required to recognize a problem in colleague that may put patient at undue risk, such as alcoholism, drug dependence etc. Regulation 1.7 of Indian Medical Council (Professional conduct, Etiquette and Ethics) regulations 2002 states “A physician should expose, without fear of favour, incompetent or corrupt, dishonest or unethical conduct on the part of members of medical profession.”

It also includes the obligation to respect human rights and to respect morally acceptable laws such as right to be treated equally in the provision of care, medical resources. The principles of diagnosis and the management mentioned by Sushruta are for all type of peoples based on individual conditions such as habitat (Desh), age (Vaya), prognosis (Sadhya Asadhyata). His instructions are based on prevention and removal of causative factors. Indirectly did justice to his foetus patient by giving instructing mother to prevent him from being Pangu, Mook, Jad, Pramehi. The acceptance of the ethical laws mentioned by Acharya Sushruta is the justice done by us to the patient.

### Issues in Ayurvedic system of medicine

1. Explanation for origin or proof of medicine.
2. A variability of original texts written in Pre-Sanskrit grammar style.
3. Objective to measure Doshas or proof of existence.
4. Provide data about rigorous proof of safety and efficacy by modern standards of clinical trial.
5. Provide high quality pharmaceutical standards to assure consistent quality of preparations.
6. Lack of standardisation and quality control of the herbal drugs used in clinical trials.
7. Use of different dosages of herbal medicines.
8. Inadequate randomization in most studies, and patient's batch not properly selected.
9. Number of patients in most of trials are insufficient for the attainment of statistical significance.
10. Difficulty in establishing appropriate placebos because of the taste and aroma etc.;
11. Wide variations in the duration of treatments using herbal medicines.

### Future directions to issues

1. Standardising Ayurvedic diagnostic and treatment protocols by in situ studies and documentation of clinical practices.
2. Creating centers of excellence for Naadi Pariksha, Marma Chikitsa, Visha Chikitsa, treatment of paralysis, medicinal preparation, and other special methods of Ayurveda.
3. Creating regional *Ayurvedic* protocols for the public health system, including prenatal and postnatal care and maternal health.
4. Sustainable manufacture and supply of quality drugs for public health.
5. Greater research into new food stuffs in the market, contemporary dietary habits and lifestyle and their effect of body constitution and *Dosha Dhātu Satmya* as measured in



various regions, rather than single-drug research for export.

6. Ayurveda requires research in the areas of diagnostic principles of Ayurveda so that the Ayurvedic diagnosis can be made more pinpointed leading to more effective treatment strategies.
7. Provide teaching hospital and research activities.
8. Establish Research Institutes having support for clinical research into use of *Ayurveda* Medicine for treating country's common health problems.
9. Explanation for origin or proof of concept.
10. Provide data about rigorous proof of safety and efficacy by modern standards of clinical trial.
11. Provide high quality pharmaceutical standards to assure consistent quality of preparations.
12. Ability to match dramatic outcomes with antibiotics, antiulcer agents etc.
13. Proper integration and linkage to Modern Technology.

## DISCUSSION

Litigation against doctors is increased since the consumer protection act is passed. Physician's explanation to the patient and patient's understanding of that explanation in medical setting have become increasingly important in recent years.

It has been noted that physician's explanation and level of patients understanding is related to patients satisfaction about treatment and treatment outcome.

Acharya Sushruta elaborated the principles to save us from litigation in his Samhita which are described above.

The common areas of negligence and the precautions described by Sushruta are:

1. Surgery without consent: to perform laparotomy (Udarpatan) after taking consent in obstructed labor (Mudgarbha).
2. Non maintenance of sterilization – the procedures of sterilization is described in Agarahupkarniya Adhyaya.
3. Untrained doctors and staff: training on non-living materials before performing any surgery on humans as in Yogyasutriya Adhyaya.
4. Non access to adequate preoperative and postoperative care–Poorva Karma, Pradhan Karma, Pashchat Karma is well described.
5. Lack of contribution in long term care of patient after abortion, delivery and caesarean

section-Chikitsa after Garbhapatana, Sutikaparicharya and Mudhgarbha Niharan is given.

6. In MTP i.e. unqualified doctors, unrecognized place, negligence of complications (e.g. perforation) instructions are given through Shishyupnayan, Vaidya Gunas, Yogyasutriya, Updrava, Sadhya Asadhyata, Krityaakrityavidhi, Yantra Shastra Gunas.
7. In cases of caesarean section (improper indication, timing, maternal and fetal morbidity and mortality): details instructions are given in context of Mudgarbha about the conditions in which to do Udarpatan and to give priority to saving life of mother.

## CONCLUSION

The above mentioned duties and universal principle will be useful for the physician to practice ethically and legally. Physician's skill, knowledge plays an important role in improving patients satisfaction, increasing treatment effectiveness and preventing medico-legal challenges.

Doctor besides a treating physician, has to remember the sociology, psychology of patient and his relatives. If physician take little more time in talking, in reassuring patients in old fashioned way, this will restore the deteriorating Doctor-Patient Relationship.

Acharya sushruta on his practical experience includes do, and don't for a physician which can save him/her from legal matters. A doctor should be aware of mishaps. Prompt attention is essential. Indifference to the complaint of patient should never be shown.

Updating the knowledge and maintaining practical skills is essential for both doctors and staff. Hospitals should be equipped with all necessary instruments in good condition. Labor room and operation theatre should be well sterilized. Ethical principles mentioned in ancient literature can be a good choice for making distance from legal matters in the present world.