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Consent and Its Medicolegal Importance

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Abstract

Consent is obtained by a doctor to examine, treat or operate a patient. Treating and examining a patient without consent is considered as an assault on patient. Every person has the right to determine what shall be done with his body. Self defense of body IPC 96,97,98,99,100,101,102,104,106 provides right to the protection of bodily integrity of a patient or person by other medical procedure like examination, treatment operation diagnostic procedure or research on patient trespass the right of person or can be considered as assault (IPC-351) in absence of valid consent.

Aim and Objectives

- 1) To create awareness about consent among physician and patient's relatives.
- 2) Detail study about consent
- 3) Rules and regulation about consent
- 4) Study related Indian Penal code

Key words: Consent, Medico legal, Indian Penal code, Patient ,Physician

Introduction :

The role of consent in practice is very important, simply consent means voluntary agreement compliance or permission section of 13 of the Indian contract act lays down that two or more persons are said to consent what they agree upon the same thing in the same sense (meeting of the mind). A medical practitioner must remember the following principles in respect of consent in relation to examination or treatment ordinarily when a patient calls on the doctor with his complaints his consent for necessary medical examination is implied however if the patient is unconscious and any delay in obtaining the consent would be dangerous, the doctor may examine and treat without consent such gravely ill person who needs immediate treatment at surgery save this exception. A doctor should not examine or treat any patient without his consent even in such cases care should be taken that the surgical procedures do not go beyond the minimum required to save life and whenever possible, amputation of limb etc is postponed till such time that proper informed consent obtained whenever oral consent is taken it is appropriate to make an entry in the patient's clinical records, such precautions taken may be used in future if any action is brought on by patient. Every person has the right to know in non personal terms, regard the disease, its status and treatment options informed consent is a step that will maintain transparency between doctor patient relationship the doctrine of informed consent is related to the rule of full disclosure and includes

- 1) Right of patient to know about disease
- 2) Right of the patient to know diagnostic test.
- 3) Right of the patient to know proposed treatment plan and alternative methods available.
- 4) Right of patient to know risk involved in the procedure.
- 5) Right of patient to know benefit prognosis.

In emergency case life threatening condition the aim of the doctor is to save the life incompetence the patient is not able to take decision and he tells doctor to do what he deem necessary but such thing should be recorded in clinical notes in alleged negligence such written things may be helpful to doctor consent should be always free, voluntary, clear, direct without undue influence / fear, without fraud, without misinterpretation of facts, the persons should be mentally sound, the person should be not intoxicate.

Types of Consent :

- 1.Implies
- 2.Expressed
- 3.Oral or Verbal, Written

Implies Consent:

Implies consent is common type of consent observed In Medical practice. Here is consent is presumed (i.e. implied or inferred for example if a patient enter in clinic,it is resumed that the patient has come for examination and consultation. Thus the conduct of patient suggests the

Willingness to undergo for medical examination.The consent is provided for medical examination such a inspections palpation and auscultation it does not cover for examination of private part vain puncher, major intervention or operation. The consent in not written but legally it is effective

Expressed consent:

Anything other than Implied consent is expressed consent in other words an expressed consent is one, which is stated, in distinct and explicit language the expressed consent may be of following types.

Oral (Verbal) Consent:

It is consent which is given verbally. This method is employed for minor procedure, however such e consent should be obtained in the presence of a disinterested third-party. eg nurse or receptionist

Age factor in Consent :

The person should be above 12 years of age for routine procedure and age should be more than 80 years. If major operations is involved where there is likelihood that death or graviorous hurt may be caused. The person should be not under any fear or injury or threat. Person is above 18 years and sound mental health his own consent is require for removal of organ from his body there is no question of consent even form the parent, for removal of organs from the body of child less than 18 years organs cannot be remove. For MTP patient should be more than 18 years to herself give consent MTP.

Related laws and I.P.C. for consent and age factor.

Indian court prefer real consent IPC SEC – 87,88,89,90,92 are related sec – 53 (1) or crpc when a person arrested on a charge of committing an offence of such a nature and alleged to have been committed under such circumstances that there are reasonable ground for believing that an examination of his person will afford evidence as to the commission of an offense. It shall be lawful & registered medical practitioner acting at the request of a police officer not below the rank of sub inspector and for any person acting in good in his aid and under his direction to make such an

examination of the person arrested as is reasonably necessary in order to ascertain to facts which may afford such evidence and use such force as is reasonable necessary that purpose. Legally valid consent for medical examination and treatment is one given by person himself is above 12 conscious and mentally sound sec – 88 IPC – OR given by parent, guardian or friend, If the pt is less than 12 or is unconscious or is insane(sec 89 I.P.C.)

MTP : For MTP Patient should be more than 18 years, to herself give consent .

Patient cannot give consent, no parent or guardian available consent can be given by friends or any one present with the patient. Patient cannot give consent, no body with patient, patient in emergency life saving procedure can he done even without consent (sec-92 I.P.C.)

Criminal Abortion or Criminal Operation

- No question of consent Since they are a crime Sec – 91IPC
- For sterilisation -Consent of both partners should be taken

For artificial insemination: Consent of both partner of recipient and of donor has to be taken.

In all medico legal cases: Consent is must for all examination and treatment after informing the patient that the examination is for legal purpose and may be used in evidence.

Examination at request of police officer: No Police officer can force medical examination on any person.

At request of Employer no employer can force an unwilling employee to submit for medical examination.

Discharge against medical advice : AMA can he done only after consent of patient or guardian

Euthanasia mercy killing : No question of consent or euthanasia is against law.

For Postmortem:

- A) No consent is required for medico legal postmortem as it is done as per the requirement of law.
- B) For Clinical Postmortem consent of two close relatives is a must.

For removal of organs transplantation from living person:

- 1) There is no question of consent even from parents for removal of organs from the body of the child less than 18 years.Organs cannot be removed.Person is above 18 and of sound mental health- his own consent is required for removal of organ from his body .
- 2) FROM DEADBODY- No organ can be removed if inquest is to be carried out on the dead body. Consent should have been given by person himself when he was alive,however for actual removal of organs from the dead body ,consent of next of kin is required.

Conclusion :

By all aspect in detail study we came to conclude that

- 1) Every physician should take consent before treatment and surgical procedure of patient and relative step by step & advantage of taking informed consent ,patient cannot sue doctor
 - i) under section 350 IPC
 - ii) under section 351IPC
 - iii) for obtaining consent by misrepresentation of facts section 90 IPC

- 2) Legally to examine,treat or operate upon a patient without consent,even if done in good faith is punishable under above section
- 3) It is beneficial to physician to maintaining good relation between patient and relatives.
- 4) Physician should explain in detail about consent form.
- 5) It will be beneficial for physician for maintaining record of patient
- 6) Taking consent of patient is mandatory otherwise it will be considered as assault under IPC 351 in absence of valid consent.
- 7) Not taking consent is considered as deficiency in medical services under the section 2(1) of consumer protection act.

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