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## Medico-Legal issues amidst the pandemic

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*On March 11, 2020, the World Health Organization (WHO) declared the Coronavirus disease-2019 (COVID-19) infection a pandemic. We've all heard of curfews, lockdowns, red zones, social separation, quarantine, Standard Operating Procedures (SOPs) and penal actions for violation, implemented by the central and state government, which led to ethical and legal aspects. This paper mainly focuses on the issues like medical ethics and the physician-patient relationship, while others including medical responsibility and malpractice arose during the pandemic. Furthermore, medico-legal issues are appearing in respect to the workplace hazards of COVID-19 infection. The covid-19 pandemic infection's effects on the severely sick individuals led to their deaths and because of the life duration of the COVID -19 virus in different body samples after death, conducting autopsies for COVID-19 patients is a controversial topic. And this paper further discusses the healthcare law in India which includes acts, rules, guidelines, protocols and regulations that are implemented during pandemic and also from the past.*

**Keywords:** *medical, pandemic, corona.*

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### INTRODUCTION

The new coronavirus originated in the Wuhan city of China, and its infection has widely spread across the globe as a threat to health. Ministry of Health and Family Welfare in the Thrissur district of Kerala confirmed the first case of a Covid-19 patient in India on January 30,

2020. The director generals of the World Health Organisation declared the Covid-19 outbreak as a pandemic. Coronavirus disease-2019 (COVID-19) has brought with it a storm of new challenges to the people of every sector, including not just patient medical treatment but also a legal quandary about healthcare services around the globe. Medical professionals have battled to balance their obligations to patients and their rights to protect themselves, their families, and their clinical surroundings. The Government and private organizations are stepping up their efforts to safeguard medical professionals against frivolous lawsuits and educate doctors about their rights.

As the health sector in India is one of the most carefully scrutinized sectors, it is complicated for doctors and healthcare practitioners to be aware of all those rights and rules governed by various laws in the Indian judiciary. A slew of significant medico-legal issues has been created due to the rising prevalence of Covid-19; while some of these issues deal with malpractice and medical liability, others are concerned about medical ethics and the patient-physician relationship.<sup>1</sup> In addition, India has been combatting the Pandemic without enacting any significant public health legislation.<sup>2</sup> The Indian Penal Code of 1860,<sup>3</sup> the 123-year-old Epidemic Diseases Act 1897,<sup>4</sup> the Disaster Management Act of 2005,<sup>5</sup> the Biomedical Waste Management Act of 1998,<sup>6</sup> the modifications to the Epidemic Disease Act of 1998,<sup>7</sup> Telemedicine in the pandemic era in India, and other acts govern the health sector in India which are used to deal with crises. Aside from that, the Government has made a host of announcements, recommendations, laws, and guidelines about COVID-19. The COVID-19 Pandemic poses enormous obstacles, but some argue that it is the need of the hour to amend

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<sup>1</sup> Hiren Dhuvad, 'Indian pharma market: Emerging medico-legal issues in COVID era' (*Financial Express*, 22 June 2021) <<https://www.financialexpress.com/lifestyle/health/indian-pharma-market-emerging-medico-legal-issues-in-covid-era>> accessed 01 October 2021

<sup>2</sup> *Ibid*

<sup>3</sup> Indian Penal Code 1860

<sup>4</sup> Epidemic Diseases Act 1897

<sup>5</sup> Disaster Management Act 2005

<sup>6</sup> Biomedical Waste Management Act 1998

<sup>7</sup> Modifications to the Epidemic Disease Act 1998

these existing laws and rules to combat this pandemic era; however, compared to 2019, the active cases of covid-19 have declined, and the recovery rate has been increased.<sup>8</sup>

Even though India has ascended to the third position in the world for COVID-19 infections, a slew of bills, including the National Health Bill of 2009,<sup>9</sup> and the Public Health (Prevention, Control, and Management of Epidemics, Bio-Terrorism, and Disasters) Bill of 2017,<sup>10</sup> has remained in place. When it came to quarantine and health measures, the Indian Government did not resort to Article 47<sup>11</sup> and Entry 29<sup>12</sup> of the Constitution of India, 1950. In order to resist the COVID-19's cascading influence outside colonial bounds, a new generation of epidemic and pandemic-driven regulations are urgently needed<sup>13</sup>. The union and state government have adopted several new rules and regulations to protect doctors as the country grapples with the outbreak. Because extreme circumstances need special measures, and some extraordinary actions are used, there is a possibility of errors leading to unintended effects when such actions are taken. During extraordinary circumstances such as a pandemic, all authorities and officials operate with the protection afforded to them for actions taken in good faith.

New hazards and challenges continue to develop for healthcare practitioners who are involved in pandemic management. In today's litigious world arising in Pandemic, doctors are more prone to risk as they get drawn into medico-legal disputes. Furthermore, it is difficult for healthcare practitioners to know all of the regulations governing public health and their rights, as mentioned above.<sup>14</sup> Although the violence against doctors has existed in India for a long time, it became more common after the coronavirus outbreak when a large number of people approached doctors and dragged them into vexatious litigation due to a lack of understanding about the disease, its treatment, and its potential to spread. It may be claimed that the outbreak

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<sup>8</sup> *Ibid*

<sup>9</sup> National Health Bill 2009

<sup>10</sup> Public Health (Prevention, Control, and Management of Epidemics, Bio-Terrorism, and Disasters) Bill 2017

<sup>11</sup> Constitution of India, art 47

<sup>12</sup> Constitution of India, entry 29

<sup>13</sup> MZM Nomani & R Parveen, 'Legal Insights Into Covid-19 Pandemic And The Platter Of Health Law Reform In India' (2020) 12(1) Supplementary Issue International Journal Of Pharmaceutical Research 2328-2332

<sup>14</sup> *Ibid*

brought the issue to light. There have been instances of violence in quarantine facilities, COVID-designated hospitals, and even the residences of healthcare personnel.<sup>15</sup>

## MEDICAL-ETHICAL ISSUES IN PANDEMIC

It has been found that the behavior and attitude of COVID-19 patients and their families differ; some are feeling worried about the spread of infection of Covid-19, and others feel guilty and attempt to conceal infected cases. As a result, clinicians face a challenge while reviewing COVID -19 cases. Generally, maintaining professional secrecy is known to be the main principle in the relationship between doctor and patient during physical examinations, where it is forbidden for the physician to reveal the professional secret, such as publishing the patient's name or any information related to his condition, in order to protect the patient's privacy.

Nevertheless, in the case of COVID -19 infection, however, there is a medico-legal exception to the above-mentioned medical ethics rules because it is permissible for the doctor to disclose the professional secret and notify the public authority and the patient's relatives about the patient's condition for the quarantine to prevent the spread of infection in good faith of the people. It is worth noting that this exception applies to all situations of infectious diseases and without the patient's agreement.<sup>16</sup> There is a lot of agony and outrage in the 2<sup>nd</sup> phase of covid-19 in public due to a shortage of oxygen cylinders, vaccine supplies, medicines. One of the ethical problems that arose during the COVID-19 outbreak was allocating limited healthcare resources and the appropriateness of withholding and withdrawing medical interventions. So, during the Pandemic, healthcare providers should commit to and apply medical ethics standards in outpatient clinics and intensive care units, exceptionally when resources are constrained. These principles focus on providing equal treatment to all people, prioritizing

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<sup>15</sup> *Ibid*

<sup>16</sup> *Ibid*

patients depending on the severity of their problems, and maximizing the benefits of limited resources.<sup>17</sup>

## MEDICO-LEGAL ASPECTS EMERGING IN PANDEMIC

- **Can a doctor refuse treatment to a Covid-19 patient?**

First and foremost, COVID -19 patients have the right to be evaluated and diagnosed by a professional. As a result, it is not the physician's right to deny an examination of a COVID- 19 patient because he is afraid of being infected. After all, the situation is an emergency. As a result, the physician must fulfill his responsibilities by taking the appropriate safeguards and biosafety procedures.<sup>18</sup> Unless his health difficulties prevent him from doing so, a qualified medical practitioner who possesses the minimum infrastructure to treat a COVID-19 patient should not reject treating the patient. Section 2.1 of the Indian Medical Council Regulations 2002 supports this.<sup>19</sup> If required, the doctor can send the patient to a higher hospital in the patient's best interests, but only after responding appropriately and maintaining a safe transfer. Refusing to treat a COVID-19 patient for any reason is a violation of Regulation 5.2 of the Indian Medical Council Regulations 2002,<sup>20</sup> States that a physician should not quit his duties during an epidemic because he is afraid of getting the disease. Article 21 of the Indian Constitution,<sup>21</sup> will be violated if an implicit or explicit refusal to treat.

- **Is Failure to Follow Government Guidelines Considered Negligence?**

Staying up to date on the current government rules and regional policies is critical, and following them prudently is essential. The medical practitioner and the administration are responsible for every eventuality that may arise while admitting or treating a COVID-19 suspect or a positive patient. Only if the hospital is approved to treat COVID-19 should the

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<sup>17</sup> SS Elishama, 'Medico-Legal Aspect of Emerging Issues during COVID- 19 Outbreaks' (2020) 5(4) International Journal of Forensic Sciences

<sup>18</sup> *Ibid*

<sup>19</sup> Indian Medical Council (Professional conduct, etiquette, and ethics) Regulations 2002, s 2.1

<sup>20</sup> Indian Medical Council (Professional conduct, etiquette, and ethics) Regulations 2002, reg 5.2

<sup>21</sup> Constitution of India, art 21

patients be admitted or treated. So failure to adhere to the government guidelines and protocols will almost certainly result in government contempt and severe legal consequences.

- **Is it possible to compel a private practitioner to open his practice?**

Every citizen of India has the right to practice any profession under Article 19 (1) (g),<sup>22</sup> subject to Articles 19 (6) (g) (i),<sup>23</sup> which prescribes the requisite professional and technical requirements. However, it might be argued that if someone has the right to practice a profession, he also has the right to cease. However, this will only be true to a limited extent in the case of medical specialists.<sup>24</sup> As we all know, medical care is a vital service, and a physician is expected or obliged to do his or her fair share when the country is faced with a crisis and must take all necessary safeguards. As previously noted, the GovernmentGovernment can demand resources from any authority or person, as well as their services, under Section 65 of the DM Act 2005<sup>25</sup>.

- **Can a government ask a physician to treat a patient beyond the scope of his degree?**

"A physician may not call himself a specialist unless he has had specific training in that subject." Says IMC regulations 2002 in section 7.21.<sup>26</sup> As a result, it is a physician's responsibility to stay within their field of training and experience and perform only within those parameters. "Whenever an epidemic arises, a physician shall not quit his duties for fear of contracting the disease," according to section 5.2 of the IMC regulations 2002. The GovernmentGovernment and regulatory agencies, on the other hand, must reassure doctors that they would not be exposed to unjustified criticism or punishment as a result of tough decisions they made or the level of care they delivered during the outbreak.<sup>27</sup>

## **MALPRACTICE ISSUES IN THE PANDEMIC**

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<sup>22</sup> Constitution of India, art 19(1)(g)

<sup>23</sup> Constitution of India, art 19(6)(g)(i)

<sup>24</sup> *Ibid*

<sup>25</sup> Disaster Management Act 2005, s 65

<sup>26</sup> Indian Medical Council (Professional conduct, etiquette, and ethics) Regulations 2002, reg 7.21

<sup>27</sup> Arun Kumar and others, 'Medicine and Law in the times of Covid-19 Pandemic: Understanding the Interphase' (2020) 24(10) Indian Journal of Critical Care Medicine

The patient with COVID -19 has the right to obtain a scientifically established therapy with proven efficacy and known adverse effects. In the COVID-19 Pandemic, however, physicians' commitment to follow particular therapeutic procedures that have been approved by official health authorities such as the WHO is not considered malpractice, but the use of other herbal drugs, illegal medicine, therapy, or what is known as alternative medicine by non-professionals is considered as malpractice.<sup>28</sup>

If a physician conducts a surgery or prescribes medicine for a patient that causes injury to the patient and there is an unidentified causal connection between the Act (mistake) and the harm, it is considered medical malpractice. As a result, using any illegal therapy to treat COVID-19 instances is deemed medical negligence, resulting in potential damage.<sup>29</sup> Medical negligence also refers to a violation of the standards of care, a violation of the patient's rights, and a physician's obligations. So, if the patient's treatment is exceedingly inadequate by medical standards of practice, or if the medical professional makes an omission or engages in behavior that jeopardizes the patient's safety and life, the health care provider is guilty of medical negligence.

### **CONDUCTION OF AUTOPSY OF COVID -19 CASES**

We are aware of how difficult it is to conduct an autopsy of dead bodies during the Pandemic. If a postmortem investigation and autopsy for COVID-19 cases is required for medico-legal purposes, the forensic expert should assess the risk and follow the universal standard precautions and operational protocols for postmortem examination of COVID-19 cases. The determination of the cause of death is the primary goal of an autopsy in a forensic investigation. As a result, it should be able to determine the pathogenic process and any probable postmortem observations in these situations. So, if the covid-19 infection is suspected or proved in this forensic case, the forensic expert should conduct a proper autopsy based on the available epidemiological data since this is a legal obligation that one cannot refuse. Notably, the forensic expert's involvement in criminal proceedings is limited to performing a

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<sup>28</sup> *Ibid*

<sup>29</sup> *Ibid*

legal autopsy. The survival period of the COVID -19 virus in different body samples after death has not been identified till now, and postmortem investigation may play an essential role in estimating the possible risk of infection spreading to other persons after death.<sup>30</sup>

## HEALTHCARE LAW IN INDIA

- **The Epidemic Disease Act, 1897**

The Indian Government invoked the Epidemic Diseases Act, 1897<sup>31</sup> (the ED Act) on March 11, 2020, enabling both the Central and State governments to halt the spread of such diseases. COVID-19 infection is covered by an Act to allow for improved prevention of the transmission of Dangerous Epidemic diseases in India. This legislation calls for specific steps to be taken and regulations to be enacted in the event of a hazardous pandemic disease. If necessary, the federal and state governments may create special provisions. The provisions of this Act now apply to medical practitioners and the general public, including patients.<sup>32</sup> The Act's first three sections detail ways to prevent and control the spread of contagious diseases, as well as the penalties for violating government directives issued under this Act. This provision protects any healthcare professional who is acting in line with the Act from legal action. Section 4 of this Act,<sup>33</sup> solely applies to healthcare professionals and provides legal protection to anybody acting in good faith.

- **The Disaster Management Act- 2005**

The Disaster Management Act of 2005<sup>34</sup> (the DM Act) was enacted with the goal of "providing for the effective management of disasters." Because of COVID-19's high infection rate and community spread pandemic scenario, India has adopted an Act to effectively handle catastrophes and items related to or incidental to that. According to the concurrent list of the

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<sup>30</sup> Elishama (n 17)

<sup>31</sup> Epidemic Diseases Act 1897

<sup>32</sup> *Ibid*

<sup>33</sup> Epidemic Diseases Act 1897, s 4

<sup>34</sup> Disaster Management Act 2005

Indian Constitution, the present lockdown was imposed under Section 6 (2) (i) of the Act.<sup>35</sup> The Government can requisition resources from any authority or person and their services under Section 65 of this Act. The authority requisitioning the services is financially liable, and logistics of such services. As a result, the Government can buy a public or private healthcare institution and turn it into a COVID-19 treatment zone.<sup>36</sup>

- **The Indian Medical Council (Professional conduct, etiquette, and ethics) regulations, 2002**

The Indian Medical Council Regulation 2002<sup>37</sup> Section 2.1.1 outlines the responsibilities of physicians to their patients and duties to the patients. It expressly states that no physician may reject treatment to a patient at his or her discretion. "When an epidemic develops, a physician should not leave his duties for fear of contracting the disease," Section 5.2 elaborates in this Act. The sole exception is if the physician has a medical condition that puts him in a high-risk group if he becomes infected. Every instance of communicable disease under the physicians shall be reported to the established public health authorities, in line with the health authorities' laws, rules, and regulations say this Act.

- **Telemedicine**

In March of 2020, the Indian Government announced "Telemedicine Guidelines." Even though doctors in India have been practicing Telemedicine for a long time, the legality of teleconsultation was unclear. The new guidelines issued by the Government of India not only made it permissible for certified medical practitioners to provide teleconsultation services, but they also authorized doctors to administer prescriptions, provide counseling,<sup>38</sup> and provide health education over the phone or via chat. Also, the statute gave doctors the authority to choose the means of teleconsultation while also stating that patients are accountable for the accuracy of the information they provide. It also stated that there is no fixed procedure for

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<sup>35</sup> Disaster Management Act 2005, s 6(2)(i)

<sup>36</sup> *Ibid*

<sup>37</sup> Indian Medical Council (Professional conduct, etiquette, and ethics) Regulations 2002, s 2.1.1

<sup>38</sup> *Ibid*

prescribing during a teleconsultation. The Telemedicine Guidelines 2020 were a significant step forward in protecting clinicians from medico-legal issues by clearly defining dos and don'ts for patients and doctors.<sup>39</sup>

Teledentistry practitioners should exercise caution to protect patients' privacy and to make sure it is not affected.<sup>40</sup> The informed consent approach used in teledentistry should adhere to criteria. The patient should be informed of the risk of inaccurate diagnosis and treatment due to teledentistry technological failure, as well as medico-legal and copyright issues. Nevertheless, unfortunately, there are no mechanisms currently in place to ensure the quality, security, efficiency, or effectiveness of information or its exchange.<sup>41</sup>

- **Indian Penal Code, 1860**

The Epidemic Diseases Act of 1897 is in addition to, not in instead of, the quarantine provision enshrined in the Indian Penal Code of 1860<sup>42</sup>. To attain the comprehensive ambit of the epidemic disease act, Sections 3<sup>43</sup> and 4 of the Epidemic Diseases Act, 1897 are read with Sections 188,<sup>44</sup> 269,<sup>45</sup> 270,<sup>46</sup> and 271<sup>47</sup> of the Indian Penal Code, 1860. Anyone found negligently (inadvertently) or malignantly contributing to the spread of an infectious disease suffers penance (punishment/ fine or both) under Sections mentioned above of the Indian Penal Code, 1860. As a result, under the terms of this law, reporting a suspected or confirmed COVID-19 case to the health authorities is required to avoid community spread.<sup>48</sup>

- **National Health Bill, 2009<sup>49</sup>**

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<sup>39</sup> Telemedicine Guidelines 2020

<sup>40</sup> Palak Tahara and others, 'Medico-legal aspects of COVID-19 disease in India: A comprehensive review' (2021) 5(5) International Journal of Medical and Biomedical Studies 29-31

<sup>41</sup> *Ibid*

<sup>42</sup> Indian Penal Code 1860

<sup>43</sup> Epidemic Diseases Act 1897, s 3

<sup>44</sup> Indian Penal Code 1860, s 188

<sup>45</sup> Indian Penal Code 1860, s 269

<sup>46</sup> Indian Penal Code 1860, s 270

<sup>47</sup> Indian Penal Code 1860, s 271

<sup>48</sup> Tahara (n 39)

<sup>49</sup> National Health Bill 2009

The Bill ensures that people's rights to health and well-being, fairness and justice, and a robust healthcare system are protected and fulfilled. Under Schedule III,<sup>50</sup> the Bill acknowledged 71 public health enactments to create coherence and consistency in the implementation of health rights. With cooperation between the Centre and the states, the Bill establishes a robust system for public health services responsive to public health emergencies.<sup>51</sup>

- **Epidemic Diseases Ordinance, 2020**

The Epidemic Diseases (Amendment) Ordinance, 2020<sup>52</sup> was issued by the President under Article 123 of the Indian Constitution of 1950.<sup>53</sup> Apart from the restriction of travel and acts of violence, the Ordinance has expanded the authority of the central Government to regulate all modes of transportation under (Section 2B<sup>54</sup>).

## CONCLUSION

COVID-19, because of its fast spread, misunderstanding about its cause, unclear treatment, and vaccinations, infections produced a substantial global health catastrophe, posing several problems and issues. As a crisis, COVID-19 provided an opportunity to address long-standing reforms of public health legislation. During this epidemic, various medico-legal concerns have developed, including medical ethics issues relating to the connection between physician and doctor. Furthermore, COVID-19 infection is regarded as an occupational danger in the workplace, posing a new medico-legal problem. Finally, the COVID -19 virus's uncertain life duration in different body samples after death is a medico-legal problem that has surfaced during postmortem investigations of COVID-19 cases.<sup>55</sup> The Government has not fulfilled its constitutional responsibility to adopt public health and disaster preparation laws in epidemic-

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<sup>50</sup> Constitution of India, schedule III

<sup>51</sup> *Ibid*

<sup>52</sup> Epidemic Disease (Amendment) Ordinance 2020

<sup>53</sup> Constitution of India, art 123

<sup>54</sup> Epidemic Disease (Amendment) Ordinance 2020, s 2B

<sup>55</sup> *Ibid*

pandemic COVID-19-like conditions,<sup>56</sup> according to a critical analysis of Indian public health legislation. It concealed behind the colonial Epidemic Diseases Act of 1897 or, at best, chose the path of the Disaster Management Act of 2005.<sup>57</sup>

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<sup>56</sup> Md Zafar and others, 'Legal Dimensions of Public Health with Special Reference to COVID-19 Pandemic in India' (*Sysrevpharm*, 2020) <<https://www.sysrevpharm.org/articles/legal-dimensions-of-public-health-with-special-reference-to-covid19-pandemic-in-india.pdf>> accessed 01 October 2021

<sup>57</sup> *Ibid*