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Doctor-Patient Relationship: A Socio-legal Analysis

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- Dr. Ajay Bhupendra Jaiswal &
- Dr. A. S. Bahatnagar

Medical is a Nobel profession. Duty of the doctor is to serve the God. Due to conflict between duty and right there are various issues among doctors and patients. This article explores the socio-legal dimension of doctor-patient relationship.

Key words: *- Doctor-Patient relationship, Doctor's Duty, Right of Patients.*

God created men and bestowed them with the best possible qualities so that they could be labeled as the finest creations of God, but the life span of man remained pre-destined like all other creatures and he has to undergo pleasure and pain. Special persons were chosen to take care of the physical pains and sufferings of man and such persons are known as the physicians or doctors.

Initially, they used to cure by magical touch or magical powers, but later on man discovered the curing properties of various gems or herbs and applied such knowledge for lessening the physical sufferings of mankind.

The physician cannot confer immortality but can confer longevity on mankind. Every branch of medicine prescribes a particular code for the persons who practise this art and unveils a special relationship between the physician and the patient, throughout the world.

The most revered is the Hippocratic Oath[1] which elaborately discusses the duties of a physician in relation to his art and patient. The Hippocratic Oath provides as under:

'I swear by Apollo, the physician by Aesculapius, Hygeia and Panacea and I take to witness all the gods, all the goddesses to keep according to my ability and my judgment the following Oath:

To consider dear to me, as my parents, him who taught me this art; to live in common with him and if necessary to share my goods with him to look upon his children as my own brothers, to teach them this art if they so desire without fee or written promise; to impart to my sons and the Sons of the master who taught me and the disciples who have enrolled themselves and have agreed to the roles of the profession, but to these alone, the precepts and the instruction. I will prescribe regimen to the good of my patients according to my ability and my judgment and never do harm to any one. To please no one will I prescribe a deadly drug nor give advice which may cause his death. Nor I will give a woman a peccary to procure abortion. But I will preserve the purity of my life and my art. I will not cut for stone even for patients in whom the disease is manifest; I will leave this operation to be performed by practitioners (specialists in this art). In every house where I come, I will enter only for the good of my patients, keeping myself far from all intentional ill-doing and all seduction, and especially from the pleasures of love with women or with men, be they free or slaves All that may come to my knowledge in the exercise of my profession or outside of my profession or in daily commerce with men, which ought not to be spread abroad, I will keep secret and will never reveal. If I keep this oath faithfully, may I enjoy my life and practise my art respected by all men and in all times; but if I swerve from it or violate it, may the reverse be my lot.' [2]

Thus it is clear from this ancient oath that the doctor is duty bound to remain accessible for the patients without any discrimination and also without any favour. The doctor is duty bound to serve the patient to the best of his ability and judgment as to the disease and is prohibited to have an ill-will towards the patient. He is duty bound not to treat the patient whose disease is beyond his comprehension or which requires a special treatment.

Even the Ancient Hindu Scriptures do provide a good account of doctor's duty and especially the ***Charak Samhita*** which is a masterpiece on ancient branch of art of medicine, i.e. Ayurveda, provides as under;

"The four aspects of therapeutics are the physician, the medicament, the attendant and the patient. They are responsible for the cure of diseases, provided they have the requisite qualities"[3].

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The ***Charak Samhita*** also provides for the qualities of a good physician as Excellence in medical knowledge, an extensive practical experience, dexterity and purity[4].

It further provides that it is better to die than to be treated by a physician ignorant of the science of medicine. Because, like a blind person moving with the help of his hands or like a boat being driven by the wind, a quack physician applies the course of treatment with apprehension because of his ignorance.[5] Such a quack physician may cure a few persons by chance, whose span of life is fixed but he is likely to kill in no time, hundreds of patients whose life span is fixed[6]. A physician duly engaged in the study of the science of medicine, in mastering their actual implications, in the right application of the therapy and having practical experience is known as the saviour of life[7]. It elaborately discusses the qualities and disciplines of good physicians, who possess the six qualities, viz.; knowledge, critical approach, insight into other allied sciences, good memory, promptness and perseverance, can never miss the target that is the cure of diseases. Any one of these, viz.; knowledge, intellect, practical experience, continued practice, success in treatment and dependence on an experienced preceptor is enough to justify the use of the Vaidya by a physician. The one who combines in him all these good qualities deserves to be called 'an excellent physician.[8] Doctor's should be sympathetic and kind to all patients, should be concerned with those who are likely to be cured and should feel detached with those who are towards death. These are the four disciplines for physician.[9]

The pseudo-physicians, do like thorns, they torture the people. These traitors in the garb of physicians move around the world due to the lack of vigilance on the part of the rules.[10]

It is very clear that the person who professes in the art of medicine owes a special duty of care to the patients. The right to health is one of the essential rights of man inherent in the right to dignified life and every state is duty bound to protect it. It finds its recognition world over and especially under the International Conventions. The Universal Declaration of Human Right also accords recognition to it and provides that everyone has the right to a standard of living adequate for the health and well-being of himself.[11]" Even the International Covenant on Economic, Social and Cultural Rights provides that it is the duty of State to recognize the right of every one of highest attainable standards of physical and mental health[12] as well as the creation of condition which would assure to all medical service and, medical attention in the event of sickness[13].

Therefore, even in India, the necessary provisions are incorporated in the Directive Principles of State Policy as well as in the Fundamental Right in the expansive notion of it as recognized by the judicial system in India.

In the case of Consumer Education & Research Center and others Union of India.[14] was held that the jurisprudence of personhood or philosophy of the right to life envisaged under Article 21 enlarges its sweep to encompass human personality in its full blossom with invigorated health which is a wealth to the workman to earn his livelihood. The expression 'life' assured in Article 21 does not connote mere animal existence or continued drudgery through life. It has a much wider meaning which includes right to livelihood, better standard of living, hygienic conditions in the workplace and leisure... etc. Right to health and medical care to protect one's health and vigors is a fundamental right under Article 21 read with Articles' 39(e) 4, 43 48-A and all related articles and fundamental human rights, to make life purposeful with dignity of person[15].

In order to provide for the same, the Government of India has created the medical amenities throughout India and has provided for the recognition of persons who can profess the art of medicine under the Indian Medical Council Act of 1956.

According to Section 15 (d), no person other than a medical practitioner enrolled on a state Medical Register shall be entitled to give evidence at any inquest or in any court of law as an expert under section 45 of the Indian Evidence Act, 1872 on any matter relating to medicine. However, this must be read save as provided in Sec. 25 which refers to provisional registration[16].

Sec. 20A is titled as professional conduct. Its subsection (1) states that the council may prescribe standards of professional conduct and etiquette and a code of ethics for medical practitioners[17].

Sec. 27 deals with privileges of persons who are enrolled on the Indian Medical register. It states as under:

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Subject to the conditions and restrictions laid down in this Act regarding medical practice by persons possessing certain recognized medical qualification, every person whose name for the time being borne on the Indian Medical Register shall be entitled according to his qualification to practice as a medical practitioner in any part of India and to recover in due course of law in respect of such practice any expenses, charges in respect of medicament or other applicants, or any fees to which he may be entitled[18].

In pursuance of the power conferred on the Medical Council by virtue of Section 20(A) of the Indian Medical Council Act of 1952, the medical council has chalked out a code of ethics for the medical profession which provides as under:

At the time of registration each applicant shall be given a copy of the following declaration by the Registrar concerned and shall read and agree to abide by the same[19]:

(i) I solemnly pledge myself to consecrate my life to the service of humanity.
(ii) I will maintain the utmost respect for human life from the time of conception.
(iii) I will not permit consideration of religion, nationality, race, party politics or society standing to intervene between my duty and my patient.
(iv) The health of my patient will be my first consideration.
(v) I will respect the secrets which are confided in me.

The code of ethics further provides certain general principles to be observed by the physicians as under:

A medical practitioner is permitted a form announcement in press regarding the following:

1. On starting practice.
2. On change of type of practice.
3. On changing address.
4. On temporary absence from duty.
5. On resumption of practice.
6. On succeeding to another practice[20].

Remunerations charged for such services should in the form and amount specifically announced to the patient at the time the service is rendered. It is unethical to enter into a contract of "no cure no payment[21]."

Though a physician is not bound to treat each and every one asking his services except in emergencies for the sake of humanity and the noble traditions of the profession, he should not only be ready to respond to the calls of the sick and the injured, but should be mindful of the high character of his mission and the responsibility he incurs in the discharge of his professional duties[22].

Once having undertaken a case the physician should not neglect the patient nor should he withdraw from the case without giving notice to the patient, his relatives or his responsible friends sufficiently long in advance of his withdrawal to allow them to secure another medical attendant[23].

The physician should neither exaggerate nor minimize the gravity of a patient's condition. He should assure himself; the patient, his relatives or his responsible friends have such knowledge of patient's condition as will serve the best interests of his patient and family[24].

Before performing an operation, a surgeon is bound to obtain in writing the consent from the husband or wife, parent or guardian in the case of a minor or the patient himself, as the case may be. In an operation which may result in sterility the consent of both husband and wife is needed[25].

Physician must not exhibit publicly the scale of fees, but there is no objection to the same being put in physician's consulting or waiting rooms[26]. Physician is prohibited from using use touts or agents for procuring patients[27].

This discussion clearly shows that medical profession is a noble calling, different from trade or business and it requires a constant engagement in the service of humanity.

Under the code of medical ethics, doctors are supposed to perform a number of duties but the basic question is whether duty is performed sincerely and honestly. There is always endangering to the life of patient. It involves a question whether the doctors are taking care and if so, then in what manners in what ratio? Previously, the doctor was equated with God but with change in thinking and expansion of knowledge of the patient, is this relation maintained? And if there is any divergence then who is responsible for

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decrease in the pious relation of doctor and patient. It suffers a setback mainly due to the professionalization and commercialization. The negligent liability and accountability of the doctor was previously fixed under law of torts mainly but with the development of consumer protection law a question is generally raised, can doctors be liable or become accountable under the present Consumer Protection Act and if they become accountable under this Act, then how and in what manner the accountability be fixed?

Doctor-Patient relationship is of antiquity and based on mutual trust and confidence. The doctor's profession is Nobel calling who is expected to serve the society especially those who are suffering from any disease and infirmity without any profit motive. The results are exceptional where there is total submission and total devotion. But modem materialistic tendencies have even touched this delicate relationship and doctors have become totally professionalized in zeal to acquire a social status reflected through the material gains which demands less devotion and a bit of ruthlessness. Initially the failures of doctors were considered pre-destined but now they are being made accountable for their failures and negligence. The relationship encompasses from the time of submission, i.e., seeking advice and diagnosis, to the final eradication of the disease or infirmity which carries inherently many other activities. Generally speaking, the doctor professes to know better than others the nature of certain methods and to know better than their clients what ails them or their affairs. The professional commands authority to the extent that he sometimes refuses to act unless the client agrees to follow his advice. The client in most cases is not competent to judge the merits of the advice or actions of the professional and hence he fully relies on the professional for his well-being[28].

The patient's expectation applies to a greater or lesser degree, depending on the severity of his illness:

(1) That he avoids obligations which may exacerbate his condition;
(2) That he accepts the idea that he needs help;
(3) That he desires to get "well"; and
(4) That he seeks technically competitive help in getting well[29].

There is a tendency of an individual to live up to the role expectations of those with whom they are interacting and come to perceive themselves in accordance with these expectations. On the patient's admission to a hospital, the doctor becomes the centre of the patients' universe. Thus in the doctor-patient relationship, the doctor enjoys the pivotal position and moves ahead with the treatment of the patient on the patients complaints. These complaints coupled with the diagnosis helps the doctor in identifying the cause of the disease. And in cases of doubt, the patient is required to undergo various tests. This is being done for the patient as well as doctors as the whole relationship depends upon the type of doctor required, since there are two major categories of doctors i.e. a general physician and a specialist. The general physician is required to treat general diseases; whereas a specialist is an expert in a particular disease or a part of the body.

Till the doctor-patient relationship subsists; the doctor has to perform many duties as under:-

The deficiency in service can make the doctor liable under the consumer protection act as it signifies failure to take care.

Generally, a person who holds himself out as ready to give medical advice or treatment impliedly undertakes that he is possessed of skill and knowledge for the purpose. Such a person, whether he is a registered medical practitioner or not, who is consulted by a patient, owes him certain duties, namely, a duty of care in deciding whether to undertake the case, a duty of care in deciding what treatment to give, and a duty of care in the administration of that treatment. A breach of any of these duties will support an action of negligence for the patient.

Further the practitioner must bring to his task a reasonable degree of skill and knowledge, and must exercise a reasonable degree of care. Neither the highest, nor a very low degree of care and competence judged in the light of the particular circumstances of each case, is what the law requires. A person is not liable of negligence because someone else of better skill and knowledge would have prescribed different treatment or operated in a different way, nor is he guilty of negligence if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art, although a body of adverse opinion also existed among medical men[30].

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No contractual relationship between the person undertaking the treatment and the patient is necessary to support an action of negligence; nor is it necessary that the services should be rendered for reward[31].

If a contractual relationship exists, the liability at common law to exercise reasonable care exists independently of the liability expressed or implied in the contract.

A medical practitioners who examines a person against his will and without statutory authority to do so, and a surgeon who performs an operation or part of an operation without his patients express or implied consent are each liable in trespass. A practitioner may be liable in damages if he is negligent in failing to inform the patient of the risk involved in the treatment and if the patient having been so informed would not have consented[32].

The liability of a practitioner for the negligence of other person depends upon the relationship between him and them. The relationship between a practitioner and a nurse in a hospital is not as a general rule, such that the practitioner is liable for the negligence of the nurse in carrying out or failure to carry out his instructions.

An employer's duty of care towards his employee may extend to responsibility for injuries to a doctor endeavouring due to rescue the employee from imminent peril due to employer's negligence[33].

For the treatment, the doctor ascertains the disease and is duty bound to make certain disclosures to the patients which are necessary for making further progress in the case.

Sufficient information requires determination of three crucial factors: (1) the measure of the duty involved (2) the scope of disclosure involved, measured by various tests and (3) the standards of disclosure.

A physician need not disclose every minute detail of a patient's condition or the procedure to be used in treatment. The law recognizes that in certain situations, this can have adverse effect on any patient. There is good law in support of arrangement that doctors frequently tailor the extent of their preoperative warnings to the particular patient to avoid the unnecessary insanity and apprehension while such appraisal might arouse in the mind of the patient.

The law in this regard recognizes to a certain extent that the medical setting differs from a legal setting. The medical setting is a cooperative venture; the physician values the trust placed in him by his patient. The physician cannot proceed without complete surrender of medical decisions to him. However, to a physician, those medical decisions include basic personal decisions such as the determination of whether to proceed at all[34].

There are at present several ways to measure the scope of disclosure determined on the basis of certain tests. One of these is the so called materialist test. By this test, the measure of disclosure is determined by the patient's need to know. Such need is determined by whatever information is material to the patient's decision. Under such a test it is immaterial whether or not the patient asked for the information. This is helpful in the submission of the patient for treatment without deterring him.

The other test, an equitable test, requires whether the physician disclose all those facts, risks and alternatives that a reasonable man., iii the situation which the physician knew to the patient. This is to avoid unnecessary legal actions. This includes (1) the physician's diagnosis (2) the general nature of the proposed treatment (3) reason for the procedure used, (4) risk involved in proposed treatment (5) prospects of success (6) prognosis if the procedure is not performed (7) any alternative methods of treatment[35].

The law has recognized limited situations in which information material to formulating a decision would be futile.

The problems are in the recognized exemption from disclosure of risks which in the physician's professional judgment would cause anxiety or fear which would be harmful to the patient's health to well being of course, the physician need not disclose every minute detail, and it has been recognized that this can have an adverse effect on any patient if the physician has an unduly apprehensive patient, it might be impractical and indeed poor psychology to require disclosure of risk. If it would have nothing but a negative or morbid connotation for the patient the logical result would be unnecessary confusion and worry. A competent and responsible medical practitioner would not disclose information which might induce an adverse psychosomatic reaction in a patient highly apprehensive of his conditions.

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Most important feature of Doctor-Patient relationship is the concept of consent or informed consent.

Consent plays a pivotal role in doctor-patient relationship, which must be a real, full and free consent. Doctrine of Consensus ad ideni forms the basis of consent and according to it "two or more person are said to consent when they agree upon the same thing in the same sense[36]." A patient while submitting himself for treatment might have a quite different doctor in his mind than the doctor who actually treated him, or the patient might have 'consented' for a particular surgery than actually performed by the doctors, or he might have thought of a particular medical procedure to be adopted for treatment than the procedure in fact adopted by the doctors. In all such cases the consent given by the patient in either of the circumstances enumerated above cannot be regarded as consent within the meaning of law and where the doctor proceeds with the treatment on the basis of such a consent, it can very well be said that be proceeded without 'realty and 'true' consent[37].' A consent is said to be free if it has not caused be coercion, undue influence, fraud, misrepresentation and mistake[38].

The relationship of the doctor and the patient also may attract the factors which vitiate the contract. A doctor may be said to have obtained the consent of the patient or any person authorised by him to give consent on his behalf, by undue influence where a doctor who is certainly in a position to dominate the will of the other party uses his dominant position to gain unfair advantage over the patient. This may happen where the doctor demands an unreasonably higher amount from the patient who may not being in a position to bargain with the doctor.

A doctor undoubtedly stands in a fiduciary relationship with his patient, and therefore, owes a duty to his patient to disclose all material facts which are likely to affect his willingness to give his consent.

The doctrine of informed consent finds its roots in the recognition of the patient's right of self determination and personal autonomy.

Mr. Justice Berjaimine Cordozo has opined that:

Every human being of adult years and sound mind has right to determine what shall be done with his own body and a surgeon who performs an operation without his patient's consent commits an assault for which he is liable in damages. This is true except in cases of emergency where the patient is unconscious and where it is necessary to operate before consent can be obtained[39].' Thus the benefit of a patient is a recognised exception.

The doctrine of informed consent means that a doctor is required to give his patient sufficient information about proposed treatment to provide with him the opportunity of making an "Informed" or rational choice as whether to undergo the treatment. The doctrine, therefore, serves two purposes, positively it confers upon the patient a right to receive certain information making it obligatory for the doctor to give the required information; and negatively it refrains the doctor to proceed with the treatment without having first obtained "full" and "informed consent" of the patient[40].

Therefore, there are reciprocal attitudes expected from doctors which enable them to function effectively. These attitudes are affective neutrality, universalism, and functional specificity. Affective neutrality means standing back from the patient and maintaining objectivity without becoming emotionally involved. Universalism means regarding all patients as being of the same value, so that non-medical details such as race or social class do not influence medical decisions. Functional specificity means that the doctor should only be concerned with those matters which are of direct medical relevance to the patient.'

Certainly for doctors there are a number of conflicts inherent in the doctor-patient relationship some of which could be summarized as under:

1. Competing demands of many patients for limited resources such as doctor's time.
2. The problem of uncertainty about diagnosis and treatment,
3. The knowledge that some diagnoses are not helpful and some treatments ineffective.
4. The conflict between the present and future interests of a patient for-instance whether to tell about a poor prognosis.
5. The conflict between the patient's interest and that of his family or the state - for instance whether to inform the authorities about an epileptic's driving licence.

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6. The problem of not being able to resolve social predicaments such as unemployment.
7. The conflicts of other roles for doctors for instance in their family and recreation hence the controversy over the use of deputizing services)[41]

Doctors attempt to resolve these conflicts in numbers of ways of which the following are some examples-
(i) A preference for controlling the consultation and not being questioned by the patient.
(ii) A tendency to dismiss social problems which they are powerless to alter as non-medical trivia.
(iii) Using placebo treatment and ritual examinations.
(iv) Persuasion and bargaining between doctor and patients to accept each others point of view[42].

Yet the complete resolution of conflict is not possible, no doubt. The doctors perform their duties effectively but yet many times they are a bit careless or reckless and the patient has to bear the brunt primarily and it gives him a right to get recompense from the doctor for the unwarranted intrusion on his person or injury and agony which he has suffered.

Reference:-

1. Hippocratic Oath, as cited in Dr. Jagdish Singh Vishnnu Bhushan, Medical Negligence and Compensation. Appendix II Bharat Law Publication Jaipur 1999, at p. 500. See also, Dr. B. Hydervali, A note on medical oath and Ethics, S.C.J. (1999).
2. Ibid
3. भिषग्द्रव्याण्युपस्थाता रोगी पादचतुष्टयम्।
गुणवत् कारणं ज्ञेयं विकारव्युपशान्तये।।
4. as cited in Dr. R.K. Sharma et al, Agniesa's Charak Samhita, Varanasi: Chowkhama Sanskrti Series office (1999) vol. - 1, at 183.
5. श्रुते पर्यवदात्त्वं बहुशो दृष्टकर्मता।
छाक्ष्यं शौचमिति ज्ञेयं वैद्ये गुणचतुष्टयम्।। Id., at 186
6. वरमात्मा हेतुघ्नेन न चिकिसत प्रवर्तिता।।
पणिचाराद्यथाघ्नचक्षुरज्ञानाभ्दीत्भीतवत्।
नार्मारूतवशेवाज्ञोभिषक् चरति कर्मसु।। Id., at 188
7. यदृच्छया समापन्नमुत्तार्य नियतायुषम्।
भिर्ष्यानी निहन्त्याशु शतान्यनियतायुषाम्।। Id., at 189
8. तस्माच्छास्त्रेर्थविज्ञाने प्रवृत्तौ कर्मदर्शने।
भिषक् चतुष्टये युक्तः प्राणाभिसर उच्यते।। Ibid.
9. विद्या वितर्को विज्ञानं स्मृतिस्त्तपरता क्रिया। Ibid.
यस्यैते षर्गणास्तस्य न साधयमतिवर्तते।।
विद्या मतिः कर्मदृष्टिरभ्यासः सिद्धिराश्रयः।
वैद्यशब्दाभिनिष्पत्तावलमेकैकमप्यतः।।
यस्य त्वेते गुणाः सर्वे सन्ति विद्यादयः शुभाः।
स वैद्यशब्दं सभ्दूतमर्हन प्राणिसुखप्रदः।। Ibid.
9. मैत्री कारूण्यमार्तेषु शक्ये प्रीतिरूपेक्षणम्।
प्रतिस्थेतु भूतेषु वैद्यवृत्तिश्श्रतुर्विधोति।। Id. At 190.
10. अतो विपरौता रोगाणामभिसार हन्तारः प्रणानां, भिषक्छप्रतिच्छत्रः कण्टकभूता लोकस्या प्रतिरूपकसधर्माणों राज्ञां प्रमादाश्चरन्ति राष्टाणि। Id. at 589.
11. Article 25.
12. Article 12.
13. Article 12 (2) (d).
14. (1995) 3 S.C.C. 42
15. Ibid. See also S.L.A. Khan, "Right to Health", S.C.J. (1995); C. Manickam, et. at., "Right to Health and Access to Medical Treatment", AIR(J) 1997; S.V. Jpga Rao, Law on Public Health, S.C.J., 1989;
16. Indian Medical Council Act. 1956.
17. Ibid.
18. Id. at p. 551.
19. Medical Council of India, Code of Medical Ethics (Dr. Jagdish Singh, E. Vishwan Bhushan) given as Appendix I, "Medical Council of India's Code of Medical Ethics", in Dr. Jagdish Singh E.; E Vishwan. "Medical Negligence and Compensation".

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Doctor-Patient Relationship: A Socio-legal Analysis

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20. Id at p. 489. I
21. Ibid. I
22. Ibid.
23. Id. at p. 491.
24. Ibid.
25. Id. at p. 499.
26. Ibid.
27. Ibid.
28. Mohan Advani, Doctor patient relationship in Indian Hospital Sanghi Prakashan, Jaipur, sixth ed. (1980), p. 1.
29. Id. at p. 5.
30. Haisbury's Law of England, vol. 30, para 34, p. 31. See also, MC. Bijawat, "Medicine and Law with Special reference to Medical Negligence in India", B.L.J.; K.P. S Mahaiwar, Medical Negligence and the Law, Deep and Deep Publications, 1991;
31. Id. at para 37 p. 33.
32. Id. at para 37, p. 33. See also, Shukat Mi, Medical Science, Patient and the Law, B.L.J (1974); R. Crawford MoRris, et. al., Doctor and Patient and Law, CV. Mosby Company, 5th Ed.; V.S. Chauhan, Medical Negligence - a Judicial Response, AIR (1), 1993; Dr. Surendra Nath et.al. Aminocentsis: Socio Legal Response and Professional ethics, B.L.J., 199 1-92.
33. Id. at para 38 p. 34.See also, M.C. Bijawat, Hospital and Doctor Negligence, J.I.L.I. (1992), Vol. 34 : 2;
34. Waune M. Ozzi Jd. Survey of the law of Informed consent in Physician - Patient Relationship; Legal - Medicine - (1982) London, at p. 117.
35. Id at p. 121.
36. Sec. 13, Indian Contract Act, 1872.
37. Ram Jee, "Medico-Legal Aspect of Consent in the Doctor-patient Relationship". B.L.J. 1991-92, p. 123.
38. Id. Sec. 14.
39. Schloendorff v. Society of New York Hospital, 211 N.Y.; 125, 105, N.. 142 (1914); See also Wayne M. Ozze,on Survey of the Law of Informed consent in Physician-Patient Relationships, Legal Medicine 1982; Ram Jee; op. cit.
40. David R. Hannay, Lecture Note on Medical Sociology, (Oxford, London Blackwell Scientific Publication) p. 152 - 53.
41. Ibid.
42. Id. at 155.