

RIGHTS AS A PATIENT: PROTECTION AND REMEDY

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INTRODUCTION

As much as hospitals are places of expectation, another chance and recuperation, they can also give rise to severe anxiety and economic burden for many, especially in a country like India where most people, only during an emergency visit a hospital or a doctor. In these cases, where doctor's statement is considered to be final and his advice is considered to be the ultimate truth. Now in this situation, patients are obliged to follow so, but meanwhile, everyone must know their rights, especially patients, at every place.

Taking this into consideration, in the year 2018 in consultation with National Human Rights Commission(NHRC), the Ministry of Health and Family Welfare (MoFHW)published a Draft of the '*Charter of Patient Rights*' – a compilation of provisions of laws with judgements of the Hon'ble Courts. This charter was compiled to help patients to recognize their rights through a single easily available document.

ISSUE

The field of medicine is mostly hierarchical with medical professionals, specialists and doctors at the top rung and patients or victims at the receiving end. The procedure and medical technicalities involved in the medical field are least known to patients. Especially during a pandemic patient's rights were largely drawn on autonomy. For instance, during the COVID-19 pandemic, compulsory isolation is antithetical to the notion of informed consent. While restrictions like isolation and quarantine might be necessary for public health emergencies, other patient rights must continue to be respected. Even many hospitals have failed to provide treatment charges in writing, denying admission to persons in need of emergency health services, discriminated against class and been slapped with inflated bills and made to run from pillar to post hunting for beds.

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LAWS GOVERNING PATIENT'S RIGHT

A patient's right is a subdivision of basic needs i.e., Human rights. Whereas concepts of natural rights refer to the minimum standards for the ways persons shall expect to be treated by others. "Rights aren't rights if someone can take them away. They are privileges." George Carlin.¹ There are various laws in India as well as worldwide that mainly govern the rights of the patient.

INTERNATIONAL RIGHTS FOR PATIENT

There are various provisions in international laws which govern the patient's rights in the world and are mentioned under United Nations such as

1. Universal Declaration of Human Rights, 1948
2. World Health Organization

Universal Declaration of Human Rights

As per mentioned in Article 25(1) of the UDHR, "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control".²

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World Health Organization (WHO)

World Health Organisation states, "Health is a state of complete physical mental and social well-being and not merely the absence of disease or infirmity".³ The World Health Organisation further clarifies that the government is legally obligated to make sure easy and consistent access to "timely, acceptable, and affordable health care of appropriate quality as well as to provide for the underlying determinants of health, such as safe and potable water, sanitation, food, housing, health-related information and education, and gender equality" to every person. In India, these rights, which are natural corollaries to ensure and promote people's health, are safeguarded in the Indian legal system in various ways.

¹<https://www.ncbi.nlm.nih.gov/books/NBK538279/#:~:text=Patient%20rights%20are%20a%20subset,ways%20persons%20should%20treat%20others.>

²<https://www.ohchr.org/en/human-rights/universal-declaration/translations/english>

³<https://www.who.int/about/governance/constitution>

INDIAN LAWS GOVERNING PATIENT'S RIGHTS

In Indian law, the term 'Patient' is not defined. However, 'patient' involves everyone who seeks medical facilities from hospitals, medical professionals or doctors. There are various laws in India that deal with the rights of a patient that are mentioned in various official statements such as:

1. The Constitution of India
2. Indian Medical Council Act, 1956 (Professional Conduct, Etiquette and Ethics) Regulation, 2002
3. Charter of Patient Rights Act, 2018
4. Indian Penal Code, 1860
5. Code of Criminal Procedure, 1973
6. The Rights of Persons with Disability Act, 2016
7. The Mental Healthcare Act, 2017
8. Drug and Cosmetic Act, 1940
9. Consumer Protection Act, 1986
10. Clinical Establishment Act (Registration and Regulation), 2010

Constitution of India

If we look closely at the bare provisions of the Indian constitution, we'll conclude that fundamental rights directly do not incorporate the Right to health. But, the founding fathers or members of the constituent assembly had a long-lasting sight and thus, had foisted the responsibility on the government like Directive Principles of States Policies in the Constitution wherein the government must ensure the justice of economic, social and political to its citizen. As a consequence, a common conclusion is that the Directive Principles mentioned in the Constitution of India implicitly or explicitly relate to policies for public health welfare.

Indian Constitution in part IV mentions the duty of the Indian government to protect and secure social and economic stability for the advancement of public health welfare, protecting the health of workers and protect the health of infants and mothers, to provide public

assistance in specific situations like an old aged patient, poverty, disability and ill patients, etc.⁴

Justiciable Rights of Patient

For the very principal Part IV having no legal or binding value, most governments use this as a weapon to run away from their responsibility, liability and duty in protecting and providing the medical facility to ordinary citizens. As a result, the Supreme Court concluded the solution and brought the medical right within the preview of Article 21⁵ which ensures the right to life and personal liberty, thus, widening its scope, which now includes the right to healthy life as well. In the popular case of '*Pt. Parmanand Katara vs Union of India*', Article 21 of the Constitution of India cast an obligation on the government to protect life. It was held that "those who are indulged in the profession of medicine are in charge of public health and have an inherent obligation to protect the same so that those who are innocent can be protected and the guilty be punished".⁶

In the case of '*State of Punjab & Others vs Ram LubhayaBagga/1998*'⁷, while moving around the matter of the right to healthy life under Articles 21,41 and 47 of the Indian constitution, Hon'ble Supreme Court held that the right of a person correlates with the duty of another person. Hence Article 21 side by side imposes the responsibility on the government which is further strengthened by Article 47 of the constitution. This is relevant to state that the Supreme Court regarded the health of a person to be an invaluable, sacred and inviolable right under this case.

There are abundant case laws wherein the Hon'ble Courts had vigorously focused upon the issues of healthy life as a basic right and to make sure that the Indian government fulfils its responsibility and duty in ensuring rights, so entrusted, are duly assured to its people. From time to time the Hon'ble Courts has utilized the capacity under writ petition by interpretation of Article 21 as the right to health.

⁴ <https://legislative.gov.in/constitution-of-india/>

⁵ <https://main.sci.gov.in/jonew/judis/9643.pdf>

⁶ <https://indiankanoon.org/doc/498126/>

⁷ <https://indiankanoon.org/doc/1563564/>

Indian Medical Council Act, 1956 Regulation, 2002

Code of medical ethics Regulation, 2002⁸ along with IMCA laid stress and mentions various rights of patients such as:

1. Medical code of ethics: Medical professionals shall uphold the respect and privilege of their duty and profession with a prime objective of rendering service to humanity not with awards or economic gains, keeping it secondary. A physician must display the registration number in a clinic to facilitate the patient and should display his fees in the chamber.⁹
2. Duties of physicians to patients: In case of an emergency treatment a doctor shall give immediate treatment to the patient otherwise, may deny treatment and refer the patient to a specialist doctor. Personal information of the patient informed to the doctor and imperfections like patients detected during the medical examination shall never be disclosed to anyone unless their disclosure is mandated by laws. He shall not over-emphasize nor derogate the nature of a patient's condition.¹⁰
3. Duties of a physician to the public: A physician, engaged in the work of public health, shall be aware of the public concerning isolation rules and precautions for the preservation of communicable or epidemic diseases.¹¹
4. Unethical act and misconduct: Violation of codes of conduct, misconduct or unethical acts such as alcoholism, adultery, human rights violation and abortion without sufficient training shall be punished by publicizing the name in the publication of medical association as well as in local newspaper and to remove his name from the register.

Charter of Patient Rights Act, 2018

MoHFW plans to draft the 'Charter of Patients Rights' through state government for adequate health care to patients by the clinical establishment. National Human Rights Commission believes that rights mentioned in this charter will be an enacting document to secure, protect and encourage the promotion of basic rights of people, among the venerable sections of

⁸ <https://www.studocu.com/in/document/tamil-nadu-dr-mgr-medical-university/bsc-nursing/code-of-medical-ethics-regulations/30380537>

⁹ <https://wbconsumers.gov.in/writereaddata/ACT%20&%20RULES/Relevant%20Act%20&%20Rules/Medical%20Council%20of%20India%20%20Act.pdf>

¹⁰ <https://www.nmc.org.in/rules-regulations/code-of-medical-ethics-regulations-2002/>

¹¹ <https://rajswasthya.nic.in/ACT/The%20Indian%20Medical%20Council%20Act.pdf>

society such as common patients and ordinary citizens seeking facilities of health care across India as mentioned below:

1. **Right of Information:** Physicians are mandated to give sufficient details about the disease, diagnosis (provincial or confirmed) suggested examination and proper complication to the patient in a simple language, easy to understand by them. Apart from this patient has a right to know the qualifications and identity of the physician or medical specialist who is treating them.¹²
2. **Rights to reports and record:** The patient shall have the right to grant the official or Xerox of prescription or report of investigation and record of admitted patients within 24 hours of admission or 72 hours of discharge.
3. **Right to an immediate medical facility:** In an urgent situations, a patient has a right to avail themselves the medical facility in any hospital whether private or government, as discussed above in Article 21 of the Constitution of India that no one shall be deprived of his life, which now implicit the right to bring emergency medical care by a medical practitioner without compromising on the standard of care or safety of the patient and does not need to pay any amount in advance to the hospital¹³.
4. **Right of consent:** The doctor, while deciding to carry out surgery or investigation or chemotherapy treatment on the patient, they are mandated firstly to fulfil the required policy procedure. The medical practitioner has to inform and explain the risk, procedure and consequences of examination or surgery in a language easy to be understood a patient before providing the consent protocol form to him or his caretaker.¹⁴
5. **Right to privacy and human dignity:** If you watch TV shows about doctors or hospitals then this is a well-known right to you. The medical code of ethics restricts the medical practitioner to reveal personal details as well as information about the disease or investigation or treatment plan to anyone except the patient and their caretakers. Until it is mandated by law in special scenarios where revealing the information is “in the interest of protecting others or due to public health considerations” as mentioned by law.

¹² <https://main.mohfw.gov.in/sites/default/files/PatientCharterforcomments.pdf>

¹³ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3470621/>

¹⁴ https://www.nabh.co/Images/pdf/Patient_Charter-DMAI_NABH.pdf

If the male doctor is examining or treating any girl or woman, then she has the right to ask for the appearance of a female doctor. The responsibility and duty of upholding the privacy and dignity of every patient lies with the doctor.¹⁵

6. Right to nondiscrimination: Patient gets a right to be upheld without bias based on HIV status, disease, age factor, sex, colour, ethnicity or place of origin.
7. Right to quality care and safety as per standards: It is the right of a patient to get quality care standard treatment as mentioned under the *National Accreditation Board* for Hospitals like safety and security, clean drinking water, proper drainage facility clean environment, infection control measures, and attended and treated professionally with the principle of medical ethics.¹⁶
8. Right, to choose a second medical facility if available: It is the responsibility of the medical practitioner for clarifying all available medical facilities to the patient/caretakers. Patients or attended can choose the best treatment process or facility. The patient also has a right to choose another doctor or a hospital of his choice by obtaining all the documents or relevant details related to his treatment from the primary doctor. It also signifies that the patient is responsible for all the consequences arising out of an alternative treatment.¹⁷
9. Right of rate transparency: Every hospital must have a display board mentioning the rates of medical procedures in official and local languages as well as have printed brochures as evidence of the written account of the cost patients has to bear for their treatment.
10. Discharge right and to receive dead body: “A patient has the right to be discharged and cannot be detained in a hospital, on procedural grounds such as [a] dispute in payment of hospital charges. Similarly, caretakers have the right to the dead body of a patient who had been treated in a hospital, and the dead body cannot be detailed on procedural grounds, including non-payment/dispute regarding payment of hospital charges against wishes of the caretakers,” says the MoHFW.¹⁸
11. Right to seek redressal and be heard: The right of a patient also includes the right to inform his complaint and can comment on the treatment and healthcare facility they received from a medical practitioner or at the hospital.

¹⁵ <https://www.thebetterindia.com/158829/patient-right-hospital-law/>

¹⁶ <https://advocatetamoy.com/2022/02/14/charter-of-patients-rights-and-responsibilities/>

¹⁷ <https://www.thebetterindia.com/158829/patient-right-hospital-law/>

¹⁸ <https://main.mohfw.gov.in/sites/default/files/PatientCharterforcomments.pdf>

The charter further adds, “Patients and caregivers have the right to seek redressal in case they are aggrieved, on account of infringement of any of the above-mentioned rights in this charter. This may be done by lodging a complaint with an official designated for this purpose by the hospital/healthcare provider and further with an official mechanism constituted by the government such as the Patients’ Rights Tribunal Forum or Clinical establishments’ regulatory authority as the case may be”.¹⁹

Indian Penal Code, 1860

As per the provision of the IPC, 1860, any act of commission or omission is not a crime unless it is accompanied by a mala fide intention. Most doctors treat the patient with their consent in good faith and hence most of the provisions of the Indian penal code are not applicable until and unless there is gross negligence or indiscretion.²⁰

There are various provisions like negligent or unlawful act done by a doctor which causes danger to life by spreading infection, promoting or selling adulterated drug, voluntarily with mala fide intention causing a woman with child to miscarry, involved in an act which deals with an act to prevent a child being born alive or cause it to die after birth, related to defamation by revealing personal or false information of the patient, shall be punished with imprisonment or with fine or with both depending upon the facts of the case.²¹

The main objective behind these provisions is to ensure the rights and safety of the patients as well as to prevent medical negligence in the case of *Martin F.D Souza vs Mohammad Ishfaq* 2019 SC, the bench of Justices Markandey Katju & R M Lodha ruled that “courts must first refer complaints of medical negligence to a competent doctor or a panel of experts in the field before issuing notice to the allegedly negligent doctor. This is necessary to avoid harassment of doctors who may not be ultimately found to be negligent. We further warn the police officials not to arrest or harass doctors unless the facts clearly come within the parameter laid down in *Jacob Mathew’s* case, otherwise, the policemen will themselves have to face legal action”.²²

¹⁹ <https://main.mohfw.gov.in/sites/default/files/PatientCharterforcomments.pdf>

²⁰ <https://www.ima-india.org/ima/archive-page-details.php?pid=207>

²¹ <https://www.indiacode.nic.in/bitstream/123456789/2263/1/A1860-45.pdf>

²² <https://indiankanoon.org/doc/1092676/>

Code of Criminal Procedure, 1973

In India, the procedure of medical investigation is framed to ease and with friendly gestures for victims. The rule of law is the ultimate law in India which is mandated to follow by the concerned authorities during a medical examination. The privacy of the victim shall be protected whatsoever the situation may be, as decided and interpreted by the Hon'ble Court in many cases to ensure the protection of the basic human and fundamental rights of the victim.²³

Such as is mentioned under Section 164 that the victim of rape has a right to a medical examination by a registered doctor or physician of any public or private hospital within twenty-four hours of knowing the information regarding the offense of crime. Section 124A (7) of CrPC prohibits the police and court to initiate a medical investigation without the consent of a victim.²⁴ POSCO Act provides that only a female doctor is allowed by law to perform a medical examination of a girl as her right is mentioned under section 27(2).²⁵

Rights of Persons with Disabilities Act, 2016

The main motive for enacting this law was to safeguard the rights and interests of persons who suffer from a disability. The act ensures the dignity and individuality of disabled persons, preventing them from discrimination, and called for an inclusive society. Chapter II of this act deals with the right of disabled persons such as the right to equality and protection against discrimination, the right to live in the community and the government's responsibility for protecting them from being forced into living in any specific arrangement and for ensuring assessable polling booths during voting.²⁶ Section 25 of the Act provides that the appropriate government should take the necessary steps to ensure that disabled people get access to free healthcare, particularly in rural areas. Disabled people must be given priority in treatment and should be provided with barrier-free access to all private healthcare organizations.²⁷

²³ <https://devgan.in/crpc/section/164/#>

²⁴ <https://www.advocatekhaj.com/library/bareacts/codeofcriminalprocedure/index.php?Title=Code%20of%20Criminal%20Procedure%20Act,%201973>

²⁵ <https://wcd.nic.in/sites/default/files/POCSO%20Act%2C%202012.pdf>

²⁶ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6482682/>

²⁷ <https://disabilityaffairs.gov.in/content/page/acts.php>

The Mental Healthcare Act, 2017

Chapter V of this act provides the rights of persons with mental illness such as the right to access mental health care and treatment from mental health care services run or funded by the appropriate government at affordable cost of good quality with easy access without any discrimination.²⁸ Persons below the poverty line with mental illness shall be entitled to mental health treatment and services free of any charge as well as has the right to ask for their treatment records. The state authority for mental health facilities shall regulate the lowest quality standards from time to time.²⁹

Consumer Protection Act, 1986

Every patient receiving health services in return for payment has been classified under the definition of this act. After the case of the Indian Medical Association vs VP Shantha, the Hon'ble Supreme Court in 1993 brought the profession of medical under section 2(1)(o) of the Consumer Protection Act.³⁰ Deferred and incorrect examination, inaccurate diagnosis, needless and improper surgery, malpractice involved in labour and childbirth and fallacious administering of anaesthesia are the different kinds of circumstances that bring medical practitioners under the preview of medical negligence.³¹ The patient has a right to demand compensation from the medical practitioner if because of his negligence patient has suffered any loss or injury.³²

GOVERNMENT SCHEMES ENSURING PATIENT RIGHTS

The government of India launched various health insurance schemes to ensure the rights of patients such as 'Pradhan Mantri Jan Arogya Yojana' (PMJAY) is a health care insurance scheme sponsored by the State which covers complicated treatments like cancer, skull surgery, knee replacement, etc. also covers post hospitalization expenses up to 15 days. 'Janani Shishu Suraksha Karyakaram' (JSSK) is an initiative by the Indian government to facilitate pregnant women by providing free and cashless services which also include normal deliveries and operational deliveries.

²⁸ <https://egazette.nic.in/WriteReadData/2017/175248.pdf>

²⁹ <https://mhca2017.com/index.php/act/chapter-v-rights-of-persons-with-mental-illness>

³⁰ <https://indiankanoon.org/doc/723973/>

³¹ <https://sundayguardianlive.com/legally-speaking/consumer-protection-act-health-medicine-hospitals>

³² <https://qps.nhsrindia.org/sites/default/files/2022-01/Medical%20Profession%20and%20the%20Consumer%20Protection%20Act%20%20%28460-466%29.pdf>

CONCLUSION

Patients have enormous rights and remedies provided by various national and international legal systems. Indian Government ensures to take every measure to protect a patient's rights by passing and amending various laws as well as launching appropriate health insurance schemes funded by the government to provide better medical care facilities. Patients' rights get more effective if they prompt behavioural changes among medical professionals and trigger a systematic difference in the functioning of medical establishments.

