



## Review Article

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### MEDICO-LEGAL DUTIES OF DOCTOR IN CASE OF SUSPECTED POISONING: A REVIEW

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#### ABSTRACT

The doctor attending the patient of poisoning has to fulfill his duties, first as medical professional then as a medico legal professional. While treating the patient of suspected poisoning, the role of doctor is not only to treat the patient but also to handle the legal formalities. In such cases, it is must to keep documentation record accurate and clear. In government hospitals, doctors have to inform all the cases of suspected poisoning to nearest police officer or magistrate while in private hospitals, doctors are bound to inform homicidal cases only. If case of suspected poisoning proves fatal, medical practitioner should never grant a death certificate but must communicate the facts of death to the nearest police officer for necessary investigations. This article highlights the legal aspects in poisoning cases which will help the doctor to do justice to the legal management of poisoning cases.

**Keywords:** Medico legal duties, Suspected poisoning, Medical Practitioner, IPC.

#### INTRODUCTION

Poison is a substance (solid, liquid or gaseous) which if introduced in the living body or brought into contact with any part thereof, will produce ill-health or death, by its constitutional or local effects or both.<sup>1</sup> A case of poisoning is defined as the overdose of drugs, medicaments and biological substances and/or a wrong substance given or taken in error.<sup>2</sup> World health organization (WHO) estimates more than 3 million cases of acute poisoning and 3 lakh death globally per year. The incidence of acute poisoning is rising in India as well as globally. Poisoning is a major unnatural death in developing countries, though the type of poison and the associated morbidity and mortality varies from one place to another. The epidemiology of poisoning usually changes in an area over a prolonged period of time.<sup>3</sup> Poisoning may be suicidal, homicidal or accidental. All the types of cases of poisoning are comparatively more common in India than in advanced countries because of ease with which poisons are available and the carelessness with which they are stored.<sup>4</sup> A medical practitioner must be very cautious in giving his opinion about poisoning. It is advisable to maintain a proper written record of his findings and treatment administered; this is useful to the doctor in the court as well.<sup>5</sup> The patient whether be an innocent person or be a criminal, liable to punishment under the laws of the society. It is the obligation of doctor to preserve life so that innocent may be protected and guilty may be punished. In cases of suspected poisoning, if such a person is brought for medical treatment, he should instantaneously be given medical aid to preserve life and thereafter the procedural criminal law should be allowed to operate in order to avoid negligent death. It is unethical to refuse a patient in emergency.<sup>6</sup> In suspicious cases of acute poisoning, the medical practitioner must try to find out the nature of suspected poison, so that he can at once administer the appropriate treatment and save the patient's life. It is advisable to maintain a proper written record of his findings and the treatment administered; this is useful to physician in court as

well.<sup>7</sup> This article is meant to bring medico legal awareness among the doctor irrespective of system of medicine (Allopath, AYUSH etc.) treating the poisoning cases and there by assist the legal investigations.

#### Review of literature

Both suicidal and homicidal cases of poisoning are more common in India than in the western countries, owing to the facility with which poison can be obtained from any market (in spite of restrictions that have been brought about for their sale). Accidental poisoning is increasing now days because of greater use of chemicals for industrial and domestic purposes. The injudicious use of loose filters and quack remedies which sometimes contain poisonous drugs, also account for fair number of cases in India. Accidental cases of bites by venomous snakes are frequent in India.<sup>8</sup>

#### Medico legal Duties of Doctor in case of Suspected Poisoning

Medico legal duties of doctor in case of suspected poisoning are as follows:

#### Records of preliminary data, history and examination

- All the preliminary data should be recorded, including name, age, sex, address, brought by, brought from, brought at (time), date, place and time of examination, consent of the patient or guardian (if minor or unconscious), marks of identification etc.
- The details of nature of the poison, time of consumption, time of onset of manifestations, nature of vomits, any typical smell, any treatment received, history of drug hypersensitivity and motive of poisoning should be recorded.

- In general examination level of consciousness, behavior of the patient, temperature, pulse, blood pressure, respiration, condition of skin-whether sweating, color- if cyanosis present, condition of pupil, breath smell, vomit's stains on clothes. And in systemic examination details of all systems should be noted.<sup>9</sup>

### Diagnosis and treatment

In suspicious case of acute poisoning, the medical practitioner must try to find out the nature of suspected poison, so that he can at once administer the appropriate treatment and save the patient's life. In case where he suspects slow poisoning by the administration of small doses at varying interval, he should make a very careful note of all symptoms exhibited by the patient.<sup>10</sup>

### Collection of materials for chemical analysis

In every case of suspected poisoning a medical practitioner where in private practice or in government service, must preserve all the evidences such as vomited matter, stomach wash, blood, samples of urine and feces passed in his presence likely to contain poison. Also suspected articles of food drink or medicine must be preserved. All these preserved evidences should be kept in separate wide – mouthed glass bottles or jars with tightly fitting glass stoppers. These bottles or jars should be properly labeled and sealed with name of the patient, the material preserved and the date of examination and should be kept under strict lock and key in his own custody until required for transmission to the chemical examiner for chemical analysis.

A medical practitioner must also preserve any other circumstantial evidence of the suspected poisoning, like a bottle, cup or tumbler in which the poison is suspected to have been mixed before administration, a mortar and pestle with which the poison might have been powdered or a piece of paper used for dispensing and wrapping the poison. If he fails in his duty in this connection, he may render himself liable to be charged with the disappearance of evidence under section 201 of the Indian Penal Code. It must however be proved that a medical practitioner did it with the intention of screening the accused otherwise; it is merely an error of judgment for which he cannot be held responsible.<sup>11</sup>

### Removal of the patient to hospital

It is always advisable to call in one or two colleagues in consultation to have the patient removed to a hospital, where the doctor in charge should be informed of the suspicion so that he would not allow anyone except the hospital nurses to administer medicine and nourishment. If patient cannot be removed to a hospital and if he can afford the expenses, two trained and trustworthy nurses must be employed to take charge of the patient in his house and also the preparation and administration of food and medicine for the day and the night will be a safeguard against further administration of poison. If that arrangement is not possible, the only alternative left for the medical practitioner is to take some close relatives or friends in his confidence and inform them of his suspicion. The patient may also be warned against the danger, if he happens to be an adult and in full possession of his senses.<sup>12</sup>

### Information to authority

- A medical officer in charge of government (public) hospital is required to report to police, all cases of suspected poisoning admitted into hospital, whether accidental, suicidal or homicidal.

- If a medical practitioner in private practice is convinced that the patient upon whom he is attending is suffering from homicidal poisoning, he is bound under Sec. 39 of the Code of Criminal Procedure, to communicate the fact to the nearest police officer or magistrate. Non-compliance is punishable under sec 176 of Indian Penal Code. He is not liable for giving notice, if the case has already been reported to the police by the village headman, village watchman or any other officer required under the law to give such information under section 40 of the Code of Criminal Procedure.
- A private medical practitioner is not bound to supply information of his own accord to the police or the magistrate, if he is sure that his patient is suffering from suicidal poisoning, since sec 309 of Indian Penal Code which refers to the offence of an attempt to commit suicide, is not included in the section of Indian Penal Code for which information has to be given under sec 39 of the Code of Criminal Procedure.
- A medical practitioner is however bound to divulge all the information regarding the case that has come to his notice, if he is summoned by investigating police officer to give such information under sec 175 of the Code of Criminal Procedure. If medical practitioner conceals any information, he is liable to be prosecuted under sec 202 of the Indian Penal Code. If he gives false information, then he is liable to be charged with the offence of giving false information under sec 193 of the Indian Penal Code.
- If there is any indication of danger to the general public, as for example, for food poisoning, public eating house or contamination of public drinking water, the doctor must notify the public health authorities at once.
- If the doctor is convinced that homicidal poisoning has occurred, he has a duty to protect society; he must inform the nearest police officer or magistrate (Sec. 44 of Criminal Procedure Code). He should take every precaution to prevent the possibility of further administration of the poison to the patient.<sup>13,14</sup>

### Laws related with poisons and poisoning

A doctor – unlike general public is in a unique position with access to evidentiary material related to a crime. A crime is committed in all manners of poisoning suicidal (sec 309 IPC), homicidal (sec302 IPC) and accidental (sec284 IPC). The doctor has evidentiary material proving or disproving the commission of these crimes (clinical history, examination, vomit stained clothes, feces, pieces of left-over tablets, half empty bottle of poison, gastric lavage fluid etc.). If the doctor does not inform the police in any of these cases he may be sued under sec 176 IPC (Omission to give notice or information to public servant by person legally bound to give it – punishment 6 months and / or Rs.1000 fine), under sec 201 IPC (causing disappearance of evidence of offence-punishment variable according to type of offence shielded) and under sec 202IPC (intentional omission to give information of offence by person bound to inform- punishment 6 months and / or fine).<sup>15</sup>

Sections, 176, 193, 201, 202, 284, 299, 300, 304A, 309, 320, 324, 326, and 328 Indian Penal Code and section 39, 40 and 175, CrPC deal with offences relating to administration of poisonous substances. Section 272 to 276, Indian Penal Code deal with adulterated food and drugs.<sup>16</sup>

### Regarding dying declaration and death certificate

If poisoned patient is conscious but on the verge of death, record a dying declaration relating to the circumstances. It is preferable to call a magistrate for this purpose, but if death appears imminent

or if there is likelihood of delay in the arrival of the magistrate, the attending doctor must himself record the declaration as per section 32, clause 1, of the Indian Evidence Act (IEA). Even when a declaration taken down by the magistrate, the presence of doctor is desirable to clarify that the dying victim is in possession of his senses and there is no clouding of judgment or coherence which is sometimes encountered in the final moments before death. If a patient dies before the exact diagnosis could be made out or he was brought dead to the hospital, the duty doctor must notify the police who will in all probability order an autopsy to be done. In such cases, death certificate must not be issued.<sup>17</sup>

## DISCUSSION

In day-to-day life, doctor routinely comes across the suspected cases of poisoning, whether he is a private practitioner or a government medical officer. The foremost duty of the doctor is to treat the patient and also to perform legal duties. The treatment should be given on specific lines when the nature of the poison is known, and it should be given on general line in case of unknown poison. As the legal duty is concerned, the doctor must have the detail records of the case, collect the poison sample, inform police, magistrate or public health authority where necessary, conduct dying declaration and autopsy according to the situation and produce himself or herself as expert witness whenever asked or summoned by the police or court. Any opinion about the nature of poison can be given only after report from the forensic science laboratory.

## CONCLUSION

Prime duty of doctor is to save the life of patient. But while performing his clinical duties doctor must not forget his medico legal duties. By knowing his/her medico legal duties doctor become legally safe. Also, he/she plays a major role in the society by helping judicial system for giving justice in suspected poisoning cases which may be homicidal, suicidal or accidental.

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