

# The Innocent Doctors and Medicolegal Aspects



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## Abstract

The innocent person is free from fault or guilt, and free from sin. A doctor is a person who is highly skilled, sharply trained and has a specialized knowledge to restore the things to their healthy state.

The word 'Innocent' and the 'Doctor' are separate words with different meanings. Rather both are antonyms. Innocent is a person, free from guilt or sin especially through lack of knowledge of evil either due to ignorance or inability, while the doctor is a learned or authoritative teacher who has special knowledge to adapt or modify for a desired end by alteration or special treatment.

Doctor is not just a common man for the eyes of others. He is supposed to be not less than a superhuman. He is believed to be a person with extraordinary powers like-

1. A super healer having no personal life
2. A sleepless person
3. Unfatigued machine running round the clock, a Carnot engine, no thirst no appetite, 100% efficiency
4. A good counsellor
5. A good person with deep sociality
6. A good listener
7. A good advisor
8. High profile businessman
9. Skilled lawyer, medicolegal expert
10. Most liable person for numerous NOCs, licenses, and taxes as well as several others.

## Keywords

Innocent doctor, Medicolegal, IPC, Indian Penal Codes, Victim, Alleged, Punishment, Law

## The innocent Doctor

To understand definition of an innocent doctor, we must review those of innocent and doctor separately.

### Definition of innocent

- 1- Free from legal guilt or fault
- 2- Lawful and a wholly innocent transaction
- 3- Free from guilt or sin especially through lack of knowledge of evil
- 4- Harmless in effect or intention

- 5- A blameless person, a person who does not deserve to be harmed
- 6- Being hurt or killed in a crime, war, etc. although not involved in it in any way



#### Definition of Doctor

- 1- A person skilled or specializing in healing arts
- 2- A person who restores, repairs, or fine-tunes the things
- 3- A person having highest academic degree from a university
- 4- A person who holds an advanced degree and is licensed to practice

An innocent doctor is a lawful person, free from sin, who has been specially as well as skillfully trained to adapt or modify for a desired goal by alteration or special treatment and awarded with the highest degree from a recognized university, having a mission to serve suffering humanity without any intention to do harm to others.



## Duties of a doctor

1. Duty to care
2. Duty to promote and protect the patient's health
3. Duty to confidentiality
4. Duty to protect patient's life
5. Duty to respect the patient's autonomy
6. Duty to protect privacy
7. Duty to protect the patient's dignity

## Moral rights of the patients

1. Right to high quality medical service
2. Right to autonomous choice
3. Right to decide
4. Right to be informed
5. Right to privacy
6. Right to health education
7. Right to dignity

## Relation of Doctor and patient under consumer protection act

1. Doctor-patient relationship is a contract of personal service
2. Doctor is an independent contractor and the doctor like the servant is hired to perform a specific task
3. Master or principal (the hirer) is allowed to direct only what is to be done, and when. The how is left up to the specific discretion of the independent contractor (doctor)

## Different Avatars of a doctor

Doctor is supposed to act in several entirely different roles in society. Some of them may be-

### Doctor as a common person

A doctor is an ordinary humankind as others are. He has his personal life, family, relations, and social empire.



He has liabilities towards them also. The known to him and the relatives often expect certain favors from the doctor. During the busiest day, they long for extra time, special attention, tress passings the queue, and the so-called discounts or free consultations amongst a general mob. Whenever the doctor fails to deal with them as per expectations, the dissatisfaction and annoyance of these so-called close ones pours upon him leaving him alone with self-condemn and sadness.

### Doctor as a healer

During the life-threatening conditions, too much is expected from doctors. They are believed to be the life saver and even considered second to God. Sometimes, expectations are beyond the capacity of a humankind. Doctors are not superhumans. They are just a scientific healer. There are several limitations, and failures are not infrequent. Every doctor tries his best to heal the patient but whenever he fails in giving results up to the expectations of the patient or attendants, he is blamed evilest.



### Doctor as a legally accountable person

Professional indemnity and medical negligence also bloom on the face of a doctor. During his most careful, most attentive, and most empathetic course of treatment, largely due to human errors, sometimes, mis happenings do occur. Despite his wonderful skills, rarely, some mistakes may lead him to be a legally accountable person. Consumer protection act may be charged upon him and very often, an emotional favor to the patients becomes a curse to the doctor.



### Criminal Liability

A person who commits a wrongful act, shall be liable for it. The crimes are public wrongs and aim of criminal proceeding is to punish the wrong doer. The law imposes liability on him who fails to perform duty. The wrongful act may be

1. Intentional or willful wrong this usually doesn't apply in medical practice as no doctor has intention to cause harm to his patient
2. Negligent act – the doctor fails to take proper care, precaution and is just indifferent to the consequences of his act. Lack of skill proportional to risk undertaken also amounts to negligence
3. Wrongs of strict liability created by some special statutes like transplantation of human organ act (1994)

### Doctor as a lawyer

During his studies in medical institute, the subjects called as Medical Jurisprudence, Forensic medicine and Toxicology are taught in depth. In this curriculum, he becomes acquainted with various laws, IPCs, postmortem and forensic analysis. He is supposed to be a medico-legal expert. He gives his expert opinions in court of law whenever needed.



### Doctor as a victim

A doctor can cure a plentiful patient, then lose one patient because of silly human error. Doctors are not robots and when they are struggling to save this many people. Even the most talented humans in the world are still only the human. So, they lose one patient by simply human errors. Doctors are sleep-deprived, malnourished, and scared while indulged in saving lives of several people in need. They know that they are not living the healthiest lifestyle right now, but they are opting to go to work every single day and fight for the lives of others at the cost of their lives and families.

Although patients are the first and obvious victims of medical mistakes, doctors are mutilated by the same errors, and they become the second victims. Doctors often struggle mentally, physically, economically as well as socially after a medical error has occurred, this phenomenon is called the second victim.



### Some acts, licenses, and NOCs applicable on doctors

1. Arms Act, 1959 for securities
2. Atal Ayushman Yojna
3. Atomic energy regulatory body approvals (For radiology dept.)
4. Boilers Act, 1923 for autoclaves
5. CGHS
6. Clinical Establishments Registration and Regulation Act, 2010
7. Dentist Regulations, 1976
8. Director Index Numbers (DIN NO)
9. Drugs & Cosmetics Act, 1940
10. ECHS (For army persons)
11. Electricity Act, 1998
12. Drinking water permit and connections
13. Environment Protection Act, 1986
14. ESI Act, 1948 (For contract employees)
15. Fatal Accidents Act 1855
16. FSSAI Kitchen License for canteen
17. GST (Goods and Services Tax)



18. Guardians and Wards Act, 1890
19. Indian Lunacy Act, 1912 (For Psychiatry dept.)
20. Indian Medical Council (IMC) Regulations 2002
21. Indian Nursing Council Act 1947
22. Indian Trademark Act, 1999
23. Insecticides Act, 1968
24. Land and construction permit
25. License for the blood bank
26. License from local Municipal board
27. License to practice by State council
28. License to practice in India by concerned medical council
29. License under Bio-Medical Management and Handling Rules, 1998
30. Maternity Benefit Act, 1961
31. Minimum wages act, 1948 (For contract employees)
32. MTP Act, 1971
33. NABH
34. NABL
35. Narcotics and Psychotropic substances Act, 1985
36. National Health Authority
37. No objection certificate from the Chief Fire Officer
38. No objection certificate under Pollution Control Act
39. PAN
40. Pharmacy Act, 1948
41. PNDT Act, 1996
42. Protection of Human Rights Act, 1993
43. Registration of Births and Deaths Act, 1969
44. Registration Under Companies Act 2013
45. Registration under Societies Registration Act, 2001
46. Regulations Building Permit and Licenses (From the Municipality)
47. Right to Information Act 2005
48. ROHINI (Registry of Hospitals in Network of Insurance)
49. SC and ST Act, 1989
50. Sewage system- STP and ETP
51. Software (for maintaining records and accounts)
52. TIN (For TDS of employees)
53. TPA (For cashless insurance services)
54. Transplantation of Human Organs Act 1994
55. Urban Land Act, 1976
56. Vehicle Registration for Ambulances and so many.

## The innocent doctor and Indian Panel Codes

### Sec. 90: Consent in Criminal Law

A valid consent must be given voluntarily, by an adult who is not of unsound mind. The consent must be given after reasonable understanding and without any misrepresentation or hiding of the facts. Thus, the consent should be an informed consent, preferably in writing and in presence of witnesses.

### Sec. 74: Non-Attendance

In obedience to summon from court- 6 months imprisonment.

Sec.175: Omission to produce the documents

That to public servant by person legally bound to produce it, 6 months' imprisonment.

Sec. 176: Failure to inform police whenever essential

Simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both

Sec. 177: Furnishing false information

Up to 6 months Imprisonment

Sec.179: Refusing to answer to public servant authorized to question

Up to 6 months imprisonment

Sec. 191- 194: Related to evidence

191. Giving false evidence

192: Fabricating false evidence

193: Punishment for false evidence- up to 7 years imprisonment

Sec. 194: Giving Or fabricating false evidence with intent to produce conviction of capital offences

Up to 10 years imprisonment

Sec. 197: Issuing or signing false certificate

Up to 7 years imprisonment

Sec. 201: Causing disappearance of evidence of offence or giving false information to screen offender

Up to 10 years imprisonment

Sec.202: Intentional omission to give information of offence

Up to 6 months imprisonment



Sec. 269-271: Related to spread of infectious disease and disobedience of a quarantine rule

269. Negligent act likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

270. Malignant act likely to spread infection of disease dangerous to life imprisonment of either description for a term which may extend to two years, or with fine, or with both.

271. Disobedience to quarantine rule imprisonment of either description for a term which may extend to six months, or with fine, or with both.

#### Sec. 272-273: Related to adulteration of food and drinks

272. To make such article noxious as food or drink, intending to sell it shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

273. Sale of noxious food or drink any article which has been rendered or has become noxious shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

#### Sec. 274-276: Related to adulteration of drugs

274. Adulteration of drugs- whoever adulterates any drug or medical preparation in such a manner as to lessen the efficacy or change the operation of such drug or medical preparation, or to make it noxious, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

275. Sale of adulterated drugs- shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

276. Sale of drug as a different drug or preparation- any drug or medical preparation, sold as a different drug or medical preparation, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

#### Sec. 304 A and 304 causing deaths by negligence

304 A. Causing death by negligence- punishment for culpable homicide not amounting to murder shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

304. Punishment for culpable homicide not amounting to murder- shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine

#### Sec. 306-309: Related with abetment of suicide

306. Abetment of suicide- if any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

307. Attempt to murder- any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if hurt is caused to any person by such act, the offender shall be liable to be punished.

#### Sec. 312-314: Related to causing miscarriage, abortion and hiding such facts

312. If miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. A woman who causes herself to miscarry, is within the meaning of this section.

313. Causing miscarriage without woman's consent shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

#### 314. Death caused by act done with intent to cause miscarriage

Shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

### Sec. 315-316: Deals with act to prevent child being born alive or to cause it to die after birth

315. If such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

316. Causing death of quick unborn child, would be guilty of culpable homicide, and shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

### Sec. 319-322: Related to causing hurt, grievous hurt, loss of vision, loss of hearing or disfigurement

319. Causing bodily pain, disease or infirmity to any person is said to cause hurt.

320. Grievous hurt- if there is permanent loss to organs or fractures.

321. Voluntarily causing hurt

322. Voluntarily causing grievous hurt

### Sec. 336-338: Deals with causing hurt by rash or negligent act

336. Act endangering life or personal safety of others, shall be punished with imprisonment of either description for a term which may extend to three months or with fine which may extend to two hundred and fifty rupees, or with both.

337. Causing hurt by act endangering life or personal safety of others shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

338. Causing grievous hurt by act endangering life or personal safety of others shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

### Sec. 340-342: Related to wrongful confinement

340. Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits.

341. Punishment for wrongful restraint- may be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

342. Punishment for wrongful confinement- may be punished with simple imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

### Sec. 491: Related to breach of contract

Breach of contract to attend on and supply wants of helpless person- may be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

### Sec. 499: Related to defamation

By words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, the culprit shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

## When to Inform Police

A doctor must inform the police in following circumstances-

1. Cases of suspected homicide
2. Cases of suicidal deaths
3. Unknown, unconscious patient

1. Death on operation table
2. Suspected unnatural death
3. Sudden, unexpected, violent, and unexplained death
4. Instant death after treatment or reaction of medicine
5. Married lady dying within seven years of marriage due to any reason

It is advisable to inform police in following circumstances-

1. Undiagnosed death within 24 hours of admission or specially if there is any suspicion
2. Any cases of poisoning
3. Accidental deaths
4. In cases of hospital deaths if-
5. Accidents not related to medical management like fall from staircase etc., though there is no legal obligation on doctor, it is advisable to inform the police
6. Unexpected or rare complications may occur sometimes, *e.g.*, a child may vomit, aspirate the content, and may die

It is advisable to suggest postmortem in the following circumstances-

1. Whenever death is sudden, unexpected, or unexplained
2. Accidental deaths which may be roadside, domestic, or industrial
3. When precise cause of death is needed for insurance claim purposes etc.
4. As a help to arrive at final diagnosis

## Arrest of a doctor

Doctors have no immunity against arrest like any other citizen of India for the various criminal acts as per the provisions of IPC or CPC of India. Illegal organ trading, unlawful sex determination etc. are non-bailable offenses. But the question is whether a doctor be arrested for-

1. Alleged medical negligence during day-to-day care of a patient
2. Unexplained hospital deaths like SIDS etc.
3. Postoperative complication or failure of operation
4. Not attending or refusing a patient (who was not already under his care) who becomes serious or dies
5. Not attending a case of roadside accident



If FIR is lodged by patient or relatives, then the police may arrest the doctor. Hence better approach in cases where the innocent doctor feels that the patients or relatives may create nuisance may be as follows-

1. The doctor should lodge a FIR that a particular incidence has happened in his hospital.
2. A crisis management committee may be formed at each Taluka or District level. The committee shall include doctors, social workers, legal personalities, politicians, press reporters etc. The committee members may meet the police officers and request them for complete investigation of the incidence and to avoid prosecution till the guilt is proved. The committee can also request the press reporters not to give unnecessary publicity to such cases.

### Some mandates for innocent doctors for their safety

1. Must inform police whenever necessary.
2. Must offer all possible co-operation to the police.
3. Provide copies of medical records to police, court or relatives whenever asked. Consent of patient may be taken while providing information to police.
4. Keep up with the legal procedures or provisions.
5. Have a valid informed consent for the treatment.
6. Preserve the documents, records specially in medico-legal, controversial, or complicated cases.
7. Contend for post-mortem examination if the cause of death cannot be discovered.
8. Include medical associations, medico-legal cells, voluntary organizations whenever legal problem arises.
9. Consult the lawyer before giving any reply.
10. Not to become anxious.
11. Not to manipulate or tamper with the documents.
12. Not to do unlawful or unethical acts.
13. Not to issue false or spurious certificates.
14. Not to neglect the treatment while completing legal formalities specially in serious or emergency.

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