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Jurisprudential Justification of Informed Consent in Medical Practice: A Critical Approach

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ABSTRACT

The concept of autonomy and decisional auto-determination of the person needing and requesting medical and /or surgical treatments tends to be reflected in the principle of informed consent, which is intended to ensure the legality of health aid. Over the past few years, this legal formula has expanded significantly in both space and importance in doctrinal approaches, legal interpretations and doctrinal elaboration influencing the daily activities of the medical profession. The topic of informed consent is still being researched, not only in terms of the theoretical profile, which has previously been established but also in terms of the murky practical and consequential component.

Keywords: *informed consent, medical practice, patient, standard*

I. INTRODUCTION

During their work, doctors frequently entire tools into patients' bodies, extract blood using needles and even amputate an entire limb. Except for three things: First, it is performed by a licenced medical professional; second, it is equally important that the patient has given consent; and third, it is done in a therapeutic relationship within a health care setting. All of this would be considered illegal, battery, and even homicide. Consent is, therefore, a must in the practice of medicine and not a choice. [2]

In addition to being required to defend any medical malpractice claim, consent is also required to avoid legal proceedings for assault or battery.[3] In the course of treating a patient, a doctor is required by law to counsel and inform.[4] The patient must be told the nature and aim of the medical operation in broad terms for their permission to be considered legitimate.

Consent in medical procedures shows the patient's welfare and respect for their wishes. The foundation for the idea of respect for people is regard for the patient's wants and welfare. The

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[2] Dr.Ishita Chatterjee, *Health Law*, 173 (Central Law Publications, Allahabad, 2019).
[3] Ibid.
[4] Ibid.

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foundation of consent is the respect for person principle, which is crucial for fostering confidence in the medical community and healthcare system. The issue of when consent is required is then brought up.[5] The doctor-patient connection is entirely consensual. A clinical worker must get the patient's agreement before examinations, treatments, or care of a competent adult. This is a process of active communication, education and establishing mutual respect and trust.[6]

Most bioethicists and legal theorists concur that informed permission from competent patients is ethically required, implying that they have adequately articulated the nature of informed consent.[7]

Some people disagree with this idea, claiming that law and ethics have not produced a satisfactory resolution or acceptable justification for informed consent.[8] Even while informed consent's significance from an ethical standpoint is evident, most practising practitioners are not only half-hearted about it.

In addition, it is not always evident to clinicians how to use informed consent at the bedside, even when they are dedicated to it. Many medical professionals doubt the need for informed consent in clinical settings as well as its underline presumptions, such as that " the most competent patients are ready, willing, and able to participate in medical decision making, as the proponents of informed consent say."[9]

Therefore, despite the assertions of attorneys and bioethicists that the right to informed consent is unquestionable, physicians continue to be not only persuaded but, more importantly, uncommitted to it. In addition, a sizable portion of medical professionals thinks that informed consent is a fallacy. The goal of informed consent is to provide patients who have traditionally been mute and helpless in the face of medical expertise and authority some measure of control.[10]

II. SIGNIFICANCE

A crucial part of medical operations is informed consent, which enables the patient or legal guardian to comprehend all aspects of the therapy being provided, weigh the risks and benefits, and provide agreement to the process.[11] This forges a link of trust between the patient and the

[5] Dr. Nandita Adhikari, *Law & Medicine*, 381 (Central Law Publications, Allahabad, 4th edn., 2015).
[6] Ibid.
[7] Dr.Ishita Chatterjee, *Health Law*, 174 (Central Law Publications, Allahabad, 2019).
[8] Ibid.
[9] Ibid.
[10] Dr. Nandita Adhikari, *Law & Medicine*, 382 (Central Law Publications, Allahabad, 4th edn., 2015).
[11] Source:https://www.dh-attorneys.com/blog/2021/april/the-importance-of-informed-patient-consent(last visited on 30.09.2022).

practitioner and can shield each from unanticipated consequences.

When a patient provides informed consent, he or she is indicating a willingness to accept some of the common risks associated with the procedure or therapy. The health care provider must still exercise reasonable care and good judgment and adhere to the industry's standards of practice. A healthcare professional cannot use informed consent as a reason to treat a patient carelessly.[12]

Any type of medical treatment requires open channels of communication, and the patient's informed consent guarantees that their decision is best based on a realistic comprehension of the factors involved.[13] The patient may file a lawsuit if, for any reason, informed consent for a certain surgery is either not granted and results in harm to the patient or if it is given but the medical professional is careless.

III. ISSUES

The state decides what constitutes an acceptable level of informed consent. They are as follows:

- Subjective standard

  What would this patient need to know and understand to make an informed decision?[14]

- Objective standard

  What would this patient need to know and understand to give their consent?

- Reasonable patient standard

  What would the typical patient need to know to participate in the choice knowledgeably?

- Reasonable medical standard

  What would an average doctor say about this procedure?[15]

Because it focuses on what the average patient would need to know to grasp the choice at hand, the reasonable patient standard is used by several jurisdictions. However, it is the provider's entire responsibility to choose the best strategy for certain circumstances.

The need for informed consent may be waived voluntary in some circumstances, such as when the patient is unconscious, when there is not enough time to gain consent or when there is a life-threatening emergency. Psychiatrist's assessment to ascertain competence may be requested if

[12] Ibid.
[13] Ibid.
[14] Source: https://www.ncbi.nlm.nih.gov/books/NBK430827(last visited on 29.09.2022).
[15] Ibid.

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the patient's capacity to make decisions is in doubt or ambiguous. If a patient cannot make decisions on their own but has not named a decision-maker, a dilemma may occur. The next legal surrogate decision maker, in this case, must be identified using the hierarchy of decision makers, which is established by the laws of each state. If this does not work, the court might have to appoint a guardian.

IV. LEGALITIES

Perhaps the only guiding all facets of today's healthcare provisions is consent. Additionally, it stands for the moral and legal manifestation of the fundamental right to autonomy and self-determination.[16] A medical professional will be held accountable both under tort and criminal law if the seeks to treat someone without their legitimate consent. A party that has suffered civil harm known as a tort, may seek restitution from the wrongdoer. Payment of compensation in civil cases incarceration would theult in criminal. The patient may first file a tort claim against the doctor for trespassing on someone's privacy. Alternatively, the medical expert can be held liable for carelessness. There is no battery if the other person has given their express or implied agreement to the contact. Unless there is a blatant disregard for the patient's bodily autonomy, such as if the patient's organs are removed without his consent, it is uncommon for a doctor to be charged with a criminal offence.

In tort law, using force against any human body without a good reason is illegal, regardless of the amount of force used. Under tort law, a doctor will be found guilty of treating a patient without getting their proper consent. Treatment consent may be explicitly given or assumed. A clinical diagnosis may be performed with the patient's permission if he enters the consultation room of his own free will. From a patient's general compliance with instructions given by a doctor during clinical diagnosis, consent may be inferred. An intimate examination of the patient, such as a vaginal examination, may be required during the clinical evaluation. The medical professional should ideally ask the patients for a spoken agreement before doing such an assessment. Furthermore, it is based on acquiring the patient's written agreement before doing any invasive examinations that require an incision or the collection of bodily fluid samples.

V. JURISPRUDENTIAL JUSTIFICATIONS

The primary deontological standard for the doctor-patient relationship is getting consent. From an ethical perspective, the idea of an individual's autonomy leads to consent based on the

[16] Source:https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2779959(last visited on 28.09.2022).

dignity of the human being.[17] Legally, permission is predicated on the well-known "noli me tangere" rule. In the course of its development, the idea of dignity translated as the status of people who held dominion, as the essential ground of science as the capacity of man to select his position within the cosmos or such as regard for the individual and opposition to the commercialisation of bodies.[18]

The patient's ability for free will, along with information about the diagnosis, the need for certain operations, the risks involved but also any available alternatives, are all factors in obtaining the patient's consent. On the other side, we can say that information is the guarantee of the right to make a decision relating to one's own body and existence. In order to obtain consent, information is a hybrid idea based on both the doctor's duty to disclose information and on the patient's desire to adhere to a certain course of treatment.

VI. CONCLUSION

As one can see, informed consent poses several issues in medical practice that actually represent the ongoing changes in the doctor-patient relationship. The latter's access to sources of medical data, the ability to connect with others who encountered comparable issues and, last but not least, an appeal to rights results from increased awareness of these rights. In this climate of human rights culture, the national and international tribunals are asked to examine medical ethics, stepping up the patient-doctor connection.

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[17] Source:https:// www.researchgate.net/publication/322828663(Last accessed on 01.10.2022)
[18] Ibid