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Topic- Professional Deviance: Doctors

**Sub-Topic- Causes of increased cases of professional deviance in the medical field,
Criminal malpractice in Medical profession, Deviances/malpractices which are commonly
committed by the person belonging to medical profession include, Cases of medical
deviance in India**

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Professional Deviance: Doctors

The medical profession is one of the oldest professions of the world and is the most humanitarian one. There is no better service than to serve the suffering, wounded and the sick. Inherent in the concept of any profession is a code of conduct, containing the basic ethics that underline the moral values that govern the professional practice and is aimed at upholding its dignity. The medical Ethics underpins the values at the heart of the practitioner-client relationship. In the recent times, professionals are developing a tendency to forget that the self-regulation which is at the heart of their profession is a privilege and not a right and the profession obtains this privilege in return for an implicit contract with society to provide good, competent and accountable service to the public. It must always be kept in mind that a Doctor is a noble profession and the aim must be to serve the humanity, otherwise, the dignified profession will lose its true worth.

Doctors are also human beings having their own needs of life. They are considered as white-collar personality without any defect and expected to have morals, ethics and professionalism while treating their patients. But as a human being to fulfill the never-ending demands, some doctors get involved in unethical practice in their profession leading to white collar crimes. Like other professions, medical profession could also offer lucrative opportunities for the criminal acts and

unethical practices, which is the main cause for loss of faith over this profession. Crime in medical profession enhances day by day which is essentially an outcome of competitive economy.

Causes of increased cases of professional deviance in the medical field

Increased industrialization, urbanization, growing competitive tendency, greed and lack of morals, ethics and lack of vigorous punishment are some causes of any types of deviance. There are some additional causes for such deviances are as follows.

1. Majority of people in our country are poor and illiterate and economically backward. They blindly follow what the health professional advised to them due to the trust on the doctors. They do not have adequate knowledge so they become easy prey for exploitation by such professionals. Whereas educated people who are well aware of such illegal acts of these professional deviants, are helpless to fight against such practices based on money, flattery and opportunism.

2. Increased professional deviance due to strong back up of corrupt politician, who always support them to perform their illegal activities. In return such deviant professionals finance politicians at the time of election or help them in any illegal acts.

3. Changing tendency of people to accumulate wealth by all means, when they find acute shortage of jobs and other opportunities for their children, as there is no guarantee from the State to provide livelihood.

Criminal malpractice in Medical profession

1. Medical examination of a female patient: Medical examination of a female patient without her consent amounts to criminal malpractice. The treating doctor should obtain the consent of the female patient or her guardian for her medical examination. A male medical practitioner should always examine a female patient in the presence of another female (Section 18 of the Workmen's Compensation Rules, 1924).

2. Performing a professional duty under the influence of drugs or an intoxicant amount to an act of criminal malpractice. eg. A registered homeopathic practitioner prescribed the administration of a dose of stramonium to be taken with a leaf of "Dhatura". On consumption of which the patient died. Since 'Dhatura' leaf is a poisonous substance which does not constitute a part of Homeopathic medicine, its prescription without thoroughly studying its effect was held as rash and negligent act punishable under Section 304 – A of I.P.C.

Deviances/malpractices which are commonly committed by the person belonging to medical profession include

1. Submitting false post mortem reports, prepared by the examiner doctor to shield criminals and murderer.
2. Issuance of false Medical certificate.
3. Demanding and receiving commission from suppliers of medicines, other equipment and instruments to hospitals.
4. Selling of medicines, injections and X-ray films, etc. which are supplied to public hospitals to private shops by the doctors and associate staff.
5. Performing pre-natal sex-determination test, which is banned by Indian law and after confirmation about female fetus doctor help to abort and kill that female fetus.
6. Presenting false medical reports in rape cases and dowry deaths to save the criminals from hands of prosecution for money.

Cases of medical deviance in India

Jaggan Khan vs. State of MP 1965 SC 831, 1965 Cr. L J 163

A Kaviraj, who was not a qualified Surgeon, cut the internal piles of a patient by an ordinary knife resulting of which the patient died of profuse bleeding. The Kaviraj was convicted under Sec.304-A IPC for his rash and negligent act. He pleaded for the benefit of Sec. 88 of the IPC saying that what he did was in good

faith and he had obtained the consent of the patient and in the past he had performed several operations of same type. His plea was unacceptable to the court and he was held liable.

ParmanandaKatara Vs. Union of India, AIR 1989 SC 1039

Supreme Court gives a bold judgment that, it is the professional obligation of all doctors whether Government or private, to extend the medical aid to injured immediately to preserve the life without waiting legal formalities to be completed with the police under Criminal Procedure Code (CrPC). Article 21 of Indian Constitution, casts the obligation of those who are in charge of the health community and preserve life so that the innocent may be protected and the guilty may be punished. The given judgment by S.C. is a very significant ruling of the Court. It is submitted that if this decision of the court is followed in its true spirit it would help in saving the lives of many citizens who die in accidents because no immediate medical aid is given by the doctors on the ground that they are not authorized to treat medico-legal cases. When all doctors of this country would follow the rulings of the court earnestly and devote their profession for the services of patients and needy people of society that would become the true inspiration beyond the concept of professional ethics.

Sources

- N. V. Paranjape: Criminology, Penology Victimology, 2018
- Ahmad Siddiqui: Criminology & Penology, 2011
- Manoj Mahadeo Ramugade, Professional Deviance In Medical Field - A Time To Rethink, International Journal of Current Medical and Pharmaceutical Research, Vol. 3, Issue, 04, pp. 1648-1651, April, 2017
- <https://fdocuments.in/document/professional-deviance.html>
- <https://journalcmpr.com/sites/default/files/issue-files/0628-A-2017.pdf>

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