

MHA 402

LEGAL FRAMEWORK FOR HEALTHCARE-II

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INDIAN CONTRACT ACT



INTRODUCTION

- **INDIAN CONTRACT ACT, 1872** lays down principles and rules of –
 - formation,
 - performance and
 - enforceability of contracts



WHAT IS A CONTRACT

- As per section 2(h) of the Indian contract act a contract is **an agreement enforceable by law.**
- All agreements are not enforceable by law therefore all agreements are not contract but all contracts are agreements.
- **AN AGREEMENT** according to sec 2 (e) every promise and every set of promises forming the consideration for each other.

ESSENTIALS OF A CONTRACT

- ✓ Agreement
- ✓ Free & Genuine Consent
- ✓ Parties Competent to Contract
- ✓ Lawful Consideration
- ✓ Lawful Object
- ✓ Agreement not declared Void
- ✓ Certainty of Meaning
- ✓ Possibility of Performance
- ✓ Necessary Legal formalities



- **PRIVITY OF CONTRACT** – means that only those persons who are a party to the contract can enforce the same.
- **DISCHARGE OF CONTRACT** – it can be done in following ways
 - discharge by performance
 - by breach of contract
 - By impossibility of performance
- **BREACH OF CONTRACT** – when a party having a duty to perform fails to do that or refuses to perform the contract it is said to be a breach of contract by that party

REMEDIES FOR BREACH **OF A CONTRACT**

- **Damages** – in it the injured party recovers compensation for the losses suffered due to breach of contract
- **Quantum meruit** – when the injured party has performed a part of its obligation under the contract before the breach it is entitled to recover the value of what it has done.

INDIAN CONTRACT ACT **AND MEDICAL** **PROFESSION**



- **CONSENT :**

as per section 13 of the Indian contract act two or more persons are said to be in consent when they agree upon the same thing in same sense.

➤ In the contracts between doctors and patients the contract is never for cure of an ailment but for the treatment of ailment.

- **TYPES OF CONSENT:**

- **Implied Consent** - a consent which is not expressly granted by a person, but rather implicitly granted by a person's actions. When patient presents himself at the doctors chamber for the purpose of advice/treatment implies that he agrees to medical examination in a general sense.
- **Express Consent** - it is valid consent given in writing or orally. It is for non routine actions and for specific procedures such as venipuncture, injection etc.

- **Informed Consent** - The process by which a patient learns about and understands the purpose, benefits, and potential risks of a medical or surgical intervention and then agrees to receive the treatment .
- **Qualified Consent** – it is a written informed consent by the patient or the guardians prohibiting a specified additional or alternate procedure that might be necessary during the course of the procedure permitted by the patient or guardian.

- **CONSIDERATION** is the amount that the patient is required to pay to the doctor in return of the care and treatment provided.
- **LEGALITY OF CONSENT:**
 - if patient is minor
 - if patient is mentally ill
 - compulsion of threat and violence
 - Obtained fraudulently
 - Obtained for illegal/ unethical purpose

- **DISCHARGE OF CONTRACT :**

Most of the cases of breach of contract are the cases not of non performance but of negligent performance such as:

- **Wrong procedure**

- **Procedure done at wrong site**

- **Death attributable to surgeon's negligence**

- **Leaving object in the area of operation**

- **Death due to mismatches blood transfusion
etc...**

- **REMEDY FOR BREACH:**

- **Remedy in such cases are generally through recovery of damage in a civil court or in consumer court where patient must prove that the doctor or hospital is in the breach of contract by the way of negligence that has caused specific damage to the patient.**
- **If there is no damage there would be no case for compensation.**

THANK YOU...