

## Original Research Paper

# Physician's Perspectives about Consent in Medical Practice A Questionnaire Based Study

\*Sanjay Gupta, \*\*Ravi Panchal

### Abstract

It is a principle recognised not only by our own but by other legal systems that ignorance of the law is no excuse for violating it. Obtaining informed consent is act like a shield to protect a medical practitioner from litigation suits and claims and also help in maintaining autonomy of the patient. With this background, the study was aimed to assess knowledge and various other perspectives of medical fraternity regarding some aspects of consent. A cross sectional survey was conducted at Pramukhswami Medial College, Karamsad during the year 2009. Total 150 physicians in the institute were given questionnaire, asking for information about their knowledge & level of satisfaction. Out of which 117 physicians have responded. 68.42% physicians felt satisfied about their knowledge of consent in medical practice but 76.31% physicians responded that their knowledge about various aspects applicable to them is limited or nil. 54.39% physicians expressed that they knew validity of consent. 50% physicians were not clear what to do if relatives deny for giving consent in emergency situation. Medical practitioner should upgrade their knowledge regarding medical jurisprudence and legal medicine to avoid any litigation, by regular medicolegal training programmes.

**Key Words:** Consent; Physician; Knowledge; Satisfaction; Training Programme

### Introduction:

As per Section13 of Indian Contract Act, two or more persons are said to consent when they agree upon same thing in same sense. [1] The word 'consent' means voluntary agreement, compliance or permission. [2] According to section 90 of Indian Penal Code, a consent is not such a consent as is intended by any section of this code, if the consent is given by a person under fear of injury, or under misconception of fact, and if the person doing the act knows, or had reason to believe, that the consent was given in consequences of such fear or misconception; or If the consent is given by person who, from unsoundness of mind, or intoxication, is un able to understand the nature and consequences of that to which he gives consent; or unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age. [3]

It is clearly observed from the literature review that informed consent is a vital component of medical practice. [4]

Legal concepts of battery, self-determination, and the fiduciary relationship create a legal foundation for informed consent. The patient's moral right to self-determination and the corresponding duty of health professionals to "do no harm" create a strong moral basis for gaining a patient's informed consent. [5] The process of informed consent is one mechanism for protecting a patient's dignity in the health-care environment. [6] Now days, more and more patients are demanding detailed information about their disease, various diagnostic methods available and options available for treatment. Consent is not mere submission of the patient to a particular treatment, but a process of communication requiring the fulfilment of certain established elements like competence, sufficient disclosure, understanding and volunteering. [7]

Considering the above facts, the study was undertaken to know their perspectives (level of satisfaction & knowledge) about some aspects of consent in medical practice.

### Methodology:

A cross sectional survey was conducted at Shree Krishna Hospital and Pramukhswami Medial College, Karamsad during the year 2009. All physicians who possess degree MBBS and above were included for the study. Self designed, validated questionnaire Proforma which covered sets of questions and

### Corresponding Author:

\*Associate Professor,

\*\*Ex-tutor

Department of Forensic Medicine & Toxicology

Pramukhswami Medical College, Karamsad

Dist.: Anand- 388325

E- mail: drsanjaymdfm@yahoo.co.in

hypothetical situation, commonly seen in the medical practice is given for all participants to check their level of satisfaction and knowledge about consent in medical practice. Ethical clearance was obtained from Institutional Ethics Committee prior to the study. Total 150 Proforma were distributed among physicians of various specialities, out of which 114 responses were received within stipulated period.

The perception about consent from various levels of physicians including professor, associate professor, assistant professor, tutors, medical officers and residents were obtained. These physicians were belonging to various specialities of medicine including preclinical,

Para-clinical and clinical departments. Their implied consent was taken for the study. They were informed that this Proforma is the part of study and they are free to accept or deny completing it. They were asked not to disclose their name and Department. Various types of questions were kept to check their level of satisfaction, and their knowledge about consent in general, age for consent and role of consent in emergency situations. Received responses were checked and cross checked for subjective (level of satisfaction) and objective (level of knowledge) ailments. The results were tabulated and statistically analysed.

**Results:**

**Table 1: Response to the Question**

Trait	Response	Number	%
How satisfied are you with your knowledge about consent in medical practice?	Satisfied	78	68.42
	Not satisfied	36	31.58
	<b>Total</b>	<b>114</b>	<b>100</b>

**Table 2: Level of Knowledge**

Trait	Number	%
No knowledge	42	36.84
Limited knowledge	45	39.47
Most of things	20	17.55
All aspects	7	06.14
<b>Total</b>	<b>114</b>	<b>100</b>

**Table 3: General Aspects of Consent**

Sr. No.	Trait	Yes, (%)	No (%)	Total (%)
1	Do you know the various types of consent applicable in medical practice?	32(28.07%)	82(71.93%)	114(100%)
2	Do you that whose consent is valid?	62(54.39%)	52(45.61%)	114(100%)
3	Do you know some sections of Indian Penal Code applicable to consent in medical practice?	2(1.75%)	112(98.25%)	114(100%)

**Table 4: Response to Age for Consent**

Sr. No.	Trait	Disagree	Somewhat agree	Fully agree	Total
1	Only a person above 18 years of age with sound mind can give valid consent for general & physical examination?	17(14.91%)	25(21.93%)	72(63.16%)	114(100%)
2	A child above 12 years of age with sound mind can give valid consent for simple, general & physical examination?	50(43.86%)	30(26.32%)	34(29.82%)	114(100%)

**Table 5: Consent in Emergency Situation**

Sr. No.	Trait	Correct response	Incorrect response	Total
1	A male patient in unconscious state brought to emergency dept. t of a hospital with alleged history of vehicular accident. Surgeon felt need of craniotomy. In absence of relative or legal heir, what should he supposed to do?	107(93.86%)	7(06.14%)	114(100%)
2	An unconscious patient requires an emergency surgery but relatives/legal heir are not ready to give consent. What a physician should do?	57(50.00%)	57(50.00%)	114(100%)

**Discussion:**

It is depicted from the table 1 that about two third (68.42%) physicians have expressed that they are satisfied with their knowledge about consent in medical practice while one third (31.58%) felt unsatisfied. The reason for dissatisfaction may be that they are not keeping themselves updated with various aspects of consent in medical practice.

It is obvious from the table 2, as far as level of knowledge is concerned, less than one fourth (23.69%) physicians have responded that they know most of aspects (including 6.14% expressed all aspects) of consent applicable to

them in their practice. More than three fourth (76.31%) physicians have admitted that their knowledge about consent is either nil or limited. If we compare table 1 and 2, it can be said that most of physicians felt satisfied despite of having limited knowledge about the consent in medical practice. The reason may be their limited access to various medicolegal training programmes or it could be just lack of interest to learn medical jurisprudence. These questions were subjective and operational definitions of what these terminology mean were not clearly highlighted that was the limitation of the study. To overcome the ailment of subjectivity, authors

have mentioned various other aspects of consent applicable in medical practice in questionnaire proforma which were then asked to cross check their responses.

It is depicted from table 3 that responses to serial no.1 were quite alarming. 71.93% physicians responded that they do not know various types of consent applicable to them in medical practice. If we look at response to serial no.2, it was observed that only 54.39% physicians knew validity of consent. From this observation, it can be opined that 26.34% physicians were knew validity of consent without having knowledge of various types of consent applicable to medical practice. In another words, it can be say that a large number of physicians are practicing medicine without having knowledge and understanding of various aspects of consent applicable in their context. It is also observed from serial no.3 of table-3, 98.25% physicians were not aware about law applicable to consent.

The reason may be lack of realization to its importance in their context. Author felt that this is a serious concern which needs to be addressed. It is of paramount importance that all physicians must know the actual meaning of valid consent. The valid consent is one which is informed, given voluntarily without any fear or misconception in mind by a person who is eligible for it. The Supreme Court of India in a recent Judgment, Samira Kohli vs. Dr. Prabha Manchanda & ANR, Appeal (civil) 1949 of 2004 (SC) has elaborated various aspects of consent taking. It has further laid down certain guidelines for taking a real or valid consent. As such it is an attempt to stream line consent process in India. [8] It is observed from table 4 that many physicians are not having concept of age for consent. When we have checked the response to some hypothetical situation applicable in day to day practice, it was opinion of 63.16% physicians that only a person above 18 years is eligible for giving consent even for simple general & physical examination. These observations again raise doubt about their knowledge of valid consent. It can be clearly inferred from section 87-89 of Indian penal code that a child above 12 years of age can give consent for simple, general or physical examination which is not associated with any harm to his/her life. In cases where a procedure is associated with harm or may lead to grievous hurt or death, consent of a person above 18 years is mandatory if he or she is in position to give. [9-10]

It is depict from the table 5, two different emergency situations were given to them and it

was observed that most of physicians have right concept what to do in emergency situation if relatives or legal heir are not there to give consent but they were confused and their responses were 50-50 (only 50% responded correctly) if relatives deny for consent. It can be inferred from section 92 of Indian penal code that act done in good faith for benefit of a person without consent is not an offence if the circumstances are such that it is impossible for that person to signify consent, or if that person is incapable of giving consent, and has no guardian or other person in lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit. [11] So it is obvious that if relatives or legal heir are denying for consent in the situation where major patient is in unconscious state, it is not advisable to perform surgery against their refusal. As mentioned by Christian P Selinger that there are several legal exceptions to the right of consent concerning minor, patient with mental illness, patient suffering from communicable disease and incapacitated patient (as mentioned here in the present study). [12]

### Conclusion:

1. The study reflects that physicians are not equipped with their knowledge of consent in medical practice.
2. Physicians felt frequent need of arranging training programme/seminar by the subject expert to address issues related to consent and various other medicolegal aspects.
3. Medical practitioner should upgrade their Medico-legal knowledge to avoid any litigation in future.
4. Regular medicolegal training programmes are need of hour.

### References:

1. Section 13 of the Indian Contract Act, 1872.
2. **Reddy KSN**. The essentials of Forensic Medicine and Toxicology. 26<sup>th</sup> edition. Hyderabad: K Suguna Devi; 2007. P.41.
3. Section 90 of the Indian Penal Code, 1860
4. **Daljit Singh**. Informed vs. Valid Consent: Legislation and Responsibilities. Indian Journal of Neurotrauma (IJNT), Vol. 5, No. 2, 2008, Vol. 5, No. 2, pp. 105-108
5. **Purtilo RB**. Applying the Principles of Informed Consent to Patient Care: Legal and Ethical Considerations for Physical Therapy. Physical Therapy. 1984. 64( 6); 934-937
6. **Purtilo RB, Cassel CK**. Ethical Dimensions in the Health Professions. Philadelphia, PA, WB Saunders Co, 1981; pp 67-68.
7. **Bastia BK**. Consent to treatment: practice vis-à-vis principle. Indian Journal of Medical Ethics. 3(3): 2008:113-114
8. The Supreme Court of India in a recent Judgment Samira Kohli vs. Dr. Prabha Manchanda & ANR, Appeal (civil) 1949 of 2004 (SC), 2008.
9. Section 87 of the Indian Penal Code, 1860
10. Section 89 of the Indian Penal Code, 1860
11. Section 92 of the Indian Penal Code, 1860
12. **Christian P Selinger**. The right to consent: is it absolute. BMJP. 2009; 2(2);50-54