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ABSTRACT

Consent forms the ethical and legal cornerstone of medical practice, reflecting respect for patient autonomy and the right to self-determination. In the Indian context, consent in medical treatment is governed by a combination of statutory provisions, constitutional principles, ethical guidelines, and judicial interpretations. This article examines the concept of consent with particular emphasis on its types—implied, express, and informed consent—and the essential elements that render consent valid, namely capacity, voluntariness, adequate disclosure, and understanding. It also analyses the legal age and competence for consent, with special reference to paediatric patients, emergencies, and surrogate decision-making. Through discussion of landmark Indian and international case laws, the paper highlights how courts have shaped the evolving doctrine of informed consent and clarified the responsibilities of healthcare professionals. The challenges of implementing informed consent in routine clinical practice, including issues of communication, informed refusal, and professional negligence, are critically discussed. The article concludes by emphasizing that consent is a dynamic process rather than a one-time event, and that strengthening consent practices is essential for ethical medical care, patient protection, and medico-legal safety of practitioners in India.

KEYWORDS

Consent, informed consent, medical ethics, patient autonomy, medico-legal issues, Indian medical law, doctor–patient relationship

INTRODUCTION

Consent is perhaps the only principle that runs through all aspects of health care provisions today. It also represents the legal and ethical expression of the basic right to have one's autonomy and self-determination. If a medical practitioner attempts to treat a person without valid consent, then he will be liable under both tort and criminal law. In modern medical ethics, patient autonomy is considered a major principle in making decisions about an individual's health, and those who receive healthcare should have the right to practice their autonomy consciously and freely, healthcare providers, on the other hand, are obligated to respect this right and allow patients to practice their autonomy in the course of their treatment.[1] Consent to treatment is a very important area and every person has the right to have his bodily integrity protected against invasion by others and only rarely can this be compounded only during arrest. Hence, touching a patient without valid consent may constitute a civil or criminal offence.[2]

TYPES OF CONSENT

Depending upon the circumstances in each case consent may be implied, expressed or informed.[3] Implied consent means non-verbal consent suggested by the actions of the patient. In *Anamika Sharma v Chhattisgarh Hospital*,[4] it was expressed that where the patient was being given physiotherapy for a long time with frequent visits to the clinic, it was held that there was implied consent for the same. Anything other than the implied consent is considered as express consent. This may be either oral or written. Express oral consent is obtained for relatively minor examinations or therapeutic procedures, preferably in the presence of a disinterested third party. Express consent is to be obtained for:

- All major diagnostic procedures
- General anaesthesia
- For surgical operations
- Intimate examinations
- Examinations for determining age, potency and virginity and
- In medico-legal cases[5]

[1] Beauchamp TL, Childress JF. Principle of Biomedical Ethics, 5th Edition, Oxford University Press. 2001. Pp 59-104
[2] Dr. Gupta & Agrawal, Medical Jurisprudence & Toxicology, Premier Publishing Company, 2023. Pp 71
[3] Dr. Annu Bahl Mehra & Harshit Kiran, Laws on Medical Negligence and Legal Remedies, Whitesmann Publication Co., Delhi, 2022 Edition
[4] 2014 (2) CPJ 265 (NCDRC)
[5] Supra note 3, pp 81

So, when a patient comes to a doctor for treatment it implies that he is agreeable to general physical (not intimate) examination.[6] Whereas, express consent (verbal/written) is specifically stated by the patient. Therefore, express verbal consent may be obtained for relatively minor examinations or procedures, in the presence of a witness. But for express written consent, it must be obtained for all major diagnostic, anaesthetic and surgical procedures as it is the most undisputable form of consent.[7] Apart from the mentioned consent there is another type of consent known as informed consent. It means a voluntary agreement made by a well-advice and mentally competent patient to be treated or randomized into a research study.[8] All information must be explained in comprehensible non-medical terms preferably in local language about the:

- Diagnosis
- Nature of treatment
- Alternative methods of treatment
- Risks and benefits involved in both proposed and alternative procedures
- Prognosis if procedure is not performed
- The relative chances of success or failure of both procedures so that the patient has the option to accept or reject the treatment[9]

The three important components of informed consent are information, voluntariness and capacity.[10]

RULE OF CONSENT PROVISION IN INDIA

Since it is a fundamental principle of medical law and ethics that before treating a competent patient, a medical professional should get the patient's consent. Anyone who intentionally or recklessly touches another without that person's consent will generally commit both a tort and a crime. Health professionals administering medical treatment to a patient with capacity therefore need to obtain a valid consent. Failure to do so can give rise to an action for battery or negligence and can constitute a crime or assault.[11] The term consent has been defined under the

[6] G Sharma, V Tandon, PS Chandra, Legal Sanctity of Consent for Surgical Procedures in India. Indian J. Neurosurg. 2012: 1: 139-43
[7] NG. Rao, Textbook of Forensic Medicine and Toxicology, 2nd Edition, Jaypee Brothers Medical Publishers (p) Ltd, New Delhi, pp 23-44
[8] Taber's Cyclopaedia Medical Dictionary, 20th Edition, 2001
[9] Supra note 3, pp 81
[10] Ram Gopal Varshney v Lasor Sight India Pvt Ltd, 2009 (1) CPJ 23 (NCDRC); AK. Mittal (Dr) v Raj Kumar, 2009 CTJ 606 2009 (2) CPR 43: CPJ 1 60 (NCDRC)
[11] Supra note 3, pp 74

law of contract as 'when two or more persons agree upon the same thing in the same sense they are said to consent'.[12] For the purpose of medical treatment, giving consent means the granting of permission by the patient for another person to perform an act, for instance, permission for a surgical or therapeutic procedure or experiment to be performed by a physician, a nurse, dentist or other healthcare professional.[13] In the case of *C. Jayapal Reddy v G.S. Rao, Managing Director, Yashoda Group of Hospitals*,[14]it was held that consent is not a 'one-off' event of signatures on paper and not a submission of the patient to a particular treatment but rather a process of communication. It is then perceived as a proactive process empowering the patient to consciously decide on what she considers best. Thus, consent is a process of communication requiring the fulfilment of certain established elements, like competence, sufficient disclosure, understanding and volunteering.

UNDERLYING CONCEPT

In the ethical approach, decision-making capacity is a relative matter and by no means a black and white situation. A patient's decision-making capacity can only be assessed in light of his or her specific condition, including the nature and degree of potential risks.[15] In order to exercise patients' autonomy and preserve their integrity throughout a particular course of treatment, they need to possess the appropriate capability and decisional capacity.[16] Naturally, in circumstances where a paediatric patient lacks the capacity required to make a particular medical decision, it appears only logical to assign the parents the right to make medical decisions, as they are responsible for raising and maintaining their children and such responsibility entails the right to make decisions for them. On the other hand, parents' love for their children, the responsibility they feel for their sensitivity to their best interest, makes them the best surrogates for recognizing the paediatric patients' best interests.[17] One of the most important missions of medical ethics is to protect the rights of all individuals and ensure that they exercise autonomy within their intellectual ability and capacity.[18] It is well known that the

[12] Section 13 of Indian Contract Act, 1872
[13] Supra note 8
[14] 2014 (1) CPJ 271 (NCDRC)
[15] JS Kaushik, M Narang, N Agrawal, Informed consent in paediatric practice. Indian Paediatric 2010, 17 (47): 1039-46
[16] Aleriza Passapoor, Mohammad Baghar Passapoor, Nima Rizaei, Farida Asghari, Autonomy of Children and Adolescents in Consent to Treatment: Ethical, Jurisprudential and Legal Considerations, Iran J Paediatric, Vol 24 (No 3), June 2014
[17] Cummings CL, Mercurio MR, Ethics for the Paediatric: autonomy, beneficence and rights. Peadiatr Rev 2010: 31 (6): 252-5
[18] Supra note 16

patient must give valid consent to medical treatment, and it is his prerogative to refuse treatment even if it will save his or her life. No doubt this raises many ethical debates and falls at the heart of medical law today. The earliest expression of this fundamental principle, based on autonomy is found in the Nuremberg Code of 1947.[19] The Nuremberg Code was adopted immediately after the Worl War II in response to medical and experimental atrocities committed by the German Nazi regime. The Code makes it mandatory to obtain voluntary and informed consent of human subjects. Similarly, the Declaration of Helsinki adopted by the World Medical Association in 1964 emphasizes the importance of obtaining freely given informed consent for medical research by adequately informing the subjects of the aims, methods, anticipated benefits, potential hazards and discomforts that the study may entail.[20]

In India, the legal age for a minor to consent to medical treatment is 18. There are fixed guidelines outlining, the exact age of consent for medical or surgical treatment in India, 'majority' is achieved at the age of 18 years and considered a legal age for giving a valid consent for treatment as per Indian Majority Act, Guardian and Wards Act and Indian Contract Act.[21] A child below 12 years (minor) cannot give consent and parents/ guardian can consent for their medical/surgical procedures. However, a child between 12-18 years can give consent only for medical examination but not for any procedure. For children who are orphans or unknown or street children, the court is appointed as a guardian, and any procedure/treatment requires court permission. In case of emergency, when parents/guardians are not available to consent, a person of the child like principal or schoolteacher can consent for medical treatment (loco parentis). A legal age of 18 years has also been set to consent for termination of pregnancy[22] and donation of organs.[23]

In the landmark UK case of *Gillick v West Norfolk and Wisbech Area Health Authority*[24], the principle that a minor can consent to medical treatment if they possess sufficient understanding and intelligence to grasp the implication of the treatment has been laid down. This principle is influential in India also, particularly in

[19] The ten points of the Nuremberg Code 1947, retrieved from The New England Journal of Medicine. https://www.nejm.org, assessed on 18th Dec 2025.
[20] The World Medical Association (WMA). https://www.wma.net/policies-post/wma-declaration-of-helsinki/, assessed on 29th Nov 2025
[21] The Indian Majority Act 1878, The Guardians and Wards Act 1890 and The Indian Contract Act 1872
[22] The Medical Termination of Pregnancy (MTP) Act 1971
[23] Transplantation of Human Organ Act 1994
[24] (1985): AC 112

assessing the maturity of older adolescents. There are many case laws which has cleared the confusion regarding the very principle of consent in medical treatment. Likewise in the case of *Moss v Rishworth*[25], another US landmark case where the court held that there was no emergency which would excuse the need for parental consent, and the father could recover damages for the death of the child. Hence consent cannot be a defence in cases of professional negligence.

MAJOR ISSUES

The element of consent is indeed one of the critical issues in medical treatment. The patient has a legal right to autonomy and self-determination enshrined within Article 21 of the Indian Constitution.[26] A patient can refuse treatment except in an emergency situation where the doctor need not get consent for treatment.[27] Also, informed consent is a crucial element in medical treatment in India too, rooted in the patient's right to autonomy and self-determination. A valid consent requires the patient's voluntary agreement based on sufficient information about the treatment, its risk, benefits and alternatives. The doctor-patient relationship in India is governed more by trust where the doctor is the authoritative person. Therefore, the benefit of informed consent does not reach all patients in day-to-day medical practices.[28] Thus, informed consent is a communication process that is ethically required before initiation of any treatment or procedure. It provides relevant information regarding the diagnosis and treatment needs so that an educated decision can be made. This is required for all aspects of medical care including preventive, diagnostic and therapeutic measures, and research. Another important aspect is that consent is considered 'valid' or 'real' only when it is given voluntarily without coercion. Given by person with capacity and competence to give consent and his minimum level of adequate information about the nature of procedure to which he/she is consenting. The ethical basis for an informed consent is that it respects the autonomy of the individual and protects the patient from any form of physical or psychological harm, thus ensuring active participation of the individual in treatment intended to restore their health. It is also documented to protect the practitioner from claims associated

[25] 222 S.W.225 (Tex.1920)
[26] V.N. Shukla's Constitution of India, 13th Edition, Eastern Book Company, 2019.pp 226
[27] Omprakash V Nandimath, Consent and medical treatment: The legal paradigm in India; Indian Journal of Urology, July-Sept 2009
[28] Mathi Haran Karunakaran, Law on Consent and Confidentiality in India: A need for Clarity, The National Medical Journal of India, 2014.

with miscommunication[29]

For a more thorough understanding, informed consent is classified into two types. So, informed consent can be either general or specific. A general consent for treatment is obtained for physical examination, basic investigations and prescription of standard medications. Procedures and treatment considered a part of routine medical work up like administration of drugs or routine x-ray or blood investigations and intravenous cannulation do not require written consent.[30] On the other hand specific consent is required for any procedure or specific treatment involving a marginal risk to the patient including major diagnostic or therapeutic procedure and prescription of a potentially toxic medication. Blanket consent for all treatment procedures deemed essential by physician is unethical and is against the law.[31]

LEGAL IMPLICATIONS OF INFORMED CONSENT

Treating a patient without consent is a battery (trespass to person) under Indian law, actionable in both civil law (tort) for compensation (like negligence/ battery) and criminal law (BNS) attracts punishment under sections related to assault or criminal force. Therefore, patient can obtain redressed for their injuries resulting from treatment administered in absence of informed consent include criminal law, Medical Protection Act and Consumer Protection Law.[32] The doctor-patient relationship in India is considered a contract, often an implied one. And as per the Indian Contract Act, if one party to the contract is misled or has entered into it in a different sense to that in which it ought to have been understood, then it would not be construed as a valid contract.[33] Under the BNS, section 27 stipulates that an act done in good faith for benefit of a person under 12 years of age (minor) or unsound mind by consent, either express or implied, by the guardian or other person having lawful charge is not an offence by reason of any harm. The exception is not available if there is an intention to cause death or grievous hurt.[34] But this is not so in case of emergency. Thus, under situation where there are no guardians/ parents from whom it is possible to obtain consent

[29] Jaya Shankar Kaushik, Manish Narang and Nupur Agarwal, Informed Consent in Paediatric Practice, 2nd July 2025
[30] C.A. Mantour, Informed Consent Chest 2004; 125; 2367-2368
[31] A Jesani, About student research and blanket consent from patients, Ind J Med. Ethics 2009, 6(4): 216-8. Doi: 10.20529/IJME.2009.075.PMID:19839552
[32] Bharatiya Nyaya Sanhita 2023, Medical Council Act, 1956 and Consumer Protection Act 2019
[33] Avtar Singh, Contract & Specific Relief; 10th Edition, Eastern Book Company, pp176-177
[34] Bharatiya Nyaya Sanhita 2023, Taxmann's Bare Act 2024, pp 37

one can proceed to save the life of the child.

When the parents/guardians refuse to undergo the desired diagnostic procedure/treatment after a complete and comprehensive information has been provided by the physician, it is the duty of the physician to inform in a discreet professional manner of consequences of refusal, failing which the physician can be held liable in the court of law. The conflict of best interest standards for treatment of the child versus rational parent standard for the attitude of parents in matter of never-ending debate.[35] In the absence of an emergency it is generally agreed that parents have a right to refuse treatment. However, it remains unsettled as to what should a physician do when a part of medical treatment is refused. For instances, if the parents refuse for a lumbar puncture in a child with suspected meningitis, but consent to all other blood investigations and treatment. No court of law protect the physician from litigations if he denies treatment on such grounds. However, in children with life threatening illness or other serious or chronic medical condition, informed refusal can amount to 'medical neglect', which is included as a form of child maltreatment or child abuse in other countries.[36] However, Indian laws are silent on concept of informed refusal in treating a minor patient in life-threatening illness.

While a competent adult has the right to refuse life-saving treatment (informed refusal), for a child with a life threatening illness, the parents/guardians' decision is paramount but must align with the child's 'best interest,' often requiring court intervention if there's a significant conflict or ambiguity, especially regarding withdrawing life support, with courts prioritizing the child's life but respecting autonomy when appropriate, requiring thorough documentation by doctors, and involving seniors colleagues and hospital administration.[37] Informed refusal must be dealt by the physician with persuasion, education and removed of obstacles to expression of underlying values. Court intervention may be sought when parents refuse treatment which the health care professionals deem essential, however, post treatment rehabilitation needs to be offered to improve parent-child relationship.[38]

[35] Cooper R, Kock KA, Neonatal and Paediatric Critical Care: ethical decision-making Crit Care Clin 1996; 12; pp 149-164
[36] Sirotnak AP, Krugman RD, Child abuse and neglect' In: Hay WW, Levin MJ, Sondheimer JM, Deterding RR (eds) Current Paediatric Diagnosis and Treatment, 18th Edition. Philadelphia: Lange Publication, 2003, pp 219-224
[37] Balakrishnan S, Mani RK. The constitutional and legal provisions in Indian law for limiting life support. Indian J Crit Care Med. 2005;9;108-14
[38] Spinetta JJ, Masera G, Jankovic M, Oppenheim D, Martins AG, Arush MWB, et al. Valid informed consent and participative decision-making in

The law of 'Full Disclosure' could result in alarming a patient who is already apprehensive or who is an emotionally disturbed individual, and who may refuse the treatment when there is in reality little risk. The facts which a doctor must reveal depends on the normal practice in his community and on the circumstances of the case. The doctor must decide, after evaluating all aspects of the patients personally, physical and mental state, how much can be safely revealed. The doctor need not disclose risks of which he himself is unaware. A physician need not inform the patient of risks that a person of average intelligence would be aware of, or in an emergency. In general, the patient should ordinarily be told everything. It is only in the case of frank psychosis or extreme psychoneurosis that the individual will be incapable of accepting the information. The presence of a malignancy or an inevitable fatal lesion may be suppressed if the doctor feels the patient is not able to tolerate the knowledge.[39]

In the case of *Samira Kohli v Dr. Prabha Manchanda and Ans*,[40] it was stated that the doctor before performing any procedure must obtain patient's consent. Hence, no one can consent on behalf of a competent adult. And consent should be based on adequate information concerning the nature of the treatment procedure. If the possibility of a risk, including the risk of death, due to performance of a procedure on its refusal is remote or only theoretical, it need not be explained. Information imparted should enable the patient to make a balanced judgment as to whether he should submit himself to the particular treatment or not. In *Dr.TT Thomas v Smt. Elisa and Ors*,[41] it was observed that refusing treatment in life threatening situations due to non-availability of consent may hold the doctor guilty, unless there is a documented refusal to treatment by the patient. Here, the doctor was held guilty of negligence for not operating on a patient with life-threatening emergency condition, as there was no documented refusal to treatment. In *Dr. Janaki S. Kumar and Ans v Mrs. Sarafunnisa*,[42] in an allegation of performing sterilisation without consent, it was contended that consent was obtained during the course of anaesthesia could neither understand the risk involved nor could she give a valid consent. Consent should be procedure specific.

children with cancer and their parents: A report of the SIOP Working Committee on Psychosocial Issues in Paediatric Oncology. Med Paediatric Oncol 2003; 40:244-246

[39] Supra note 2, pp77

[40] AIR 2008 SC 1385

[41] AIR 1987 Ker 52: 1986 Ker LJ 1026 (DB)

[42] Appeal No. 850 of 1998 (1999) I CPJ 66

CONCLUSION

The consent in medical treatment is not a mere procedural formality but a foundational ethical and legal obligation that safeguards patient autonomy and bodily integrity. The Indian legal framework, supported by judicial pronouncements, clearly establishes that valid consent is a continuous process of communication requiring capacity, adequate disclosure, voluntariness, and understanding. Distinctions between implied, express, and informed consent underscore the need for context-specific application, particularly in high-risk procedures, research, and care involving minors. While emergencies justify limited departures from consent requirements, such exceptions must always align with the patient's best interests and be carefully documented. Persisting challenges in Indian healthcare—such as paternalistic practices, inadequate disclosure, and ambiguity in cases of informed refusal—highlight the need for greater awareness, training, and institutional support. Strengthening consent practices ultimately promotes ethical clinical decision-making, enhances trust in the doctor–patient relationship, and provides legal protection to healthcare professionals while upholding constitutional values of dignity and autonomy.