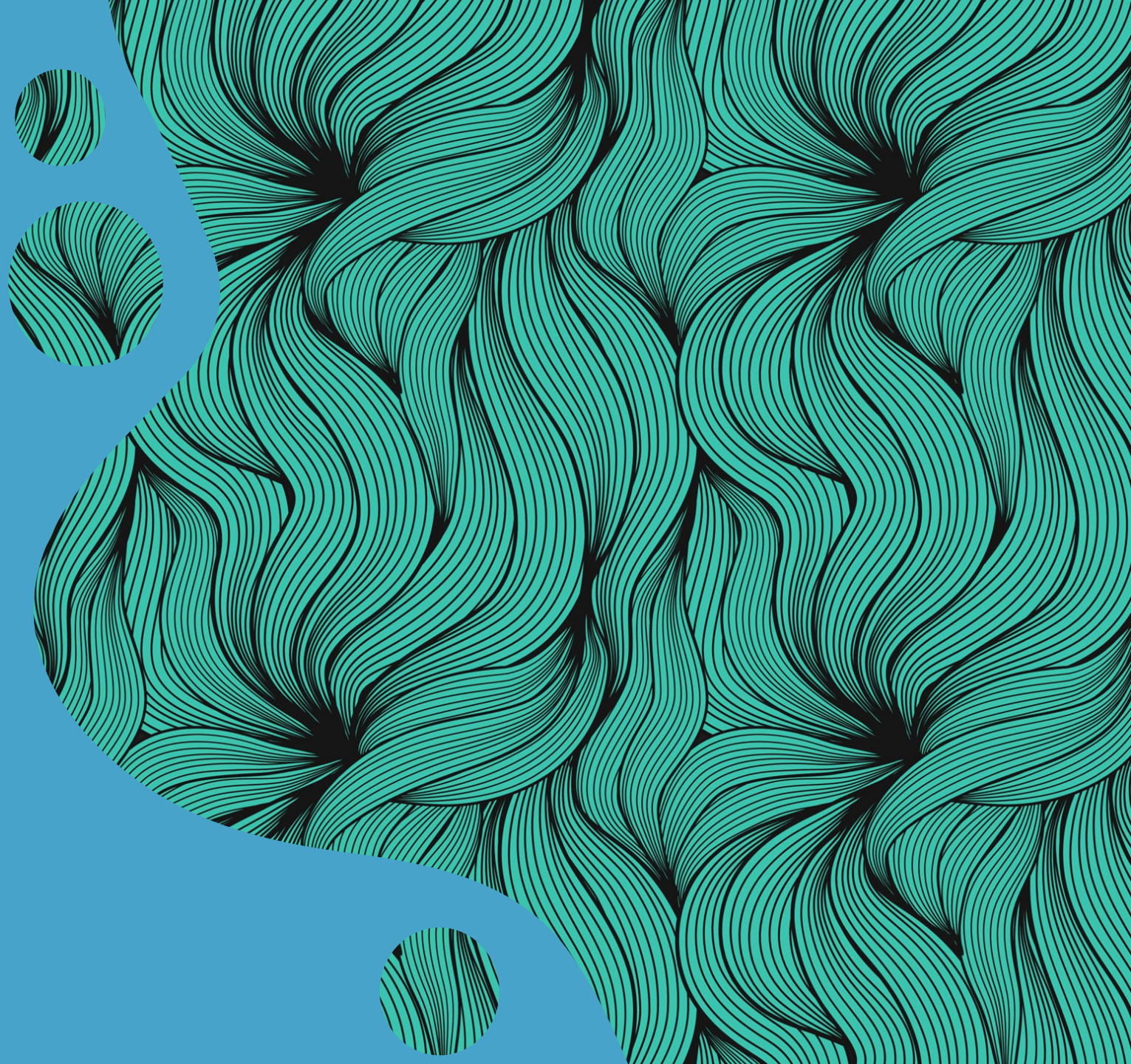
Medical Jurisprudence and Criminal Trial

An Overview



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Medical jurisprudence

Medical jurisprudence [Latin: juris - law; prudential - knowledge] is the study of legal principles that guide medical personnel.

Briefly: **Law (as applied to) ⇒ Medical personnel**

The branch of law that studies the relationship between medical facts and legal issues.

Medical jurisprudence is a very old discipline, but with the advancement of technology and the addition of changes to the legal system, this sector is continually evolving.

Doctors in most countries are required by law to certify

- individuals for workers' compensation or other national insurance plans,
- the occurrence of birth or the cause of death,
- to report any cases of specified infectious diseases to the authorities, and
- to determine when mentally disturbed individuals need to be detained to protect themselves or others.

The most common tasks of medical jurisprudence are these everyday activities.

The use of a doctor as a witness is less common, but perhaps more important.

When physicians appear in court to testify about what they have seen, they are subjected to the same restrictions that apply to other witnesses.

As the discipline evolved, the medical practitioner/doctor gained enormous authority thereby playing a critical role by providing expert opinions in cases.

With this authority, however, came enormous responsibility.

To mention a few, there is the doctor-patient relationship, medical negligence, ethical behaviours, and professional misconduct.

Historical perspective

Medical jurisprudence stretches back to 4000-3000 BC.

The data recorded can be studied from the Materia Medica Imhotep (around 2300 BC), the Egyptian ruler’s personal physician and chief judge, and is regarded as the first medico-legal specialist.

Indian perspective

While in India, the Charaka Samhita (about 7th century BC) contains necessary regulations for physicians regarding ethics, obligations, privileges, and other matters, other writings like the Manusmriti, Sushruta Samhita, Yajnavalkya Smriti and others were also important in preserving and regulating medical practice.

In medico-legal practice, an autopsy is regarded as the most significant instrument.

Dr. Edward Bulkley was the first to do a medico-legal autopsy in India in the 18th century.

When medicolegal jurisprudence was first introduced in India, it didn’t take long for it to spread in all directions. Calcutta received the country’s first medical school in 1822. This progression continued in the presidencies of Madras and Bombay.

Scientific procedures have evolved by a factor of ten in the previous few decades. The tests carried out and the findings produced were so accurate that they were used as evidence to prove or refute a defendant.

This expansion has resulted in the expansion and diversification of medical law into several small fields.

In forensic medicine, a medical specialty that aids in the identification of crime, law and medicine come together more harmoniously.

Forensic medical experts also help courts figure out what caused sudden and unexpected deaths.

In these circumstances, the primary inquiry conducted by a forensic professional is a postmortem examination of the corpse, which includes a thorough inspection of every organ and its contents, as well as microscopical study of some organs and chemicals along with DNA testing.

Forensic medicine includes dramatic tasks such as

- establishing the size and sex of a body by analysing just a few bones,
- identifying a corpse based on its dental pattern, and
- uncovering signs of rape or unsolved murder.

It also entails determining the timing of a person’s death or analysing the amount of alcohol in a motorist’s blood to determine the degree of impairment in judgment.

Most common medical jurisprudence cases that come up before the courts

- Injuries and wounds.
- Death as a result of poisoning.
- Cause of death and manner of death.
- Violent death.

Judicial decisions

The evolution of medical jurisprudence in the democratic land of India can be better understood by means of judicial decisions where the subject of medical jurisprudence has always been provided with a dignified position.

Ram Kala v. Emperor (1945)

The case of *Ram Kala v. Emperor* (1945) that appeared before the Allahabad High Court was one such early case where the Court had referred to Lyon's Medical Jurisprudence for India by Waddell to understand the 'signs of recent intercourse' in cases of rape.

Lyon states that if the vagina is covered with a uniform coating of smegma then recent intercourse is indicated.

Furthermore, according to Modi's Medical Jurisprudence, if the accused is not circumcised, the presence of smegma around the corona glandis, which is rubbed off during sexual intercourse, is proof against penetration. If the victim doesn't take a bath for twenty-four hours, the smegma will accumulate.

Even if there are certain flaws in the defence that are not precisely compatible with the accused’s innocence, the prosecution must nonetheless show his guilt beyond a reasonable doubt and in the present case, the prosecution had failed to achieve this goal. The Court held that the accused was not guilty under Section 376 of the Indian Penal Code, 1860 and was therefore acquitted.

Mulakh Raj Etc v. Satish Kumar and Others (1992)

The Supreme Court of India while deciding on the case of *Mulakh Raj Etc v. Satish Kumar and Others* (1992), relied on Taylor's Principles and Practice of Medical Jurisprudence to decide what asphyxia actually is and whether the death of the deceased victim was a result of the same.

In this case, all of the symptoms observed on the deceased's dead body indisputably revealed that her death was caused by pressure on the neck, and the doctor's findings during the post-mortem examination and his testimony were compatible with medical jurisprudence.

Hence, the respondent was charged under Section 302 of the Indian Penal Code, 1860.

Virender v. the State Of NCT of Delhi(2009)

The Delhi High Court while hearing the case of *Virender v. the State Of NCT of Delhi* (2009), referred to Parikh's Textbook of Medical Jurisprudence and Toxicology which describes 'sexual intercourse' as the tiniest degree of penile penetration of the vulva, with or without semen discharge.

As a result, it is quite conceivable to lawfully commit rape without causing any genital harm or leaving any seminal traces.

In light of the facts of the case and perspective provided by the aforementioned textbook, it was decided that the finding of guilt of the appellant for commission of the offence under Section 376 of the Indian Penal Code, 1860 was not sustainable.

Madan Lal v. State (2012)

In *Madan Lal v.* State (2012), the Rajasthan High Court was considering a rape incident of an adolescent girl, in which the hymen of the victim was not torn.

Because of the same, the Court had taken reference from medical jurisprudence along with the contentions of the parties to the case.

Medical jurisprudence provides that as the hymen is located more posteriorly in teenage females, rape can occur without the hymen being ripped.

On the other hand, if the hymen of an adolescent girl is torn as a result of rape, the penetration must be deep.

The Labia Majora are the first organs to be contacted by the male organ, and they are subjected to blunt powerful strikes, depending on the vigour and force employed by the accused and countered by the victim, with bruising visible to the human eye.

In the case at hand, it was evident that the medical evidence about the commission of rape was contradicting the prosecution's case, hence, the accused was acquitted of the offence under Section 376 of the Indian Penal Code, 1860.

The offence of committing assault to outrage the modesty of a woman was made out in this case and the accused was held guilty of offence punishable under Section 354 of the aforementioned Code.

Bharatbhai Mohanbhai Chavda v. State of Gujarat (2021)

The Gujarat High Court while deciding on the recent case of *Bharatbhai Mohanbhai Chavda v. State of Gujarat* (2021) had put its reliance on Modi's Medical Jurisprudence and Toxicology (26th Edition) in order to understand the meaning of the term 'strangulation'.

The Court had concluded that the deceased was murdered in her home by smothering and strangling, and an effort was made to remove her corpse by setting fire to it. After that, close relatives concocted a tale that she committed suicide by hanging herself.

The Hon'ble High Court had also observed that the Trial Court in the present case was correct in convicting the accused under Section 302 of the Indian Penal Code, 1860.

Indian laws that are being governed by principles of medical jurisprudence

Indian Penal Code, 1860 / Bhartiya Nyaya Sanhita, 2023

IPC Section	IPC content	BNS Section	BNS Content
29	Document definition	2	The scope of Section 29A IPC is broadened.
44	Injury definition	2(14)	No Significant change. Word “denotes” is replaced with “means”.
45	Life definition	2(17)	No Significant change. Word “denotes” is replaced with “means”.
46	Death definition	2(6)	No change
87	Act not intended and not known to be likely to cause death or grievous hurt, done by consent.	25	No change
90	Consent known to be given under fear or misconception.	28	No change
166 B	Punishment for non-treatment of victim of acid attack and sexual attack victims.	200	No change

IPC Section	IPC Heading	BNS Section	BNS Heading
177	Furnishing false information.	212	The upper limit of the fine has been increased from one thousand to five thousand rupees.
197	Issuing or signing false certificate.	234	No change
269	Negligent act likely to spread infection of disease dangerous to life.	271	No change
270	Malignant act likely to spread infection of disease dangerous to life.	272	No change
304 A	Causing death by negligence.	106 (1)	IPC section is included as subsection in BNS. Imprisonment is increased and offence by registered medical practitioner, and its explanation are added.
306	Abetment of suicide	108	No change

IPC Section	IPC Heading	BNS Section	BNS Heading
307	Attempt to murder	109	IPC, Sec. 307 (2)- death penalty only for an attempt to murder by a life convict. Alternate punishment in BNS Sec. 109(2) -"be punished with death or with imprisonment for life, which shall mean the remainder of that person's natural life".
308	Attempt to commit culpable homicide	110	No change
312	Causing miscarriage	88	No change
313	Causing miscarriage without woman's consent	89	In place of words "defined in last preceding section" previous section number is mentioned in BNS.
314	Death caused by act done with intent to cause miscarriage.	90	Heading of para-2 "if act done without woman's consent" is excluded. The words "Where the act referred to in sub-section (1)" are added.

IPC Section	IPC Heading	BNS Section	BNS Heading
319	Hurt	114	No change
320	Grievous hurt definition.	116	Suffering threshold period for grievous hurt is reduced from twenty days to fifteen days.
321	Voluntarily causing hurt.	115 (1)	No Change except IPC section is included as subsection in BNS.
322	Voluntarily causing grievous hurt punishment.	117 (1)	No change
323	Punishment for voluntarily causing hurt.	115 (2)	Fine increased from one thousand to ten thousand rupees.
324	Voluntarily causing hurt by dangerous weapons or means.	118 (1)	Fine limited to twenty thousand rupees.
325	Punishment for voluntarily causing grievous hurt.	117 (2)	No change
326	Voluntarily causing grievous hurt by dangerous weapons or means.	118 (2)	“imprisonment of either description for a term which shall not be less than one year” added.

IPC Section	IPC Heading	BNS Section	BNS Heading
328	Causing hurt by means of poison, etc., with intent to commit an offence.	123	No change
337	Where hurt is caused.	125 (a)	Fine is increased from five hundred to five thousand rupees.
338	Where grievous hurt is caused.	125 (b)	Imprisonment is increased from two years to three years and fine is increased from one thousand to ten thousand rupees.
351	Assault	130	No change
375	Rape definition	63	Age of Consent: 15 years is replaced by 18 years in BNS. Exception 2 of Section 63 states that “sexual intercourse or acts by a man with his wife, the wife not being under 18 years of age, is not rape”.
376	Punishment for rape	64	Almost No change Word “military” is replaced with “army”.

Code of Criminal Procedure, 1973 / Bhartiya Nagarik Suraksha Sanhita, 2023

CrPC Section	CrPC content	BNSS Section	BNSS Content
Section 53 (1)	Examination of accused by medical practitioner at the request of police officer.	51 (1)	”not below the rank of sub-inspector” excluded.
Section 53 (2)	Examination of female accused shall be made only by, or under the supervision of a female medical practitioner.	51 (2)	No change
Section 54	Examination of arrested person by medical practitioner.	53	One more examination can be done if it is necessary, in the opinion of the medical practitioner.
Section 174	Police to enquire and report on suicide etcetera..	194	“Forthwith” is replaced by “within twenty-four hours” for sending the report to DM and SDM. “Man” replaced by “person”.
Section 176	Inquiry by magistrate into cause of death.	196	“Judicial magistrate” replaced by “Magistrate”, and Metropolitan Magistrate is excluded.

Indian Evidence Act, 1872 / Bhartiya Sakshya Adhiniyam, 2023

IEA Section	IEA content	BSA Section	BSA Content
Section 45	Opinions of experts	39 (1)	Words “or any other field” are added. Thus, scope is expanded greatly.
Section 114 A	Presumption as to absence of consent in certain prosecution for rape.	120	IPC sections replaced by corresponding BNS sections.

Medical negligence

The idea that ignorance of the law is no excuse for breaking it, is acknowledged by both Indian and other legal systems. Every individual owes it to themselves to understand the parts of it that interest them.

A doctor, in particular, is definitely considered to know the law and is treated as if they do, because they can and should know it in general.

The medical profession varies from other vocations in terms of professional responsibility since it operates in areas where success cannot be guaranteed in every case and when success or failure is frequently dependent on elements outside a medical expert’s control.

The risks involved with medical practice have long been acknowledged by the courts.

Because the law presumes that a doctor always works in good faith for the well-being of his/her patient, Sections 26 to 30 of the Bhartiya Nyaya Sanhita, 2023 shield doctors from criminal culpability.

In a medical malpractice case, however, the idea of good faith plays a more difficult role. *"Nothing is claimed to be done or believed in 'good faith' which is done or believed without appropriate care and attention,"* according to Section 2 (11) of the aforementioned Code.

The Supreme Court of India reaffirmed its views in a medical malpractice case, ruling that *"the medical practitioner must bring to his duty a fair degree of ability and knowledge and must exercise a reasonable degree of care."*

The law does not demand the maximum level of care and competence, nor the lowest level of care and competence, as determined by the facts of each instance.

When a scenario arises that necessitates the application of a particular skill or competence, the test is the ordinary/reasonable skill that a man practising and purporting to have that special talent possesses.

The “duty of care” is viewed as the complementary principle that applies to medical professionals and healthcare providers.

When it comes to professional negligence, courts have always been quite mindful of medical practice.

A clinician has specific responsibilities to his or her patients.

A clinician has committed a negligent act if they do something that other clinicians of their standing, standard, and competence would not do, or if they fail to do something that other clinicians would undoubtedly do.

A medical expert is supposed to practice with proper care, dedication, and adoption of acknowledged standards of practice while respecting the autonomy of the patient.

A medical practitioner must also follow the copy of the Code of Medical Ethics statement issued by the National Medical Commission at the time of registration.

The Supreme Court of India set the legal basis for the duty of care as a binding ethical and constitutional concept in a ruling declaring the Code of Medical Ethics as the prevailing rule for the medical profession.

In a way, this gives medical ethics in India legal support, as in the National Medical Commission Act, 2019 and provides medical ethics with the backing of legal authority in India.

Jurisprudence of emergency medical care in India

In India in the 1980s, emergency medical care jurisprudence, which closely intersected ethical concerns, established the groundwork for the emergence of healthcare litigations.

In following litigations involving the medical profession and private and public healthcare providers, it provided a bridge for the courts to apply the right to a dignified life and the State's constitutional responsibility to save a life.

It also made it easier to write healthcare jurisprudence and declare healthcare to be a fundamental right.

The topic of emergency medical treatment, which frequently involves dealing with life and death circumstances, brings various overlapping concerns about health services, patient rights, and the state's and medical profession's responsibilities into sharp light.

The indignity caused by the refusal to treat critically ill patients, resulting in death, undue suffering, morbidity, and financial loss, has been challenged in courts on the basis of moral-ethical principles that are at the heart of the medical profession and the reason behind the healthcare system in a welfare state.

Bystanders do not come forward to aid the victims of such emergency situations because of the medico-legal nature of the cases and the fear of being harassed by the police and courts.

Following a PIL filed by the SaveLIFE Foundation in 2012, the Supreme Court of India made efforts in 2016 to enact new legislation relating to accidents and emergency treatment by requesting that the Central government draft guidelines for the protection of 'Good Samaritans' from police or other authorities.

In another key ruling [*Pt. Parmandand Katara v. Union of India and Ors* (1989)], the subject of safeguarding doctors from legal headaches in medico-legal matters so that they can offer prompt treatment to patients in need of emergency life-saving care has been addressed.

In the well-known case of *Paschim Banga Khet Mazdoor Samiti v. State of West Bengal*(1996), the victim, Hakim Sheikh, was an agricultural labourer who was a member of the Paschim Banga Khet Mazdoor Samiti, a labour organisation. He was denied admission to five public hospitals after falling off a moving train on his way to work. The patient was refused admission on the ground that there were no beds available.

The victim was finally admitted to a private hospital and forced to pay expensive fees for his care. Surprisingly, some 20 years after the *Paschim Banga Khet Mazdoor Samiti case*, the focus in "the Good Samaritan" discourse has changed from the healthcare system to the healthcare of individuals from a different social class.

This discourse has been pushed into the public imagination without any mention of emergency care accessibility and availability for the disadvantaged. It appears sufficient that such care is available, through medical insurance, to the upper-middle class, who continue to overlook its inaccessibility to the underprivileged.

A number of Public Interest Litigations aided in the development of personhood jurisprudence, affirming the priority of the right to life and dignity.

As a result, Article 21 of the Indian Constitution became the bedrock of social and civil-political rights, including health and healthcare.

The right to medical treatment for employees and civil rights litigation for the rights of people in jails and police custody are two of the many components of a large number of healthcare litigations.

Even though the number of lawsuits involving emergency medical treatment is less, they have shown systemic flaws in the field of life-saving care.

These include medical practitioners' insensitivity and personal/professional apathy, especially towards patients from socially disadvantaged groups, as well as delays or denials of care.

Medical care in police custody

People in state custody, such as those in police or judicial custody, as well as those in state-run asylums and prisons, are subjected to torture, ill-treatment, and abuse, as well as are denied access to necessary medical care.

In *Poonam Sharma v. Union of India,* the Delhi High Court reaffirmed police officers' and physicians' constitutional obligations to care for wounded people in medico-legal matters.

Article 32 of the Constitution, which establishes access to justice as a fundamental right, confirms the indisputable nature of the State's commitment.

Abridgement

- Both the medical and legal fields have profited greatly from the development of medical jurisprudence.
- A greater understanding and cooperation have evolved, allowing both disciplines to operate more smoothly.
- With the advancement of medical jurisprudence, formerly insoluble problems are now easily settled.
- It may be used to identify a child’s paternity as well as the identification of human remains that have been disfigured beyond recognition in incidents such as bomb blasts, factory explosions, and so on.
- It may be used to solve instances involving murder, rape, and other crimes in the subject of evidence laws. After a person has died, medical jurisprudence procedures like an autopsy can be used to uncover key information that is crucial to the case.

The heart of ethics, codified in the Code of Medical Ethics and strengthened by ethical jurisprudence, may revitalise ethics-compliant healthcare in India.

Streamlining ethics in the public and private healthcare systems would necessitate a number of policy measures, including a complete statute to institutionalise ethical principles for maintaining the right to healthcare.

Most significantly, medical practitioners would have to be steadfast in their efforts to resuscitate and restore the profession to its lofty ethical ideals of patient care and suffering reduction.

THANK YOU