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CHAPERONE IN INDIAN MEDICAL PRACTICE: LEGAL CORNER

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ABSTRACT

This paper examines the legal issues surrounding the institution of Chaperone in Indian medical practice. A chaperone is an individual present during intimate examinations to protect both the patient and the physician. There has been no acknowledgment of the chaperone in India. This concept and institution are foreign and unspecified in the Indian Medical Practice. Therefore, so far there have not been any guidelines, rules, regulations, or notification in respect of the use of chaperone. However, the role of a chaperone in the most basic sense is inevitable and often indirectly mandated by law in specific situation of the medical practice. While the use of chaperones is intended to enhance patient safety and prevent misconduct allegations; it also raises several legal considerations. This paper explores the legal framework governing the use of chaperones in India, including patient consent, confidentiality, liability, and professional regulations. Through an analysis of relevant laws, guidelines, and case law, this paper aims to provide insights into the complexities surrounding the role of chaperones in Indian medical practice and offers recommendations for addressing legal challenges.

Keywords: Chaperone, medical practice, legal issues, India, patient safety, professional regulations., etc.

WHAT IS A CHAPERONE?

A chaperone is a person who acts as a *witness* for a patient and a health professional during a medical examination or procedure [1]. A chaperone should stand in a location where he or she is able to assist as needed and observe the examination, therapy or procedure. The keyword for this definition is 'witness', this which pushes the requirement and necessity of this institution into the legal realm and the underlying tone is synonymous with the protection of both the patient and the doctor in case of an alleged malpractice or misconduct on part of either the doctor or the patient. The word 'witness' also pontificates to the need this institution as a safeguarding asset in case of dispute in the interaction between patient and the doctor.

Medical Defence Union (UK) explains -A chaperone is an impartial observer present during an intimate examination of a patient. They will usually be a health professional who is familiar with the procedures involved in the examination. The chaperone will usually be the same sex as the patient. Chaperone must be trained for the role and understand what is involved in the proposed examination [2].

Under the guidelines of Ministry of Health and Family Welfare responsibilities of a registered medical practitioner pertaining for medico-legal care [3], of a rape case survivor or sexual assault survivor is clearly mentioned as follows: The offences specially related to cases of sexual nature against women and children and marginalised groups have guidelines relating to

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intimate area examination. These guidelines/rules do not necessarily use the word "chaperone" but in essence mandates a specific person to take on the role of chaperone which in these cases is mandated to be a Female Registered Medical Practitioner (RMP) with considerable knowledge, experience and training. However, the need for clear guidelines to effectively use the said institution leaves much to be desired in the interest of the patient and patient-doctor relationship.

Indian medical practice requires clearer and more structured guideline. There is evidence of more clear guidance in western medical practice. But in India there is a lack of firm regulations, existing guidance or clarity of its use in practice. In the era of enhanced medical facility, medical tourism, patient care in hands of multiple providers, lack of continuity with same physician and digitalisation there is intense need to develop a simple and clear guideline. Indian doctors do encounter patients from different parts of the world, where a patient expectation could be different than that of the local residents. The subject and guidance should be discussed in medical training programs, CMEs, conferences and further implemented in the practice across the country. Ideally a chaperone must be medically trained.

Ideally a chaperone must be a competent Registered Medical Practitioner with extensive experience and medically training on the present issue.

LEGAL ISSUES AND CHALLENGES

There are several key challenges that may arise serious concerns and conflicts with the law on implementing the institution of chaperones in Indian medical practice. They key ones that may arise are identified below:

1. Patient Consent: While chaperones are intended to enhance patient safety and comfort during intimate examinations, obtaining valid consent for their presence is essential. Patients must be informed of the purpose of the chaperone and given the opportunity to refuse their presence if desired. However, ensuring that patients understand their rights and feel empowered to make informed decisions can be challenging, particularly in situations of vulnerability or power imbalance. Informed consent of the patient is often the key variable/deciding factor in the malpractice litigations so it is of prime importance that informed consent should be recorded in a presentable form in each interaction between patient and doctors.
2. Confidentiality: The presence of a chaperone during medical examinations raises concerns regarding patient confidentiality. Healthcare providers must ensure that chaperones maintain confidentiality and do not disclose sensitive information obtained during the examination. However, breaches of confidentiality may occur inadvertently or through misconduct, leading to legal repercussions for both the healthcare provider and the chaperone.
3. Liability: In cases where misconduct or malpractice occurs during a medical examination involving a chaperone, questions of liability may arise. Healthcare providers may be held accountable for any harm caused to patients, including violations of privacy, dignity, or professional standards. Chaperones may also face liability if they fail to fulfil their duties appropriately or engage in misconduct themselves.
4. Professional Regulations: Regulatory bodies such as the MCI and state medical councils play a crucial role in overseeing the conduct of healthcare providers and enforcing standards of practice. However, inconsistencies in regulatory guidelines or enforcement mechanisms may contribute to confusion or ambiguity regarding the use of chaperones in medical settings. Clear and consistent guidance is necessary to ensure compliance with professional regulations and promote patient safety.

CONSTITUTIONAL FRAMEWORK

The Constitution of India as the supreme law of the land provides a framework for governance and safeguarding fundamental rights. Several constitutional provisions are relevant to the discussion of chaperones in Indian medical practice, particularly those pertaining to the right to privacy, dignity, and equality before the law.

Some of the landmark judgments by the Supreme Court of India interpreting the fundamental rights relevant to the present discussion are as follows:

K.S. Puttaswamy v. Union of India [4]:

The Supreme Court recognized the right to privacy as a fundamental right under Article 21 of the Constitution and emphasized the importance of individual autonomy and dignity, particularly concerning personal choices related to bodily integrity and intimate matters. While the case primarily dealt with issues of privacy in the context of digital surveillance and data protection, its principles have broader implications for medical practice, including

the use of chaperones during intimate examinations.

State of Punjab v. Ram Lubhaya Bagga [5]

In this case, the Supreme Court emphasized the importance of *informed consent* in medical treatment. The Court held that medical professionals must obtain explicit consent from patients before conducting any medical examination or procedure. The judgment reiterated the principle of patient autonomy and highlighted the obligation of healthcare providers to respect patients' rights to make informed decisions about their treatment.

Vishakha and Others v. State of Rajasthan [6]:

In this landmark case, the Supreme Court of India laid down guidelines to address sexual harassment in the workplace, particularly in contexts where no legislation existed at the time. The Court held that sexual harassment violates the fundamental rights of women to equality and dignity under Articles 14, 15, and 21 of the Constitution. While the case primarily focused on workplace harassment, its principles are applicable to any setting, including medical practice. This Judgment emphasized the duty of employers to provide a safe working environment and highlighted the importance of preventive measures and redressal mechanisms to address instances of harassment promptly and effectively and the same is relevant in terms of the medical practice where patient-doctor interaction and doctor to doctor interaction forms a majority part of work which may have the possibility of such harassment.

Common Cause v. Union of India (2018) [7]*:*

The Supreme Court recognized the right to die with dignity as a fundamental aspect of the right to life and personal liberty under Article 21 of the Constitution. The Court legalized passive euthanasia and living wills, allowing individuals to refuse medical treatment or life support in certain circumstances and the same underscores the importance and need for respect of patients' choices, preferences, autonomy and dignity in medical decision-making.

State of Punjab v. Mohinder Singh Chawla [8]:

In this case, the Supreme Court emphasized the importance of the right to privacy in medical context. The Court held that medical examinations and treatment procedures must be conducted with due regard for the patient's privacy and dignity. The Judgment underscored the need for healthcare providers to respect the confidentiality of medical information and ensure that patients are treated with sensitivity and respect. While the case primarily addressed issues of medical negligence and compensation, its principles are applicable to the use of chaperones in safeguarding patient privacy during intimate examinations.

Suchita Srivastava v. Chandigarh Administration [9]:

Herein, the Supreme Court addressed the issue of forced medical examinations and upheld the right to privacy and bodily integrity of individuals. The Court ruled that subjecting women to mandatory gynaecological examinations without their consent violated their fundamental rights under Articles 21 and 14 and affirmed the principle that individuals have the right to control their bodies and make decisions regarding their medical treatment and procedures. This judgment is relevant in context that despite existence of a mandatory statutory provision for intimate examination such a provision would still be subject to the informed consent of the Patient.

State of Punjab v. Ramdev Singh [10]:

The Supreme Court reiterated the duty of healthcare providers to obtain valid consent from patients before performing medical procedures and held that consent must be informed, voluntary, and based on a clear understanding of the risks and benefits involved. The judgment emphasized the importance of respecting patients' autonomy and decision-making authority in matters related to their health and well-being. While the case primarily dealt with issues of medical negligence and compensation, its principles have implications for the use of chaperones in ensuring that patients are fully informed and empowered to make choices about their medical care.

Consumer Education and Research Centre v. Union of India [11]:

The constitutional framework, as elucidated by these landmark judgments, underscores the fundamental rights of individuals in the context of medical treatment. These rights include the right to privacy, bodily integrity, equality before the law, choice of refusal/acceptance of treatment and informed consent. Healthcare providers must adhere to these constitutional principles when considering the use of chaperones in medical practice. By recognizing and respecting patients' constitutional rights and through adherence to these principles' healthcare providers can ensure that their practices align with ethical and legal standards which will lead to the promotion of

patient-centred care and the protection of individual rights in the healthcare setting.

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LEGAL FRAMEWORK

The legal framework for the use of chaperone in intimate medical settings is based primarily on three types of statues:

A. Professional Conduct and Practice Guidelines, Notifications, Circulars issued by the Competent Authority or Government

1. Indian Medical Council (Professional Conduct, Etiquette, and Ethics) Regulations, 2002 [12]:

   These regulations serve as a cornerstone of ethical conduct for medical professionals in India. Section 6 of these regulations outlines the responsibilities of physicians towards their patients. It emphasizes the importance of maintaining patient privacy, dignity, and confidentiality during medical examinations. Specifically, Section 6.1 states that:

   "A physician shall uphold the dignity and honour of his profession" and "shall not disclose the secrets of a patient that have been learnt in the exercise of his / her profession."[13]

   Regarding the use of chaperones, Section 6.3 of the regulations emphasizes the obligation of physicians to respect the autonomy and dignity of patients during intimate examinations. It states:

   "The physician shall not use his / her professional position, official title or post to promote their own interest." [14]

   This provision underscores the importance of obtaining patient consent and ensuring that the presence of a chaperone is conducive to the patient's comfort and well-being.

2. National Medical Commission (NMC) Guidelines [15]: The NMC, established under the National Medical Commission Act, 2019 [16], is responsible for regulating medical education and practice in India. The NMC issues guidelines and regulations to ensure the ethical conduct of healthcare professionals and the protection of patients' rights. The following are key provisions from the NMC guidelines relevant to the use of chaperones in medical practice:

a. Patient Consent: The NMC emphasizes the importance of obtaining informed consent from patients before conducting any medical examination or procedure. Section 2.3.1 of the NMC Code of Ethics Regulations, 2002 [17], states that physicians must respect patients' autonomy and rights to make decisions about their healthcare. This includes explaining the purpose of a chaperone's presence during intimate examinations and obtaining the patient's consent for their participation.

b. Professional Conduct: The NMC mandates that healthcare providers adhere to high standards of professional conduct and ethics. Section 1.2.1 of the NMC Code of Ethics Regulations, 2002, requires physicians to maintain patient confidentiality and privacy at all times. This includes ensuring that chaperones respect the confidentiality of medical information obtained during examinations and do not disclose sensitive details without the patient's consent.

c. Accountability: The NMC holds healthcare providers accountable for their actions and behaviour in the delivery of medical care. Section 4.1.1 of the NMC Code of Ethics Regulations, 2002, states that physicians are responsible for the quality and safety of care provided to patients under their supervision. This includes ensuring that chaperones fulfil their duties appropriately and do not engage in any form of misconduct or negligence during examinations.

B. Statutory provisions governing the medical practice.

1. The Medical Termination of Pregnancy Act, 1971 [18]: The Medical Termination of Pregnancy Act, 1971, governs the procedures and requirements for terminating pregnancies in India. Section 3 of the Act stipulates the conditions under which a pregnancy may be terminated, including the

need for informed consent from the pregnant woman. In the context of chaperone use, Section 3 of the Medical Termination of Pregnancy Act underscores the principle of patient consent. Healthcare providers must ensure that patients are fully informed about the purpose of the chaperone's presence and have the opportunity to refuse or request an alternative arrangement if they so desire. This aligns with the principle of respecting patient autonomy and ensuring that medical care is provided in a manner consistent with the patient's wishes and preferences.

2. The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 [19]: The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013, addresses sexual harassment in various professional settings, including healthcare facilities. Section 3 of the Act defines sexual harassment and prohibits any form of unwelcome behaviour of a sexual nature that creates a hostile or offensive work environment.

   While the primary focus of this Act is on preventing sexual harassment in the workplace, its provisions have implications for the use of chaperones in medical practice. Healthcare providers must ensure that the presence of a chaperone is not perceived as intimidating or harassing by patients, particularly in sensitive medical examinations. Section 3 of the Act emphasizes the importance of maintaining a safe and respectful environment for all individuals in the workplace, including patients.

3. The Consumer Protection Act, 2019 [20] The Consumer Protection Act, 2019, aims to protect the rights of consumers and provide mechanisms for redressal in cases of deficiencies in services. Section 2 of the Act defines "consumer" broadly to include any person who avails or hires services for a consideration. In the context of medical practice, patients are considered consumers of healthcare services, and healthcare providers are service providers. Section 2 of the Consumer Protection Act establishes the legal relationship between patients and healthcare providers, highlighting the rights and responsibilities of both parties. This includes the expectation that healthcare providers will deliver services with due care, skill, and diligence, and that patients have the right to seek redressal for any deficiencies in the services provided.

C. Penal provisions in respect of breach of such guidelines or statutory provisions

   1. Indian Penal Code (IPC) [21]:

      The IPC contains provisions related to offenses against the person, including those that may arise in the context of medical practice. Relevant sections from the IPC that may apply to issues involving chaperones include:

      a. Section 354: This section deals with the offense of assault or criminal force to a woman with intent to outrage her modesty. If a chaperone engages in inappropriate behaviour or misconduct during a medical examination, they may be charged under this section.

      b. Section 375, 376, 376AB: These sections specifically deal with the victim of rape and the provision for penalty both in case of an adult female and a minor victim.

      c. Section 509: This section addresses the offense of word, gesture, or act intended to insult the modesty of a woman. If a chaperone makes derogatory or offensive remarks or gestures towards a patient during an examination, they may be liable under this provision.

   2. Code of Criminal Procedure (CrPC) [22]:

      The CrPC governs the procedure for the investigation and trial of criminal offenses in India. Relevant provisions from the CrPC that may apply to cases involving chaperones include:

      a. Section 154: This section deals with the procedure for the registration of a First Information Report (FIR) in cases of cognizable offenses. If a patient alleges misconduct or harassment by a chaperone, they may file an FIR with the police, triggering an investigation into the matter.

      b. Section 161: This section empowers the police to examine witnesses during the course of an investigation. If a patient or other witnesses provide statements regarding the conduct of a chaperone, their statements may be recorded by the police as part of the investigation process.

      c. Section 164A: This provision under the statute is mainly for how the medical examination if the victim of rape is to be conducted in prescribed manner and by

a Registered Medical Practitioner (RMP) with the consent of the victim and in the same procedure is followed for if the victim is a minor child under POCSO Act, 2012. The law here mandated that the RMP must be a female and if so, is not possible, then under the supervision of the Head of the institution.

4. Other Penal Laws:

   Apart from the IPC and CrPC, other penal laws may also be relevant to cases involving chaperones in medical practice. For example:

   a. Protection of Children from Sexual Offenses (POCSO) Act, 2012 [23]: This Act provides for the protection of children from sexual offenses and includes provisions related to sexual harassment and assault. If a chaperone engages in misconduct involving a minor patient, they may be prosecuted under the POCSO Act. This statute has stricter provisions for any misconduct and attempt as well.

      Incorporating provisions from the NMC guidelines, IPC, CrPC, and other penal laws into the legal framework surrounding chaperones in medical practice provides a comprehensive overview of the regulatory environment and potential legal consequences for misconduct or negligence involving chaperones. Healthcare providers must be aware of these legal provisions and ensure compliance with ethical standards and professional conduct guidelines to protect patient rights and prevent legal liability.

      Chaperone should be offered routinely before conducting an intimate examination. This applies to both female and male patients. Some patients may require a chaperone for other examinations too. For example, particularly vulnerable patients or those who have suffered abuse may need a chaperone for examinations where it is necessary to touch or be close to them. In these circumstances, a clinician should use their professional judgement about whether to offer a chaperone, depending on the patient's views and level of anxiety [2]

SOME RELEVANT FACTS FROM WESTERN MEDICAL PRACTICE

A chaperone provides a safeguard for both patient and doctor, and can discourage unfounded allegations of improper behaviour. In rare circumstances, the chaperone may also protect the doctor from physical attack [2].

Healthcare professional should note in the patient's records the details of the discussion about the presence of a chaperone. Where a chaperone is present, we advise members to document both the presence of a chaperone and their identity (name and full job title) in the records. If an accusation of improper behaviour is made several years later and there is no record of who acted as chaperone, it would be difficult to recall who witnessed the examination. For patients who refuse a chaperone, one should record that he/she offered a chaperone but the patient declined [2].

Patients have a right to refuse a chaperone. If Healthcare professional is unwilling to conduct an intimate examination without a chaperone, he/she should explain to the patient why he/she would prefer to have one present.

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It's advisable to publish a chaperone policy to define what happens when a patient refuses a chaperone or prefers a same-sex chaperone. This can help manage patients' expectations and encourage them to make their wishes known at an early stage [2]. The chaperone should leave the room following the examination and once the patient is dressed so the consultation can continue in private [2].

According to the United Kingdom's General Medical Council (GMC) guidance, doctors should offer the patient the option of a chaperone wherever possible before conducting an intimate examination, whether or not they are the same gender as the patient. The chaperone should usually be a trained health professional, although doctors should comply with 'a reasonable request' to have a family member or friend present as well as a chaperone. The chaperone should be sensitive and respect the patient's dignity and confidentiality, reassure the patient if they show signs of distress or discomfort, and be familiar with the procedure involved in a routine intimate examination [24].

The GMC's 'Intimate examinations and chaperones' (2024) highlights some of the issues involved in carrying out intimate examination. It states that this must not deter healthcare professional from carrying out intimate examinations where necessary.

Practices should no longer use untrained practice staff to fulfil the role of a chaperone. Chaperones need to be trained so that they understand what a legitimate clinical examination entails and at what stage it may become inappropriate [25].

Although a chaperone does not have to be medically qualified, they must be [25]:

- A health professional.
- Aware of their duty of confidentiality.
- Prepared to reassure the patient.
- Familiar with the procedures involved in the relevant examination.
- Prepared to raise concerns about a doctor if misconduct occurs.

It is important to note that family members cannot fulfil the role of chaperone. Written information detailing the chaperone policy should be freely available to patients – for example the policy might be displayed in waiting rooms, consultation rooms, and on the hospital website. This empowers patients to address the topic themselves if they would feel more comfortable with a chaperone present [25].

RECOMMENDATIONS

To address the legal issues and challenges associated with the institution of chaperones in Indian medical practice, the following recommendations are proposed:

1. Enhanced Training: Healthcare providers should receive comprehensive training on the legal and ethical aspects of chaperone use, including principles of patient consent, confidentiality, and professional conduct. Training programs should emphasize the importance of respecting patient autonomy and upholding standards of care.
2. Clear Guidelines: Regulatory bodies and professional associations should develop clear and consistent guidelines for the use of chaperones in medical practice. These guidelines should outline the circumstances in which chaperones are recommended or required, as well as protocols for obtaining patient consent and ensuring confidentiality.
3. Accountability Mechanisms: Healthcare institutions should implement robust accountability mechanisms to monitor compliance with chaperone policies and address instances of misconduct or negligence effectively. This may include establishing reporting mechanisms for patients to raise concerns about chaperone conduct and ensuring appropriate disciplinary actions for violations of professional standards.
4. Public Awareness: Efforts should be made to raise public awareness about the role and purpose of chaperones in medical practice, as well as patients' rights regarding their use. Education campaigns can help empower patients to advocate for their own safety and well-being during medical examinations.

CONCLUSION

The institution of chaperones in Indian medical practice presents various legal challenges related to patient consent, confidentiality, liability, and professional regulations. While existing laws and guidelines provide a framework for addressing these issues, the situation remains ambiguous and therefore additional efforts are needed to ensure effective implementation and compliance. There remains a lot to be desired in terms of stricter and clearer regulations pertaining to institution of chaperone. By enhancing training, developing clear guidelines, implementing accountability mechanisms, and raising public awareness, stakeholders can work together to promote patient safety and uphold ethical standards in medical practice. Addressing these legal issues is essential to fostering trust between patients and healthcare providers and safeguarding the integrity of the healthcare system in India. There are clear guidelines available in the western medical practice, which could be examined, tailormade to our need and healthcare structure in India. The legislators of the country in consultation with the medical body should formulate laws and regulations along with suitable procedural guidance, taking in consideration of huge population diversity in India to solve this conundrum.

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