



Medical negligence and law in global perspectives

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Abstract

“Ignorance of the law is no excuse”. The rule is Applied everywhere. A doctor in particular should have the knowledge of law which belongs to the medical profession. In case of professional liability, the medical profession is differs from other occupations for the reason that the success in treatment or failure depends upon factors beyond the control of doctor. No doctor is allowed to take undue advantage of this fact and allowed to act negligently which can result in damage to the health of patient. Number of litigations in medical profession is increasing day by day. Super specialist doctors are also vulnerable and sued under civil and criminal litigation. This creating complex in the mind of doctor to be over precautious in the course of treatment, ultimately affecting entire medical profession and legal system in different ways.

Hence, for the purpose of preventing medical negligence cases we will discuss various aspects of medical negligence one by one in this series of articles, Which includes history of medical negligence, doctor patient relationship, duties of doctor towards patient, duties of patient towards doctors, areas of medical negligence, causes of medical negligence, importance of consent in medical profession, liability and its extent, approach of various countries to medical negligence cases, medical negligence and law in India, Indian constitution and medical negligence, and finally landmark judgment's.

Objectives: Objective of this research study is to understanding the legal relationship between Health care service providers and patients and Study the basic concept of doctor patient relationship, the concept of liability, importance of Consent in medical filed and approach of various countries to medical negligence cases.

Methodology: Analytical Research method with support from various other methods as per need to elaboration of the concept of medical negligence.

Discussion: Medical Negligence means any misconduct by a medical practitioner by not providing enough care resulting in breach of their duties which results in harm to the patient.

Keywords: medical malpractice, medical negligence, medical law, medical malpractice claim. medical negligence and indian legal system

Introduction: Elements must be proven

1. A professional duty owed to the patient;
2. Breach of such duty;
3. Injury caused by the breach; and
4. Resulting damages.

Duties of physicians to their patients

Obligations to the Sick: It are a duty of every physician to help the sick person with his best knowledge and skills. No patient should be discriminated on any grounds in course of treatment.

The Patient must not be neglected: before initiating treatment, during treatment and after treatment; patient must be informed with relevant facts related with diagnosis, prognosis, mode of treatment, advantages and disadvantages, etc.

Patience, Delicacy and Secrecy: Physician or any other health care service provider is not allowed to disclose patient's details or data to some other purpose except Legal purpose. It is obligatory on hospital and other service providers to keep record of patient till the period of three years.

Prognosis: good doctor should begin his treatment on grounds of diagnosis. Various investigation and help of technology can be taken appropriately to do correct diagnosis on which prognosis is depend

Appointment of Substitute: In absence of on self-it's a

duty of doctor to arrange some other doctor for patient's safety. Mostly it is needed in IPD patients. Where patient required more monitoring and treatment.

Statement to Patient after Consultation: Patient shall be explain detail about his diseases status and all relevant question he is asking at consultation and treatment.

Treatment after Consultation: Treatment shall be only after proper consultation personally while telephonic consultation is recommended in follow- ups.

Important causes of medical negligence

Different pathies for treatments: Allopathic concept referred to as scientific medicine, which is proved on animals via experimentation. Allopathic mode of treatment is depends on various investigations and diagnosis. This pathy is accepted universally. The majority of medical schools in different countries are allopathic medical schools. Countries having less number of pathies for treatment are not affected much by medical negligence law suit. It became easy for such countries to design uniform laws which help in governing; Preventing and controlling unwanted claims of medical malpractice.

In Indian scenario it is more than nine different pathies currently in use for treatment of patient helping in error in medical treatment and increases graph of medical negligence cases every year. Pathies such Ayurveda, Homeopathy, Unani, Sidhha, Naturopathy, Traditional

Chinese Medicine (TCM), Chiropractic practitioners, Complementary Medicine and Alternative Medicine (CAM) Various pathies for treatment are very useful and at the same time it is confusing for patient to decide the correct one. Doctors from one specific stream is practicing different other pathies without proper knowledge. Approach of different pathies towards same disease is different. Mode of treatment also changes depends on basic doctrine of different pathies. Patients are getting confused in selecting exact mode of treatment as every pathy have its own merits and demerits.

Treating one particular disease doesn't mean that patient will not suffer from any other disease, selecting one pathy for treatment can help patient but variation of drugs, medicine and its ways of implication also have great role in patient's treatment.

All the factors related with various pathies are having its own benefits and limitations and one of the reasons for increase medical negligence claim in country like India.

New technologies in medical field: medical laboratory technology is required to work in medical diagnostic, research and other laboratories. Starting from collecting different samples and performs tests to analyse body fluids, Tissue, and other components in Urine, Blood, and Sputum. Each such step deals with medical negligence at its basic level. Subjects like biochemistry, microbiology, haematology, transfusion science, histopathology, technical laboratory skills, Radiography, Hearing aid technology, Optical technology, X-ray Technology. All this deals with diagnostic value of patients condition and important for disease diagnosis and deciding mode of treatment. Any negligence here can result into medical negligence claim unnecessarily.

Poorly developed health policies: Various policies developed by appropriate authorities of different countries will help to prevent medical malpractice claim but those policies are different in different countries as per the supportive laws enforced in country. In India interpretation of different legal provisions to medical malpractice are making the process more complicated. It is a need of time when medical negligence claims are increasing day by day, we should frame strict laws and different policies for implication in medico legal filed preventing medical malpractice claims.

Lack of services: Various services which are important to save patients life, lifesaving medicines, skilled staff in hospitals, Tertiary services like ventilator, Defibrillator, are mostly not available in the general hospital. Considering government hospital and services provider by them, it is beyond imagination condition where doctor needs to do operation under light of mobile torch. Sealing wall of operation theatre is full of fungus. Infected surrounding of ICU. These all areas need to consider for strict implementation of standard protocol.

Undue competition in medical field: Competition in medical field is not hidden. As cost of medicine are increasing day by day with effect to invention of new molecules, Pharmaceutical companies are spending huge amount of money for invention of new medicine providing fastest relief to patients suffering. Using modern technology in healthcare services are no doughty expensive but such expensiveness should be reasonable. In India CUT practice concept is very well established which is one of the reason

behind high price of medicines.

Indian legal provisions

Provisions of IPC

Section 29 of Indian penal code- Documents / Record keeping Medical record shall be store for the period of three years from the date of registration. Such record shall be cogent, accurate, without overwriting ad any suspicious change. Record shall be accurate in relation with physicians written orders and nursing chart written by nursing staff.

Sections 80 and 88 of the Indian Penal Code contain defences for doctors accused of criminal liability. Under Section 80 (accident in doing a lawful act) nothing is an offence that is done by accident or misfortune and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution.

Section 87- act not intended and not known to be likely to cause death or grievous hurt done by consent. Physician should explain nature of procedure, its benefits, Purpose and effects. Any alternative method if available, Adverse effects in case of not taking treatment.

Consent given for specific procedure, treatment, will not be available to other treatment procedure. The only exception is when life of patient is in dangers. There should be different consent for diagnosis and treatment.

According to Section 88, a person cannot be accused of an offence if he performs an act in good faith for the other's benefit, does not intend to cause harm even if there is a risk, and the patient has explicitly or implicitly given consent.

Section 92- Act done in good faith for benefit of a person without consent

Section 324, 326 - Punishment for culpable homicide not amount to murder

Section 312, 313, 314, 315, 316- Offences related with miscarriage.

Section 304A Of the Indian Penal Code of 1860 states that whoever causes the death of a person by a rash or negligent act not amounting to culpable homicide shall be punished with imprisonment for a term of two years, or with a fine, or with both.

Section 337- Causing hurt by act endangering life or personal safety of others.

Section 338- Causing grievous hurt by act endangering life or personal Safety of others.

Section 341,342 – Detaining patients body for non-payment of bills may also fall within the definition of wrongful restraint or wrongful confinement

Liability under law of tort

Damnum Sine Injuria

Damnum sine injuria is a Latin legal maxim which basically means damage without injury. It means an actual loss which occurs without the infringement of any legal rights. This is because the mere loss of money or money's does not amount to any tort action; real violation of some rights must take place in the form of legal damage. No liability can arise in such cases.

For example, doctor with 20 years of medical practice suffered reduction in number of patient after opening of new clinic by another doctor in same area.

Injuria Sine Damno

The principle of injuria sine damno means an infringement

of rights without actual losses. Since this leads to infringement of rights, liability can arise even if no person suffers actual or substantial losses.

For example, Detaining patients body for non- payment of bills may also fall within the definition of wrongful restraint or wrongful confinement

Principle of vicarious liability

The general rule of tort liability is that the person who causes damage must pay compensation. In certain cases, however, liability can arise on third parties also called vicarious liability. In order for vicarious liability to arise, there should be some legal relationship between the defendant and the third party. Vicarious liability can arise in the course of employment due to the master-servant relationship between employers and employees.

For example, wrongly given medicine by hospital staff nurse to the patient results in allergic reaction and subsequently death. Here hospital who is employer of the nursing staff is also liable for wrongful act of nurse under principle of vicarious liability. Therefore, one partner can be liable for the defaults of another.

Volenti Non-Fit Injuria

Person may suffer damages when he consents to some act. This consent may be in the form of knowledge of all the possibilities of damages and person shows free will to undergo it. In such cases if he is suffering any damages he cannot seek compensation.

For example: A 75 yrs. patient who went under procedure of hip replacement was asked to take strict bed rest for 20 days at home.

Whereas due to no pain and discomfort patient travel continuously for 20 hrs. By train. Resulting in damage to the operating site and further complications. The patient here cannot claim compensation. This is because the law presumes that he was aware of these risks and still did the act which was not permitted.

Strict liability: The rule of a strict liability says that if any commercial activities harm somebody, it should compensate him. This liability will arise even if it took all necessary precautions to prevent the damage. *Rylands v. Fletcher*, Example – Administration of intramuscular (IM) injection intravenously (IV) by physician.

Conclusion

In this article we have summarised the areas of medical negligence in short, those are the important areas in medical negligence cases. In upcoming articles we will study those areas one by one in detail with reference to views of various countries and landmark judgements given by apex court.

Author by writing this articles wish to spread awareness of medical negligence in the society, also wish to suggest correct Protocols and Guidelines for healthcare service providers . This will help in developing health laws, giving ideal care and cure to the society at large.

References

1. Advocate Act, 1961
2. Constitution of India
3. Indian penal code 1860
4. Consumer Protection (Amendment) Act, 2002
5. Consumer Protection Act, 1986
6. Homeopathy (Minimum Standards of Education

Regulations, 1983

7. Indian Medical Council Act, 1956
8. Indian Medicine Council Professional Conduct, Etiquette and Ethics Regulation, 2002
9. <http://airwebworld.com>
10. <http://consumer.indlaw.com>
11. <http://indiankanoon.com>
12. <http://indiatoday.com>
13. <http://jstor.org>