

Medical Negligence: A Case Report, India

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Abstract: *Medical negligence, now days have become one of the serious issues in India. The medical profession is governed by legislation and by a code of ethics and etiquette. Indian Penal Code 1860 sections 52, 80, 81, 83, 88, 90, 91, 92 304-A, 337 and 338 contain the law of medical malpractice in India. The current study was conducted to know awareness about medical negligence among the medical and surgical specialists working in private and Government hospitals. On the basis of history and examination of deceased, there was no adequate and timely monitoring of vital status and bleeding continued resulted to shock. Opinion of such case is given as cause of death is "hemorrhagic shock due to iatrogenic bleeding".*

Keywords: Medical negligence, Forensic medicine, Unnatural death.

1. Introduction

Recently, Indian Society is experiencing a growing awareness regarding patient's rights. This trend is clearly discernible from recent spurt in litigation concerning medical professional or establishment liability, claiming redressed for the suffering caused due to medical negligence, vitiated consent, and breach of confidentiality arising out of the doctor patient relationship.

Medical malpractice is professional negligence by act or omission by a health care provider in which the treatment provided falls below the accepted standard of practice in the medical community and causes injury or death to the patient, with most cases involving medical error [1].

Back in 1984, the extrapolated statistics from relatively few records in only several states of the United States estimated that between 44,000-98,000 people annually die in hospitals because of medical errors [2]. From all causes there have been numerous other studies, including "A New, Evidence-based Estimate of Patient Harms Associated with Hospital Care" by John T. James, PhD [3] that estimates 400,000 unnecessary deaths annually in hospitals alone. Less than one quarter of care takes place in hospitals. Across all care settings the numbers are higher. Another study notes that about 1.14 million patient-safety incidents occurred among the 37 million hospitalizations in the Medicare population over the years 2000-2002. Hospital costs associated with such medical errors were estimated at \$324 million in October 2008 alone [4]. Between 15,000 and 19,000 malpractice suits are brought against doctors each year [5].

Negligence is simply failure to exercise due care. The three ingredients of negligence are as follows:

1. The defendant owes a duty of care to the plaintiff
2. The defendant has breached this duty of care.
3. The plaintiff has suffered an injury due to his breach.

And in case of medical negligence mostly the doctor is the defendant. Negligence is predominantly a theory of liability

concerning allegations of medical malpractice, making this type of litigation part of the Tort Law.

2. Civil Liability and Medical Negligence

Negligence is the breach of a legal duty to care. It means carelessness in a matter in which the law mandates carefulness. A breach of this duty gives a patient the right to initiate action against negligence. Persons who offer medical advice and treatment implicitly state and undertake to have the skill and knowledge to do as under:

- To undertake particular job.
- To decide whether to take a case or not ,
- To decide the treatment suitable for particular case
- To administer that treatment.

This is known as an "implied undertaking" on the part of a medical professional.

However, no human being is perfect and even the most renowned specialist could make a mistake in detecting or diagnosing the true nature of a disease. A doctor can be held liable for negligence only if one can prove that she/ he is guilty of a failure that no doctor with ordinary skills would be guilty of if acting with reasonable care. An error of judgment constitutes negligence only if a reasonably competent professional with the standard skills that the defendant professes to have, and acting with ordinary care, would *not* have made the same error.

Doctors must exercise an ordinary degree of skill. However, they cannot give a warranty of the perfection of their skill or a guarantee of cure. If the doctor has adopted the right course of treatment, if she/ he is skilled and has worked with a method and manner best suited to the patient, she/ he cannot be blamed for negligence if the patient is not totally cured. Certain conditions must be satisfied before liability can be considered. The person who is accused must have committed an act of omission or commission; this act must have been in breach of the person's duty; and this must have caused harm to the injured person. The complainant must prove the allegation against the doctor by citing the best

evidence available in medical science and by presenting expert opinion.

3. Criminal Liability and Negligence

Indian Penal Code 1860 sections 52, 80, 81, 83, 88, 90, 91, 92 304-A, 337 and 338 contain the law of medical malpractice in India.

A physician can be charged with criminal negligence when a patient dies from the effects of anesthesia during, an operation or other kind of treatment, if it can be proved that the death was the result of malicious intention, or gross negligence. Before the administration of anesthesia or performance of an operation, the medical man is expected to follow the accepted precautions. In such cases, the physician should be able to prove that he used reasonable and ordinary care in the treatment of his patient to the best of his judgment. He is, however, not liable for an error judgment. The law expects a duly qualified physician to use that degree of skill and care which an average man of his qualifications ought to have, and does not expect him to bring the highest possible degree of skill in the treatment of his patients, or to be able to guarantee cures. "Gross Lack of competency or gross inattention, or wanton indifference to the patient's safety, which may arise from gross ignorance of the science of medicine and surgery or through gross negligence, either in the application and selection of remedies, lack of proper skill in the use of instruments and failure to give proper attention to the patient." (Hampton v State; State v Lester)

When Does The Liability Arise In Case Of Medical Negligence?

The liability of a doctor arises not when the patient suffers injury but when the injury results due to the conduct of the doctor, which was below reasonable care. Hence once there exist a duty which has to be established by the patient, then the next step is to prove breach of such duty and the causation. Normally the liability arises only when the plaintiff is able to discharge the burden on him of proving negligence. However, in some cases the principle of "*res ipsa loquitur*" which means the thing speaks for it might come into action. Mostly the doctor is liable only for his own acts. However in some cases a doctor can also be made vicariously liable for the acts of another. The example of such a situation is when a junior doctor assisting the senior doctor commits a mistake it becomes the duty of the senior to have supervised him hence vicariously liable.

Proof of Medical Negligence

It has been held in different judgments by the **National Commission** and the **Hon'ble Supreme Court** that a charge of professional negligence against a doctor stood on a different footing from a charge of negligence against a driver of a vehicle. The burden of proof is correspondingly greater on the person who alleges negligence against a doctor. It is known fact that things can go wrong even with the best doctor. And the guilt or the negligence should be established beyond all reasonable doubts that his skill fell below reasonable care that he ought to take during the treatment/ surgery.

Steps / Procedure to File Complaint Pertaining To Medical Negligence

Medicine is a noble profession and practitioner must bring to his task a reasonable degree of skill and knowledge and must exercise reasonable degree of care. Neither the very highest nor a very low degree of care and competence, judged in the light of the particular circumstances of each case, is that the law requires.

1. Damage to organ due to negligence.
2. Wrong treatment due to wrong diagnosis.
3. Money receipt or prescription or discharge summary or test reports when not provided.
4. When treatment not chosen as accepted and established in medical norms /as per medical research/available medical literature.
5. Theory of *res ipsa loquitur* [a thing speaks of itself] – in case any instrument left in the body, a wrong part removed, allopathic treatment given by a homeopathic doctor etc.
6. Government Hospital liable if contribution from the employee's salary deducted OR Payment made by insurance company.
7. Negligent if these steps necessary are not observed by the medical practitioners. First – To decide whether he has to take up the case or not: Then- Whether the treatment given as per the diagnosis made.
8. Hospital can also be negligent if ,it is a case of non-availability of oxygen cylinder either because of the hospital having failed to keep available a gas cylinder or because of the gas cylinder being found empty.

Medical negligence, now days have become one of the serious issues in India. The medical profession is governed by legislation and by a code of ethics and etiquette [6]. Negligence is defined as absence of reasonable care and skill or willful negligence of a medical practitioner in the treatment of a patient which cause bodily injury or death of the patient [7]. Our experience tells us that medical profession, one of the noblest professions, is not immune to negligence which at times results in death of patient or complete/partial impairment of limbs, or culminates into another misery. There are instances wherein most incompetent or ill- or under-educated doctors, on their volition, have made prey the innocent patients. The magnitude of negligence or deliberate conduct of the medical professionals has many times led to litigation. It was found that the awareness about medical negligence among the medical as well as surgical specialists was unsatisfactory.

4. Aim of the Study

- The current study was conducted to know awareness about medical negligence among the medical and surgical specialists working in private and Government hospitals.
- To height light problem regarding negligence.

5. Case Report

- A 30 year old female from rural area was admitted with labour pain at 7:45 P.M., on clinical and ultrasonic

examination, diagnosed as full term pregnancy with oligohydromnios.

- She was advised for cesarean section because of delayed labour with oligohydromnios.
- Patient attendant gave consent for operation at 9.00 P.M.
- Patient was operated and LSCS was done and patient was shifted to ward at 11:30 P.M.
- Next day at 4:00 A.M patient complained of dizziness and pain in lower abdomen, for this complaint she was given some injection by nursing staff.
- On repeated complaint she was not attended by any specialist Doctor and in the mean time she collapsed. At about 6:30 her attendant was informed that she died due to cardiac arrest.
- Patient attendant complained foul play and lodged FIR nearby police station, after conducting inquest police sent the body for postmortem examination

6. Autopsy Examination

External Examination

Bloody vaginal discharge otherwise no specific finding.

General Examination

Patient look pale otherwise no specific fining.

Internal Examination

All viscera and vital organs are appeared pale.

- Heart was normal in size. Cardiac chambers contained few ml of fluid blood, great vessels normal and coronaries patent.
- Both lungs were normal in size and cut section pale. No evidences of petechial hemorrhages or features suggestive of fat embolism.
- Stomach contained 60 ml of white colored fluid with semi digested food, with no specific odor, mucosa pale.
- Liver, spleen and kidney: normal in size and pale on cut section.
- Urinary bladder was empty.
- Uterus showing during postmortem examination with empty, enlargge and flabby and sign of recent delevery of baby by cesarian section are present (Figure 1).
- Haematoma in lower abdomen was found involving an extent of 19x16 c.m. covering both sides of lower abdomen (Figure 2) and weight about 1500 gram (Figure 3).
- No evidences of petechial hemorrhages or features suggestive of fat embolism.
- Skull and brain was found to be intact.

7. Discussion

- On the basis of history and examination of deceased, there was no adequate & timely monitoring of vital status and bleeding continued resulted to shock.
- In this case even though the cause of death is cardiac arrest, the treating doctor thought it is a case of death due to cardiac arrest.
- Failure to give proper postoperative care is included as instances of medical negligence [6].

- Thus by avoiding medical negligence we can bring improvements in monitoring care to a great extent possible and thereby preventing valuable human life from being a prey to accidents.

Opinion

Cause of death "hemorrhagic shock due to iatrogenic bleeding."

8. Conclusion

Due to failure proper post operative care result continue bleeding leading to shock culminating in death.

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Figure



Photograph 1: Showing during postmortem examination with empty, enlargge and flabby and sign of recent delevery of baby by cesarian section are present.



Photograph 2: Showing retroperitoneal hematoma during postmortem examination



Photograph 3: During postmortem examination showing blood clot weight 1500.00 Gram.