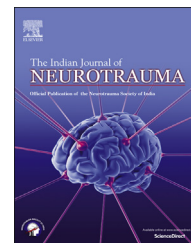


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Review Article

Medical negligence: Indian scenario

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ABSTRACT

Medical profession differentiates itself from other professions, where apart from the knowledge and skill, touch of humanity is also required. Since the inclusion of medical profession under the ambit of Consumer Protection Act there has been a spurt in the number of cases against the doctors. Bolam's test is applied to assess medical negligence of doctor. Cases against the doctors can be brought in a civil or criminal court, and accordingly the negligence may be civil or criminal negligence. In deciding criminal negligence against doctors criminal intent need to be proved. The Medical Law and Ethical Code for medical professional in India are prescribed by Indian Medical Council, under the section 20-A of Indian Medical Council Act of 1956 and Amendment Act No. 24 of 1964.

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Medical profession differentiates itself from other professions where apart from the knowledge and skill, touch of humanity is also required. In fact medical professional has always been given the highest degree of respect by the common man for the service they render towards the mankind. Even though the patient knows that he is suffering from an incurable disease, he derives solace under the care of the treating physician, whom they see as their saviour.

and a medical professional is required to be updated on the current medical practices. Even none of the test is hundred percent sensitive and specific and no drug and procedures are totally safe and above all the interpretation of the test may require great degree of knowledge and understanding which vary among individuals.

1. Medical knowledge: a dynamic concept

A medical professional applies his or her knowledge and skill in diagnosing and treating an ailment. However the degree of skill and knowledge may vary from person to person depending upon their experience and host of other factors. Newer methods of diagnosis, treatment comes up regularly

2. Reasons for increased litigation against doctors

Doctor–patient relationship have always been of trust and doctors have enjoyed that trust in the past. But with increasing awareness among the patients, their expectations have also risen. This is evident from the fact that after the inclusion of medical profession under the ambit of Consumer Protection Act, we have seen a spurt in the number of cases

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against the doctors. The reasons which can be enumerated for this fact are:

1. Lack of human feeling towards the patients
2. High expectation of the people
3. Commercialization of the medical services
4. Doctors criticize their own colleagues
5. Difficult patients: there are difficult patients to treat e.g. who conceal facts deliberately or by mistake, the history of their illness patients/don't follow the instructions/runs from doctor to doctors/and don't want to get cured because they receive benefit.

2.1. Duties of a medical practitioner

Every doctor, before he is awarded a Degree of Medicine is required to take oath known as Hippocratic Oath, which grossly defines the duties of the doctors. Following the gross violation of the medical code of conduct in the Second World War, the World Medical Association restated the Hippocratic Oath which is known as **Declaration of Geneva**. The Medical Law and Ethical Code for medical professional in India are prescribed by Indian Medical Council, under the section 20-A of Indian Medical Council Act of 1956 and Amendment Act No 24 of 1964.

2.2. Duties of doctor towards the sick

1. A doctor must always bear in mind the obligation of preserving the human life.
2. A doctor owes to his or her patient complete loyalty and the resources of his or her science. Whenever an examination or treatment is beyond his or her capacity he or she should summon other doctor who has the necessary ability.
3. A doctor shall preserve absolute secrecy every thing he or she knows about his/her patient because of the confidence entrusted in him.
4. A doctor must give emergency care as a humanitarian duty unless he or she is assured that others are willing and able to give such care.

2.3. Duties with regards to attendance on a patient

When a doctor agrees to treat a patient, he is obligated to attend the patient as long as he/she requires his attention. He cannot stop attending the patient unless in the following conditions:

1. After giving prior notice to the patient
2. Patient himself asked the doctor to withdraw
3. Medicines other than those prescribed by the practitioner is used by the patient
4. Patient doesn't follow the instructions given to the patient
5. Another practitioner is also attending the patient without his knowledge
6. The doctor himself is sick
7. When patient is malingering
8. Fees is not paid by the patient
9. Patient has recovered from the illness.

2.4. Duties in case of surgical operations

To carry out the necessary and relevant preoperative investigation in order to reach to the accurate diagnosis.

1. To explain to the patient and/or his relative regarding the exact nature of his illness, the line of treatment, expected outcome, possible complication of surgery and anaesthesia, and the possible alternative method of treatment and its accompanying risk.
2. To ensure that the operation theatre is adequately equipped with the necessary machine, and staff and the have facility to deal with the possible complication that may arise during surgery.
3. To ensure the adequate stock of emergency drugs, oxygen etc., in consultation with the anaesthetist and also to ensure that all the instruments are in proper working condition.
4. To follow the standard procedure of surgery.
5. Cautious to avoid making such mistakes of operating on wrong side or wrong limb.
6. He must not make experiment in operating.
7. He must not delegate his duty of operating on patient to his juniors, when he knows that the junior is incapable of performing the surgery.
8. With the help of the scrub nurse in counting the instruments and sponge before starting the operation and also at the end of surgery.
9. To maintain the complete record of the surgical procedure.
10. To provide adequate post-operative care and treatment and readiness to deal with the post-operative complication.
11. To give proper direction to the patient at the time of discharge from the hospital with clear instructions for the further treatment and follow-ups.

3. Consumer Protection Act

Consumer Protection Act was introduced in 1986. As per the Section 2(1) of the act, **consumer means any person who—**

1. Buys any good for consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than person who buys such good for consideration paid or promised or party paid and partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include who obtain such good for resale or for and commercial purpose; or
2. Hires or avail any service for a consideration which has been paid or promised, partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than person who buys such good for consideration paid or promised or party paid and partly promised, or under any system of deferred payment when

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