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ORIGINAL ARTICLE

Study of medical negligence cases decided by the state consumer disputes redressal commissions of Chandigarh, Punjab and Haryana

Varun Modgil, Harish Dasari, Amandeep Singh
Department of Forensic Medicine & Toxicology, Government Medical College & Hospital, Chandigarh, India

Abstract
'Doctor' is a word which commands respect in the heart of the common man, and hence medical profession is considered a noble profession. But being a doctor has more responsibilities than privileges, which is reflected in the Hippocratic Oath, as well as our very own Charaka Samhita. A retrospective and prospective cohort study was done by perusing cases from 1st January, 2018 to 15thNovember, 2019 with the aim to study and analyze medical negligence cases in Chandigarh, Punjab and Haryana and to analyse the pattern of cases and reasons for filing suit, outcome and time schedule of the decision-making process by the Forum and the role of Expert medical opinion in decision making. In our study, 79.5% cases were from the private sector. Of the total 44 cases where deficiency was admitted by the three commissions, in 11 (25%) cases negligence/ deficiency of service was proved, while in 33 (75%) cases, the complainants were not able to prove the allegations of medical negligence against doctors/hospitals. In 15 (34.1%) cases, composite negligence was alleged by the complainant/ plaintiff. Furthermore, in 14 cases (31.8%), recommendations of the medical board, were sought and the commission accepted their findings in 11 cases (78.5%).General surgery and cardiology related cases accounted for 16.7% and 13% of the suits filed, respectively. In general, surgery and its subspecialties accounted for 42.6% and medicine accounted for 22.2 % of suits.

Keywords
Medical negligence; Composite negligence; Expert medical opinion; Consumer commission.

Introduction

Doctor is a word which commands respect in the heart of the common man, and thus medical profession is considered a noble profession. But being a doctor has more responsibilities than privileges, which is reflected in the Hippocratic Oath, as well as our very own CharakaSamhita.[1,2] The movement of consumer rights, which started from the West, also spread to the Indian subcontinent with the enactment of the Consumer Protection Act in 1986, and subsequently, included the medical profession under its ambit through an important judgment by the Hon'ble Supreme Court in 1995 in the Indian Medical Association vs V.P Shantha and Ors.[3,4] This, not only described the doctor as a service provider, but also made him liable under the Act for any deficiency of service.

However, way back in 1969, the Hon'ble Supreme Court, in Laxman Balakrishna Joshi vs Trimbak Bapu Godbole and anr, said: "A person, who holds himself out ready to give medical advice and treatment, impliedly holds forth that he is possessed of skill and knowledge for the purpose. Such a person, when consulted by a patient, owes certain duties: namely, a duty of care in deciding whether to undertake the case, a duty of care in deciding what treatment to give, and a duty of care in the administration of that treatment. A breach of any of these duties gives a right of action of negligence against him. The medical practitioner has discretion in choosing the treatment which he proposes to give to the patient and such discretion is wider in cases of emergency, but, he must bring to his task a reasonable degree of skill and knowledge and must exercise a reasonable degree of care according to the circumstances of each case."[5]

The Supreme Court, since then, has defined medical negligence from time to time, especially in Poonam Verma vs Ashwin Patel & Others (1996), Achutrao Haribhau Khodwa vs State of Maharashtra And Ors (1996) and Jacob Mathews vs State of Punjab and anr (2005).[6-8] Other important recent Supreme Court judgments are the V. Kishan Rao vs Nikhil Super Speciality Hospital (2010), Balram Prasad vs Kunal Saha & Ors(2013) and Dr.S.K. Jhunjhunwala vs Mrs. Dhanwanti Kumar (2018).[9-11] From the above judgments, it can be construed that medical negligence is an act of omission i.e. failure to maintain reasonable care and skill, or an act of commission i.e. doing something which a reasonable man, exercising reasonable degree of care and caution and professionally skilled would not do so in the said case/ situation, leading to damage/ harm to the patient. In all cases of alleged negligence, the first and foremost requirement is that the doctor-patient relationship must be demonstrable. The Hon'ble Supreme court has further redefined medical negligence in the Malay Kumar Ganguly vs Sukumar Mukherjee & ors (2009) by including overdose of medicines in its ambit.[12] It further made it clear that the standard of duty of

Corresponding Author
Dr Amandeep Singh (Professor)
Email id: dramandeep@gmail.com
Mobile: 9646121610

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care in medical services may be inferred after taking into account the position and stature of doctors or the hospital. Hence, degree of care is more for a specialist doctor as compared to an MBBS doctor. If a doctor claims himself as a specialist, but it turns out that he is not, deficiency of service would be presumed by comparing his skill to that of specialist.[13]

A recent survey by National Law School of India University (NLSIU), Bengaluru, cites increasing awareness among consumers, escalating cost of medical services, consumer mindset to enter litigation and flexible consumer forums; as the reasons behind increase in medical negligence cases in India.[14]As per a study by advocate Bajpai, there has been a 110 % rise in cases of medical negligence each year in India, with the majority of suits filed against hospitals, rather than individual doctors.[15]

Hence, the present study was conducted to probe into the reasons and factors responsible for medical negligence. The aims and objectives of the study were to analyze medical negligence cases in Chandigarh, Punjab and Haryana to ascertain pattern of cases and reasons for filing suit, outcome and time schedule of decision making process by forum and role of expert medical opinion in decision making.

Materials and Methods

A retrospective and prospective cohort study was undertaken, perusing cases from 1st January, 2018 to 15th November, 2019. After receiving the approval from the Institutional Ethics and Research Committee, the present study was undertaken and the judgments of the decided cases of State Consumer Disputes Redressal Commissions of UT Chandigarh and the states of Haryana and Punjab were accessed. The respective chairpersons had already been approached and permission received in principle to peruse the relevant documents. The judgments were downloaded from the respective portals: *http://confonet.nic.in/* and NCDRC website: *http://chdconsumercourt.gov.in/*, as all the judgments of decided cases are freely available on the public domain and continuous updating is done by the respective commissions on the public portal/ website. The relevant documents of the case file were also studied in the commission office. Incidence and prevalence were gauged after a complete analysis of all the medical negligence cases decided by the consumer commissions selected during study period. This was accompanied by an insightful analysis of the reasons behind filing the suit by the plaintiff or the petitioner. The general profile of the medical negligence cases and the specialties concerned, the damages awarded by the concerned commission, along with the duration within which such cases were adjudicated or disposed of was noted. Whether expert medical opinion was sought in the particular case and if sought, did it have a bearing on the outcome or decision making was also studied. All decided cases within the chosen time period, pertaining to medical negligence were included in the study while cases which are subjudice were excluded.

Results

An analysis of the cases revealed that Government health facilities were implicated in only 9 cases out of a total of 44 cases (20.5%) while private hospitals accounted for the rest 35 cases. The latter were further bifurcated into corporate hospitals and self-owned institutions which accounted for 11 (25%) and 24 (54.5%) cases respectively (Table 1).

Table 1: Distribution of cases – government vs private

Type of hospital/clinic		n	%
Government		9	20.5%
Private	Corporate	11	25%
	Self-owned	24	54.5%
Total		44	100%

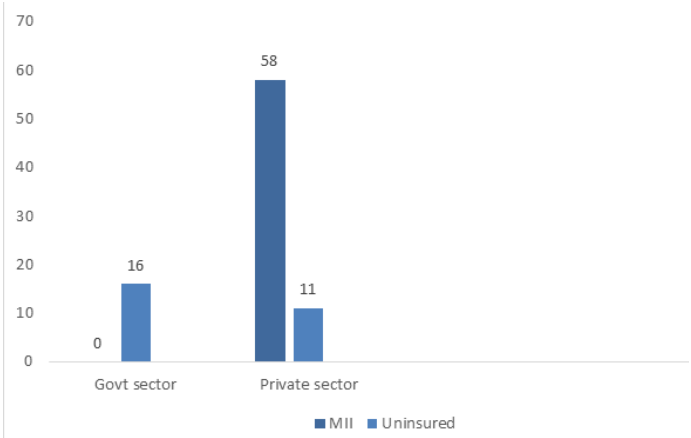
Table 2: Distribution of Cases – negligence proven vs not proven

Parameter		n	%
Negligence not proven		33	75%
Negligence proven fully or partly	Corporate	4	25%
	Self	6	
	Govt	1	

Table 3: List of the specialities involved, including cases of composite negligence

Speciality	n	%
General Surgery	9	16.66
Cardiology	7	12.96
Orthopaedics	5	9.25
Internal Medicine	4	7.407
Radiology	4	7.407
Ophthalmology	3	5.55
Neurosurgery	3	5.55
Gynaecology	3	5.55
Pathology	3	5.55
Dentistry	2	3.70
Ayurveda	2	3.70
ENT	2	3.70
Paediatrics	2	3.70
Hospital Administration	1	1.85
Nephrology	1	1.85
Anaesthesia	1	1.85
Plastic Surgery	1	1.85
Total	54	100

Figure 4: Representation of prevalence of medical indemnity insurance amongst health institutions and doctors



MII = medical indemnity insurance

Further analysis of the outcome of alleged medical negligence cases revealed that in 33 cases out of 44 (75%), negligence could not be proved when contested in the respective State consumer disputes redressal commission while in rest of the 11 cases in which negligence was proven, self-owned health facilities accounted for 6 cases, corporate hospitals for 4 cases while government hospitals only for 1 case (Table 2).

With respect to composite negligence it was observed that in 15 out of 44 cases (34.1%), composite negligence, i.e. negligence of more than one doctor was alleged by complainant/ plaintiff. Thus, the total number of doctors sued were 37 and out of these, composite negligence proved in 5 cases (33.3%). Furthermore, hospitals were made a party in 77.3 % cases (34 of total 44) (Table 3).

Again, as can be seen from Table 3 above, general surgery and cardiology related cases accounted for 16.7% and 13% of the suits filed, respectively. In general, surgery and its subspecialties accounted for 42.6 % and medicine for 22.2 % of suits.

In 70.7% cases, doctors had indemnity insurance cover. All these doctors/ institutions were from the private sector. This shows that risk of future medical negligence claims is becoming palpable in medical fraternity, more so, in private sector. (Fig 1)

As per the Hon'ble Supreme Court, in Jacob Mathews vs State of Punjab,[8] Expert medical opinion should be sought before proceeding against a doctor in an alleged medical negligence suit. In our study, in 14 cases (31.8%), recommendations of a medical board, were sought and the commission accepted findings in 11 cases (78.5%).

In only 7 cases, (15.9%), time period of decision making was 90 days or less. Frivolous complaints accounted for 11.3% of the total suits (5 of 44 cases). The commission did not charge any complainant. In 11 cases (25%), an appeal was made against decision of SCDRC in the National Commission.

Discussion

Mahatma Gandhi once said; "A consumer is the most important visitor on our premises. He is not dependent on us, we are on him. He is not an interruption to our work; he is the purpose of it. We are not doing a favour to a consumer by giving him an opportunity. He is doing us a favour by giving us opportunity to serve him."[16]

The Consumers International, formerly, International Organisation of Consumer Unions, the umbrella body for 250 organisations in over 120 countries, has endorsed 8 rights:[17] - Right to safety, right to choose, right to be informed, right to be heard, right to consumer education, right to redressal, right to satisfaction of basic needs and right to healthy environment.

The consumer rights 1 to 6 are also enshrined in the Consumer Protection Act, 1986.[3] (CPA) The provisions of this Act cover 'goods' as well as 'services'. The goods are those, which are manufactured or produced and sold to consumers through wholesalers and retailers. The services are in the form of banking, finance, transport, telephone, electricity, housing construction, insurance, medical treatment, entertainment etc. Excluded are those services that are rendered free of charge or under a contract of personal service.

A landmark judgment was delivered on 13 November 1995 by a 3-member Supreme court bench headed by Justice Agrawal in the Indian Medical Association vs. V.P. Shantha and Ors.[4] The central issue which arose for decision by the court was whether and, if so, a medical practitioner can be regarded as rendering 'service' under Section 2(1) (0) of the Act and can be proceeded against for 'deficiency in service' before a forum under the Consumer Protection Act, 1986. The court dealt with how a 'profession' differs from an 'occupation', especially in the context of performance of duties, and hence, the occurrence of negligence. The court noticed that medical professionals do not enjoy any immunity from being sued in contract or tort (i.e. in civil jurisdiction) on the ground of negligence. However, in the observation made in the context of determining professional liability as distinguished from occupational liability, the court referred to authorities, in particular, Jackson & Powell, and stated the principles, partly quoted from the authorities: "In the matter of professional liability, professions differ from occupations for the reason that professions operate in spheres where success cannot be achieved in every case and very often success or failure depends upon factors beyond the professional man's control. In devising a rational approach to professional liability which must provide proper protection to the consumer while allowing for the factors mentioned above, the approach of the courts is to require that professional men should possess a certain minimum degree of competence and that they should exercise reasonable care in the discharge of their duties. In general, a professional man owes to his client a duty in tort as well as in contract to exercise reasonable care in giving advice

or performing services. The principle of 'Bolam test' as laid down by McNair J in Bolam vs Friern Hospital Management Committee, is to be applied to determine the standard of care which is required by medical practitioner in an action for damages for negligence as the common law of England continues to remain applicable in the law of torts by virtue of Article 372 of the Constitution of India."[12,18,19] At present, the CPA exempts those hospitals and doctors, which offer free medical services to their patients. Recently, in 2017, Supreme Court stayed the National Consumer Disputes Redressal Commission order to include government hospitals treating patients free of cost by including them within the ambit of CPA.[20]

Present situation in respect of medical negligence in India

A study by Supreme Court advocate Mahendra Kumar Bajpai,who specialises in medical law, shows a 110 per cent rise in number of medical negligence cases in India every year. The study also reveals that 90 per cent of all cases in medical negligence involve hospitals, and 12 per cent of all the cases decided by consumer courts are of medical negligence. Between 60 to 66% of the filed cases are based on improper consent taken by the hospitals from relatives before performing certain procedures or switching hospitals, or improper documentation throughout the course of diagnosis and treatment.[14]

Another study conducted in India on medical negligence was the 'Pattern and reasons of medical negligence in Delhi and the profile of hospitals associated with it'.[21] In this study, of the 48 cases studied, 43 (89.6%) were of private hospitals and only 5 (10.4%) were from Government hospitals, which correlated very closely with the finding observed in our study which attributed 79.5% cases to private sector (54.5% belonged to self-owned institutions/ health facilities and 25% to corporate hospitals).Again, the study revealed that of the 48 cases, deficiency in service/unfair trade practice was proved only in 15 (31.3%) cases, while in 33 (68.6%) cases, complainants were not able to prove the allegations of medical negligence against doctors/hospitals, similar to our study in which negligence could not be proved in 33 (75%) cases, while in the rest of 11 (25%) cases, negligence could be proved either wholly or partly, particularly against private institutions (10 cases), while in only 1 case negligence was proved against a government hospital. The above study further stated that surgery and allied specialties were at major risk of allegation, with orthopaedics, obstetrics and gynaecology, general surgery and general medicine specialty doctors facing allegations of negligence in 14.3% cases each, followed by ophthalmology (12.2%), cardiology (10.2%) and ENT (4.1%), respectively. Dentistry alone faced allegations of medical negligence in 8.2% cases, which is significant. In our study also the findings were similar, with general surgery and cardiology accounting for 16.7 % and 13% of the suits filed, respectively, as shown in the representative Table 3. The reasons cited for the above ambiguity were lack of awareness and knowledge among all stakeholders (patients/ lawyers) and complexity of cases of medical negligence, lack of second opinion/ expert opinion on the issue of allegations of medical negligence or these not supporting the allegation.

The aforementioned study stressed that there is a need to create awareness and interaction among medical fraternity and patients and advocate dealing with medical negligence cases. Forensic medicine expert can play a great role in this field by either practicing as an expert for filing cases of medical negligence in various consumer courts or by providing consultation to aggrieved patients or aggrieved hospital/doctors. [21]

Another hospital-based study titled 'role of liability in medical negligence', found doctors negligent in 15 cases i.e., 41.7 % and vicariously liable in 3 cases i.e., 8.3 %. Among these 36 cases of medical negligence, informed consent was obtained from 30 patients i.e., 83.2 % while implied consent was obtained from 3 patients i.e. 8.4 % and no consent was obtained from 3 patients i.e. 8.4 %.[22]

A pertinent study analysing 4450 autopsies was carried out due to suspicion of medical malpractice in 17 German institutes of forensic medicine from 1990 to 2000 by the German Federal Ministry of Health. They reported that Medico-legal autopsies are still a very sufficient method to evaluate cases of medical malpractice as 2863 were clarified by autopsy.[23]

Time frame under CPA

As per the statute, the State commission disputes redressal commission shall not admit a complaint, unless filed within two years from the date on which the cause of action has arisen, unless the complainant satisfies the commission regarding sufficient cause for not filing the complaint within stipulated period and the reason for condoning such delay is recorded by the presiding member or judge. Any appeal against the order of the State commissions under the act must be filed within 30 days of the order. A complaint filed in the Consumer commission should be adjudicated within a period of 90 days from the date of notice received by opposite party and within 150 days if it requires analysis or testing of commodities. However, no time limit has been laid down for the disposal of an appeal or revision petition.[3,24] Our study revealed in only 7 cases, (15.9%), time period of decision making was 90 days or less was adhered to by the respective consumer commissions.

Conclusion

Proper documentation as it is the best defence for a doctor in a court of law against a plea of negligence. It is generally said that "if you have not documented it, you have not done it" in a court of law. Documentation of positive findings and important negative findings in the case file by a doctor proves due diligence. SCDRCs should preferably follow a uniform method

of trial in medical negligence cases viz. Constitution of medical board & speedy redressal of consumer complaints in a time bound manner. Referral cases should be properly documented with proper referral slip indicating reasons for and the condition in which patient is being referred. A doctor should not refuse a patient during emergency and should give life-saving treatment. But, if an urgent referral is required to higher centres in view of specialist consultation and management, it would be prudent to refer such a patient but the referring doctor should ideally communicate with the specialist in charge of the referral unit of the availability of bed and requisitioned diagnostic modality or treatment facility. Updating medical knowledge by means of CMEs, etc is one of the important requirement during practice of medicine. Better communication skills, ethical medical practice based on pillar of evidence based medicine, empathy and a sound medical knowledge with awareness of one's capabilities & limitations important to save oneself from negligence suits.

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