Original Research Paper

A Study of Medical Negligence Cases decided By the District Consumer Courts of Delhi

[1]Mukesh Yadav, [2]Pooja Rastogi

Abstract

Indian Medical Association vs. V.P. Shantha and Ors (1995) is a three-Judge Bench decision. The principal issue which arose for decision by the Court was whether a medical practitioner renders **'service'** and can be proceeded against for **'deficiency in service'** before a forum under the COPRA, 86.

There is an urgent need to check increasing trend in number of medical negligence cases and deteriorating quality of healthcare in India. Study of decided cases of medical negligence can provide an insight into the reasons for medical negligence cases, factors mainly responsible for medical negligence and impact of doctor-patient relationship, etc.

This study is attempted to explore the insight into ground realities & problems in the present healthcare system with ways & means to prevent these in healthcare institutions and medical fraternity. High cost of healthcare coupled with practice of defensive medicine will further aggravate the situation. Out of 48 cases studied 43 (89.58%) belongs to private hospitals and only 05 (10.42%) belongs to Government Hospitals. Surgical & Allied specialties and investigational specialties are more at risk of alleged medical negligence and subsequent probability of proof of medical negligence. Outcome of this study will definitely beneficial for all, for healthcare provider it will help in improving the quality of healthcare and doctor-patient relationship, restoration of lost trust in medical profession.

Key Words: Medical Negligence, Damage, Damages, Duty, Dereliction of Duty, Compensation

Introduction:

The **"World Consumer's Right Day"** is celebrated globally on March 15th and the "National Consumer's Right Day" on December 24th each year in India to create awareness among consumer's about their rights. Supreme Court verdict in 1995 brought the medical profession under the purview of the Consumer protection Act, 1986. [1-3]

Doctors are always afraid of its impact on them, many landmark judgments given by various consumer forums against doctors and health institutions to award compensation in alleged negligence cases, percussions of which can be felt every moment a doctor think of providing its services to a new patient. The Consumer Protection Act, 1986 (COPRA, 86), is a benevolent social legislation.

It lays down the rights of the consumers and provides there foer promotion and protection of the rights of the consumers.

Corresponding Author:

[1]Director/Principal/Dean
Siddhant School of Medical Science, Mainpuri, U.P
E-mail: drmukesh65@yahoo.co.in
[2]Prof & Head, Dept. of Forensic Medicine
SMSR, Sharda University, Greater Noida, UP
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Profession differentiated from Occupation:

The Supreme 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 has referred to authorities, in particular, **Jackson & Powell** [4] and has so 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." [4]

Scenario of Medical Negligence around the Globe and in India:

India is recording a whopping 5.2 million injuries each year due to medical errors and adverse events. Of these biggest sources are mishaps from medications, hospital acquired infections and blood clots that develops in legs from being immobilized in the hospital.

A landmark report by an Indian doctor from Harvard School of Public health (HSPH) has concluded that more than 43 million people are injured worldwide each year due to unsafe medical care.

Approximately 3 million years of healthy life are lost in India each year due to these injuries. [5]

Medical Mishaps and Fatal Errors:

- Health care errors is the 8th leading cause of death in the world
- Over 7 million people across the globe suffer from preventable surgical injuries every year (WHO)
- Globally, 234 million surgeries take place every year, one in every 25 people undergo a surgery at any given time.
- In developing countries, the death rate was nearly 10% for a major surgery
- Morality from general anaesthesia affected one in 150 patients while infections were reported in 3% of surgeries with the mortality rate being 0.5%

Table 1: Reported Deaths due to Medical Negligence every years Globally

S. N.	Country	No. of Deaths every year
1	**United States**	98000
2	**Canada**	24000
3	**Australia**	18000
Source: Compiled from article published in the Times of India [5, 6]		

- Nearly 50% of the adverse effects of surgery were preventable
- 5.2 million medical injuries are recorded each year in India
- 43 million people get injured each year due to unsafe medical care worldwide
- About two-thirds of medical injuries occur in low and middle income countries like India

Sources of Medical Mishaps: Wrong medications, Hospital acquired infections, Blood clots.

Legal Scenario of Medical Negligence in India:

Have doctors become more negligent now? The kinds of malpractice hitting the headlines are not new: in 1953, a boy with a fractured limb died in Pune as a doctor operated on him without proper anaesthesia. [7]

Now the numbers are what first stand out, and what also make the questions necessary. According to a 2013 study (Global Burden of Unsafe Medical Care) by Dr. Ashish Jha of Harvard School of Public Health, of the 421 million hospitalizations in the world annually, about 42.7 million adverse events of medical injury take place, two-thirds of which are from low-income and middle-income countries.

India records approximately 5.2 million cases a year, ranging from incorrect prescription, wrong dose, wrong patient, wrong surgery, and wrong time to wrong drug. [8]

With public awareness, claims and litigation are rising. In the country's consumer courts, they now top the list of 3.5 lakh pending cases. According to Dr Girish Tyagi, registrar of Delhi Medical Council, the appellate authority for dealing with such cases, the number of cases from overcharging, needless procedures, wrong doctors to wrong decisions has zoomed in the last two years, from about 15 complaints a month to 40 now. [8] A report by the Association of Medical Consultants shows that there were 910 medico-legal cases against doctors between 1998 and 2006 in Mumbai. Now they are going up by 150-200 cases every year. [8]

But it's the gap in the law that seems to leave both patients and doctors at a dead end. "For the longest time in India, medical negligence was not seen as compensable," says Barrister, Sushil Bajaj of The Integrated Law Consultancy, Delhi. [8]

Justice S. Ahmad observed that Medical Negligence plays its game in strange ways. Sometimes it plays with life; sometimes it gifts an "Unwanted Child" as in the instant case where the respondent, a poor labourer woman, who already had many children and had opted for sterilisation, developed pregnancy and ultimately gave birth to a female child in spite of sterilisation operation which, obviously, had failed.

Smt. Santra, the victim of the medical negligence, filed a suit for recovery of Rs. 2 lakhs as damages for medical negligence, which was decreed for a sum of Rs. 54000/- with interest at the rate of 12 per cent per annum from the date of institution of the suit till the payment of the **decretal amount.** [9]

Duties of Doctors:

In two decisions rendered by the Supreme Court of India, namely, Dr. Laxman Balakrishna Joshi vs. Dr. Trimbak Bapu Godbole & Anr., 1969 [7] and A.S. Mittal vs. State of U.P., 1989 [13], it was laid down that when a Doctor is consulted by a patient, the former, namely, the Doctor owes to his patient certain duties which are (a) a duty of care in deciding whether to undertake the case; (b) a duty of care in deciding what treatment to give; and (c) a duty of care in the administration of that treatment.

Role of Indemnity Insurance and Cost of Treatment:

It's also pushing doctors toward heavy professional indemnity policies. "It is usually around Rs.10 lakh, with a premium of Rs.3000-Rs.5000 per annum," says Dr. Neeraj Nagpal, Convenor, Medico-Legal Action Group, Chandigarh.

If a doctor wants to cover himself against a claim of Rs.11.5 crore, the amount awarded to Saha, the premium will be between Rs.300000 and Rs.600000 annually.

For that a doctor will have to attend to a large number of patients every day and raise his fees substantially. "With rising litigation, everyone will have to pay through their nose."

Hon'ble Supreme Court of India in Jacob Mathew vs. State of Punjab & Anr., 2005 [11] observed that with the awareness in the society and the people in general gathering consciousness about their rights, actions for damages in tort are on the increase.

Medical Ethics and Medical Negligence:

In M/s Spring Meadows Hospital & Anr. vs. Harjol Ahluwalia through K.S. Ahluwalia & Anr.JT, (1998) [12], it was observed as under:

"In the case in hand we are dealing with a problem which centres round the medical ethics and as such it may be appropriate to notice the broad responsibilities of such organisations who in the garb of doing service to the humanity have continued commercial activities and have been mercilessly extracting money from helpless patients and their family members and yet do not provide the necessary services.

The influence exerted by a Doctor is unique. The relationship between the doctor and the patient is not always equally balanced.

The attitude of a patient is poised between trust in the learning of another and the general distress of one who is in a state of uncertainty and such ambivalence naturally leads to a sense of inferiority and it is, therefore, **the function of medical ethics to ensure that the superiority of the doctor is not abused in any manner.** It is a great mistake to think that doctors and hospitals are easy targets for the **dissatisfied patient.** It is indeed very difficult to raise an action of negligence.

Not only there are practical difficulties in linking the injury sustained with the medical treatment but also it is still more difficult to establish the standard of care in medical negligence of which a complaint can be made.

All these factors together with the sheer expense of bringing a legal action and the denial of legal aid to all but the poorest operate to limit medical litigation in this country."

It was further observed as under:

"In recent days there has been increasing pressure on hospital facilities, falling standard of professional competence and in addition to all, the ever increasing complexity of therapeutic and diagnostic methods and all this together are responsible for the medical negligence.

That apart there has been a growing awareness in the public mind, to bring the negligence of such professional doctors to light Very often in a claim for compensation arising out of medical negligence a plea is taken that it is a case of bona fide mistake which under certain circumstances may be excusable, but a mistake which would tantamount to negligence cannot be pardoned.

In the former case a court can accept that ordinary human fallibility precludes the liability while in the latter the conduct of the defendant is considered to have gone beyond the bounds of what is expected of the reasonable skill of a competent doctor." [12]

Error in Judgment and Medical Negligence:

In this judgment, reliance was placed on the decision of the House of Lords in **Whitehouse vs. Jordan** & Anr., (1981) [10]. **Lord Fraser,** while reversing the judgment of **Lord Denning** (sitting in the Court of Appeal), observed as under:

"The true position is that an error of judgment may, or may not, be negligent; it depends on the nature of the error.

If it is one that would not have been made by a reasonably competent professional man professing to have the standard and type of skill that the defendant holds himself out as having, and acting with ordinary care, then it is negligence. If, on the other hand, it is an error that such a man, acting with ordinary care, might have made, then it is not negligence."

Aims and Objectives:

The following aims and objectives have been decided for the present study:

1. To study the pattern of medical negligence cases in Delhi
2. To study the reasons for medical negligence in Delhi
3. To know the profile of hospitals (Govt. /Private)

Material & Methods:

Delhi District Consumer Dispute Redressal Commission's 50 judgments of alleged medical negligence cases from year 2009 to 2014 were collected for study. After thorough study of judgments, 15 cases in which medical negligence was proved were selected for further analysis in present study. Judgments were accessed from website http://confonet.nic.in/ [by using Key Word "Medical Negligence" in text phrase search box]

Assumptions:

Following assumptions has been made based on limitation of research methodology:

- All case are uploaded on the NCDRC Website
- All cases are searchable with Text Phrase "Medical Negligence"

Various parameters /variables such as medical subjects and consultant involved in medical negligence, hospital liability, consent, medical records, unqualified staff, investigative tests, operative skill and diagnosis, hospital facility, operative and postoperative complications, referral, advice, current update, time to attend patient, other deficiency in services etc. were studied, and discussed.

Observations and Discussion:

Type of Hospitals:

In this study out of 48 cases studied 43 (89.58%) belongs to private hospitals and only 05 (10.42%) belongs to Government Hospitals. (Table 2)

Table 2: Type of Hospitals /Institutions/Clinics (Govt. /Private)

S.N.	Contents	Cases (n=50)	% (n=48)
1	Private Hospitals	43	89.58
2	Govt. Hospitals	05	10.42
	Total cases	**48**	**100.00**
3	Not Admitted for Trial	02	
	Grand Total	50	
*Two cases excluded			

Reason for this low number of Government Hospitals could be following:

- Free services/services at low price provided by Government Hospitals and whenever there is not expected outcome from treatment/procedure/intervention it causes less hurt to them as there is at least less financial damage.
- Number of Government Hospitals is less as compared to private hospitals (including individual clinics) in Delhi i.e. why private hospitals are more prone to case of medical negligence.
- Perception among consumers that Government Hospitals are not covered under the Consumer Protection Act, 1986. There is need to study on perception of consumers on this aspect.
- Low level of awareness on consumer court law
- It is presumed that patients coming to Govt. Hospitals are mainly poor and illiterate and not having knowledge/Awareness of COPRA, 1986. There is need to study the relationship between socioeconomic status and literacy and level of education and awareness among patients visiting government hospitals and low level of medical negligence cases.
- There is need to further study regarding whether patient's expectations from govt. hospitals are less as compared to high cost healthcare in private hospitals and doctors or not.

Reasons for Less number of Cases in DCDRC in Delhi:

- High cost of healthcare and claim for higher compensation after Amendments in 2002 (in District Consumer Court up to Rs.2000000/ and in SCDRC claim from Rs.2000000 to 1 Crore)
- High per capita income in Delhi

Outcome of Consumer Court Cases in terms of proof of 'Deficiency in Service' and/or adoption of 'unfair trade practices':

It was revealed from outcome of consumer court cases in terms of whether negligence proved or not that out of 48 cases deficiency in service/unfair trade practice proved only in 15 (31.25%) cases while in 33 (68.75%) cases complainant were not able to prove the allegations of medical negligence against doctors/hospitals. (Table 3)

Reasons for this could be lack of awareness and knowledge among all stake holders (patients/lawyers) and complexity of cases of medical negligence, lack of Second Opinion/Expert Opinion on the issue of allegations of medical negligence or Second Opinion/Expert Opinion not supported the allegation.

Table 3: Distribution of Medical Negligence Cases (Negligence: Proved/Not Proved)

S. N.	Contents	Cases (n=48)	%
1	Negligence not proved	33	68.75
2	Negligence Proved/Partially	15	31.25
	Total cases	48	100.00
*Two cases excluded as not admitted for hearing			

There is need to create awareness and interaction among medical fraternity and patient and advocate dealing with medical negligence cases. Forensic Medicine Expert can play a great role in this field either practice as Expert for filing cases of Medical Negligence in various Consumer Court Cases or can provide consultation to aggrieved patients and aggrieved hospital / doctors.

Specialty-wise Distribution of Medical Negligence Cases:

Present study showed that Orthopaedics, Obstetrics & Gynaecology, General Surgery and General Medicine specialty doctors faced with allegations of Medical Negligence (Deficiency in Service) in 07 (14.29%) cases each, followed by specialty of Ophthalmology 06 (12.24%) and Cardiology 05 (10.20%) cases and ENT 02(4.08%) cases respectively. (Table 4)

Table 4: Specialty-wise Distribution of Medical Negligence Cases

S. N.	Subject of Specialization	Cases(n=48)	%
1	Orthopaedics	07	14.58
2	Ophthalmology (Paediatrics)	06	12.50
3	Obst & Gynae	07	14.58
4	Dentistry	04	8.33
5	Surgery	07	14.58
6	Medicine	07	14.58
7	ENT	02	4.17
8	Cardiology (Super speciality)	04	8.33
09	Miscellaneous (Physiotherapy)	01	2.08
10	Diagnostic/Investigation (Radiology, Pathology, etc.)	03	6.25
	Total	**48**	**100.00**
11	Cases Excluded	02	

Surprisingly doctors practicing dentistry faced with allegation of medical negligence in 04 (8.16%) cases which is a significant finding.

Surgery & Allied Specialty are at more risk of allegations of Medical Negligence:

Our study showed that out of 48 cases of medical negligence studied, Surgery and Allied Specialty faced with allegation of medical negligence in 29 (59.18%) cases against only 12 (24.49%) cases belongs to Medicine and Allied Specialty. Surprisingly 04 (8.16%) cases each belongs to allegation of medical negligence against Dentistry doctors and Doctors /Hospitals provided Diagnostic/ Investigation/ Physiotherapy services. (Table 5)

Reasons could be attribute to high cost of treatment for surgical interventions as well as degree of damage (physical disability, suffering) suffered by the complainant in availing surgical services as against services availed from medicine and allied specialty doctors/hospitals.

Table 5: Distribution of Medical Negligence case (Medicine vs. Surgical Specialty

S. N.	Specialty Surgical/Medicinal	Cases	%
1	Medicine & Allied	12	24.49
2	Surgery & Allied	29	59.18
3	Dentistry	04	8.16
4	Miscellaneous (Physiotherapy, Diagnostic)	03	8.16
	Total cases	**48**	**100.00**

Negligence against Surgical & Allied Specialty easy to prove:

Present study revealed that it is easier to prove allegations of medical negligence against Surgery and Allied Specialty as compared to Medicine and Allied Specialty.

Chances of proof of allegations of medical negligence against Diagnostic Specialty (Radiology, Pathology, Biochemistry, etc.) are highest at 50% cases, followed by Surgery & Allied Specialty with 34.48%, Dentistry with 25% and with least chances of prove in Medicine & Allied Specialty with only 18.18% respectively. (Table 6)

Table 6

Distribution of Medical Negligence Case (Medicine vs. Surgical Specialty)

S. N.	Specialty Surgical/Medicinal	No.	%	Negligence Not Proved	%	Negligence Proved	%
1	*Medicine & Allied	11	24.49	09	81.82	02	18.18
2	Surgery & Allied	29	59.18	19	65.52	10	34.48
3	Dentistry	04	8.16	03	75.00	01	25.00
4	Miscellaneous (Physiotherapy, Diagnostic)	04	8.16	02	50.00	02	50.00
	Total cases	**48**	**100.00**	**33**	68.75	**15**	31.25

Summary & Conclusions:

Out of 48 cases studied 43 (89.58%) belongs to private hospitals and only 05 (10.42%) belongs to Government Hospitals.

Surgical & Allied specialties and investigational specialties are more at risk of alleged medical negligence and subsequent probability of proof of medical negligence.

Medical ethics and regulations, 2002 [14] awareness among medical faculty will go a long way in preventing future medical negligence cases in India.

Recommendations:

- There is need for similar studies and frequent audit of medical negligence cases to find out the new and emerging causes of medical negligence in future.
- Doctors and hospital owners are advised to go for Indemnity Insurance cover of adequate limit to prevent loss by complementation to the stakeholders.
- With increasing cost of healthcare claim for medical negligence are bound to be raised in future. Govt. should increase funding for healthcare and coverage by health insurance so that cost of healthcare can be controlled to some extent.
- Medical Ethics teaching and training on soft skills, especially of communication skills will go a long way in not only improving the quality of health care and satisfaction of patients but also in preventing medical negligence cases.
- Need for Classification of Medical Negligence Cases
- Need for further Research

Limitations:

- No uniformity in allegations due to cultural and educational variations

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