

# REASONS FOR INCREASE IN MEDICAL NEGLIGENCE CASES AND POSSIBLE SOLUTIONS

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## INTRODUCTION

Medical Negligence is defined as lack of reasonable care or skill and willful negligence on the part of the doctor in the treatment of the patient whereby the health and the life of the patient is at risk. It is the act of omission, which a reasonable prudent man should have done, and the act of commission, which the reasonable prudent man should not have done.

The concept of taking reasonable care and skill by the doctor takes its root from the laws of Rome and England.<sup>1</sup> The responsibility of medical professional can be traced back to the 2030 B.C where the Code of Hammurabi provided that “if the doctor has treated a gentlemen with a lancet of bronze and has caused the gentleman to die, or has opened an abscess of the eye for a gentleman with a bronze lancet, and has caused the loss of the gentleman’s eye, one shall cut off his hands.”

Therefore, the point here is, at that time also cases of Negligence were present but now the claims have increased. The simple reason behind the increase is the development in the standard of medical services and technological advancement. The awareness of the society has increased due to literacy and education.

## COMMON REASONS FOR INCREASE IN MEDICAL NEGLIGENCE CASES

- ❖ **ADMISSION BY DONATION** -The most important reason is that, the rich people are giving donations, to get their son/daughter admitted into a Prestigious Medical College. The point is whether it is justifiable that a person rejected in other Entrance Exams got

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<sup>1</sup> Smith, Powis: origin and History of Hebrew Law. Chicago, IL: University Of Chicago Press ;1931

admitted, on the basis of money and not on Merit. So the consequence of this is, directly reflected on the society, where the people are not treated in a proper manner and a lot more cases have come, which has shown the inadequate knowledge of the doctor.

- ❖ **SURGICAL MISHAP-** This happens in the operation theatre or in the wards before after the operation has taken place. For ex- Wrong patient is selected for operation, due to mix-up over names, especially when the patient has been given Anesthesia and at that point, of time he is not in a position to identify him. Many a time's wrong body part or organ is operated. The most common mistakes happening around are leaving of foreign particles in the body- like swab, suction tube.
- ❖ **ORGANIZATIONAL ERROR AND SYSTEMATIC FAILURES-** Many of the accidents that result in the injury to the patients recently are the result of organizational errors or systematic failures in risk management<sup>2</sup>. In Jacob Mathew V state of Punjab- the hospital authorities did not have oxygen in the oxygen cylinder' which resulted into the death of a person. In most hospital, necessary equipment for treatment is not adequate or not present.
- ❖ **CASUALTY AND ACCIDENT DEPARTMENTS-** It is one of the busiest areas of the hospital or medical Centre, the urgency and rush contributes to medical claims. Here cases of negligence is seen, where the doctors fail to diagnose fractures or fail to treat head injuries and many other errors are frequent in this department. Here the junior staff is given the responsibility to take care of these patients, but here the senior doctor should be in charge because there is high risk of mishaps.

**MEDICO- LEGAL CASES-** Law Commission, 201st Report dealt with "Medical Treatment after Accidents, During Emergency Medical Condition, and Women in Labour". The Supreme Court observed in Parmanand Katara v. Union of India AIR 1989 SC 2039

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<sup>2</sup> An organization with a Memory, Department of Health, June 2003

- ❖ At after the occurrence of the accident, the patient needs emergency treatment but when he is taken to the hospital, the doctor says since it is a medico legal case he should be taken to government hospital. Sometimes the injured patient's case is turned down because he is poor and he does not have money to pay. In this report, S.C made obligatory to treat these patients.
- ❖ **ANAESTHESIA-** Anesthetist plays an important role during surgical operation. Any major or minor medical treatment cannot take place without administering proper Anaesthesia. Thus, failure to check up the Anesthesia at preoperative stage resulted into the death of the patient in Dr. Laxman Prakash V. State, 2001, ACJ 1204 (Mad.HC). The failure of Anaesthetist to keep constant check on cardiac changes took place in V.K. Kini V. K. Vasudeva Pai and others, 2001 ACJ 2141 and failure to notice pulse rate or to prepare patient for general Anesthesia attracted liability in Bhanupal V. Dr. Praksh Padode 200(2) CPJ 384
- ❖ **FAILURE TO ATTEND-** Many negligent actions are brought by patients, because it usually happens doctors do not attend the patients on time. So many patients die before securing medical attention especially it happens in the case of children.
- ❖ **INJECTION AND VENEPUNCTURE HAZARDS-** whenever a needle is stuck beneath the skin, in most of the cases medico-legal situation exist, with a possibility of Negligence claim. In many cases, death and paralysis occurred when the wrong substance was injected into the body, in higher dosage than advised or in some cases, local Anesthesia being contaminated with Antiseptics, which damages the spinal cord. The syringe or needle used for injection, is at times broken and in some cases reused.
- ❖ Many patients have allergy from certain drugs and therapeutic substances, the doctor does not take notice of his earlier case and injects or administers drug, which also results into death.

- ❖ **DEFENSIVE MEDICINE-** Doctors are prescribing these medicines or tests to save themselves from the litigation process. The doctors deviate from the path of sound medical practice and they do not treat the patients properly. Therefore, this results a problem both for doctor and for patient.
- ❖ **SPECIALIST-** According to Indian Medical Council and Medical Ethics, a person specialized in one area should not treat patients of other specialized area. As we know that doctors are also human beings, they can also make Mistakes, but what is the need of providing treatment to those cases in which he does not have specific Knowledge. For ex-
  - ❖ Homeopathic doctors are treating Allopathic Patients. So then, there will be more chances of mistakes. In Dr.S.N. Namboodri V. Haneefa 1998(1) CPJ 389, Ker. SCDC - Namboodri was an Ayurvedic practioner, but he prescribed allopathic medicine to a child who was suffering from jaundice, which resulted into child's death.

**CRIMINAL CASES-** A doctor owes a duty of care towards the patient and when he breaches it, the patient suffers the injury. The greediness has grown more and more now, people have become selfish and self- centered. There is a fiduciary relationship between doctor and patient but nowadays some doctors have resorted to unlawful practice- taking out human body parts like Kidney, liver etc. These people are punished under Sec 304 of IPC but then also it is so shameful to expect these kinds of activities from our so-called "God". Doctors are seeing it as a business, which is against their Medical Ethics Code, and this has resulted into rise of cases.

Every time the doctor should not be alleged. It happens in many cases that doctor diagnoses with expertise and knowledge then also the patients suffer harm.

In Achutrao Haribhou Khodwa V State of Maharashtra- It was held that that there is two ways of treatment and the doctor performed his duty through the 1<sup>st</sup> way with adequate care and caution, then also the patient suffered harm. Therefore, this is not the fault of the doctors,

- Pending cases puts pressure on the doctor so he is not able to treat the patient in a proper manner and in order to protect them they start prescribing "defensive medicine".

- Consumer protection Act provides compensation to the patients in a speedy manner. In certain cases the patients takes advantage of the situation, in trivial matters also they file the suit. For ex- If a patient has been given a suggestion on any matter, and anything goes wrong then also the Patient files the suit.
- A patient has been treated by two doctors and due to the mistake of the first doctor, the second doctor is held negligent in the eyes of the family members.
- Media plays a crucial role in spreading awareness about the rights of the patient and at the same time, it defames doctor unnecessarily in some cases.
- Doctors are human beings so they cannot guarantee, and in every treatment, there is a chance of failure so the doctor cannot be blamed always.

### **POSSIBLE SOLUTIONS TO REDUCE MEDICAL NEGLIGENCE**

- The doctors should be very careful while treating the patient. They should be very conscious and very much aware of what they are doing.
- The communication between the doctors and the patient should be very clear and complete. Patient should not hesitate while consultation. The same applies to doctor that it is his responsibility to tell the patient each and every thing about the disease, its consequences and its treatment. The patient whose leg has to be amputated will suffer a loss if he forgets to tell his podiatrist that he has a hereditary circulation disorder.
- The tests and examinations of the patient should be done very carefully avoiding all the possible human errors. In many cases the reports or examinations in itself is wrong and leads to wrong treatment.
- Proper working equipment should be there, so that better treatment could be done without any fault. Before admitting the patient, the doctor should ensure that the required medical equipments are there and in working condition.
- The most important thing is the staff. The staff of the doctors should also be registered according to Indian Medical Council. There are several works, which has to be done by the staff and that too with much care. The staff should follow the instructions of the doctor sincerely and should be there for all the needs of a patient.

They should be well trained to take up immediate action in the absence of doctor in case of an emergency.<sup>3</sup>

- The treatment provided by the doctors should be done step-wise and the daily checkup chart should be maintained.
- The drugs that are to be given to the patient should be well prescribed and should be given with much care. Sometimes expired medicines and wrong insertion of drugs proves to be fatal.
- The cleanliness is the most important factor that needs to be maintained everywhere which doctors generally do not maintain .The use of used injection ,tools ,equipment, towels and other things causes a great problems
- Actions should be taken for the betterment of the patient.
- The doctors and the staff should be updated about everything, all the technologies, tools, drugs, and also know how to use them, which are be applied in the medical field.
- Before all this the most important that is consent should be taken by the doctor from the patient and that too after explaining each thing (risks and benefits).In case the patient is not in a position to give consent then from his family to the patients especially who is immediately operated. Sometimes the infections caught by vital organs results in the death of the patient.
- The blood checkups should also be done with due care. Any single mistake in blood transformation may create damage at a large-scale .Before starting the treatment the blood group should be properly matched so that no further mistake could be made.
- The blood bank should regularly be maintained and it should be ensured that all blood groups should be available there. The blood bank should also be regularly checked up as there are many cases where instead of human beings blood, animal blood is being supplied.
- In case of emergency treatment no formalities should be done. In *Samira Kohli vs. Dr.Prabha Manchanda & anr* on 16 January 2008- Here the doctor told the patients very clearly about the situation and confirmed whether they understood or not.

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<sup>3</sup> Given by Jack H. Olender



- Doctors before performing the operation or doing the treatment if thinks it's a non-emergency case must consult with other doctors and should have a second opinion on the nature of disease, as every doctor has a different opinion and even if there is a doubt, get a third opinion and if you are not able to perform, he should handover it to someone more experienced.
- The laws made must be strict and should be implemented strictly, so that it can be an example for others to take care further.
- We cannot always blame the doctors, as patients also do not pay attention while going to doctor.
- Awareness Program should be organized for the people in whom they should be taught to get speedy Justice through ADR Mechanism like COPRA.
- Outcasting of the doctors from the society would be the best solution.

## **CONCLUSION**

In this Article, we tried to throw light, on the reasons for rise in medical negligence and possible solutions. The paper is divided into 2 parts-, wherein, in the 1<sup>st</sup> part, we have dealt with common reasons for rise in medical negligence. Here we have discussed when the doctors are at fault and secondly, precisely wherein the doctors are not negligent and the patient or the society does not understand that doctors are also human beings and they can also make mistake. The 2<sup>nd</sup> part provides solutions, focusing at the loopholes of the doctors and the society.

We know that the mistakes of the doctors and the society contribute to the rise in Medical Negligence cases. If the doctors understand their duties towards their patient then no such rise could take place and if the patients acknowledge this fact, that in every matter the doctor is not to be blamed. Therefore, the ultimate result of understanding from both sides would lead to balance between the doctors and patient's relationship.

Now the question arises what are the duties of the doctor. The best possible answer to this is given in the Declaration of Geneva: by the World Health Organization. It stated that every member of the Medical Profession should pledge to consecrate their life to the service of humanity and that he should practice his profession with conscience and dignity. The

conclusion of the oath is that a doctor cannot use his knowledge contrary to the laws of the humanity.

To reduce the rise in Medical Negligence cases the society should undertake the responsibility and follow the Social Engineering Theory that is discussed in Jurisprudence. The theory states that if each and every member of the society plays their role with due care and caution then there will be balance in the society. So if the doctors and the society perform their part of work honestly then the society will achieve maximum happiness and ultimately the cases will reduce.

