

MEDICO LEGAL CASES AND STEPS TO CURB MEDICAL NEGLIGENCE

¹S.SABITHA

¹ Student, Final Year ,Ba.Bl,(Hons), Saveetha School Of Law, Saveetha Institute Of Medical And
Technical Sciences, Saveetha University, Chennai-77, Tamilnadu, India.

²PROF DR .A.SREELATHA

²Professor of Law, Saveetha School of Law, Saveetha Institute of Medical and Technical Sciences,
Saveetha University, Chennai-77, Tamilnadu, India.

¹sabitharubavathi@gmail.com, ²annamanenisreelatha.ssl@saveetha.com

ABSTRACT:

A Doctor owes his duty towards his patient who consults him for illness. The negligence is deficiency in duty that is said to be medical negligence. Indian society is aware of patient's rights. This is clearly discernible from a recent litigation. Three ingredients of negligence are Defendant owes duty of care to plaintiff; breach of duty; plaintiff suffered due to that breach. The Medico legal register to be maintained in every casualty ward hospital and the details of MLC is maintained in this. Time and date of examination and name of the Doctor are contained in it. The Indian Medical Council (Professional conduct, Etiquette and Ethics) Regulation, 2002 has made few things clear i.e. it created legal awareness to the Doctors and in interest of public health the Doctors should function. Quality treatment, information, safety and redressal are important rights of patient which is recognized by Consumer Protection Act. And in recent years, the Consumer Protection Act has widened its scope relating to corporate negligence. The medical science is advancing law which is encroached in every area of medical practice. It cannot be ignored by society and deserves right to nourish great expectation from advances of medicine. In current medical practice therapeutic as well as diagnostic procedure involve inherent risk due to high technology so the duty of physician is to protect the health of public. The medical negligence is punishable under various laws i.e. under Indian Penal Code, Consumer Protection Act, Indian Contract Act and tried respectively. This will be dealt in detailed manner.

KEY WORDS:

Medico legal- chief medical officer- negligence- service- compensation

INTRODUCTION:

In current medical practice therapeutic as well as diagnostic procedure involve inherent risk due to high technology so the duty of physician is to protect the health of public. The Medico legal register to be maintained in every casualty ward hospital and the details of MLC is maintained in this. Time and date of examination and name of the Doctor are contained in it. The medical practitioner have three duties duty of care in deciding whether to undertake case; duty of care regarding what treatment to be given; duty of care in administration of treatment.

The aim of this paper is to study about the medico legal cases and the steps to curb the medical negligence.

RESEARCH METHODOLOGY:

Only secondary sources have been referred for this study. The secondary sources include books related to the medico legal cases. Numerous websites and blogs have been referred for the study. This research paper is doctrinal in nature.

RESEARCH QUESTION:

Whether the enactment of new laws will curb the medical negligence and prevent the innocent victims falling in to prey?

OBJECTIVES:

- To study about medico legal cases.
- To know the reasons as to why this issue is still ongoing debate.
- To find out the steps to curb medical negligence.
- To suggest remedial measures for preventing such negligence.
- To examine the Supreme Court guidelines on Medico Legal Cases.

HYPOTHESIS- NULL:

Mere scientific and systematic investigations in medico legal cases does not punish the culprit, since the technology is developing every day.

HYPOTHESIS- ALTERNATIVE:

The medico legal case needs scientific and systematic investigations with strong legal evidences to be proved in the court in order to punish the culprit.

DUTY OF MEDICAL PRACTITIONER:

A Doctor owes his duty towards his patient who consults him for illness. The negligence is deficiency in duty that is said to be medical negligence. Indian society is aware of patient's rights. This is clearly discernible from a recent litigation. Three ingredients of negligence are Defendant owes duty of care to plaintiff; breach of duty; plaintiff suffered due to that breach. The Medico legal register to be maintained in every casualty ward hospital and the details of MLC is maintained in this. Time and date of examination and name of the Doctor are contained in it. As soon as the patient is admitted under suspicion or if he died on admission then the CMO (Chief Medical Officer) has to make a report to the Police officer regarding the patient details and treatment given. The medical practitioner have three duties duty of care in deciding whether to undertake case; duty of care regarding what treatment to be given; duty of care in administration of treatment.

RECENT DEVELOPMENTS:

The Indian Medical Council (Professional conduct, Etiquette and Ethics) Regulation, 2002 has made few things clear i.e. it created legal awareness to the Doctors and in interest of public health the Doctors should function. Quality treatment, information, safety and redressal are important rights of patient which is recognized by Consumer Protection Act. And in recent years, the Consumer Protection Act has widened its scope relating to corporate negligence. The medical science is advancing law which is encroached in every area of medical practice. It cannot be ignored by society and deserves right to nourish great expectation from advances of medicine. In current medical practice therapeutic as well as diagnostic procedure involve inherent risk due to high technology so the duty of physician is to protect the health of public.

MEDICAL NEGLIGENCE AND LAW:

The medical negligence is punishable under various laws i.e. under Indian Penal Code, Consumer Protection Act, Indian Contract Act and tried respectively. In nature of civil liability the person can claim and damages in form of compensation if there is a breach of duty of care while carrying out operation under supervision of medical practitioner. In the nature of criminal liability if the patient died after the treatment then the particular medical practitioner is liable under Sec.304A of Indian Penal Code which deals with causing death by rash and negligent act. And the punishment is 2 years imprisonment and fine. Also the hospital is liable for negligently transmitting diseases. The conduct of medical practice is brought under the Consumer Protection Act, 1986 due to landmark case named Indian Medical Association V. V.P.Shantha, (1995) 6 SCC 651. It is not stated that Doctors are negligent but while performing duty lots of patience is required, since this is a noble profession high expectation from the public. So with due care and caution it is to be performed. Recently the Apex court has awarded compensation in Krishna Iyer V. State of TN, 2015 STPL (web) 1239 SC, for about Rs.1.8 crores for the loose of eye sight. This is the highest compensation ever and many Activist striving hard to curb the negligence.

NATURE:

The cases which are said to be medico legal case are of following nature:

Accidental deaths, poisoning, if patient dies after admission, if patient dies within 24 hours of admission, if in operation theatre during MTP Medical Termination Of Pregnancy or during delivery if patient dies, if death is related to alcohol/ drug, if in burn cases or if admitted patient absconded. In these cases it attracts the medico legal purview[3].

DECIDED CASES & VIEWS:

Besides medical treatment, if there is any suspicious circumstance then the investigating agency will fix the problem. The CMO Chief Medical Officer has authority to decide whether to register particular case as medico legal case or not[4].

In *Parmanand Katara V. Union of India*, the scooterist met with an accident and taken to the nearby hospital but they refused to give treatment and he was taken to another hospital and the patient died. The reason for refusal is to inform Police, but the Honorable Court held that first aid to be given to every injured citizen the only criminal law should come in to play[5].

Article 21 deals with right to life and personal liberty. That is, no person shall be deprived of his right to life and personal liberty except according to procedure established by law. The hospital cannot deny emergency medical care to an accident victim[6].

Every medical practitioner during his practice faces at time the term “Medico legal Cases”. The case is labeled as MLC solely lies with attending medical practitioner. Such cases are to be registered even after several days of such incident[7].

The medico legal case is a case of injury or illness where the attending medical practitioner thinks that necessarily to be carried out “the investigation” by the law agencies to fix the case in accordance with law of land[8].

A Doctor should not issue death certificate in case of MLC and should recommend the post mortem examination for the cause of death. The doctor should be well acquainted with the existing guidelines of MLC[9].

In order to avoid legal cases, Doctor should attend the patient on regular basis and be cautious in advising medication. The Doctor should obtain proper consent before starting treatment. Usually the problem starts with the Doctor whose negligence in his profession towards the patient[10].

In an illustration case, the victim was under suicidal poisoning under Sec.309 of Indian Penal Code, but he did not insist to file MLC. And if subsequently Doctor does so, then U/s.201 of IPC the Doctor will be liable for causing disappearance of evidence of offence[11].

In case of registering MLC in one hospital and referred it to another hospital a fresh injury report need not be prepared, the referral slip be attached on medico legal report form. Treatment of every MLC takes precedence over MLC formalities if the condition of patient is serious[12].

The Chief Medical Officer register Medico legal cases where it must contain preliminary data like name, age, sex, address, identification marks, consent signature, thumb impression, history of the incidence, treatment given, copy should be attached and filed to the Police officer[13].

The Doctor who is acting in negligent manner is based on principles of Res ipsa loquitur i.e. “thing speaks for itself”. The negligence pointed out should be a breach in due care which the practitioner would have been able to keep[14].

In case of *Gian Chand V. Vinod Kumar Sharma*[15],

If a patient requires instant treatment but such patient is transferred from one ward to another and if it thereby causes damage to patient’s health then it amounts to medical negligence.

In a case, the patient died due to no maintenance of bathroom, the hospital authorities are liable for compensation of Rs.1 lakh. This is said to be negligence on part of the hospital authorities[16].

The word “medical care” means “service” and the person seeking medical aid is to be considered as consumer so the conduct of medical malpractice brought under Consumer Protection Act, 1986[17].

In *Dr.P.Narasimha Rao V. G.Jayaprakashu*[18],

It is held that if a patient is under surveillance of particular Doctor, if he does not attend that patient and if patient dies thereby, then the Doctor is liable for medical negligence.

In *Jagdish Ram V. State of H.P.*,[19]

Before performing surgery for a patient, the amount of anesthesia and allergies should be mentioned so that the anesthetist provide ample amount of damage, and can avoid medical negligence.

In *Dr. karkanwaljit Singh saini V.Gurbax Singh* [20]

Until and unless there is something contrary to the statement of record of Doctor, the expert opinion is constituted by the commission of consumer Protection.

In *Calcutta Medical research Institute V. Bimalesh Chatterjee* [21],

The Honorable Court held that onus of proving negligence and resultant deficiency in service was clearly on complainant. It shifts to the accused once it is proved by the complainant side.

VERIFICATION OF HYPOTHESIS:

It is hence proved that in our present era, more systematic investigation is required to detect the actual crime happened in the purview of Medical Profession.

SUGGESTION:

Mistake happens in all fields. Even the professionals do mistake. In the field of medical profession due care to be exercised before giving any treatment or undergoing operation. Framing of laws doesn't curb the issue. It is up to the mindset of the medical practitioners to prevent from doing any negligent act.

CONCLUSION:

Negligence is breach of legal duty to care. This carelessness in matter mandates or gives patient the right to initiate legal action against negligence. Burden of proof lies on the complainant[22]. It is clear that the mistake occurs in every issue. Nothing is perfect in nature, but reasonable care and caution to be exercised while carrying out a medical duty towards the patient who is termed as a consumer.

REFERENCES:

- [1] Student, Saveetha School of Law, Saveetha Institute of Medical and Technical Sciences, sabitharubavathi@gmail.com
- [2] Professor of Law, Saveetha School of Law, Saveetha Institute of Medical and Technical Sciences,
- [3] Mathiharan K, Patnaik A.K. Modi's Medical jurisprudence & Toxicology, 23rd Ed, New Delhi: Lexis Nexis Butterworths; 2005 P.350
- [4] <http://www.barc.gov.in/publications/tb/mg2009.pdf/14.4.18/1.10p.m>.
- [5] 1989 AIR 2029
- [6] Constitution of India, 1949, Universal law publishing, Lexis Nexis , 2017, p.11
- [7] http://www.anilagarawal.com/ij/vol_008/15.4.18/10.03.a.m.
- [8] Dorga, TD, Rudra A.Lyon's Medical Jurisprudence & Toxicology, 11th Ed; New Delhi; Delhi Law House; 2005 p.367
- [9] <http://www.jmedsoc.org/article.asp/15.4.18/10.18.a.m>.
- [10] <http://www.worksure.org/medico-legalcases.in/15.4.18/11.04.p.m>.
- [11] <http://www.mamcjms.in/article/in/15.4.18/11.17a.m>.
- [12] http://www.tddogra.blogspot.in/2014/02/medicolrgal_manual/all_india_institute/html/15.4.18/11.45.a.m.
- [13] International Journal of health Information & Medical research vol:1, issue,1,jan, 2014
- [14] http://www.lawctopus.com/academike/medical_negligence.in/15.4.18/12.05.p.m.
- [15] AIR 2008, H.P.97
- [16] Sharma J & Bhushan V, medical Negligence & comSpensation, 2nd Ed; New Delhi; bhara publications; 2004
- [17] Medical association V.V.P.Shantha & ors, 1995 SCC 651
- [18] AIR 1989AP 207, at 215

[19] AIR 2007 (NOC) 2498 HP

[20] 2003;(1) CPJ 153 (NC)

[21] 1999 CPJ 13 (NC)

[22] <http://www.vakilno.1.com/medical-negligence/15.4.18/1.12p.m>.

[23] Dr.Lakshmi T and Rajeshkumar S “In Vitro Evaluation of Anticariogenic Activity of Acacia Catechu against Selected Microbes”, International Research Journal of Multidisciplinary Science & Technology, Volume No. 3 , Issue No. 3, P.No 20-25, March 2018.

[24] Trishala A , Lakshmi T and Rajeshkumar S,“ Physicochemical profile of Acacia catechu bark extract –An In vitro study”, International Research Journal of Multidisciplinary Science & Technology, Volume No. 3 , Issue No. 4, P.No 26-30, April 2018.

