

Medical Negligence and Risk Management

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Abstract—

Objective: *The key theme of this paper is to endorse the concept of medical negligence in the light of interpretation of law by the Supreme Court of India. Further, this research paper examines and investigate the awareness of doctors about risk management in case of medical negligence.*

Design/Methodology/Approach: *A survey was conducted of 89 doctors selected at random from Delhi and Faridabad. Feedback of the doctors was taken through questionnaire.*

Findings: *It was found that around 89% are aware of risk management. 40% of doctors in Delhi were covered under risk management coverage.*

Keywords: *Medical Negligence, Risk Management, Compensation*

1. INTRODUCTION

The Supreme Court awarded the highest compensation against the medical negligence of the doctors of more than Rs. 6 crores in the case of Balram Prasad vs Kunal Saha & Ors on 24 October, 2013.[1] Dahat Prashant R.[2] found in his study that deficiency in medical services has been a serious concern for the public who consider the doctors as second life savers as God. There is enormous growth in the awareness of medical negligence in India after the Consumer Protection Act, 1986, has come into force. Hospital managements are increasingly facing complaints regarding the facilities, standards of professional competence, and the appropriateness of their therapeutic and diagnostic methods.

According to Tiwari Daya Shankar [3], Medical negligence which at times results in death of patient or complete/partial impairment of limbs, or culminates into another misery. Many patients have been the prey of most incompetent or ill- or under-educated doctors. The negligence of doctors leads to litigation. This paper focuses on what constitutes negligence and what is required to prove it as a result, a number of legal decisions have been made. The standard of care from doctors and hospital authority is expected to be more in comparison with other cases of negligence.

In a survey of 149 randomly selected patients in an academic internal medicine practice, Witman and coworkers[4] found that almost all of the respondents wanted their physicians to acknowledge even minor errors. Indian Medical Association

vs. V.P. Shantha and Ors (1995)[5] held whether a medical practitioner renders 'service' and can be proceeded against for 'deficiency in service' before a forum under the Consumers Protection Act, 1986.

Supreme Court verdict in 1995 brought the medical profession under the purview of the Consumer protection Act, 1986. [6-9] 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. In present scenario, many cases are reported and filed under medical negligence and a huge amount of compensation is being given. Therefore, a need for the risk management was also felt.

2. CONCEPTUAL FRAMEWORK OF MEDICAL NEGLIGENCE

According to Dahat Prashant R., Yadav IV Puneet Satbir (2010) [10] The word "negligence" is always damaging to the reputation of doctors, related to some damage to the patient and a challenge before the judges.

'Medical negligence' is the legal term used to describe a medical accident where a patient has been harmed, not because of a complication but because a doctor did not deliver the proper standard of care. It doesn't always mean that the doctor was incompetent – it just means that he made a mistake that he shouldn't have, for example, Making a mistake during surgery, breach of duty, carrying out a procedure without the patient's consent, administering the wrong drug to the patient, making a wrong diagnosis, not giving timely treatment, not warning the patient or the family about the risks of a particular treatment. It means carelessness in a matter in which the law mandates carefulness. A breach of this duty gives a patient the right to initiate action against negligence under tort liability.

Criminal Negligence' is an offence against the State while 'Civil Negligence' is an offence against the individual act, which leads to injury i.e. physical injury, hurt. An absence of reasonable degree of care and skill in treating his patient, causing any injury to a patient in the form of Loss of earning of the patient, reduction of expectation of life of the patient due to wrong treatment, reduced enjoyment of life of the

patient, pain and suffering, either physical or mental, Loss of potency and Death of the patient is civil negligence. Operation of patient without consent is an example of negligence (Statutory Damage) even without actual apparent damage.

Gross mismanagement of the delivery of a woman, Gross incompetent administration of a general anesthesia, administration of a wrong medicine in to the eye causing loss of vision., amputation of wrong finger or operation on a wrong limb, Leaving instruments, tubes, sponges or swab in abdomen, Performing criminal abortion etc. are examples of When the doctor exhibits gross lack of competency, gross inattention, criminal indifference to the patient's safety or gross negligence in the secretion and application of remedies for eg. A single professional act by a doctor may subject him to both civil and criminal liability.

The basic elements of Negligence are Duty of Care , Breach of Duty , Cause in fact, Proximate Cause and Damage. Standard of care was laid down by Supreme Court in the case of *Dr. Laxman Balakrishna Joshi vs. Dr. Trimbark Babu Godbole*, 1969 [7] and *A.S Mittal .v. State of U.P.*, 1989 [8] . In these cases, different kind of negligence were introduced which were further question of qualification for application in other cases.

There is an exception for medical negligence that if a doctor does not charge fees for his act then he cannot be sued for medical negligence under Tort as per the definition of service which is mentioned in sec 2(1) of Consumer protection Act 1986.

2.1 Vicarious liability of hospitals

The principle of vicarious liability was established in the case of *Aparna Dutt .V. Apollo Hospital Enterprises Ltd.*, 2002 [11] The patient only requires diligent and proper care, if any of the staff of the hospital is negligent in the performance of their prescribed work, the hospital will be held liable on the negligent conduct of even borrowed doctors for specific performance of certain operations. Hospitals have been also held liable for not providing adequate medical facility as it was held In *Paschim Bengal Khet Mazdoor Samity and Ors. v. State of Bengal*, 1996 [12]. and in *Mr. M Ramesh Reddy .V. State of Andra Pradesh*, 2003 (13) .Hospitals were held vicariously liable for not providing medical facility and proper sanitation facility, respectively.

2.2 India vs. Foreign Countries

According to Baker Tom (2005) [14], the Harvard Medical Practice Study (HMPS) continues to have a significant impact in medical malpractice policy debates of "medical injury . . . accounts for more deaths than all other kinds of accidents combined" and "more than a quarter of those were caused by substandard care." Hyman David A., Silver Charles (2006), [15] Health care providers and tort reformers claim that the medical malpractice litigation system is rife with behaviors

that are irrational, unpredictable, and counter-productive. Rodwin Marc A. (2011) [16], in his article seeks to illuminate medical malpractice law and policy in the United States as well as in France. Medico-Legal Problems are so technical that it can be dealt or understood by a Medico legal expert only.

Thousands of cases of medical negligence are alleged every year, many more go unreported. There is no centralized collection of data on negligence cases filed in India or their outcome, State medical councils and the Medical Council of India (MCI) are supposed to maintain registers of all complaints filed against doctors, their status and the outcome of such complaints. But till today, the MCI has not bothered to put together regional data to build a central database for the nation.

Highest compensation awarded to the victim of medical negligence case in India has gone up to Rs 11 crore (including interest) in 2013 by AMRI hospital in Kolkata. The cases occur mostly in categories of Gynaecologist, Surgeons, Dermatologist, Anaesthetist, Dentist, and Orthopaedist. Most of the Medical Negligence Cases were reported from metro cities or tier 1 cities. In the Verdicts of medical negligence cases, doctor was even suspended, their license was cancelled, and they were also arrested & send to jail.

Table 1

Country	Population (in million)	No. of doctors (000s)	Negligence cases filed annually	Deaths	Injured
India	1,200	840	No data	No data	No data
USA	313.9	954	85,000	98,000	100,000
UK	63.2	260	10,129	3,000	500,000
Australia	22.7	70	2,900	18,000	50,000
Canada	34.9	70	1,000	24,000	70,000

Every year, according to a recent study from the *New England Journal of Medicine*, a typical physician has about a 7% chance of being sued for medical malpractice. Surgeons almost certainly will face a malpractice claim sometime during their career. Neurosurgeons, for instance, have a 19.1% chance of being sued in a given year, while that number is 18.9% for thoracic and cardiovascular surgeons and 15.3% for general surgeons.

3. RISK MANAGEMENT FOR DOCTORS

In the context of hospital operations, the term risk management usually refers to self-protective activities meant to prevent real or potential threats of financial loss due to accident, injury, or medical malpractice. When a malpractice claim is made against an institution in the private sector, risk managers coordinate the defence against patients, their dependents, and their attorneys. The medical institution and the patient often become adversaries, and patients and attorneys frequently seek punitive as well as loss-based damages.

Risk management is a futuristic program that prevent loss (financial or reputation), and to market the practice as a leader in health care. The need for Risk Management is in great part, as a direct result of the increase in the number of malpractice claims against health care professionals. Risk Management includes reviewing accidents or incidents to prevent their recurrence.

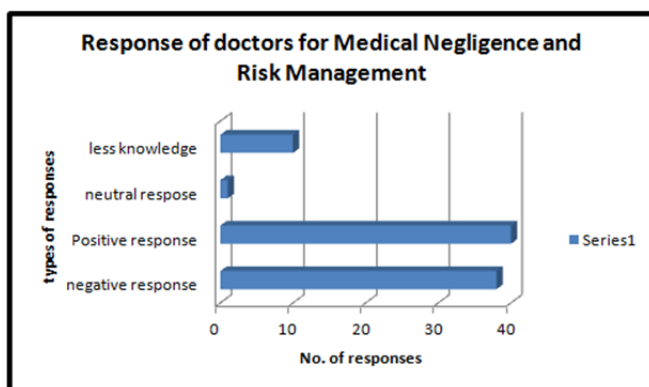
Reviewing existing systems includes Personnel, Office policies and procedures, Equipment and premises Professional procedures, Educating staff about practice and work habits, Reviewing patient complaints and maintain personal involvement Establishing appropriate practice management procedures

4. RESEARCH METHODOLOGY

A survey was conducted of 89 doctors selected at random from Delhi and Faridabad. Feedback of the doctors was taken through questionnaire on the awareness of medical negligence and risk management among Doctors. The sample size was 89 doctors and meeting with each 89 doctors was done separately. Each 89 Doctors were followed and data has been collected. The composition of sample included Physicians, Casualty doctors, Surgeons, Dentists etc. All the categories of doctors from different hospitals of Delhi and Faridabad were covered. Our target was to cover 100 doctors but due to their scheduled we were able to make it 89 doctors. As it is very important to safeguard their profession, therefore 99% of doctors may have a full knowledge about Risk management. Among all the doctors in Delhi 90% may be covered under risk management coverage.

5. DATA ANALYSIS AND RESULT

The data collected was tabulated and analyses. The data analysis says that out of 89 doctors 38 doctors responded negatively. Out of 89 doctors 40 doctors responded positively, 1 doctor responded neutrally and 10 doctors do not have knowledge about risk management.



Bar-chart

An analysis of data finds that 56% doctors had knowledge of medico legal cases. Regarding the protection against medical negligence 66% were aware about the protection Medical Negligence. 89% (79 out of 89) doctors were Risk Management Professional.

55% doctors believed that Medical Negligence is an Unintentional Tort only 12% believed that it can be both intentional and unintentional.. 73% understand the difference between Medical Negligence and Mal Practice. 77% doctors know that other doctors are facing Medico legal cases. More than 55% doctors agreed that 80% cases are lost by doctors due to lack of documentation. The finding says that Around 89 % Doctors feel that surgeon are at higher risk than physician. 44% doctors think that 3 out of 10 doctors are on an average are facing Medical Negligence cases.

The researcher faced difficulties while collecting the information because few doctors were not ready to talk about Medical Negligence cases. 9% doctors were found who do not know anything about the negligence or risk management. 40% doctors were covered by the Risk Management Company. 20% doctors were covered under Risk Management Company but they did not know about the policies they are covered. . Hence, this study proved help to get the present status of the awareness of medical negligence and risk management.

6. CONCLUSION & RECOMMENDATIONS

The Hypothesis that 99% of doctors may have a full knowledge about Risk management is not proved as the findings give that less than 50%, have full knowledge about risk management, 9% are having full knowledge about risk management. The alternative Hypothesis is true. Another hypothesis which the research wants to test was that Among all the doctors in Delhi 90% may be covered under risk management coverage. The alternative was true here also because- 40% of doctors in Delhi were covered under risk management coverage

The doctors are not able to manage their risk due to lack of knowledge about professional indemnity among doctors, lack of interest, less time to know and collect information about risk management. Few doctors were not ready to talk about medical negligence and risk management

There is a need of Proper Marketing of the product covering risk. Seminar for risk management should be conducted on timely basis. ,Doctors should try to know each and every term mentioned in the policy..Importance of risk management should be known by the doctors in a proper way.

REFERENCES

- 1 Dr. Balram Prasad and others v Dr. Kunal Saha and another; Supreme Court of India; 24 October 2013; Bench – V. Gopala Gowda, C. K. Prasad, JJ.; Reported in 2013 Indlaw SC 696; (2014) 1 SCC 384; 2013 (4) ACC 378;
2. Dahat Prashant R., “Medical Negligence and Consumer Protection Law”, *Social Science Research Network* (2010), <http://ssrn.com/abstract=1589192>
- 3 Tiwari Daya Shankar , “Medical Negligence in India: A Critical Study”, *Social Science Research Network* (2013), <http://ssrn.com/abstract=2354282>
- 4 Witman AB, Park DM, Hardin SB. “How do patients want physicians to handle mistakes? A survey of internal medicine patients in an academic setting”. *Arch Intern Med.* 1996;156:2565-9.
5. Indian Medical Association vs. V.P. Shantha and Ors. (1995) 6 SCC 651
6. Supreme Court’s Landmark Judgment: Docs can be Sued for Compensation; *Hindustan Times*, Nov.14, 1995.
7. Dr. Laxman Balakrishna Joshi vs. Dr. Trimbark Babu Godbole AIR 1969,SC 128
- 8 A.S Mittal .v. State of U.P, AIR 1989 SC 1570
9. Planning Commission Skeptical About Govt.”Consumer Right Day” Initiative; *Times of India*; Dec. 29, 2000: 3.
10. Dahat Prashant R. , Yadav IV Puneet Satbir, “Medical Negligence and Criminal Law: An Indian Perspective”, *Social Science Research Network* (2010), <http://ssrn.com/abstract=1591159>
- 11.Aparna Dutt .V. Apollo Hospital Enterprises Ltd. (2002 ACJ 954 (Mad. HC)
- 12.Paschim Bengal Khet Mazdoor Samity and Ors. v. State of Bengal(1996(4)SC260)
13. M Ramesh Reddy .V. State of Andra Pradesh [2003 (1) CLD 81 (APSCDRC).
14. Baker Tom, “Reconsidering the Harvard Medical Practice Study Conclusions about the Validity of Medical Malpractice Claims”, *Social Science Research Network* (2005),
15. Hyman David A., Silver Charles, “ Medical Malpractice Litigation and Tort Reform: It's the Incentives, Stupid”, *Social Science Research Network* (2006), Vol. 59, p. 1085, 2006.
16. Rodwin Marc A., “French Medical Malpractice Law and Policy through American Eyes: What It Reflects about Public and Private Aspects of American Law”, *Social Science Research Network* (2011). Vol. 4
17. Mukesh Yadav & Pooja Rastogi ,” A Study of Medical Negligence Cases decided By the District Consumer Courts of Delhi” *J Indian Acad Forensic Med.* Jan-March 2015, Vol. 37, No. 1
18. Steve S. Kraman, MD, and Ginny Hamm,,”Risk Management: Extreme Honesty May Be the Best Policy, *JD · Annals of Internal Medicine · December 1999, Volume 13, · Number 12* 963-7