

MEDICAL NEGLIGENCE AND MEDICAL ETHICS—AN AYURVEDIC AND LEGAL PERSPECTIV

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ABSTRACT

Medical professionals are treated as next to God. They provide humanitarian services and gives solace to individuals suffering from various diseases and disorders. Due to their great service to humanity, the doctors and medical professionals are treated with reverence and since the ancient times the medical profession has been considered as a noble profession. However with the passage of time, there has been a change in the doctor - patient relationship. During the last few decades, a number of incidents have come to light in which the patients have suffered due to the error and inadvertent conduct of doctors. Due to the increasing conflicts and legal disputes between the doctors and patients, most of the legal systems have developed various rules and principles to deal with such inadvertent behavior of doctors. Medicine is a highly complex domain. It is difficult for consumer laws to review medical negligence cases with flawless technical clarity and accuracy. . In ancient India the system of medicine was indigenous (called Ayurvedic Chikitsa). The concept of medicine and medical practices was prevalent in ancient India too. Ayurveda also has great emphasis been given on ethics, duties to serve the suffering humanity, getting consent, to develop the virtues of integrity, compassion and self effacement, to maintain good relation with co-professionals. Thus medical negligence is not purely a matter of consideration for judiciary but also the technical inputs of specialized experts in the field have substantial weightage while deciding the case of medical negligence against doctors. The present paper is devoted to introvert inspection of negligence in medical profession in the light of existing laws with more emphasis on the interpretation of consumer protection law by judiciary.

KEYWORDS: Negligence, Medical Negligence, Standard Care, Breech, Ethics; Malpractice.

INTRODUCTION

Medical professionals are treated as next to God. They provide humanitarian services and gives solace to individuals suffering from various diseases and disorders. Due to their great service to humanity, the doctors and medical professionals are treated with reverence and since the ancient times the medical profession has been considered as a noble profession. However with the passage of time, there has been a change in the doctor - patient relationship. During the last few decades a number of incidents have come to light in which the patients have suffered due to the error and inadvertent conduct of doctors. Due to the increasing conflicts and legal disputes between the doctors and patients, most of the legal systems have developed various rules and principles to deal with such inadvertent

behavior of doctors. This has led to the development of a new branch of jurisprudence, i.e. medical negligence.

Medicine is a highly complex domain. It is difficult for consumer laws to review medical negligence cases with flawless technical clarity and accuracy. Thus medical negligence is not purely a matter of consideration for judiciary but also the technical inputs of specialized experts in the field have substantial weightage while deciding the case of medical negligence against doctors.

Negligence literally means carelessness. Ordinary human behavior is rife with careless actions, most of which cause no harm or do so little harm will be easily forgiven. Medical Negligence literally means an omission to do something which a reasonable man is expected to do or doing something which a reasonable

prudent man under the circumstances would not do (act of commission). Medical negligence is the absence of standard care and skill or willful negligence of a medical practitioner in the treatment of a patient, which causes injury or death of the patient.

^[1]4.,D" of Negligence^[2,3]

The elements of a cause of action in tort of negligence are:

- (1) a duty to use ordinary care
- (2) breach of that duty
- (3) approximate causal connection between the negligent conduct and the resulting injury and
- (4) Resulting damage.

Duty

Duty is the thread that binds humans to one another in community. As soon as doctor agrees to treat the patient he owe's a duty towards him.

Breach of Duty

The second element that the patient has to prove is that the doctor was careless the doctor has breached his or her legal duty of care towards the patient.

Direct Causation

The damage caused to the patient must have been due to the direct effect of negligence by the treating doctor and without which injury would not have been occurred.

Damage

Unless there is a visible damage (physical or mental) to the patient due to negligency he cannot claim for compensation.

AIMS AND OBJECTIVES

1. Definition of negligency and how conduct of physician influence over negligency.
2. This Article is mainly based on analysis of the existing laws and policies relating to medical services
3. To make the health professionals aware of such laws, which will be beneficial to the patients and doctors and as well as the whole society.
4. Highlight the description about negligency in Ayurveda

Historical Background and Importance of Medical Ethics and Negligence

There are some ethical principle mentioned in Ayurveda which guide our profession and whose breach may be considered as negligence. They are:-

Autonomy - Patient should have a right to know what treatment is going to be done. Dalhana has commented that if surgery is done without obtaining consent then surgeon is liable to be punished by death sentence.^[4]

Sympathy and Beneficence - The physician should have the quality of understanding the suffering of the patient and should attend the patient as early as possible to

relieve the pain. Sushruta has also mentioned that physician should protect the patient like his own son.^[5] In the reference of Vranashopha Sushruta has said that a surgeon should well versed with the clinical feature of various stages of Shopha so that he can drain the pus at appropriate time when it is well suppurated and pus has formed.^[6]

Competence - First and the foremost requirement in ethical surgical practice is the competence practice should be done only by the competent and qualified person who acts with total integrity and impartiality. One should not enter in the horizon of other speciality and patient should be referred to concerned specialist. In the context of Gulma, Charak has clearly been advised to refer the patient to the specialist (surgeon) who is skilled to manage the same.^[7]

Integrity - Patients need to be given appropriate and accurate information about their condition and the reasons of surgery, any complication that may occur. In the context of urinary calculus (Ashmari Chikitsa Prakarana) and Mooda-Garbha Chikitsa (treatment of dead foetus), reference of prior consent of the king or patient well wishers /relatives.^[8,9]

Moral Ethics - The ethical approach of Ayurveda deals with upliftment of moral character of the surgeon. He should avoid sitting together with women, residing with them, cutting jokes with them, accepting anything given by them except food.^[10]

Professionalism - Charak Samhita four basic qualities of the physician have been described viz. Maitri (friendship), Karuna (compassion), Harsha (cheerfulness), Upeksha (indifference and calmness).The physician should be devoted to these virtues.^[11]

Confidentiality - It is clearly mentioned in Ayurvedic texts that the physician should not disclose the private matters of the patient to anyone else.^[12]

Historical Review On Professional Skill Its Negligence And Punishments

Charak stated that one should not enter in the horizon of other speciality and patient should be referred to concerned specialist In the context of Pakva Gulma, it has clearly been advised to refer the patient to the specialist (surgeon) who is skilled to manage the same.^[17,18] In 15th chapter named as Upkalpaniya Adhyaya Charak has mentioned Yogya, Ayogya person , to whom Panchkarma treatment should be given. The physician should keep this in mind while providing Panchkarma treatment otherwise any complications regarding therapy may be sued under negligenc act.

Sushrut Samhita states that for a physician it was mandatory to obtain permission from the king before starting medical practice(Raja-anugya).^[19] Sushruta Samhita says that the physician has to sit down and then

examine his patient by Trividh and Shadvidh Pariksha for proper diagnosis and treatment, if the disease is curable by him. In case of incurable diseases, surgeon has to clearly tell the prognosis of the disease to the patient and relatives before starting the treatment i.e. 'Pratyakhyan'(informed consent).^[20,21] On the other hand a physician should be well versed in his pathy, otherwise he will be condemned as a quack, and deserves capital punishment from the king.^[22]

Vagbhatta has quoted to seek the permission prior to surgical intervention.^[23] In Ras Tarangani- Acharya Sadanand Sharma clearly mentioned in his 24th tarang, that vishupvisha dravyas properly purified, if not it will lead to many health hazards so one should know it's standard operating procedure otherwise patient can sue the doctor for negligence.

Medical Negligence: In Modern Era. Types of Negligence^[24,25,26]

1. Doctors negligency
 - a) Civil negligency b) Criminal negligency
2. Patient negligency
3. Contributory negligency
4. Composite negligency
5. Corporate negligency

1. Doctor's Negligence

a. Civil Negligency: When patient demands monetary compensation for the damage that has occurred due to the doctor's negligency. Not only the patient, an even doctor can also bring a civil suit against the patient to recover his fee. The case for negligence either goes to civil court or to consumer forum.

b. Criminal Negligency: When patient complain to police regarding the misconduct or negligence of the doctor, and police register a case against the doctor. The burden of proof should be beyond the reasonable doubt i.e. gross or of a very high degree. There should be more than 80% chances of the doctor being negligent in his conduct. Sec. 304-A IPC deals with criminal negligence; whoever causes the death of any person by doing any rash or negligent act, not amounting to culpable homicide, is punished with imprisonment upto 2 years and with/without fine.

2. Patient Negligence: Patient negligence is outright negligence by the patient only. The doctor is not negligent. Patient does not give correct history, start an alternative form of treatment without informing doctor, does not follow doctor instructions, discontinues treatment.

3. Contributory Negligence: Any unreasonable conduct, or absence of ordinary care on part of the patient or his attendant, which combined with doctor's negligence contributed to the injury complained of, as a direct cause and without which the injury would not have occurred.

4. Composite Negligence: Injury is caused to the person as a result of the combined effect of the negligence of two or more persons. In such a case, each one of them jointly and severally liable for payment of the entire damages, and the injured person has the choice of proceeding against all or any of them.

5. Corporate Negligence: It is the failure of those in hospital administration/management who are responsible for providing the treatment, accommodation and facilities necessary to carry out the purpose of the institution, to follow the established standard of conduct.

Laws and defences against negligence^[27,28]

Informed consent

It is voluntary agreement, permission or approval without any compulsion, given freely, willingly and truly. A physician must explain the proposed treatment to the patient, the risks involved, and the possibility of any alternative treatment and ensure that appropriate consent is obtained. He must ensure that all necessary information and explanations have been given, before the procedure, the patient must be given clear pre-operative and post-operative instructions in writing and written consent must be obtained to avoid the risks of medical negligence.

Law of Limitation: The case against the doctor should be filed within 2 years from the date of alleged negligence. Volenti non fit injuria (Latin, „to a willing person, injury is not done“) is a defense to an action in negligence. If plaintiff (patient), with his full knowledge, voluntarily gives consent for the risk of injury, he can't take any action legally.

DISCUSSION

Negligence in the context of the medical profession necessarily calls for a treatment with a difference. To infer rashness or negligence on the part of a professional, in particular a doctor, additional considerations apply. A case of occupational negligence is different from one of professional negligence. A simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of a medical professional. So long as a doctor follows a practice acceptable to the medical profession of that day, he cannot be held liable for negligence merely because a better alternative course or method of treatment was also available or simply because a more skilled doctor would not have chosen to follow or resort to that practice or procedure which the accused followed,

“The duties which a doctor owes to his patient are clear. A person who holds himself out ready to give medical advice and treatment impliedly undertakes that he is possessed of skill and knowledge for the purpose. Such a person when consulted by a patient owes him certain duties viz., a duty of care in deciding whether to undertake the case, a duty of care in deciding what treatment to give or a duty of care in the administration of that treatment. A breach of any of those duties gives a

right of action for negligence to the patient. The practitioner must bring to his task a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. Neither the very highest nor very low degree of care and competence judged in the light of the particular circumstances of each case is what the law requires.”

Each and every step of life, one or the other way person will be messed up with so many mistakes, like will be in medical profession. It is every individual's duty to avoid errors and foresee the potential for mistake. In the health profession mistakes would result in serious consequences for the patient and, in turn, lead to the doctor being answerable. So the professionals should carefully decide that what line of treatment is to be adopted, should explain the patient about the risks involved, should keep records, including history, chart notes, radiographs, photographs records which must be signed and dated. Adequate medical education is a light that will extend the horizon of one's vision and re-fine ones native talent. Ashtanga Samagraha indicated that an efficient doctor is friendly towards all, compassionate to the patients, happy when he sees healthy people, and unhappy when he finds that his patient is un-likely to be saved. Finally the advice given by Charaka which is pertinent for the doctors even today, that the physicians who trade their medical skill for livelihood; leaving heap of gold aside collect a pile of dust.

CONCLUSION

The Medical Negligence is a very hot topic nowa days in the Consumer Courts. The Profession of Medicine is getting worst with regards to the Supreme Court's decision and the whole aspect is turning its way to criminal prosecution which may hamper the prestige of medical profession. In recent time the cost of the medicare has gone up enormously and beyond the reach of common man, the so-called cut-throat competition among the hospitals, notwithstanding. District and general hospitals have inadequate supply of medicines and medical equipment and the doctors there are working with no incentives. Provision of medical facilities through Government should be raised to a higher level by increasing the budget provisions for strengthening the government hospitals with equal facilities. Motive is something, which prompts a man to form an intention, and for the same the doctors must get an advantage as defense, because his major intention is saving life of the people. The doctors should also be more careful to perform their duties. Gross lack of competency or gross inattention, or indifference to the patient's safety can only initiate a proceeding against a doctor. A healthy medical environment can create a great society.

Hence there should be a sense of responsibility in doctors as well as consumers regarding the standard care and knowledge (Doctor's) and regarding maintaining the respect and prestige of doctor who save the life of human and are the sole base of saving humanity(Consumer's).

Finally, most importantly the doctors individually and collectively shall introspect their style of functioning and make sincere attempt to strengthen doctor-patient relationship and strive to put forth in their best possible care and skill and competence

Moral values of Ayurveda are milestones to guide the physicians of modern times. It is vital to understand the legal and professional importance of medical ethics and to practice the same at all the levels of medical care

REFERENCES

1. Textbook of Forensic Medicine, Ajay Kumar, Avichal Publishing Company, Second Edition, 2016; 37.
2. Singhal's Forensic Medicine & Jurisprudence, S. K. Singhal Forth Edition Reprint, 2014; 37.
3. Textbook of Forensic Medicine Ajay Kumar Avichal Publishing Company Second Edition, 2016; 38.
4. Kaviraja Atrideva Gupta. Vidyotini Hindi Commentary on Ashtanga Hridaya, Sharira Sthana, Chapter 2, verse no. 26, 1st ed. (reprint), Chaukhambha Prakashan, Varanasi, 2010; 246.
5. Kaviraja Ambikadutta Shahtri Sushruta Samhita , Sutra Sthana, part1 vol 1 Chapter 25/ 44, Chaukhambha Prakashan, Varanasi, 136.
6. Kaviraja Ambikadutta Shahtri Sushruta Samhita, Sutra Sthana, part1 vol 1 Chapter 17/11 Chaukhambha Prakashan, Varanasi, Ed, 2012; 94.
7. Bramhanand tripathi Charak Samhita, chikitsa Sthana, vol 2 Chapter 5/44, Chaukhambha Prakashan, Varanasi Ed, 2012; 254.
8. Kaviraja Atrideva Gupta. Vidyotini Hindi Commentary on Ashtanga Hridaya, Sharira Sthana, Chapter 2, verse no. 26, 1st ed. (reprint), Chaukhambha Prakashan, Varanasi, 2010; 246.
9. Ambikadatta Shastri, Ayurveda tatva sandeepika Hindi commentary on Sushruta Samhita, Chikitsa Sthana, Chapter 7, verse 29, 2nd ed. Chaukhambha Sanskrit Sansthana, Varanasi, 2012; 54.
10. Ambikadatta Shastri translator, Ayurveda tatva sandeepika Hindi commentary on Sushruta Samhita, Sutra Sthana, Chapter 10, verse 9, 2nd ed. Chaukhambha Sanskrit Sansthana, Varanasi, 2012; 45.
11. Bramhanand tripathi Charak Samhita, sutra Sthana, vol 1 Chapter 23/26, Chaukhambha Prakashan, Varanasi Ed 2013; 214.
12. Shailaja Srivastava. Hindi Commentary on Astanga Samgraha, Part I, Sutra Sthana, Chapter 2 verse 17, 1st ed. Chaukhambha Orientalia, Varanasi, 2006; 31.
13. Sharma R.N. (edi.). Manusmriti- Sanskrit text with English translation of M.N. Dutt, Index of slokas and critical notes. Star Publishers" Distributors, 1998.
14. Vidyabhaskar Vedratna Kautilya Arthashastra, Udaiveer Shahstri Published By Meherchand Lakshman Das Part, 1, 1970 (KAŚ 2.36.11).

15. Vidyabhaskar Vedratna Kautilya Arthashastra, Udaiveer Shahstri Published By Meherchand Lakshman Das Part 1, 1970 part 2 pg 111(KAS 4.1.73-75).
16. Vidyabhaskar Vedratna Kautilya Arthashastra, Udaiveer Shahstri Published By Meherchand Lakshman Das Part 1, 1970 (KAS 1.21.9) pg85 part 1.
17. Bramhanand tripathi Charak Samhita, chikitsa Sthana, vol 2 Chapter 5/44, Chaukhambha Prakashan, Varanasi Ed 2012; 254.
18. Bramhanand tripathi Charak Samhita, Chikitsa Sthana, vol 2 Chapter 13 verse184-188; Chaukhambha Prakashan, Varanasi Ed, 2012; 505.
19. Kaviraja Ambikadutta Shahtri Sushruta Samhita, Sutra Sthana, part1 vol 1 Chapter 10, verse 3, Chaukhambha Prakashan, Varanasi Ed, 2012; 41.
20. Kaviraja Ambikadutta Shahtri Sushruta Samhita, sutra Sthana, part1 vol 1 chapter 10, verse 4; Chaukhambha Prakashan, Varanasi Ed, 2012; 42.
21. Kaviraja Ambikadutta Shahtri Sushruta Samhita, Chikitsa Sthana, part1 vol 1 Chapter 16, verse 39; Chaukhambha Prakashan, Varanasi Ed, 2012; 98.
22. Kaviraja Ambikadutta Shahtri Sushruta Samhita, sutra Sthana, part1 vol 1 Chapter 3, verse 49,50, Chaukhambha Prakashan, Varanasi Ed, 2012; 19.
23. Kaviraja Atrideva Gupta. Vidyotini Hindi Commentary on Ashtanga Hridaya, Sharira Sthana, Chapter 2, verse no. 26, 1st ed. (reprint), Chaukhambha Prakashan, Varanasi, 2010; 246.
24. Kumari M et al.: Negligence in Medical and Dental Professionals International Journal of Oral Health and Medical Research, May-June 2017; 4(1): 87.