

Original Research

Knowledge about legal aspects of medical negligence in India among dentists– A questionnaire survey

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ABSTRACT:

Introduction: India's health care system with its advanced technologies have helped millions of people live longer and healthier lives. But according to statistics, nearly 5,000,000 Indians dying every year due to medical negligence. Negligence is the breach of a legal duty to care. It means carelessness in a matter in which the law mandates reasonable care. If there happens breach of this duty gives a patient the right to initiate action against negligence. As dentists its high time we should be aware of the present judicial system, the litigations and upgrade our knowledge about the legal aspects of medical negligence. This study was done to evaluate and address the knowledge about legal aspects of medical negligence among dentists in India. **Materials and methods:** A total of 100 dentists from different dental colleges across country were requested to respond to survey of 15 questions regarding legal aspects of medical negligence. The responses obtained were evaluated and descriptive analysis was done. The results calculated were represented as graphs. **Results:** The responses from dentist to different aspects of medical negligence varied widely. Knowledge and understanding was found to be least for terms like Res Ipsa loquitur bolam's test and Bolitho case. The other questions had less than an average response. There were significantly lesser response for the rest of questions. **Conclusion:** From the survey it was found that, most of the dentists were aware of the medical negligence but were less aware of its legal aspects in depth. The survey emphasis our need to strengthen our knowledge relevant to medicolegal aspect of medical negligence in India.

Key Words: Medical Negligence, Law, Knowledge.

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INTRODUCTION

Medical negligence is the breach of a legal duty to care. 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 [1]. Doctors, which is one of the noblest professions of the society is now perceived as miserably contemptible when there is ignorance and negligence from their part. Medical negligence deaths in India is

estimated as 5 million every year, and according to WHO it is one of the third leading cause of death in the United states[2]. These high reaching figures have claimed increasing awareness among patients regarding their rights and society has become more litigious. Medical professionals are liable to provide the 'reasonably skilful behaviour' adopting the 'ordinary skills' and practices of the profession with 'ordinary care'[3]. Negligence occurs when doctors

simple failure to exercise due care making this type of litigation part of the Tort law. Dental practitioners may deal with a great variety of perplexing issue of these criteria in their work scenario. There are also reported cases of redressal of grievances and compensation from consumer courts that occurred in the field of dentistry recently due to medical negligence. As dentists its high time we should be aware of the present judicial system, the litigations and upgrade our knowledge about the legal aspects of medical negligence. This study was done to evaluate and address the knowledge about legal aspects of medical negligence among dentists in India.

MATERIALS AND METHODS

An Online questionnaire survey was done among 100 dental fraternities of various dental colleges across the country through web based discussion platforms. The survey design was cross – sectional which is carried in the period from October 2019 to August 2020. The web based questionnaire consist of 15 different question which are developed by authors with Content validity established by a lawyer and a professor of medical law. The participation in the survey was volunteered and responses were in the format were they have to choose between options ‘know’ and ‘don’t know. This survey was aimed to evaluate and address the knowledge about legal aspects of medical negligence among dentists in India. The responses obtained were evaluated and descriptive analysis was done. The results calculated were represented as graphs. The responses obtained

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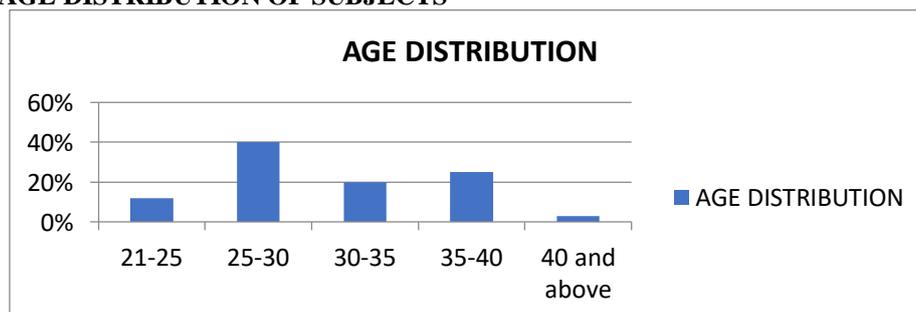
RESULTS

A total 100 participants from different dental colleges of the country participated in the survey with a response rate of 84.3% (TABLE 1). The most of the responders is of age 25-35 years. 82 % of the participants were male and 18 % were female. The 27% of the participants were BDS graduates and 73% were of specialists. About half of the participants were having private clinical practice for more than 2 years. The average number of clinical experience of most of the participants were 3 ± 3 years. When asked about their familiarity with the term medical negligence 89% of them reported they knew the term. Majority of the participants received Knowledge about medical negligence from lectures, webinars, and clinical discussions during their clinical years while 40 % received from online sources, media. We found a comparatively lower knowledge for terms like Implied undertaking, res Ipsa loquitor, Bolam’s test, Bolitho case and Vicarious liability. About 66% of the participants are aware of the punishment implied by the medical negligence. More than half of the dentists know the term criminal negligence, whereas only 40% claimed they knew when is the doctor arrested for medical negligence. However 61% are not aware of the fact that doctors are not punishable for free services (consumer protection act).

TABLE 1: THE RESPONSES (IN %) FOR THE MEDICOLEGAL TERMS AND QUESTIONS

S.No	Knowledge on	% Who knew	% Who didn't know
1	Medical negligence	89	11
2	The Standard to judge the negligence of the doctor	43	57
3	Implied undertaking	30	70
4	Res Ipsa loquitor	3	99
5	Bolam’s test	4	96
6	Bolitho case	4	96
7	Civil negligence	51	49
8	Criminal negligence	60	40
9	Punishment for medical negligence	66	34
10	When can a doctor be arrested?	40	60
11	Are you punishable for free services?	39	61
12	When is the Dr not punishable?	42	58
13	Vicarious liability	14	86
14	Burden of proof	22	74

GRAPH 1: AGE DISTRIBUTION OF SUBJECTS



GRAPH 2: SEX DISTRIBUTION OF SUBJECTS



GRAPH 2: DISTRIBUTION OF SUBJECTS AS PER QUALIFICATION



DISCUSSION

With India's medical negligence report has even crossed the mile stone of 5 million, its imperative for every medical professionals to raise their moral values and to be bound to fundamental values of medicine According to WHO 138 million patients are harmed every year by doctor's error which it seeks to raise awareness of this ongoing tragedy[4]. Like any other medical professions, dental practitioners may deal with a great variety of perplexing issue of these criteria in their work scenario. There are also reported cases of redressal of grievances and compensation from consumer courts that occurred in the field of dentistry recently due to medical negligence. Dentist should have enough knowledge about judicial and legal perspective of medical negligence and the minimum standards of care required under law. Our study on the knowledge about the Legal Aspects of Medical Negligence in India among Dentists, we found that the knowledge was found inadequate .One of the limitation of this survey was that we did not evaluate the extent to which the clinicians were actually aware of legal consequence s. In 1995, the Supreme Court decision in Indian Medical Association VP Shantha brought the medical profession within the ambit of a 'service' as defined in the Consumer Protection Act, 1986 [5]. Under this act there are contracts for service, under which a

doctor too can be sued in Consumer Protection Courts. Most of the participants (89%) knew the term medical negligence, which implies an act or omission by a medical practitioner, which no reasonably competent and careful practitioner would have committed. However, only 43% knew about the criteria which give patient a right to action for negligence. There are certain Standard to judge the negligence of the doctor. The patient who has allegation of medical malpractice against his/her doctor has to prove four important elements. They are as follows:[6]

1. If there is Breach in duty of care
2. The defendant was in charge of his/her treatment and the patient has nothing to contribute to the bad outcome
3. The patient suffered significant damages or injuries
4. These damages have been caused by lack of standard care which any other doctor of same qualification may not do.

Both the terms civil negligence and criminal negligence ,which created possible confusion in half of the participants. To specify in civil medical negligence, the doctor owes a duty of care to the patient, and due to the breach of that duty, the patient receives damage (physical or mental) where the damage was caused due to the breach of that duty[7].

A clinician is charged criminal negligence when the patient dies from the effects of anesthesia during, an operation or other kind of treatment, if it can be proved that the death was the result of malicious and reckless intention or gross negligence[8]. When a doctor fails to establish a proper relationship and communication with the patient, it can make the doctor vulnerable to many law suits. The term implied undertaking of the modern law states that that any person who offers medical advice and treatment implicitly state that they have the skill and knowledge to do so, that they have the skill to decide whether to take a case, to decide the treatment, and to administer that treatment[9]. A large number of participants (70%) are not knowing the term and its implications. Only minority of participants are aware of the terms Res ipsa loquitur, Bolam's test and Bolitho case. The term Res ipsa loquitur is latin origin which means the 'things speak for itself'. It is considered as an act of evidentiary rule in personal injury law. This law of doctrine has been explained in Halsbury's Laws of England. It applies in situations which no proof of negligence is required beyond the accident itself eg: if a surgeon leaves a sponge inside the body of a patient [10]. Bolam's test and its principles is one which were applied in all aspects of medical judgement like diagnosis, treatment and advice. The main rationale of bolam's test is to protect the doctor from floodgates of medical claim as he must have provide very goodness for the mankind. Many judges have felt that doctors needed to be protected from the threat of medical negligence. This framework which was formulated by a high court judge in 1957 is mainly aimed for assessing the appropriate standard of reasonable care in negligence cases involving skilled professionals[11]. The law imposes a duty of care between a doctor and his patient, but the standard of that care must be in accordance with the responsible body of opinion (medical board), then he is not considered negligent. This is known as Bolam test propounded by McNair J in Bolam v. Friern Hospital Management Committee (1957). Another essential component of the medical negligence is Bolitho case. It was a major departure from bolam's test and introduced a 'reasonable patient approach'. The case of Bolitho v City and Hackney Health Authority dates back to 1997 and which concerned the treatment of a sick child in hospital. In that particular case Negligence was alleged, as on the night in question no doctor had responded to a call made by the sister in night duty. It was agreed that if a doctor had come and had intubated the child, the cardiac arrest and brain damage that he went on to suffer would have been avoided. In the contest of deciding medical negligence the judgment given by the House of Lords in this case of Bolitho imposes a requirement that the standard proclaimed must be justified on a logical basis and must have considered the risks and benefits of competing options. Interestingly the effect of Bolitho is that the court will take a more enquiring stance to

test the medical evidence offered by both parties in litigation before reaching its own conclusions[12]. Very rarely doctor can be punishable for free services. But now it is attributed that under the torts law or civil law, they can be punished even if the doctor provides free services. The CPA 2019 in its current form does not explicitly specify healthcare in the list of services listed in the definition of 'service', even though the earlier version of the consumer protection bill as passed by the Lok Sabha had included it. The confusion arises with respect to whether the CPA 2019 takes away the basis of the judgement in VP Shantha Case. Nonetheless, it is yet to be seen which way the courts will decide in the event they are asked to consider the question of whether a healthcare services are covered by the CPA 2019 and whether the intent of the Parliament in explicitly removing healthcare from the list of services under the CPA 2019 will have any bearing on their decision. There are few dentists who reported they knew the term Vicarious liability, sometimes also referred to as "imputed liability,". Usually doctor is liable for his actions, in this vicarious liability even if his employee/servant rashly causes the death of a patient. In that case, the employee as well the doctor will be liable due to the principle of 'Vicarious Liability' under Tort law[13]. Burden of proof is one where the injured one has to establish the act of medical negligence by the doctor. In case of dental malpractice, the unique capability of plaintiff to provide best evidence available in medical science presented with expert opinion is required by the complainant to prove failure of doctor to provide reasonable care [14]

CONCLUSION

Medical profession is one of the respected profession of the society and their service have saved millions. In the light of this survey, we were able to assess the knowledge among the dentist about current legal aspects of medical negligence. As medical field is evolving daily in to new horizons to provide better diagnosis and care, complications may also arise. Framework of laws of medical negligence are directed to provide patient safety. Our survey results have shown that there is less awareness among dentists regarding law and medical negligence. To provide appropriate standard of care and improve knowledge about legal aspects of medical negligence, it is advised to be included in the dental curriculum in the future.

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