

Current scenario of violence against doctors and the medico legal considerations

¹Sarika Gupta (LLB), Associate Professor, Department of Oral Medicine and Radiology, Rajasthan Dental College and Hospital, Jaipur, Rajasthan, India

²Jitender Solanki , Professor and Head, Department of Public Health Dentistry, Rajasthan Dental College and Hospital, Jaipur, Rajasthan, India

³Vinod Kr Bagri, Additional senior civil cum Acmm-02, Jaipur Mertropolitan-II, Jaipur, Rajasthan, India

⁴Manoj Meena , Associate Professor, Department of Oral Medicine and Radiology, Rajasthan Dental College and Hospital, Jaipur, Rajasthan, India

Corresponding Author: Sarika Gupta (LLB), Associate Professor, Department of Oral Medicine and Radiology, Rajasthan Dental College and Hospital, Jaipur, Rajasthan, India

Citation of this Article: Sarika Gupta, Jitender Solanki, Vinod Kr Bagri, Manoj Meena , “Current scenario of violence against doctors and the medico legal considerations”, IJDSIR- January - 2021, Vol. – 4, Issue - 1, P. No. 382 – 393.

Copyright: © 2021, Sarika Gupta (LLB), et al. This is an open access journal and article distributed under the terms of the creative commons attribution noncommercial License. Which allows others to remix, tweak, and build upon the work non commercially, as long as appropriate credit is given and the new creations are licensed under the identical terms.

Type of Publication: Original Research Article

Conflicts of Interest: Nil

Abstract

The practicing medical doctors are living under a huge burden these days. This includes the cost of education, establishing infrastructure in practice and buying expensive medical equipments. This leads to increase in cost of treatment which becomes a challenge for the patient, leading to one of the many reasons to crime against doctors. The other reason can be emotional breakdown of patient’s relatives; unrealistic expectations of patients etc. to handle this well doctor should have good awareness of legislation. Doctors should look out for any susceptible violent nature of patient or their relatives and take proper precautions related to it. It is important for a doctor to be right on his part also this can be achieved by fulfilling well his rights, duties, liabilities and responsibilities towards patients and hospital. A doctor

and his medical staff should be very careful while handling situations with important medico legal implications like drug and fluid administration, blood transfusion, etc. to avoid untoward medico legal issues. Proper consent of the patient or his relatives should be taken, documents should be well maintained and negligence, incompetence, malpractice should be avoided. Doctors should develop an asset protection plan along with professional medical liability insurance. He should be moderately aware of the laws governing medical issues and should never leave any scope for mistakes. A clear and effective communication with the patient should be maintained. This article discusses in detail the points mentioned above along with the details and medico-legal considerations, laws governing medical issues that are applicable to the hospital, consumer protection sections of

Indian penal code and measures to avoid medico-legal cases.

Keywords: Medico Legal, Doctor, Violence, Legal, Medical, Protection.

Introduction

Practicing medical doctors are facing many challenges in the current scenario. The unfavorable environmental factors such as cost of location, expensive medical equipments and technologies are a huge burden on budding doctors. Therefore, a few of them may drift towards undesirable practices^[1]. Since the doctors have low awareness of legislation, it may put them under further problems. Here, ignorance of knowledge is not a crime, but negligence is. Medicine practice should not only be curative aspect alone, but should also be concerned with medico legal aspect relating to doctor-patient relationship, doctor-doctor relationship and doctor-state relationship^[2]. For this, it is important to know about the medical laws, ethics and bioethics. The responsibilities of medical professionals towards the patient and rights of patient come under medical law. Many laws have been enunciated to protect the society against the harms from the medical profession over the years.

The study of moral values and judgments as they apply to medicine, history, philosophy, theology, and sociology is medical ethics. According to medical ethics, the patient has right to refuse or choose treatment (respect for autonomy), doctor should act in best interest of patient (beneficence), doctor should first, do no harm (non maleficence), fairness and equality (justice), respect for patient, truthfulness and honesty and moral values in conflict.³ Bioethics is the study of the ethical issues emerging advances in biology and medicine. It is the ethics of the ordinary. Bioethics is controversial as it is related to advances like abortion, euthanasia, surrogacy, organ donation, gene therapy, etc^[3].

Challenges in medical practice

With perfection, come challenges. No matter what profession you are practicing in today's world, it will always come with day to day challenges. A person, who is able to overcome these, attains perfection. The challenges that a doctor may face during his routine medical practice are obtaining consent from patient or/and his relatives, occurrence of medical negligence, forming properly signed, informed, correct medical report. Issue of certificates, handling sexual offences, maintaining confidentiality, terminal illness and withdrawing life support are other few important challenges. If these are not handled properly and with care, then all of the above may lead to medico legal troubles for doctor and hospital^[4]. Other than these, the biggest and the scariest challenge faced by a medical practitioner is increase in number of violence cases against medical personnel which has increased markedly over the last decade.

Violence against doctors

As there is a general increase in aggression in society, it has affected the medical fraternity as well. The various causes of violence against doctors and medical staff are discussed here. The poor image of doctors and the role of media is a big cause. To gain more number of viewers for news channels sensationalization of every news item is done. This has made people think of private practitioners as business-minded. Meager health budget and poor quality healthcare has lead to overcrowding, long waiting time, absence of a congenial environment, multiple visits to get investigations done and consult doctors, sharing a bed with other patients and poor hygiene and sanitation. Today, the public healthcare system is on the verge of collapse due to inability in providing more number of healthcare professionals for increasing population. Poor infrastructure and no increase in the number of posts for government doctors can be the reason which has attributed

to this. The diminished capacity of small and medium healthcare establishments is noted as another cause behind the crippling malady of violence against doctors^[5].

According to the WHO, just 33% of Indian healthcare expenditure is from government sources and the remaining is from out-of-pocket expenditure^[6]. This out-of-pocket expense for healthcare pushes many households into poverty. Many incidents of violence have occurred at the time of billing and with any decrease in the already pitiable budget for health the situation is likely to deteriorate further. There is a lack of faith of people in the law and order machinery and the judiciary^[7]. A person with a grievance does not trust the mechanisms of redressal provided by law. In India, during emotional breakdown following death of near and dear ones, it becomes impossible to present or understand a rational view. Unrealistic expectations become part of the low health literacy. This emotional turmoil due to death of a loved one is sometimes used by local politicians as an opportunity to demonstrate their political relevance by fueling violence at the clinical establishment^[5]. The rising cost of healthcare is the key reason for the breakdown of bond between doctors and their patients^[8]. One of the prominent reasons for patient–doctor mistrust is the perception of injustice within the medical sphere, related to profit mongering, knowledge imbalance and physician’s conflict of interest. With meager budgets, not sufficient to hire enough doctors and nurses, it would be unrealistic to expect adequate security in Indian hospitals except in a few corporate hospitals. But, whatever be the provocation, justifying any violence especially against a doctor who tries to help in times of need has to be strongly condemned.

Violence against doctors in India comprises of telephonic threats, intimidation, oral/verbal abuse, physical assault

that could be non injurious or causing injury, murder and vandalism and arson^[5].

There is an urgent need to make healthcare facilities a safe environment and prevent violence against medical practitioners. Any complaint filed by a patient or the relatives in any court of law, should be automatically cancelled (ab initio) if proof of violence by the patients or the relatives can be provided by the hospital/doctor^[5]. This should be in addition to the punishment for violence under the Prevention of Violence against Medicare Persons and Medicare Institutions Acts and relevant sections of the Indian Penal Code. Doctors need to evaluate each situation for potential violence when they enter a room or begin to relate with a belligerent patient or relative. It is advisable to look for indicators of violent behaviour such as staring and eye contact, tone and volume of voice, anxiety, mumbling and pacing (STAMP)^[9]. Restrict entry. The most important step in preventing mob violence in a hospital is restricting entry of the public by passes by deploying good security. A large number of relatives should not be allowed at the patient’s bedside. All clinical establishments should develop a Standard operating procedure (SOP) for violence. Mock drills need to be conducted and each member of the staff should be clear about his role if the situation of impending or actual violence does arise^[5].

Other than the above mentioned ways of preventing violence, it is very important for medical personnel to perform his duties well and fulfill all the responsibilities towards the patient and his relatives with honesty, in order to avoid any untoward activity against him. Therefore, a doctor must know his rights, duties, responsibilities in detail.

Duties and rights of doctors

The most important duty of the doctor begins as soon as he consults the patient. A doctor should obtain proper

history of the patient and examine carefully. He should give diligent care to the patient during treatment. All the relevant facts related to the illness should be well explained to the patient and his relatives and proper medicines should be given. A doctor must have average, recent knowledge of diagnosis, treatment planning and medicine as per the specialty. He must be able to foresee the complications and refer the patient at right time. Proper record of patients should be well maintained^[10].

A lot of responsibilities come with the medical profession. But with this, a doctor also gets some rights in his practice. It is the right of a doctor that he may turn away a patient before starting treatment but only after providing minimal basic care especially in an emergency situation. A doctor may select the drugs supported by standard medical practice according to his understanding^[10]. The investigations and method of treatment can be chosen by the treating doctor depending upon various factors. A doctor may obtain a written refusal in case the patient does not want to do as advised. A doctor can delegate the powers to properly trained personnel's or colleagues, usually with the willingness of patient. However, a better alternative is to do a group practice so that a regular consultant is always available for the patient. It is the right of a doctor to decide regarding visits and consultation fees. A doctor maintains the patient's record including its secrecy in certain specific situations^[10].

Liabilities and responsibilities of hospitals

A good medical practice is always a result of combined efforts of the doctor, his colleagues, medical staff and the hospital administration. The hospital administration plays a key role in the general functioning of a hospital or clinic. Therefore, there are a lot of liabilities and responsibilities on hospital. The liability of hospital is to the owner to follow rules and regulations for achieving the objective.

The liability of hospital is to the staff to provide safe, healthy and congenial atmosphere to work. Other than this, it is the liability of hospital to take care of the safety of building and equipments, maintain sanitary environment, give contractual obligation to suppliers and service providers, and maintain adequate safety for patient, relatives and visitors. Hospital should take care that there is no breach of legal obligation by any staff and law, order and adequate facilities for patient care are maintained^[10].

The responsibility of hospital is towards the patients visiting or admitted in the hospital, relatives of the patients, the staff employed in the hospital, the society, central and state government, the local police and the visitors in the hospital^[10].

Legal responsibilities

In the present time, a good medical practice doesn't only requires the doctors and hospital administration to fulfill their duties and responsibilities, but they should also be aware of their legal responsibilities. It is the legal responsibility of doctor (community care aspects) to register and form a medico legal case. A doctor should issue certificates of birth, death, etc. He should give notifications of birth, deaths, infectious diseases and unnatural death. He should properly conduct medical examination, postmortem, file case sheet. It is the responsibility of doctor to determine age on order of court, follow court direction and furnish medical opinion^[10].

The legal responsibilities of hospital (laws governing medical acts) are covered under few acts, namely Compliance of The Medical Termination Of Pregnancy Act, 1971, Compliance of Pre-Natal Diagnostic Techniques Act, 1994, Compliance of Bio-Medical Waste Act, 1998, Consumer's Protection Act, 1986, Right to Information Act, 2005, National Organ Transplant Act, 1984, Artificial Insemination Act, 1988, Pre-Conception

and Pre-Natal Diagnostic Techniques (sex determination) Act, 1994, Food Adulteration Act, 1954^[3]. It is the legal responsibility of hospital to issue disability certificates, give custody of mentally ill patients, to follow ethical and other health regulations.

Vicarious responsibilities are the legal responsibilities that are a liability on administrator for the negligence of hospital staff. These include safety of patient and medical staff, control of hospital infection, cleanliness and sanitization, maintenance of building structure, water supply and safety, fire control measures, training, orientation and motivation of hospital employees and to give guidelines for safety procedures^[10].

Examination of medico legal case

A doctor should take utmost care while examining a medico legal case. He should register medico legal case (MLC), should entertain patients request to register MLC, and must give an opinion regarding present examination. A doctor can convert a referred non medico legal case from another hospital to a medico legal one. He should always report to the Chief medical officer in case of MLC^[10].

Preparation of MLC

The preparation of MLC should always be done very carefully since it involves law. During the preparation of MLC an injury sheet should be filled in duplicate; help of police constable can be taken. Name and address of accompanying person should be mentioned. Name, age, sex, date and time of arrival and injury details should be mentioned. If it's not possible to give an opinion on the current state, write 'case under observation'. It is the responsibility of chief medical officer (CMO) to give final opinion on the case. If patient is admitted, write 'Admitted for detailed examination and management'. Always mention the type of weapon and nature of injury. In case of suspected poisoning write 'unknown poisoning' or

'cause of poisoning not known'. In very critical case, note general findings and mention facts in sheet. A doctor can prepare fresh sheet if the case is referred from some other hospital. Sheet should be prepared by treating unit doctor^[10].

In case of case brought dead, mention details. In case of MLC referred to specialist doctor, inform CMO. A rape case and its clinical examination should always be shown to a lady doctor. Consent for examination should always be taken unless arrested on charge of offence. If the patient is a minor, take consent of guardian for examination of private parts. Though, there are a few exceptions where consent may not be required. In case of medical emergency, notifiable disease, immigrants, new admission to prison, court orders, members of armed force and section 53(1) CrPC on request by police or force a consent may not be required. Casualty duty officer should complete sheet before his/her duty gets over. Sign of attending doctor should always be there in the sheet. Copy of MLC should be given to police by doctor and receipt taken. It is very important to note that 'No MLC should be back dated^[10]'.

Common situations with important medico legal implications

The most common situations occurring in hospitals with common medico legal complications are¹¹:

1. Drug or vaccine administration – Precautions should be taken by the hospital staff for complications that may occur. Skin sensitivity should be done prior to administration, especially when there is a history of first time administration. Proper history of any previous complications should be taken and recorded in writing. A written consent should be obtained from the patient and written information should be given to patients relatives in case of any possible complications.

2. Fast i.v fluids administration – Proper use of bottles, drip set and chambers should be done. All precautions should be taken. The doctor shall not be held responsible in case of any complication if he/she had written proper orders and the nurse injecting is qualified.
3. Mismatched blood transfusion – Name, age and blood group of the recipient and donor should always be checked cautiously prior to transfusion by a health care professional. The details of blood group, quantity of blood and all other details should always be mentioned in written in hospital and patient record. Proper orders for monitoring the vital signs (pulse, respiratory rate, temperature) and early signs of mismatched blood transfusion must be given. A valid consent is a necessity before starting transfusion.

Important aspects of medico legal considerations

Consent – This comes under sec 90 of Indian Penal Code^[12]. According to this, if a patient has given consent to a procedure, knowing about the risks of complications, then he cannot complain later for the same procedure. Consent can be implied, blanket, written or informed. A valid consent is one which is obtained voluntarily from an adult of sound mind who is not under any intoxication. The common possible complications that may arise during or after the procedure should be well mentioned in the consent. This is very important for dentists as well, as they should mention the success rate and possible complications of procedure. The consent should never hide facts or misrepresent them. It should be obtained after explanation and reasonable understanding. Consent should be informed and taken in writing. It should preferably be taken in presence of witness (two from patient side and two from hospital side).

The neighbors consent doesn't have a legal validity. It may not be necessary to obtain consent in certain

situations like if you are managing a patient in an emergency situation, while working in situations of public interest like during floods, cyclones, earthquakes, etc. When a doctor is treating patients in places like mental asylums, orphanages, etc or working under Court order, e.g., in case of smuggling, operations are done for detecting narcotics or gold kept in intestine or other parts of body, taking a consent is not necessary.

Documentation – Documentation comes under sec 29 of Indian Penal Code^[12]. A document is the property of hospital and should be produced only on written request. It should always be clean, correct, complete, comprehensive and chronological. Documents carry confidential information of patients and should be released with consent only. Well maintained documents may be helpful in cases of negligence. A document can be asked for outdoor patient; indoor admission, medical termination of pregnancy, medico legal cases, operations, death certificates and other certificates, etc.

Medical negligence – Negligence is an act of commission or omission. Meaning, it is either a positive act or failure to act, which a man of average skill and objective standards should not perform. According to objective theory, in negligence there is carelessness in approach towards the patient and the act of commission results in injury to the patient. According to subjective theory, the doctor is indifferent to the consequences of his act of omission and thus causing damage to the patient. If there is a breach in duty undertaken, resulting in damage or injury then this is negligence^[10]. If the doctor takes greater risk voluntarily, then he/she must exercise greater care and skill. If the doctor is not a specialist, with special skills then average skill and care are sufficient to avoid the charge of negligence. The degree of care should be proportional to the duty undertaken. Negligence is many times difficult to prove. The burden of proof is on the

patient or relatives except in cases where there was no access to a place like Operation Theater, intensive care unit, nursery, etc. The four Ds of medical malpractice are duty, dereliction (negligence from the standard of care), damages, and direct cause. Each of these Ds must be proved to establish malpractice based on preponderance of the evidence^[11].

A medical negligence can be of 3 types^[11]:

1. Criminal – Any extensive damage comes under this. The negligence speaks for itself (Res-Ipsa-Loquitur). Eg visible damage to an organ or limb due to medical negligence, not taking adequate safety measures, inadequate information to patient, etc.
2. Civil – it consists of omission and commission. Here, the negligence has to be proved by the patient or his relative. eg wrong dose or medicine, hospital infection, etc.
3. Contributory – in this type, the party contributes to injury and damage.

Liability - Every individual is liable for his wrongful acts under various laws. The wrongful act can be an act of commission or an act of omission. "Mens rea" guilty mind with intention, knowledge and awareness of doing wrong is more punishable than the acts done without willful intent. Negligence, incompetence, mal-practice, etc. constitute the liability of medical persons. Vicarious liability involves the acts of staff members and partners in different situations. The doctors shall only be liable for the act of their staff if they are unqualified. But if the staff is qualified and makes a mistake then the doctor may not be held directly responsible^[11].

Asset protection and indemnity- Doctors should develop an asset protection plan along with professional medical liability insurance. A malpractice lawsuit can dry off a doctor's earned and invested assets. Professional indemnity is an insurance plan to financially safeguard

medical practitioners against legal costs and claims for compensation by patients in case of a legal row. The two categories of professional indemnity are personal or individual and Errors and omissions. Personal indemnity takes care of the risk of liability of the doctor and his qualified assistant while errors and omissions policy covers an institution, nursing home, or hospital along with its staff members^[13].

If a doctor is the owner of a hospital/institution, it is recommended to take both individual and error policy as the hospital/institution is a separate legal entity and often can be made a party to medico legal case^[14]. Personal indemnity also covers the cost of defending oneself in the court of law (Cost of Decree). The plan covers liabilities for a year from the point of subscription that is fixed per policy and accident period. However, the policy does not cover criminal actions. Various organizations in India render indemnity insurance policies for medical practitioners, like Indian Medico-legal Consulting Services or Professional protection groups, IMA National Professional Protection Scheme and Professional Indemnity Policies by National General Insurance companies. The concerned doctor, who is a member, shall inform the Honorary Secretary and State Representative of the Scheme as soon as the incident occurs^[15].

When the violence occurs, remain calm in the face of provocation and let things blow over. Depute someone to take photographs and audio/video recording of the violence, to get the medical record of the patient photocopied. In case of stolen or misplaced original record, use photocopies. Inform the police immediately and your lawyer and keep a record of such phone call. Identify the troublemakers in the mob. Get written, signed statements from the persons present regarding the occurrence of violence. Lodge an FIR with the police under the relevant Act for protection of medical personnel.

Do not try to 'settle' the issue by paying hush money (may be taken as admission of guilt). Only after you act appropriately, you can proceed with professional indemnity plan along with the proof^[5].

Burden of proof - The court demands that medical negligence has to be established and cannot be presumed. The patient must establish her/his claim against the doctor. The burden of proof is correspondingly greater on the person who alleges negligence against a doctor. Negligence, carelessness, or insufficiency should be proved by the complainant^[13]. A doctor can be held liable for negligence only if the patient can prove the doctor guilty of negligence that no other doctor with ordinary skills would be guilty of if acted with reasonable care. In Bimalesh Chatterjee case, it was held that the onus of proving negligence and the resultant deficiency in service was clearly on the complainant. When the damage is too remote, it is not considered as an immediate result of medical negligence^[16].

Laws governing medical issues

The four laws that govern the medical issues are^[10]:

1. Civil law – When the issue is between two parties then it comes under civil law. Physical punishment is given under this, with or without compensation. A civil law is expensive, time consuming and cumbersome. The following laws come under civil law:
 - Law of contracts – It could be express (by consent) or implied (by provision of care, services, examination of medico legal cases, unconscious patient, under life and death situation)
 - Law of torts – Not covered by contract. It comprises of negligence, intentional interference (malafied or bad intentions), community care rights and medical laws.
 - Law of vicarious responsibility

2. Criminal law - When the issue is between society and individual then it comes under criminal law. All the medico legal cases come under this. The punishment under this is imprisonment, with or without fiscal punishment.
3. Consumer protection act
4. Others – MTP IT, Drug Act Labour law, Medical Council Act.

Recently, in 2019, a draft bill was proposed by the honorable supreme court of India in the wake of increasing cases of violence against doctors. The Health Services Personnel and Clinical establishments (Prohibition of Violence and Damage to property) Bill, 2019 Sought to punish people who assault on duty doctors and other health care professional by imposing a jail term of ten years, fine up to rupee 5 lakhs.

Laws applicable to hospitals

The laws that are applicable on hospitals can be broadly classified as the laws governing the following^[17]:

1. Commissioning of hospital
2. Qualification/ practice and conduct of professionals
3. Sale, storage of drugs and safe medication
4. Management of patients
5. Environmental safety
6. Employment and management of manpower
7. Medico legal aspects
8. Safety of patient, public and staff within premises.
9. Professional training and research.
10. Business aspects
11. License/ certification for hospital.

Consumer protection act (CPA)

It was enacted in 1986. Supreme Court added medical services in CPA by its ruling in November, 1995. According to this, a consumer can approach district forum or state commission or national commission or Supreme Court, depending upon the jurisdiction and the amount of

damage claimed. The limitation period for this act is 2 years but may be extended by the judge. A complaint can be filed by a consumer, beneficiary, voluntary organization or government for the consideration which may be paid/promised, part paid/part promised or even deferred payment^[11]. The complaint filed can be for any fault, shortcomings in quantity, quality or standard of work performance. According to section 52 of Indian Penal Code, nothing is said to be done or believed in 'good faith' which is done or believed without due care and attention^[12].

Free government and charitable hospitals are not covered by CPA. All private charging hospitals are covered under this. There are a few shortcomings of CPA like litigation is easy, no stamp fee or court fee, no medical experts to guide negligence and justice may be hurried. In case of CPA, what best a doctor can do is give reply on time, explain the misunderstandings and misrepresentation in written statement, attend personally with or without lawyer. The doctor should always give brief, clear and comprehensive answer. He should produce affidavit of colleagues, ask for expert witness, give reference relevant to case, demand cross examination and always ask for counter compensation whenever possible. What should not be done in case of CPA is one should never ignore or disrespect court, should not give unnecessary details, handover documents and get panicky or frightened^[11].

Errors by medical professionals

It is very important for medical professionals to leave no scope for any mistakes. Still, some mistakes or errors may happen by them. Here, we will discuss those few errors that may occur. It should be taken care that a patient or his relatives should never feel avoided, unheard or unattended^[18,19]. A doctor should always be empathetic towards all his patients. It is better that a doctor avoids practicing defensive medicine. When the patient has issues

with affordability then a complaint is more likely. This comes under malpractice. Communication should never lag from the doctor's side^[20]. Communicate clearly and effectively with the patient. Make them understand the diagnosis, treatment plan and medication. Make sure that they follow the instructions properly. There should never be any failure in diagnosis of doctor. Here, taking a proper case history helps. A probable complication should never be missed. A well made consent form saves one in this. There should never be a scope of inadequate follow up. Maintain the documents well^[21]. Always give proper time to your patient so that the patient's trust develops in you and there are less chances of being sued^[22]. There should never be a scope of prescribing errors by the doctor. Before prescribing any medication, one should be fully aware of all the other medications the patient is taking. Patients should be instructed that they should immediately respond if there are any side effects with the medicine. Prefer electronic medical recording and prescribing over handwritten prescriptions^[13].

How to avoid legal cases

Precaution is better than cure, in medical practice as well as legal matters. The legal cases can be avoided by taking certain precautions. A doctor should always attend patients personally, carefully, empathetically, behave humanely and communicate well. He should always try to do the best. Legal cases can be avoided by being conscientious. Take proper consent. He/she should maintain documents^[23], be efficient and have expert opinion. A doctor should always adhere to clinical guidelines and hospital policies. Refrain from blaming other health care providers^[24]. Finances and bills should be well explained. Guarded prognosis should be given, appoint trained hospital staff, avail insurance and indemnity schemes, keep your knowledge updated, abide by the laws applicable to hospitals, create medico legal

cells and medical organization. There is never any harm in taking second opinions. If in case a mistake happens by the doctor, there should never be any harm in apologizing^[13].

When physicians are honest about medical errors and apologize to the patient, the overall cost of medical malpractice is reduced in the end. However, it does depend on the type of error, motive of the victim and situational influences. A reasonable doctor should consider every patient as a potential litigant. Therefore, one should stick to a prescribed standard of care and avoid any adventurous attempt. A doctor should not ignore any allegation in any form (oral or written) and should be able to handle allegations with clear and firmness in an intelligent and sympathetic manner. The medical malpractice stress syndrome is real. In time of ongoing case, one needs to stay focused on other areas of life as well^[11].

Indian penal code

Any human may commit a mistake unknowingly or unintentionally. Similarly, it may happen with a doctor in detecting or diagnosing a disease. It has been held in different judgments by the National Commission and by the Honorable Supreme Court that a charge of professional negligence against a doctor is different from that of a charge of negligence against a vehicle's driver. There are a few sections in IPC which a doctor should be well aware of. All those sections will be discussed here^[12].

IPC Section 52: (Good faith). Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention.

IPC Section 80: (Accident in doing a lawful act). Nothing is an offense which is done by accident or misfortune and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution.

IPC Section 87: act not intended or not known to be likely to cause death or grievous hurt, done by consent.

IPC Section 88: (Act not intended to cause death, done by consent in good faith for person's benefit). Nothing which is not intended to cause death is an offense by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm.

IPC Section 89: Act done in good faith for benefit of in child or insane person, by or by consent of guardian.

IPC Section 90: Consent known to be given under fear or misconception. This could be a consent of insane person or child.

IPC Section 91: Exclusion of acts which are offences independently of harm caused.

IPC Section 92: Act done in good faith for benefit of a person without consent. Nothing is an offense by reason of any harm which it may cause to a person for whose benefit it is done in good faith, even without that person's consent, if the circumstances are such that it is impossible for that person to signify consent, or if that person is incapable of giving consent and has no guardian or other person in lawful charge of him/her from whom it is possible to obtain consent in time for the thing to be done with benefit.

IPC Section 93: (Communication made in good faith) No communication made in good faith is an offense by reason of any harm to the person to whom it is made if it is made for the benefit of that person.

IPC Section 304-A: death due to negligence.

IPC Section 312-16: Causing abortion or miscarriage without consent. This includes causing death or act done with intent to prevent child born alive. An act is done amounting to culpable homicide.

IPC Section 319-22: causing grievous hurt/ disfigurement.

It includes voluntarily causing hurt or grievous hurt.

IPC Section 340-42: wrongful confinement of patient.

This includes punishment for wrongful confinement and restraint.

IPC Section 499: Defamation.

Reference

1. Ramesh Bhat. Characteristics of private medical practice in India: a provider perspective. Health policy and planning. 1999;14(1):27-37.
2. Mukherjee JB. J. Legal aspect of medical practice. J Indian Med Assoc. 1999 Nov;97(11):461-5, 474.
3. http://www.indus.org/healthcare/Scientific_sessions. Y.M. Fazil Marickar. Law regarding medical practice.
4. <https://www.slideshare.net/amintabish/legal-aspects-of-med-prac>
5. Nagpal N. Incidents of violence against doctors in India: Can these be prevented? Natl Med J India 2017;30:97–100.
6. Shiva Kumar AK. Fixing India's healthcare system: Strong political commitment is needed to build a system of universal health coverage and better regulations. Available at www.livemint.com/Opinion/pl58bANi9zaF0AR2MkUYuN/Fixing-Indias-healthcare-system.html (accessed on 15 May 2015).
7. Madhok P. Violence against doctors. Bombay Hosp J 2009;51:301–2.
8. Goold SD, Lipkin Jr M. The doctor–patient relationship: Challenges, opportunities, and strategies. J Gen Intern Med 1999;14 (Suppl 1):S26–S33.
9. STAMP system can help professionals to identify potentially violent individuals. Eureka Alert. The global source for science news. Washington, DC: Black Lack Publishing; 20 June 2007. Available at www.eurekaalert.org/pub_releases/2007-06/bpl-ssc062007.php (accessed on 2 Jun 2017).
10. <https://www.slideshare.net/NcDas/legal-aspect-of-medical-care>. Sited on 28/04/2020.
11. Pal S.S, Pal RB. Indian Penal Code, 1980, Pal Publishing House, Delhi, Diglot Edition 2019.
12. Joseph Thomas. Ethical and legal issues in medical practice. Indian J Urol. 2009 Jul-Sep; 25(3): 335–336.
13. Raveesh BN, Nayak RB, Kumbar SF. Preventing medico-legal issues in clinical practice. Ann Indian Acad Neurol. 2016;19(Suppl1):S15-S20.
14. Kapoor L. Better Safe than Sorry; Medico-legal Do's & Don'ts. Mumbai: Association of Medical Consultants; 2011.
15. Mathur MC. Professional Medical Indemnity Insurance - Protection for the experts, by the experts. Indian J Ophthalmol 2020;68:3-5.
16. Calcutta Medical Research Institute vs. Bimalesh Chatterjee I. CPJ 13 (NC) 1999
17. Singh MM, Garg US, Arora P. Laws Applicable to Medical Practice and Hospitals in India. Int J Res Foundation Hosp Healthc Adm 2013;1(1):19-24.
18. Oyeboode F. Clinical errors and medical negligence. Med Princ Pract. 2013;22:323–33.
19. Kreimer S. Six Ways Physicians Can Prevent Patient Injury and Avoid Lawsuits, Medical Economics. [Last updated on 2013 Dec 10; Last cited on 2016 Sep 05]. Available from: <http://www.medicaleconomics.modernmedicine.com>.
20. Hagihara A, Tarumi K. Association between physicians' communicative behaviors and judges' decisions in lawsuits on negligent care. Health Policy. 2007;83:213–22.

21. Gupta SK, Padhi PK, Chouhan N. Medical negligence: Indian scenario. *Indian J Neuro trauma*. 2014;11:126–33.
22. Hickson GB, Federspiel CF, Pichert JW, Miller CS, Gauld-Jaeger J, Bost P. Patient complaints and malpractice risk. *JAMA*. 2002;287:2951–7.
23. Flynn M. *Encyclopedia of Forensic and Legal Medicine*. 2nd ed. Sydney: Elsevier; 2016. Medical Malpractice – Medico-legal Perspectives: Negligence, Standard of Care;365–369.
24. Yadav M. Role of expert opinion in medical negligence cases. *J Indian Acad Forensic Med*. 2014;36:336–9.